

**DEPARTMENT OF LABOR****Occupational Safety and Health Administration****29 CFR Part 1908****Consultation Agreements**

**AGENCY:** Occupational Safety and Health Administration, U.S. Department of Labor.

**ACTION:** Final rule.

**SUMMARY:** In this final rule, the Occupational Safety and Health Administration (OSHA) is revising a significant portion of its regulation governing Cooperative Agreements between OSHA and State agencies whereby such agencies provide consultation assistance to employers. The revised regulation provides for broadening the scope of consultative activities by shifting the focus from simply the identification and correction of specific workplace hazards to a concern for the effectiveness of the employer's total management system for ensuring a safe and healthful workplace. The regulation also expands the scope of service by allowing offsite consultation as well as training and education of employers and employees. In addition, the regulation provides an exemption from general schedule OSHA inspections for employers meeting specified conditions.

The revised regulation is intended to further the Agency's goal of achieving a balanced mix of program activities by strengthening, encouraging and assisting voluntary employer and employee safety and health efforts.

**EFFECTIVE DATE:** This regulation is effective July 19, 1984 except for § 1908.7(b)(4) which is effective August 20, 1984.

**FOR FURTHER INFORMATION CONTACT:** James Foster, Director, Office of Information and Consumer Affairs, Occupational Safety and Health Administration, U.S. Department of Labor, Room N3637, 200 Constitution Avenue, NW., Washington, D.C. 20210, (202) 523-8148.

**SUPPLEMENTARY INFORMATION:****I. Background**

Section 21(e) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 670(c)) directs the Secretary of Labor to establish programs for the education and training of employers and employees in the recognition, avoidance, and prevention of unsafe or unhealthful working conditions in employment covered by the Act. The need for a greater understanding by employers of

their obligations under the Federal or State OSH Acts has been widely acknowledged. The interpretation of complex standards and the ability to recognize hazards in the workplace are often difficult for employers. Small business employers who may lack the financial resources to utilize private consultants may face even greater difficulty in understanding their obligations under the Act.

Under the Federal OSH Act, onsite consultation services by OSHA personnel cannot be provided without triggering the normal enforcement provisions of the Federal Act, including citation and possible penalties for any hazards observed. Onsite consultation services can, however, be provided by State personnel without triggering the enforcement mechanisms of the Act. Federally funded onsite consultation was originally conducted only by States operating plans approved under section 18 of the Act. In response to the demand for consultation in other States, Part 1908 was first promulgated on May 20, 1975 (40 FR 21935) to authorize Federal funding of onsite consultation activity by States without approved State Plans through Cooperative Agreements entered into under the authority of sections 21(c) and 7(c)(1) of the Act. Part 1908 was subsequently amended on August 16, 1977 (42 FR 41386) to clarify a number of provisions which had been subject to misinterpretation, as well as to increase the level of Federal funding to ninety percent, a level that was considered necessary to provide a strong incentive for States to enter the program.

On October 5, 1983, a notice was published in the Federal Register (48 FR 45411) requesting public comment on further proposed changes to Part 1908. These amendments were intended to clarify various provisions to reflect the experience gained since the 1977 revisions. Additionally, the proposal raised a number of new issues, including: A shift of focus from simply the identification and correction of specific workplace hazards to a broader concern for the employer's total management system for ensuring a safe and healthful workplace, provision for offsite consultation, training and education, and exemption from general schedule inspections for employers satisfying specific criteria. Over 50 comments were received from State agencies, labor organizations, business associations and individuals. After consideration of the public comments, the proposal has been amended to a limited extent and is published herein as a final rule.

**II. Summary and Explanation of Final Rule**

This section includes an analysis of the public record and the policy considerations underlying the decisions on various provisions of the regulation.

OSHA has made various changes to the October 5, 1983 proposed language in the final rule. Editorial and grammatical corrections are made throughout the final rule which do not alter the specific intent or purpose of the proposal's requirements. In most instances, these minor changes are not discussed in the preamble. The preamble focuses primarily on substantive issues raised in the proposal.

OSHA has cited public comments in the record by identifying exhibits parenthetically. The comments of the National Advisory Committee on Occupational Safety and Health (NACOSH) are included in Exhibit 2. All other public comments are identified as Exhibit 3. Comment numbers identifying a particular commenter follow the exhibit number. If more than one comment is cited, the comment numbers are separated by commas. For example, (Ex. 3:4, 5, 6) means Exhibit 3; comment numbers 4, 5, and 6. The names and numbers of commenters are listed in Attachment I.

**Section 1908.1 Purpose and scope.**

This section describes in general terms the purpose of Cooperative Agreements between OSHA and State governments for the provision of consultation services to employers. In its present form, the section describes free consultation services which focus on the identification of specific workplace hazards and assistance in their elimination. It explains that the consultation services are independent of OSHA enforcement, but that employers remain under statutory obligation to protect their employees and are required to take necessary protective action in certain instances.

The October 5, 1983 proposal revised this section to clarify the central purpose of the Cooperative Agreements and set forth the expanded scope envisioned in changes to subsequent sections of the regulation. The proposal identified the central purpose of the Agreements as the prevention of injuries and illnesses which may result from exposure to hazardous workplace conditions and practices. The expanded scope of work under the Agreements would include evaluation of, and assistance with, an employer's occupational safety and health program.



as well as the identification of specific hazards and assistance in their correction. In addition, as part of the expanded scope, consultation assistance away from the employer's worksite would be authorized, as would education and training of the employer, the employer's supervisors, and the employer's other employees as needed to make the employer self-sufficient in ensuring safe and healthful work and working conditions. In conjunction with the proposed new focus on effective safety and health programs, a provision of this section in the October 5, 1983 proposal noted that employer correction of serious hazards and establishment of an effective safety and health program may serve as the basis for employer exemption from certain OSHA enforcement activities.

In an addendum to the section, a new statement in the final rule makes clear that, in States operating Plans approved under section 18 of the Act, the provisions of the regulation governing enforcement policies do not apply to safety and health issues covered by the Plan. States operating such Plans are, in accord with section 18(b), required to establish enforcement policies which are at least as effective as Federal policies. The wording of this statement in the final rule has been changed slightly from that in the proposal. The proposal would have provided that the Federal enforcement provisions of Part 1908 are totally inapplicable within any State Plan State. However, this language is modified in today's final rule to reflect the fact that some Plans do not cover all occupational safety and health issues within the State. Where coverage of an issue is provided by Federal OSHA, the enforcement related provisions of Part 1908 will apply even in a Plan State. Although no comment was directed to this feature of the proposed rule, OSHA believes that the modified language is more appropriate, and more clearly reflects existing State Plan relationships, than the language originally proposed.

A significant number of commenters (See Ex. 3:1, 2, 3, 4, 6, 8, 11, 14, 20, 21, 25, 27, 31, 33, 34, 41, 43, 47, 52) have expressed support for the expanded scope of activity under the proposal. Several States specifically welcomed the addition of the new provisions. One State agency (Ex. 3:33) commended the general shift in focus "from the limited program scope of the identification and control of specific workplace hazards to an emphasis on a complete health and safety program." Similarly, another commenter (Ex. 3:43) stated that "assistance in establishing occupational safety and health programs, including

training and education, can help systematically to prevent workplace hazards from appearing. Such assistance will establish a more durable comprehensive basis for continued improvement by the employer \* \* \*." Another State (Ex. 3:11) indicated "that inclusion of training and education services \* \* \* will lead to greatly enhanced abilities for employers and employees to protect themselves against the hazards present." A third State (Ex. 3:21) endorsed the proposal's provision for offsite assistance, noting that "telephone and correspondence are effective methods to provide offsite consultant services and are a necessary adjunct to a good \* \* \* consultation program."

One commenter (Ex. 3:45) objected to the expansion on the basis of a lack of evidence that OSHA-sponsored consultants are "competent and qualified to do more than offer technical advice about hazards." OSHA has, however, had experience to the contrary. Although the focus of consultation assistance under the current regulation has been on the identification of specific hazards, § 1908.7(b)(2)(i) of the 1977 regulation establishes as a minimum requirement that consultants demonstrate "knowledge of workplace safety and health program requirements." Many consultants have in fact offered assistance to employers in establishing or improving a workplace safety and health program. As well, many consultants have provided informal training and education to employers and their employees as a part of the routine consultation process, during the opening and closing conference and during the walk through the workplace.

At the same time, OSHA recognizes that this shift of emphasis in consultation services will necessitate increased training of State consultants in these areas. All consultants will receive training in the evaluation of, and assistance with, employers' workplace safety and health programs, and in the provision of training and education in the course of the initial consultation visit. Moreover, consultants in each State project will be selected to specialize in the delivery of more formal training, and these consultants will receive additional training.

Other commenters (Ex. 3:9, 17) objected to the proposed changes on the grounds that they would place the Federal government in the position of competing with the private sector. Since States are directed to give priority to smaller businesses, their assistance is provided largely to businesses which

usually do not obtain consultation assistance from the private sector. In fact, State consultation services have generated significant private sector business by advising employers to obtain specialized assistance from the private sector.

One commenter (Ex. 3:38) objected that allowing offsite assistance through telephone and correspondence "to replace worksite visits" will not allow consultants to determine workplace hazards effectively. OSHA does not, however, regard offsite assistance as a substitute for onsite consultation. The intent is rather to provide assistance which does not require onsite observation, such as the review of construction or design plans or the interpretation of standards. After careful consideration of these comments, OSHA has determined that expansion of the scope of consultation services is in the interest of occupational safety and health, and this section remains unchanged in this respect.

As discussed in relation to section 7 of this rule, the provision for exemption from certain OSHA enforcement activities has been modified to require correction of other-than-serious hazards as well as serious hazards, and this section is modified accordingly.

One commenter (Ex. 3:41) suggested that this section requires that all training and education be provided at the worksite and proposes that workshops and seminars to public groups, trade associations, labor groups and employer groups be authorized. However, OSHA provides for such training through the funding of State Plans and through its own Area Offices. Because consultation funds are limited, OSHA prefers to focus the training and education activities of consultants at the worksite, where their impact can be most immediate and most efficient. At the same time, OSHA will prescribe by directive limited circumstances under which consultants may conduct training and education offsite.

One commenter (Ex. 3:21) expressed the view that the authorization of an expanded scope for consultation will not result in the expected benefits without additional staff to provide the new activities. Another commenter (Ex. 3:1) proposed that the provision of training and education by consultants be delayed until additional funds are available. A third commenter (Ex. 3:14) proposed such a delay only in the provision of offsite training and education.

OSHA recognizes that the focus on employer safety and health programs and the provision of training and



education by consultants will require, on the average, that consultants spend a longer time in each establishment visited. OSHA believes, however, that these additional activities will produce a more complete and more enduring impact on employee safety and health in those workplaces visited. In workplaces where safety and health program assistance has been provided through OSHA's Voluntary Protection Program and California's Small Employer Voluntary Compliance Program, significant decreases in average injury incidence rates have been realized. Year end evaluations of plants participating in the California Small Employer Voluntary Compliance Program show an average 60 percent reduction in lost workday injuries and illnesses, and an 85 percent improvement in employer/employee safety consciousness. After a year, the four Try participants in the OSHA Voluntary Protection Programs for which data are available had reduced their lost workday injuries by an average of 45 percent. OSHA has concluded, therefore, that the increased impact of these visits justifies a reduction in the number of visits which can be made with current funding.

OSHA will work with the States to ensure that the priority accorded to employer requests will provide assistance where the need is greatest. Further, although OSHA will not delay authorization of training and education until additional funding is available, it will carefully monitor the proportion of consultant time which may be expended on training and education. In addition, OSHA will expect that the States will carefully evaluate requests for training and education in relation to requests for other assistance, to ensure that the most efficient and effective mix of consultative activities is provided. As already indicated, offsite training and education will be limited.

No comments were received on the statement limiting the applicability of the enforcement provisions of the regulation to States not operating Plans approved under section 18 of the Act. One State (3:14) asked that the regulation declare that the provision of exemption from specified enforcement activities is applicable in a State with a Plan approved under section 18 only if the State adopts the exemption provision. Since the exemption from inspection is an enforcement-related provision of the regulation, it would apply only if the State adopts it.

#### *Section 1908.2 Definitions.*

OSHA is adding a number of definitions to § 1908.2, to define terms used throughout the final Part 1908.

For purposes of Part 1908, OSHA defines "imminent danger" as a hazard which could reasonably be expected to cause death or serious physical harm immediately or before the danger can be eliminated through the procedures set forth in § 1908.6(e)(4); (f) (2) and (3), and (g). These latter-referenced provisions relate to employers' obligations to eliminate serious hazards identified during a consultation and establish the procedures to be followed with respect to such hazards. One commenter (Ex. 3:45) suggested that the definition was in conflict with the substance of the regulation in § 1908.6(f)(1), which relates to referrals of imminent danger situations to OSHA enforcement authorities. The commenter suggested that imminent danger should be defined exactly as it appears in section 13 of the Act. The definition in section 13 of the Act describes an imminent danger as one which may cause death or serious harm before it can be eliminated through the normal enforcement process. That definition does not provide meaningful guidance within the consultation process. The definition proposed for Part 1908, therefore, applies the same concept to the consultation process; i.e., it defines an imminent danger as one which may cause death or serious harm before it can be eliminated through the normal consultation process. Section 1908.6(f)(1) requires that such hazards be eliminated immediately, or they will be referred to the appropriate enforcement authority. OSHA, therefore, sees no inconsistency between the definition and the requirements of § 1908.6(f)(1).

Two States (Ex. 3:20, 41) proposed that the definitions be revised to permit onsite training and education without requiring a walk through the workplace to identify hazards. One State (Ex. 3:41) proposed the same with respect to assistance in developing a safety and health program. OSHA believes that the conduct of a hazard survey is essential in determining the need for training and education in a workplace and in determining the nature of the safety and health program needed by an employer. OSHA has decided, therefore, not to revise the definitions which establish this requirement. OSHA has, however, revised § 1908.6(b) to indicate that a hazard survey conducted in an enforcement inspection may serve as the basis for scheduling a visit specifically for training and education or assistance with a safety and health program.

In response to concerns expressed in relation to § 1908.4, the definition of offsite consultation has been modified to include offsite training and education in

limited cases to be specified by the Assistant Secretary.

One commenter (Ex. 3:45) suggested that a definition of "employee" and "employee representative" be added. OSHA has added the definition of "employee" as it appears in section 3 of the Act. In identifying employee representatives, consultants will be instructed to follow the definition in OSHA's Field Operations Manual.

As discussed herein, § 1908.7(b)(4) is amended to require the correction of all hazards, other-than-serious as well as serious, as a prerequisite of employer exemption from general schedule inspection. Accordingly, a definition of "other-than-serious hazard" has been added. An "other-than-serious hazard" is defined as one which would be classified as an other-than-serious violation of applicable Federal or State statutes, regulations or standards, based on criteria contained in the current OSHA Field Operations Manual.

Several commenters (Ex. 3:22, 41, 47) proposed that the regulation refer to State enforcement officials as well as to OSHA's Regional Administrators in discussing certain enforcement-related responsibilities under the regulation. However, since section 1908.1 makes clear that the provisions of this part which govern enforcement policies do not apply to safety and health issues covered by States operating an enforcement program as part of a Plan approved under section 18 of the Act, OSHA believes that referencing State enforcement officials in this part would be misleading. A State operating an approved Plan must have enforcement procedures which are at least as effective as the enforcement procedures in this part, but the enforcement procedures may differ from the Federal procedures. A reference to State enforcement officials in this part would imply that those officials are bound by the procedures in relation to which they are referenced. It may be inferred that where reference is made in this part to OSHA's Regional Administrators or Area Directors in their enforcement capacity (e.g., §§ 1908.5(b)(93), 1908.6(f)(4) and 1908.7(c)(4)), State enforcement officials may have a comparable function. However, it is necessary to compare State procedures to determine whether those functions are carried out in a similar way.

#### *Section 1908.3 Eligibility and funding.*

This section establishes the criteria for State eligibility to enter into a Cooperative Agreement with OSHA and sets forth the terms of reimbursement under an Agreement. OSHA proposed



no change to this section. However, several commenters proposed changes.

One commenter (Ex. 3:9) proposed that the regulation be modified to "provide funds for the States to enter into contractual agreements with qualified small business consulting firms either in conjunction (with) State employees funded through the program or in lieu thereof." Although OSHA has, pursuant to section 7(c)(2) of the Act, established contracts with private firms to provide consultation in States which have not agreed to provide the service, the Act does not authorize OSHA to provide funds to the States for contracts with private firms. Section 7(c)(1) of the Act, pursuant to which this regulation is issued, specifically authorizes OSHA to reimburse States for carrying out, through State agencies and employees, the responsibilities of the Secretary of Labor. Neither section 7(c)(1) nor any other section authorizes the allocation of funds to the States for contracting with private firms. Thus, OSHA cannot accommodate this recommendation.

One State (Ex. 3:14) points out that § 1908.3(a)(2) is either an exception to § 1908.3(a)(1) or is in conflict with it. Section 1908.3(a)(1) indicates that any State may enter into an Agreement with the Assistant Secretary. Section 1908.3(a)(2) says that a State with a Plan approved under section 18 of the Act may enter into an Agreement if the Plan does not provide for Federally funded consultation to private sector employers. The latter section is in fact an exception to the former. That fact is clarified in the final rule by combining the two.

One State (Ex. 3:37) proposed that State and local governments be eligible for consultation assistance under the Cooperative Agreements pursuant to this part. Although OSHA recognizes the need for assistance to State and local governments, they are not included in the definition of "Employer" in section 3 of the Act. They are not, therefore, within the jurisdiction of OSHA. The Act provides for Federal funding to cover State and local government employers only under a Plan approved pursuant to section 18 of the Act.

#### *Section 1908.4 Offsite consultation.*

A new § 1908.4 was proposed to replace the present § 1908.4. It authorizes consultation assistance to employers away from the employer's worksite. No objections were raised to this section which are not addressed elsewhere. However, the section has been modified to permit offsite training and education in limited cases to be specified by the Assistant Secretary.

#### *Section 1908.5 Requests and scheduling for onsite consultation.*

This section was § 1908.4 in the 1977 regulation. The section includes requirements for State consultation agencies to encourage employers to request onsite consultative visits and to publicize the availability and scope of services provided. Several promotional methods are suggested. The language in these requirements is unchanged.

Section 1908.5(a)(3), Scope of Service, provides that publicity for the program must explain that the service is provided at no cost to the employer and that the purpose is to assist in establishing and maintaining effective programs for providing safe workplaces in accord with State or Federal laws. The description of purpose is changed from the 1977 regulation which was limited solely to assisting the employer in understanding the requirements of applicable State and Federal laws and regulations. The broadened statement of purpose in this section makes it consistent with the expanded mission of the consultation program as described and discussed in § 1908.1.

This section also requires that State publicity regarding the program describe certain employer responsibilities incurred when utilizing consultative services. These responsibilities include the statutory obligation to provide a safe and healthful workplace and the obligation to eliminate employee exposure to a hazard which is an imminent danger to employees or which would be classified as a serious hazard. Publicity must also inform employers that the identification of imminent danger situations or serious hazards will not initiate any enforcement activity unless the employer fails to eliminate or control the hazard.

The requirements for the content of publicity for the consultation program are the same as in the 1977 regulation. The addition of the word "immediate" before "action" to eliminate employee exposure to imminent danger situations is intended to clarify the requirement for corrective action at the moment that an imminent danger situation is identified.

Section 1908.5(b)(2) provides that State consultants encourage employers in smaller, high hazard establishments to allow them to conduct a comprehensive assessment of the conditions of the worksite and the employer's safety and health program. More limited scope consultative visits may be encouraged in larger and less hazardous establishments.

One State agency (Ex. 3:49) expressed concern that this language would discourage larger employers from

seeking consultative assistance and noted that some larger employers particularly desire assistance in reviewing their safety and health program. This language was added to the regulation so that smaller, high hazard workplaces which are generally less able to afford safety and health expertise would receive a high priority in receiving assistance. Moreover, OSHA desires to discourage the possibility that a State program might provide resource intensive services to a few large employers at the expense of servicing several smaller, yet high hazard workplaces. OSHA also believes that in smaller, higher hazard workplaces it is particularly useful to assess the entire workplace and safety and health program because this requires less consultant time than it would in a large establishment and has a significant potential for "pay-off" in establishing or improving a preventive program tailored to the needs of the workplace. It is not, however, OSHA's intention to discourage larger employers from seeking consultative assistance.

OSHA has, therefore, decided to retain this language but has added the qualifying phrase that a more limited scope may be encouraged in larger "and less hazardous" establishments. This language makes clearer OSHA's belief that consultative resources are most efficiently utilized when focused in industries and establishments which are known to pose higher risks to employees, and that this factor is as important as size in targeting the use of consultative resources. These provisions and rationale are also consistent with the provision for scheduling priority in § 1908.5(c).

Language was also added to § 1908.5(b)(2) of the proposal which provides that during a limited scope consultation visit the consultant will review only the working conditions, hazards, or situations specified by the employer. It also provides the exception that if, in the course of the limited visit, hazards are observed which are outside the scope of the request, the consultant must treat such hazards as though they were within the scope of the request. This means that any hazards observed outside the scope of the request would be pointed out to the employer and if, in the judgment of the consultant, the hazard poses a serious hazard and is not corrected during the visit, a correction date would be established. An imminent danger situation, outside the scope of the request but observed by the consultant, would require immediate action as described in § 1908.6(f)(1).



Two commenters (Ex. 2; Ex. 3:49) objected to this provision as a violation of the voluntary nature of a request. One of these commenters (Ex. 3:49) expressed concern that it could result in "wall-to-wall" visits regardless of the limited scope of the request. Other commenters suggested that the requirement be limited only to the observation of serious hazards (Ex. 3:1, 14, 52).

The added language in this section only clarifies a requirement which was already in the 1977 regulation (§ 1908.5(e)(3)). This requirement is essential for consultants to carry out their professional responsibility to notify employers of observed hazards so that employees may be removed from potential risks. This requirement has been operative in the past on limited scope visits without appreciably expanding the nature of the visit.

Program experience also suggests that most employers wish to be notified of all hazards observed by the consultant so that appropriate corrective action may be taken. This has seldom resulted in a feeling that the voluntary nature of the request has been violated or is in conflict regarding the scope of the request. OSHA has, therefore, decided to retain the language in this section which makes consultant responsibilities, also contained in the 1977 regulation, more explicit.

Section 1908.5(b)(3) as originally proposed would provide that a consultative visit shall not be available to an employer when a compliance officer has been refused entry to conduct a compliance inspection. The proposal notes that the purpose of the provision is to prevent the possible frustration of an ongoing compliance inspection by a subsequent consultative visit. One commenter (Ex. 3:43) suggested that this provision has the effect of penalizing employers for exercising their constitutional rights. NACOSH (Ex. 2) expressed a similar concern. After further consideration, OSHA has determined that the provision as written may create misunderstanding with respect to its actual intent. It was not the Agency's intent to penalize employers for the exercise of their Fourth Amendment rights. Rather the Agency intended, as previously stated, to avoid the possible frustration of an ongoing compliance inspection. OSHA also believes that conducting a consultative visit while an enforcement inspection is in progress would result in an inefficient utilization of the Agency's resources.

In order to avoid any possible misunderstanding, §§ 1908.5(b)(3) and 1908.7(b)(3) have been revised to

provide that an onsite consultative visit may not take place while an OSHA enforcement inspection is in progress. An enforcement inspection will be deemed "in progress" starting at the time an inspector initially attempts entry to the workplace. An enforcement inspection will also be deemed in progress in cases where entry is refused until such time as the inspection is actually conducted; a determination is made that a warrant will not be sought; or a determination is made that allowing the consultation to proceed is in the best interest of employee safety and health. The revised provisions, therefore, do not distinguish between employers who refuse entry and those who do not. Instead, consultative visits generally will not be conducted at any time an enforcement inspection is in progress.

Two commenters (Ex. 3:12, 38) stated that OSHA should not allow a consultation visit to take place, under any circumstances, if an employer has refused entry to the workplace. They expressed the belief that a denial of entry, in itself, demonstrates that such employers have no genuine concern for the safety of their employees which could be served by a consultative visit. Another commenter (Ex. 3:45) also expressed concern and asked for an explanation of the circumstances under which OSHA might allow a consultation visit following a denial of entry for inspection.

OSHA believes, however, that there may be some unusual situations in which employee safety may be enhanced if a consultative visit is allowed following a denial of entry while an inspection is considered to be "in progress." Therefore, OSHA has decided to provide those responsible for enforcement some discretion in this matter. OSHA foresees that only rarely will circumstances be such that it will decide to allow a consultation visit to proceed when an enforcement inspection is in progress. Guidance on such circumstances will be provided by Agency directive.

Two commenters proposed revisions to the criteria in § 1908.5(c) for determining priority in responding to requests from employers. One commenter (Ex. 3:25) cited the legislative history of a proposed amendment to the Act in support of limiting consultative assistance to employers with 50 or fewer employees. NACOSH (Ex. 2), on the other hand, cited figures for 1981 from the Bureau of Labor Statistics which indicated that businesses employing 100 to 249 employees have the highest injury rates, and that the rates of businesses having 50-99 employees, 250-499 employees

and 500-999 employees have a higher injury rate than businesses having fewer than 50 employees. NACOSH argues that smaller businesses in hazardous industries should receive priority, but that no limit should be set on the size of establishment which may receive assistance. A third commenter (Ex. 3:38) stated that consultation should only be provided to small businesses.

As previously indicated, OSHA believes that both the need of smaller businesses for assistance that they might otherwise not be able to afford and the need to focus OSHA resources on higher hazard businesses merit consideration in determining which employers will receive assistance and with what priority. The criteria of § 1908.5(c) seek to balance these concerns by giving equal weight to both. The proposed amendment to the Act which occasioned a discussion of limiting consultation to businesses with 50 or fewer employees was not passed, and no legislative limit has been set on the size of businesses which may receive assistance. There is a wide range of definitions of small business among Federal agencies, and OSHA does not wish to establish an absolute limit in this regulation. Some businesses requesting service in the middle size range may be sufficiently more hazardous than the smaller businesses requesting assistance and therefore merit priority. At the same time, OSHA recognizes that some limitations may be necessary on the nature and extent of assistance which may be accorded to businesses of varying size, in order to ensure the most efficient and effective use of OSHA resources. Under § 1908.1, the Assistant Secretary is authorized to establish limitations in the Cooperative Agreement on the consultative assistance which may be provided, and OSHA will provide any limitations which are found necessary through that mechanism.

#### *Section 1908.6 Conduct of a visit.*

This section was § 1908.5 in the 1977 regulation.

The proposed § 1908.6(b) provides that training and education of employers and employees may be conducted during an initial consultative visit. One commenter (Ex. 3:27) suggested that the language be clarified to provide that training and education be conducted only at an employer's request. Inasmuch as the consultative services are voluntary on the part of employers, OSHA agrees with the commenter and has amended the language to provide that training and education will be



conducted in response to employer requests.

One State (Ex. 3:41) pointed out that language in the proposal may limit the provisions of safety and health program assistance and education and training assistance to employers who have requested an initial consultation visit. OSHA believes that in order for a consultant to know what type of assistance is needed on the workplace, such assistance must be linked to knowledge of the conditions, processes and potential hazards of the workplace. OSHA recognizes that such knowledge may possibly result from a previous compliance inspection. Therefore, the final rule provides that a visit limited to training and education or assistance with the employer's safety and health program may, in some cases, be provided without a prior initial consultative visit, if a recent compliance inspection has been completed at the workplace. In such cases, the results of the compliance inspection would have to be reviewed by the consultant prior to visiting the workplace. Guidance on when such a procedure is appropriate will be provided by Agency directive.

Although the proposal did not include modifications to § 1908.6(c) relating to employee participation in the consultation process, a number of commenters (Ex. 3:15, 38, 42, 48, 51) objected to the lack of mandatory employee participation in the consultative process. One commenter (Ex. 3:51) stated: "Full employee participation must be provided by the regulations for any consultative visits conducted under the Act to be meaningful." While OSHA agrees that employee participation in the consultation is both useful and desirable, a number of State consultation officials have expressed the belief that many employers would not request the service if employee participation is required. OSHA concluded in the 1977 revision of this regulation that the Act's purposes are better served by providing consultative assistance without employee participation, if the employer objects to such participation, rather than denying assistance to employers who have indicated a desire to undertake voluntary measures to improve safety and health but who resist employee participation in the process. On this same basis, the regulation will continue to encourage but not require employee participation.

Section 1908.6(e)(1) allows an employer to expand or reduce the scope of a consultative visit at any time during the visit. The employer, however,

remains obligated to ensure correction of serious hazards identified during the visit. One commenter (Ex. 3:39) expressed concern that this paragraph "appears to give an employer an unlimited or unqualified opportunity to expand the scope of a consultation, even when the original request was intentionally limited because of the size of the establishment." The commenter points out that some requests for expansion may require review by the consultant's supervisor to ensure that the consultant is qualified and prepared for the additional task and that the request merits priority attention. OSHA concurs with this concern and has modified this paragraph to establish criteria for determining whether a request for expanding the scope may be responded to immediately, or whether it must be referred to the consultation manager.

One commenter (Ex. 3:38) objected to the provision for reducing the scope of a visit after it has started, arguing that it allows employers to avoid visiting all serious and imminent danger areas. OSHA believes that because the consultation program is basically voluntary, it would be inadvisable and in fact improper for a consultant to attempt to continue a visit over an employer's objection. Moreover, OSHA believes it is unlikely that an employer will wish to curtail a visit in progress where such an employer has already demonstrated the desire to voluntarily improve the safety and health conditions at the worksite by requesting a consultation in the first instance. Additionally, the employer is obligated to take appropriate corrective action with respect to serious hazards observed during the visit.

Section 1908.6(e)(3) provides that consultants will review and provide advice on the employer's safety and health program within the scope of the employer's request. NACOSH (Ex. 2) proposed not to limit the review and advice to the scope of the employer's request. One commenter (Ex. 3:52), on the other hand, suggested that the provision be reworded to make clear that consultants have authority to review an employer's safety and health plan only if the employer has included those areas of the plan in the scope of the request. Because of the voluntary nature of the service, OSHA's intent in this section is not to require a review of any aspect of an employer's safety and health program which the employer does not wish to be covered. OSHA does intend, however, that the consultant, in addressing those conditions or hazards regarding which the employer has

requested assistance, will advise the employer of any ways in which the hazards reflect deficiencies in the employer's safety and health program. For example, if the nature of the hazard observed appears to indicate the lack of employee awareness of a safe work practice which should have been communicated to the employee through the establishment of a work rule and through training on and enforcement of the rule, this fact will be pointed out to the employer.

Section 1908.6(e)(7) provides for the consultant and the employer to develop a specific plan to correct serious hazards identified during a consultation visit. The plan must give the employer a reasonable time to complete hazard correction. This section also provides an opportunity for the employer, upon request within 15 working days of receipt of the consultant's report, to have an informal discussion with the consultation manager concerning established hazard correction periods or other substantive consultant findings. One commenter (Ex. 3:26) expressed concern that this section makes the consultant a guarantor that the plan will successfully result in correction of the hazards. Another commenter (Ex. 3:27) asserted that "the employer should be solely responsible for developing and implementing the plan." OSHA's intent in this section is to provide for the consultant to assist the employer in identifying hazard correction measures and to determine a reasonable time period for their correction. This will provide the employer an opportunity to contribute to the consultant's judgment in determining what a reasonable correction period is. The consultant's assistance does not relieve the employer of the responsibility for ensuring that the selected measures adequately correct the hazard; nor does the employer's proposal for a reasonable correction time period remove the consultant's responsibility for determining such a period. OSHA has revised the language of this section to clarify these points.

Although the provision for establishing correction dates for serious hazards only (not for other-than-serious) is unchanged from the 1977 regulation, several commenters (Ex. 2; Ex. 3:45, 51) argued that OSHA should require the setting of correction dates for all hazards. One commenter (Ex. 3:49), on the other hand, asked that this provision be modified to require corrective action only in imminent danger situations.

OSHA believes that requiring only the correction of serious hazards is reasonable since hazards classified as other-than-serious are pointed out to



employers, and recommendations for correction are made and normally followed in a timely manner. The lack of a requirement for setting correction dates on other-than-serious hazards is also based on the consideration that these situations would probably not cause death or serious physical harm. (See OSHA Field Operations Manual, Chapter IV.) Furthermore, an employer who has had a consultation visit is still subject to OSHA enforcement and, therefore, in order to avoid possible citation, has another incentive to correct other-than-serious hazards identified by a consultant. For these reasons, OSHA has decided to retain the language of the 1977 regulation on this matter.

Other commenters objected to the 15-day period during which the employer may request an expeditious informal review of hazard correction periods or other substantive consultation findings. One commenter (Ex. 3:4) reflected the belief that, after this 15-day period, an employer could not request an extension of the hazard correction period. Another (Ex. 3:35) expressed concern that the 15-day period would serve as a "grace period" during which an employee would not be expected to take action to correct serious hazards. OSHA intends neither. The 15-day period provides an employer an opportunity to discuss with the consultation manager any objections or questions concerning the consultant's findings or the established hazard correction periods. If the employer does not raise such objections or questions during that period, the consultant's findings and hazard correction periods will be regarded as acceptable to the employer. The employer will not, however, be precluded from requesting an extension of a hazard correction period after the 15 days have passed, based on the criteria set forth in § 1908.6(f)(3). On the other hand, the employer will not be relieved of responsibility to correct a serious hazard within less than 15 days, if the consultant finds a shorter correction period to be reasonable and necessary in order to ensure employee safety and health. In the event of such a situation, the consultation manager will be expected to respond quickly to an employer's request for review of the hazard correction period.

Section 1908.6(e)(8) provides that employers shall be encouraged to advise affected employees of hazards identified and their correction. Several commenters (Ex. 2; Ex. 3:37, 38, 42) suggested that notification to employees of hazards and correction thereof should be mandatory. OSHA believes that employee notification of hazards and

their correction is desirable and should be encouraged. As is the case with employee participation in the consultative visit, however, OSHA is concerned that making this a mandatory requirement may dissuade some employers from undertaking voluntary actions to improve safety and health conditions and thus frustrate the purpose of the program.

Section 1908.6(f)(1) requires employers to take immediate action to eliminate employee exposure to imminent dangers. If the employer fails to take such action, the consultant will notify employees and the appropriate OSHA enforcement authority of the imminent danger. Although this provision is unchanged from the 1977 version, several comments were received concerning the provision. One commenter (Ex. 3:16) suggested that the consultant be required to document the existence of an imminent danger and the fact that the employer has failed to take appropriate action. Because the OSHA enforcement authorities will make an independent judgment concerning the hazard and determine whether proceedings under section 13 of the Act are appropriate, separate documentation by the consultant is unnecessary. One commenter (Ex. 3:27) suggested that the provision be amended to make clear that the consultant is required to notify the employer of the imminent danger. OSHA believes that no modification is necessary inasmuch as the consultant is obligated to advise employers of all hazards observed during a visit. (See §§ 1908.6(e) (6) and (7)). One commenter (Ex. 3:38) suggested that immediate correction of serious hazards as well as imminent dangers be required. OSHA believes that, as is true in the enforcement context, setting a requirement for immediate correction is not always reasonable. If the hazard is such that it is likely to cause death or serious physical harm before correction can be achieved through the ordinary procedures, then the hazard would be classified as an imminent danger and immediate correction required.

Section 1908.6(f)(2) provides that an employer may be required to submit periodic reports, permit a followup visit or take similar action in order to demonstrate that appropriate action is being taken to eliminate identified serious hazards. Several commenters (Ex. 3:21, 49, 50) objected to the submission of periodic reports, arguing that this is an unnecessary burden on employers. It should be noted that the employer's obligation to correct serious hazards identified during a consultative visit has always been a central feature

of the program. Along with this employer obligation, OSHA has the concomitant responsibility to assure that the employer's obligation is fulfilled. Accordingly, submission of periodic progress reports by employers or conducting followup visits by consultants may be necessary for OSHA to fulfill its responsibility. OSHA has not found that employers have considered this provision to be unduly burdensome.

Section 1908.6(f)(3) allows for the extension of the time frame allowed for correction of serious hazards under specific conditions. One commenter (Ex. 3:45) suggested that there must be a maximum limit on extensions permitted. The commenter states that "it is unrealistic to believe that a consultation service that survives on employer cooperation will ever act to cut off their extension requests and refer the matter for enforcement." OSHA believes that an adequate limitation on extensions is established in the provision. An extension may only be granted if the employer: (1) Has in good faith attempted to correct the hazard within the established time frame; (2) has demonstrated that correction of the hazard has not been completed because of factors beyond the employer's control; and (3) demonstrates that all available steps are being taken to protect employees in the interim. If this showing is not made, an extension will not be granted. OSHA has no reason to believe that the various State program authorities will not carry out these responsibilities fully and effectively. Moreover, OSHA will monitor State performance in this as in other areas.

In § 1908.6(f)(5), OSHA proposed to require written confirmation of hazard correction. Several commenters (Ex. 3:1, 25, 41) raised questions concerning the role of followup visits in the program. One commenter (Ex. 3:25) stated that followup visits should be conducted in all instances rather than written confirmation. OSHA recognizes that certain cases may require followup visits rather than acceptance of written confirmation. At the same time, in many cases written confirmation would be sufficient. A rule requiring that followup visits be conducted in all cases may result in an inefficient utilization of program resources. Instead, OSHA has amended the proposal to require written confirmation of hazard correction unless correction is verified by a followup visit. The determination of when followup visits are necessary is left to the discretion of the State program authorities, under guidelines which will be established by Agency directive.



Section 1908.6(g) requires that a written report be prepared for each visit and sent to the employer. One State (Ex. 3:22) asked whether this provision applies to all visits or only to initial visits. OSHA intends that a report be sent to the employer following any initial visit and following any subsequent visit which results in a substantive finding (e.g., a finding of hazards or of a need for improvement in the employer's safety and health program) or recommendation. Visits which follow an initial visit, which involve only the provision of assistance to the employer (e.g., training), and which result in no new findings or recommendations will not require a report to the employer.

*Section 1908.7 Relationship to enforcement.*

This section was § 1908.6 in the 1977 regulation.

Section 1908.7(a) provides that State consultation programs be operated independently of Federal or State OSHA enforcement programs. Independent operations mean that the consultation program must have a management staff separate from enforcement and that the identity of employers requesting onsite consultation not be given to Federal or State OSHA for use in any enforcement activities, except for failure on the part of the employer to act in good faith to correct serious hazards as provided in § 1908.6(f)(1), and for participants in the exemption program as provided in § 1908.7(b)(4).

One commenter (Ex. 3:14) suggested that § 1908.7(a)(3) be modified to allow an exchange of information under exceptional circumstances where OSHA determined that it would serve the interest of worker safety and health and would not prejudice statutory employer and employee rights. The commenter noted that such language would provide specific criteria to meet objectives of the program. OSHA has considered this request and determined that while there may be some situations in which worker safety and health would be served by an exchange of information, the current provision for communication upon failure to correct serious hazards adequately covers the great majority of cases. OSHA believes, moreover, that the phrase "exceptional circumstances" is open to interpretation which may lead many employers to doubt the independence of State consultation and Federal or State OSHA enforcement programs. OSHA has therefore not added any qualifying language to § 1908.7(a)(3).

One commenter expressed concern that the proposed language in

§ 1908.7(a)(3) may imply that consultation information could be provided to OSHA as long as it is not used (Ex. 3:20). In order to avoid the introduction of any doubt regarding the confidentiality of consultation information, the language of the final regulation is the same as the 1977 regulation which prohibits providing the identity of employers requesting consultation or the file of consultation visits to OSHA for use in any compliance inspection or scheduling activities. Use of this language requires, however, that an exception be added. That is, consultation projects will notify OSHA of employers who qualify for, and request to participate in, the inspection exemption program as provided in § 1908.7(b)(4) so that they may be removed from the OSHA general schedule inspection list.

Section 1908.7(b) (1) and (2) provide that a consultation visit already in progress has priority over an OSHA compliance inspection unless the inspection is an imminent danger, fatality, catastrophe, complaint, or other critical investigation as determined by the Assistant Secretary. The proposed regulation places a time limit on the period during which a consultation visit is considered to be "in progress." No such limits were contained in the 1977 regulation.

For working conditions, hazards, or other situations included in the scope of the request, a consultation visit is considered in progress from the beginning of the opening conference through the end of the closing conference. If this period exceeds 30 days, the Regional Administrator may decide to proceed with an inspection even though the consultation closing conference has not yet been held. For conditions not covered in the scope of the request, a consultative visit is considered in progress only while the consultant is at the workplace. This would permit an inspection of conditions not covered by the consultation visit to proceed as soon as the consultant leaves the workplace, whether or not a closing conference has been held.

One commenter (Ex. 3:14) suggested that § 1908.7(a) (1) and (2) be amended to allow a consultant and a compliance officer to proceed in those portions of the workplace not covered by an employer's consultation request. OSHA believes this would be administratively infeasible because the potential for overlap and conflict is high. This potential results from the responsibility of both consultants and enforcement compliance officers to notify the employer of observed hazards (some of

which may be outside the boundaries of the request) and from the employer's flexibility to expand or reduce the scope of the request.

Several commenters pointed out that 30 days may be an insufficient time to obtain laboratory results when a visit involves taking air samples (Ex. 3:3, 4, 20, 36, 41). A variety of alternative time frames were suggested. Another commenter (Ex. 3:14) proposed that a consultation visit should be considered "in progress" 30 days before the scheduled visit and 30 days after the closing conference. This commenter and another (Ex. 3:14) felt it would be counterproductive to conduct an enforcement inspection just before or after a consultative visit. Some suggested leaving the time period open-ended (Ex. 3:20, 50). After carefully considering the alternatives, OSHA has determined that 30 days is a reasonable period of time to require delay of an inspection for a consultation visit which is in progress. This provision does not mean that immediately after the 30-day period a delayed inspection would automatically proceed, but rather that the Regional Administrator would have the opportunity to review the rationale for the extended consultation and to initiate the inspection if it appears to be warranted.

OSHA's intent is that inspections not be delayed indefinitely by consultation visits which are "in progress." Enforcement officials should have the authority to evaluate the situation and determine whether or not it is appropriate to proceed with an inspection. If a comprehensive health visit was made and laboratory sample results have not been received, the Regional Administrator is likely to delay inspection until the results are obtained. In other circumstances, however, the enforcement authority may determine that worker safety and health may best be served by proceeding with an inspection. The final provision, therefore, is the same as the proposal. Guidance for Regional Administrators on the exercise of the discretionary authority will be provided through Agency directive.

One State (Ex. 3:14) suggested adding a sentence to the end of § 1908.7(b)(3) stating, "Consultation services shall not be precluded in those portions of the workplace which were not affected by citations." OSHA believes that adding this provision is unnecessary. The proposed language already allows consultation visits following the issuance of citations, but prior to the citation items becoming final orders,



with regard to conditions not involving the cited items.

As indicated earlier in relation to § 1908.5(b)(3), § 1908.7(b)(3) has been revised to address issues raised by the earlier section.

Another commenter (Ex. 3:5) stated that the restriction in § 1908.7(b)(3) on providing consultative advice regarding cited items prior to their becoming final orders is unreasonable in that it denies the employer an important abatement tool. The language of this section is unchanged from the 1977 regulation and reflects OSHA's concern that potential conflicts between State consultation programs and enforcement agencies regarding contested citations be avoided. In addition, under OSHA enforcement, the employer may already receive constructive advice on possible abatement methods from the compliance officer.

The proposed § 1908.7(b)(4) would allow employers a one-year exemption from general schedule enforcement inspections if such employers have, among other things, received a comprehensive consultative visit, corrected all serious hazards identified during the visit and demonstrated that an effective safety and health program is in effect. Several commenters (Ex. 3:25, 38, 45, 51) have suggested that OSHA lacks statutory authority to grant such an exemption. They argue basically that because "agency inspections are an integral part of the enforcement mechanism Congress established to achieve compliance with the requirements of the Act," the Secretary lacks statutory authority to substitute voluntary employer consultation arrangements for general schedule inspections. In support of this assertion, the commenters offer the floor statements of Congressman Steiger which were made when proposing a substantial appropriation to fund onsite consultative activities.

Federal enforcement would continue without regard to State consultation activity. An employer seeking consultation would not be immunized from regular inspection activity but the consultation would in no way trigger an enforcement inspection. (120 Cong. Rec. 21297).

OSHA believes that the Act grants the Secretary considerable discretion in determining what methods will best effectuate the purposes of the Act. The Act, in fact, sets forth 13 separate means by which its purposes are to be achieved. (20 U.S.C. 651(b)). An effective enforcement mechanism (including inspections and citations) is merely one of those thirteen methods. Moreover, the Act does not indicate that the

enforcement mechanism is considered the primary means of achieving its ultimate purpose. Accordingly, the Act does give the Secretary authority to provide a balanced program including both voluntary compliance activities and general schedule inspections.

Additionally, the exemption program provided for in § 1908.7(b)(4) is entirely consistent with Congressional intent, as expressed in the previous statements of Congressman Steiger. The commenters improperly equate Congressman Steiger's phrase "regular inspection activity" with general schedule inspections. General schedule inspections are but one of a variety of enforcement activities conducted by OSHA. The Agency additionally conducts inspections in response to employee complaints made pursuant to section 8(f) of the Act, imminent dangers, fatalities and catastrophes, and referrals. Although § 1908.7(b)(4) would exempt employers from general schedule inspections, such employers would in no sense be immunized from other enforcement actions. The Act authorizes general schedule inspections, but the scheduling and frequency of such inspections are left to the Secretary's discretion. In OSHA's judgment, conducting general inspections in workplaces where an extensive consultation visit has been carried out within the past year, where the employer has already been required to correct all identified hazards, and where the employer has or is establishing an effective safety and health program would not be useful and indeed would divert enforcement resources from areas of greater need.

In response to comments received on the proposal, several modifications have been made in the specific conditions under which an exemption may be granted. Under the proposal, correction dates and verification of correction would have been required only for serious hazards identified by the consultant. The final rule requires that correction dates be established and correction verified for *all* hazards identified during the consultative visit. In addition, under the proposal, OSHA would have granted an exemption based, in part, on the *commitment* from the employer to correct hazards identified by agreed upon dates and the *commitment* to establish an effective safety and health program. Under the final rule, however, an exemption will be granted only after all identified hazards are verified corrected, certain core elements of an effective safety and health program are in place, and the employer demonstrates to the consultant that the remaining elements of an effective safety and health program will

be in place within a reasonable time frame. The core elements and other elements of an effective safety and health program will be established by Agency directive. The employer would post a notice of participation in the process required to qualify for the exemption, between the time of election to participate and the completion of the process. In addition, the employer would have to agree to request a consultative visit if, during the exemption period, major changes in working conditions or work processes occur which may introduce new hazards. The rationale for these modifications to the proposal are discussed below.

Several commenters stated that if OSHA is to grant an exemption based on a consultative visit, the Agency should require that *all* hazards identified by the consultant be corrected (Ex. 2; Ex. 3:15, 28, 39, 41, 51). In the general consultation program, the 1977 regulation and the proposed regulation require that consultants establish correction dates only for hazards classified as "serious." Hazards classified as "other-than-serious" are identified and recommendations for correction are made; however, no correction dates for other-than-serious hazards are established.

As already indicated, the lack of a requirement for setting correction dates on other-than-serious hazards in the general consultation program is based in part on the consideration that these situations would probably not cause death or serious physical harm. (See OSHA Field Operations Manual, Chapter IV.) Moreover, program experience indicates that most employers voluntarily seeking consultative assistance genuinely desire to safeguard employees and therefore correct other-than-serious hazards as soon as possible. In any case, the possibility of an OSHA inspection remains as an incentive for the employer to correct all hazards identified by the consultant.

OSHA is aware, however, that when an employer becomes a participant in the one-year exemption program provided in § 1908.7(b)(4), the incentive to correct "other-than-serious" hazards to avoid the possibility of citation is removed. Inspections would no longer operate as a "check" on the correction of other-than-serious hazards, as they do in the general consultation program. OSHA believes, moreover, that verifying correction of all hazards to qualify for the exemption program will not discourage employer participation. Correction of all identified hazards should routinely occur as part of the



employer's required safety and health program.

The final rule, therefore, requires employers wishing to qualify for the exemption program to correct all identified hazards, including hazards classified as other-than-serious as well as those classified as serious. This requirement applies only to employers seeking an exemption based, in part, on a consultative visit. If no exemption is being sought, agreement on correction dates and verification of correction is required only for serious hazards identified as provided in § 1908.6(e)(7). If correction dates are established for other-than-serious hazards with the intention of qualifying for the exemption program and the employer fails to correct the other-than-serious hazards within the agreed upon time frame (including approved extensions), the employer will not be granted exemption program participation. Failure to correct other-than-serious hazards within the established time frame will not, however, cause referral to Federal or State enforcement authority. Such referral will occur only when an employer has failed to correct a serious hazard as provided in § 1908.6(f)(4). This provision is unchanged from the 1977 regulation.

The proposed language in § 1908.7(b)(4) also provided that an exemption may be based, in part, on the employer's commitment that identified hazards will be corrected within established time frames, and on the employer's demonstration to the consultant that an effective safety and health program is in effect, or will be implemented within an established time frame.

Several commenters expressed concern that an exemption based on consultation should only be granted once identified hazards are corrected and an effective safety and health program is in place, rather than on future intentions. (Ex. 2; 3:14, 15, 37). OSHA's intent in providing for inspection exemption in conjunction with consultation is threefold: To provide recognition to employers who voluntarily work with OSHA-sponsored consultants to correct identified hazards and to establish an effective safety and health program; to employ such recognition as a means of providing an incentive to employers to take such voluntary action; and to make the most efficient use of its limited resources by avoiding a duplication by enforcement staff of work already successfully completed by a consultant. After carefully considering the comments on this issue, OSHA has concluded that

these objectives can best be met by requiring that all hazards be corrected and that a good beginning be made in the establishment of an effective safety and health program before the exemption is granted.

This requirement will serve as an incentive to correct identified hazards and implement certain core elements of an effective safety and health program as soon as possible following the consultative visit. Inasmuch as the potential exemption year begins on the date of the consultative visit closing conference, the actual exemption period is shortened by whatever time is required by the employer to correct hazards and implement the required aspects of a safety and health program which are not in place at the time of the visit. At the same time, establishing a plan to complete the implementation of all elements of an effective safety and health program will ensure that reasonable progress is made.

Two commenters (3:26, 41) made specific suggestions on the manner of administering the certificate of exemption and definitions for closing conference date. In order to provide necessary administrative flexibility, such details will be addressed through Agency directive implementing the program. Two commenters (Ex. 3:1, 26) suggested that State consultation projects issue exemption certificates directly rather than going through OSHA. OSHA views the exemption status as a condition authorized by the Federal or State enforcement authority. Certificates of exemption reference the enforcement agency and therefore, OSHA believes, must be issued directly by the Federal or State enforcement agency.

One State (Ex. 3:20) commented that occasionally after a consultative visit, a major change in procedures occurs or new equipment is purchased which substantially contributes to safety or health hazards. The State suggested adding a provision to the exemption program which would require the employer to request a consultation visit if this kind of change occurs in the workplace during the exemption period. After considering this issue, OSHA has determined that such a requirement would provide the Agency with greater assurance that no new hazards have been introduced and that the workplace safety and health program is capable of "handling" the new work situation. Therefore, § 1908.7(b)(4) of the final regulation contains an added provision, not found in the proposal, which stipulates that an exempted employer will request a consultative visit if major

changes in working conditions or work processes occur which may introduce new hazards.

Some commenters (Ex. 3:12, 15, 38, 51) were under the impression that an exemption could be based on a limited scope consultative visit. Apparently, the discretion to limit the scope of a visit as provided in § 1908.5(b)(2) created some confusion in this regard. Participation in the exemption program as described in § 1908.7(b)(4) is to be granted only after, among other conditions stated, the consultant has completed a visit covering all conditions and operations in the workplace related to occupational safety and health. In order to avoid any possibility of misinterpretation in this regard, the words "and undergoes" have been added to the first sentence of § 1908.7(b)(4).

One commenter (Ex. 3:26) suggested that exemptions be based on a consultative visit limited to one or more specific areas of a worksite. Only the areas visited would be included in the exemption program. OSHA has concluded that such a program would be administratively infeasible, in that it would create confusion during subsequent enforcement visits as to what working conditions and practices are covered by the exemption program.

One commenter (Ex. 3:52) stated that the language of § 1908.7(b)(4) should be modified from "may" to "shall," pointing out that "may" implies that even if an employer meets all the conditions specified, the exemption could be denied. The use of the term "may" reflects OSHA's current intention to authorize but not to commit to providing an exemption for non-fixed worksites (see below) and to limit the size of establishments which may be exempt. OSHA believes that firms of all size categories which take the initiative to seek Federal or State review of their safety and health conditions and program and voluntarily abide by the resultant recommendations deserve official recognition. The consultation program is intended to provide such recognition and assistance for smaller firms. OSHA's Voluntary Protection Program provides recognition for larger firms, needing less intensive assistance, which request OSHA review and successfully demonstrate the establishment of an effective workplace safety and health program.

Use of the word "may" reflects, moreover, that OSHA's recognition of State consultation project exemption recommendations is dependent on monitoring of the State project as provided in § 1908.9(a). Use of the word "may" in the regulation also provides



OSHA greater flexibility to modify implementation of the program as experience indicates is necessary. It should be noted, however, that under normal circumstances when an employer meets the requirements in this section and requests an exemption, it is OSHA's intention to grant an exemption.

Another commenter (Ex. 3:45) requested that the regulation make clearer that an exemption cannot be based on offsite consultative assistance. The revised provisions of § 1908.7(b)(4) make that clear.

The preamble to the proposal limited the application of the exemption program provided in § 1908.7(b)(4) to fixed worksites only, while noting that OSHA was considering a pilot program covering non-fixed worksites. Comments were requested on the design and application of the exemption program to non-fixed worksites, including operations such as construction, logging and longshoring. Comments were specifically requested on the following issues: (1) How can consultation projects under this Part provide services to ensure worker protection sufficient to merit an exemption from general schedule inspections under the changing working conditions of non-fixed worksites; and (2) how can the services be designed so that the level of resources required to provide assistance in relation to these changing working conditions does not impose an unworkable burden? Several commenters endorsed the proposed plan for a pilot exemption program involving non-fixed worksites (Ex. 3:7, 19, 23, 40, 52). The Associated General Contractors of Massachusetts (Ex. 3:7) noted that the focus of consultation at non-fixed establishments would not be on the changing worksite, but rather on the "permanent attitudes \* \* \* programs \* \* \* policies \* \* \* systems, (and) procedures that make a safety program in any industry." The West Gulf Maritime Association (Ex. 3:19) stated, "Working conditions do not change at non-fixed worksites, only the sites change." Several commenters objected to implementing even a pilot exemption program at non-fixed worksites or expressed serious reservations about the practicality of an exemption program at non-fixed worksites (Ex. 3:1, 2, 35). They argued basically that the changing conditions at the non-fixed worksite prevent application and proper monitoring of the exemption program. OSHA has not made a final decision on this issue. The Agency will examine further whether the unique problems posed by these worksites may be

manageable and may warrant a test program to assess feasibility of an exemption program.

In regard to § 1908.7(c) (1) and (2), two commenters (Ex. 2; Ex. 3:3) recommended that the findings of a consultant be made binding on a compliance officer in a subsequent enforcement inspection. OSHA believes this requirement would restrict the Agency from independently carrying out its enforcement responsibilities under the Act, likely lead to confusion and conflict regarding conditions at specific worksites at different points in time, and negate current management and administrative separation between the two programs. The provisions of § 1908.7(c) (1) and (2), therefore, are unchanged from the 1977 regulation.

Section 1908.7(c)(3) permits the Area Director to assess minimum penalties for violations observed, if such violations had previously been identified during a consultative visit and the employer is in good faith complying with the recommendations of the consultant. One commenter (Ex. 3:25) asserted that the "Act offers no authority for a reduction in penalties through participating in the consultative program." OSHA believes to the contrary, that nothing in the language of the Act prohibits OSHA from proposing a reduced penalty based on an employer's participation in consultation activity. Indeed, the Act specifically requires that an employer's good faith be considered in determining appropriate penalties. (29 U.S.C. 661(j)). OSHA believes that an employer's voluntary participation in the consultative process and willingness to comply with the correction assistance recommended by a consultant is evidence of considerable employer good faith and would ordinarily justify the assessment of minimum penalties.

#### *Section 1908.8 Consultant specifications.*

This section was numbered § 1908.7 in the 1977 regulation.

It establishes criteria for selection of consultants to implement a Cooperative Agreement under this Part. It sets forth criteria for determining the number and mix of consultant positions which will be funded under an Agreement, fixes qualification requirements for the consultants, and provides for consultant training requirements to be developed by the Assistant Secretary.

The revisions proposed in this section involve the inclusion of "industrial mix" among the criteria to be considered in determining the number of consultants under an Agreement; elimination of a section regarding the ratio of

consultants to compliance officers, the effect of which expired in August, 1978; authorization of trainee positions under a Cooperative Agreement; and removal of a requirement for a specific plan from each State on upgrading the qualifications of State consultants. In addition, the preamble to the proposal to revise the regulation requested comment on two alternative approaches to encourage the continued broadening of consultant skills. One approach was the development of model consultant qualification requirements which would provide guidance to the States in revising their own requirements; the other was a certification system for OSHA-funded consultants, operated by OSHA in conjunction with Agreement States.

One commenter (Ex. 3:38) states that this section would allow the Assistant Secretary to shift enforcement positions to consultative staff. However, since only State employees can be consultants under this Part, the Assistant Secretary cannot shift Federal enforcement positions to consultation.

In the course of reviewing comments on this proposal and preparing for its implementation, OSHA has recognized that the factors on which consultant performance must be measured did not clearly include elements related to the training and education which was proposed for authorization under this part. Since, on the basis of the comments received, OSHA will authorize training and education by consultants, the evaluation factors in § 1908.9(b)(1)(iii) have been modified to clarify the elements of the ability to communicate on which consultants will be evaluated. These elements include communicating to employers not only consultant findings but also recommendations and the reasons for them, and communicating to employers and employees information, skills and techniques necessary to safe and healthful employment and a place of employment.

A number of commenters (Ex. 3:2, 4, 5, 11, 21, 27, 33, 35, 53) expressed support for the provision of model consultant qualification requirements as guidance to the States in improving the skills of their consultants. On the other hand, one commenter (Ex. 3:51) argued that OSHA is obligated to establish mandatory qualification requirements. Several other commenters (Ex. 3:18, 46, 53, 54) proposed the adoption as consultant qualification requirements of the criteria for certification issued by the Board of Certified Safety Professionals and the American Board of Industrial Hygiene, or other specific



criteria. In considering these comments, OSHA has taken account of the fact that the present and proposed regulations already include mandatory skill requirements. However, OSHA has concluded that the identification of model education and experience criteria will provide useful guidance and encouragement to the States in the improvement of consultant skills. OSHA will work with State officials and other interested parties to identify such criteria.

Two commenters (Ex. 3:20, 27) endorsed the development of a consultant certification system by OSHA. One commenter (Ex. 3:20) argued that such a system would provide "a positive framework for encouraging maximum training for consultants." At the same time, several commenters opposed the development of a system; one (Ex. 3:5) on the basis that it is difficult to judge communication skills by standardized testing, and others (Ex. 3:11, 46, 53, 54) on the basis that certification systems for occupational safety and health professionals already exist which consultants should be encouraged to use. In light of these comments, OSHA has decided not to proceed with the development of a certification system for consultants at this time but will examine the issue further.

#### *Section 1908.9 Monitoring and evaluation.*

This section was number § 1908.8 in the 1977 regulation.

The proposal included several revisions to the 1977 monitoring and evaluation provisions. The Assistant Secretary is made responsible for monitoring and evaluation in order to provide for greater uniformity and for use of a monitoring system which relies on a nationwide data system. OSHA may suspend recognition of State consultative visits as a basis for inspection exemption as permitted under § 1908.7(b)(4), if State procedures and policies raise doubts regarding assurances that hazards are corrected and that effective safety and health programs are in place. Section 1908.8(b) of the 1977 regulation on State performance is deleted since its provisions will be handled by Agency directive which will specify the "Federal plan" for monitoring and evaluation referred to in § 1908.9(a). A consultant evaluation factor concerning safety and health program expertise is added in § 1908.9(b)(1)(iii) to conform with the new emphasis on providing assistance in this area. The proposal also revises the 1977 requirement for semiannual accompanied visits to allow for

variation according to the needs of individual consultants.

One State (Ex. 3:1) asked that the methods OSHA would use to monitor State exemption program procedures be defined. New Federal monitoring procedures have been developed and will be specified by Agency directive. One commenter (Ex. 3:45) suggested that a mechanism be developed which would enable public input as part of OSHA's monitoring of State consultation programs. OSHA welcomes information from the public regarding the operation of State consultation programs at any time. Any information which would be of assistance to OSHA in carrying out its monitoring responsibilities will receive full attention and should be sent to the nearest OSHA Regional Office. A list of OSHA Regional Offices is provided in Attachment II at the conclusion of this section.

One commenter (Ex. 3:38) stated that § 1908.9(b)(iv) should require a specific number of accompanied visits by State consultation management with their consultants. OSHA has found such a requirement to be overly restrictive since it does not allow a project to focus its management resources where they are most needed. It should be noted that while the revised regulation deletes the requirement for semiannual accompanied visits of each consultant in every State, these visits must still be performed in accordance with a plan established in the Cooperative Agreement. This plan may, in some cases, call for accompanied visits more frequently than once every six months; in other cases it may require an accompanied visit on only an annual basis, depending on the State's and OSHA's judgment with regard to the need for such supervisory assistance and evaluation.

#### **III. Regulatory Impact and Regulatory Flexibility Act Analysis**

This amendment of the existing regulations governing Onsite Consultation Agreements is not a major action as defined by Executive Order No. 12291 as it will not have an annual effect on the economy of \$100 million or more, cause major increases in costs or prices, or have any other significant adverse effects. This is based on the fact that the proposed revisions to Part 1908 primarily concern the relationship between OSHA and State authorities administering consultation programs, and that participation in the program is voluntary both with respect to States wishing to administer the program and employers wishing to make use of the consultative services.

The proposed amendments will, in fact, produce numerous beneficial results. The amendments are intended in large part to stimulate employer utilization of consultation services as well as to broaden the scope of services offered. In this way they are intended to encourage voluntary efforts of employers in improving the working conditions of employees. Since priority under the consultation program is accorded to smaller businesses in high hazard industries, the program offers an economic benefit to smaller employers, and thereby to their employees, by providing advice and assistance which they might otherwise be unable to afford. Although small business employers often work directly with their employees and thereby are in a position to recognize obvious hazards in their workplaces, they often have greater difficulty recognizing less obvious and more complex hazards and discovering effective remedies for correction of such hazards.

Many small business entrepreneurs find OSHA regulations complex and difficult to comprehend. Larger employers, on the other hand, are generally better able to afford needed assistance in comprehending and developing means of complying with OSHA regulations. Since the consultation program is primarily aimed at high hazard small businesses, it will tend to offset any advantage that larger businesses may enjoy through employment of larger staffs or access to specialized consultants.

Furthermore, since the consultation program offers assistance to employers in relation to hazards which are difficult to address by regulation, the program offers an additional benefit to employers and their employees.

OSHA believes that the amendments proposed herein, by broadening the scope of the consultation services offered, will substantially increase the impact of the program on both regulated and unregulated hazards, and will in consequence significantly strengthen the value and appeal of this nonregulatory approach to the safety and health of employees.

For the same reasons, OSHA certifies pursuant to the Regulatory Flexibility Act of 1980 (5 U.S.C. 601 et seq.) that this rulemaking will not have a significant adverse economic impact on a substantial number of small entities.

#### **Authority**

This document was prepared under the direction of Thorne G. Auchter, Assistant Secretary of Labor for Occupational Safety and Health, U.S.



Department of Labor, 200 Constitution Avenue NW., Washington, D.C. 20210.

#### List of Subjects in 29 CFR Part 1908

Intergovernmental relations,  
Occupational safety and health,  
Technical assistance.

(Secs. 7(c)(1), 21(c), 84 Stat. 1598, 1612) 29 U.S.C. 656(c)(1), 670(c); 29 CFR Part 1908)

Signed at Washington, D.C., this 8th day of June 1984.

Patrick R. Tyson,

Deputy Assistant Secretary of Labor.

Part 1908 is revised as follows:

#### PART 1908—CONSULTATION AGREEMENTS

Sec.

- 1908.1 Purpose and scope.
- 1908.2 Definitions.
- 1908.3 Eligibility and funding.
- 1908.4 Offsite consultation.
- 1908.5 Requests and scheduling for onsite consultation.
- 1908.6 Conduct of a visit.
- 1908.7 Relationship to enforcement.
- 1908.8 Consultant specifications.
- 1908.9 Monitoring and evaluation.
- 1908.10 Cooperative Agreements.
- 1908.11 Exclusions.

Authority: Secs. 7(c)(1), 21 (c), 84 Stat. 1598, 1612 (29 U.S.C. 656(c)(1), 670(c)).

##### § 1908.1 Purpose and scope.

This part contains requirements for Cooperative Agreements between States and the Federal Occupational Safety and Health Administration under sections 7(c)(1) and 21(c) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 651 et seq.) under which OSHA will utilize State personnel to provide consultative services to employers. The service will be made available at no cost to employers to assist them in establishing effective occupational safety and health programs for providing employment and places of employment which are safe and healthful. The overall goal is to prevent the occurrence of injuries and illnesses which may result from exposure to hazardous workplace conditions and from hazardous work practices. The principal assistance will be provided at the employer's worksite, but offsite assistance may also be provided by telephone and correspondence, and at locations other than the employer's worksite, such as the consultation project offices. At the worksite, the consultant will, within the scope of the employer's request, evaluate the employer's program for providing employment and a place of employment which is safe and healthful, as well as identify specific hazards in the workplace, and will provide appropriate advice and assistance in establishing or

improving the employer's safety and health program and in correcting any hazardous conditions identified.

Assistance may include education and training of the employer, the employer's supervisors, and the employer's other employees as needed to make the employer self-sufficient in ensuring safe and healthful work and working conditions. Although onsite consultation will be conducted independent of any OSHA enforcement activity, and the discovery of hazards will not mandate citation or penalties, the employer remains under a statutory obligation to protect employees, and in certain instances will be required to take necessary protective action. Employer correction of hazards identified by the consultant during a comprehensive workplace survey, and implementation of certain core elements of an effective safety and health program and commitment to the completion of others may serve as the basis for employer exemption from certain OSHA enforcement activities. States entering into Agreements under this part will receive ninety percent Federal reimbursement for allowable costs, and will provide consultation to employers requesting the service, subject to scheduling priorities, available resources, and any other limitations established by the Assistant Secretary as part of the Cooperative Agreement.

In States operating approved Plans under section 18 of the Act, the provisions of this Part which establish policies governing enforcement activities do not apply to safety and health issues covered by the State Plan. States operating such Plans shall, in accord with section 18(b), establish policies which are at least as effective as Federal policies.

##### § 1908.2 Definitions.

As used in this part:

"Act" means the Federal Occupational Safety and Health Act of 1970.

"Assistant Secretary" means the Assistant Secretary of Labor for Occupational Safety and Health.

"Compliance Officer" means a Federal compliance safety and health officer.

"Consultant" means an employee under a Cooperative Agreement pursuant to this Part who provides consultation.

"Consultation" means all activities related to the provision of consultative assistance under this Part, including offsite consultation and onsite consultation.

"Cooperative Agreement" means the legal instrument which enables the

States to collaborate with OSHA to provide consultation in accord with this Part.

"Designee" means the State official designated by the Governor to be responsible for entering into a Cooperative Agreement in accord with this part.

"Education" means planned and organized activity by a consultant to impart information to employers and employees to enable them to establish and maintain employment and a place of employment which is safe and healthful.

"Employee" means an employee of an employer who is employed in a business of that employer which affects commerce.

"Employer" means a person engaged in a business who has employees, but does not include the United States, or any State or political subdivision of a State.

"Hazard correction" means the elimination or control of a workplace hazard in accord with the requirements of applicable Federal or State statutes, regulations or standards.

"Imminent danger" means any conditions or practices in a place of employment which are such that a danger exists which could reasonably be expected to cause death or serious physical harm immediately or before the imminence of such danger can be eliminated through the procedures set forth in § 1908.6(e)(4), (f) (2) and (3), and (g).

"Offsite consultation" means the provision of consultative assistance on occupational safety and health issues away from an employer's worksite by such means as telephone and correspondence, and at locations other than the employer's worksite, such as the consultation project offices. It may, under limited conditions specified by the Assistant Secretary, include training and education.

"Onsite consultation" means the provision of consultative assistance on an employer's occupational safety and health program and on specific workplace hazards through a visit to an employer's worksite. It includes a written report to the employer on the findings and recommendations resulting from the visit. It may include training and education needed to address hazards, or potential hazards, at the worksite.

"OSHA" means the Federal Occupational Safety and Health Administration or the State agency responsible under a Plan approved under section 18 of the Act for the



enforcement of occupational safety and health standards in that State.

"Other-than-serious hazard" means any condition or practice which would be classified as an other-than-serious violation of applicable Federal or State statutes, regulations or standards, based on criteria contained in the current OSHA Field Operations Manual or an approved State Plan counterpart.

"RA" means the Regional Administrator for Occupational Safety and Health of the Region in which the State concerned is located.

"Serious hazard" means any condition or practice which would be classified as a serious violation of applicable Federal or State statutes, regulations or standards, based on criteria contained in the current OSHA Field Operations Manual or an approved State Plan counterpart, except that the element of employer knowledge shall not be considered.

"State" includes a State of the United States, the District of Columbia, Puerto Rico, the Virgin Islands, American Samoa, Guam, and the Trust Territory of the Pacific Islands.

"Training" means the planned and organized activity of a consultant to impart skills, techniques and methodologies to employers and their employees to assist them in establishing and maintaining employment and a place of employment which is safe and healthful.

#### § 1908.3 Eligibility and funding.

(a) *State eligibility.* Any State may enter into an Agreement with the Assistant Secretary to perform consultation for private sector employers; except that a State having a Plan approved under section 18 of the Act is eligible to participate in the program only if that Plan does not include provisions for federally funded consultation to private sector employers.

(b) *Reimbursement.* (1) The Assistant Secretary will reimburse 90 percent of the costs incurred under a Cooperative Agreement entered into pursuant to this part. Approved training of State staff operating under a Cooperative Agreement and specified out-of-State travel by such staff will be fully reimbursed.

(2) Reimbursement to States under this part is limited to costs incurred in providing consultation to private sector employers only.

(i) In all States with Plans approved under section 18 of the Act, consultation provided to State and local governments, as well as the remaining range of voluntary compliance activities referred to in 29 CFR 1902.4(c)(2)(xiii), will not be affected by the provisions of

this Part. Federal reimbursement for these activities will be made in accordance with the provisions of section 23(g) of the Act.

(ii) In States without Plans approved under section 18, no Federal reimbursement for consultation provided to State and local governments will be allowed, although this activity may be conducted independently by a State with 100 percent State funding.

#### § 1908.4 Offsite consultation.

The State may provide consultative services to employers on occupational safety and health issues by telephone and correspondence, and at locations other than the employer's worksite, such as the consultation project offices. It may, under limited conditions specified by the Assistant Secretary, include training and education.

#### § 1908.5 Requests and scheduling for onsite consultation.

(a) *Encouraging requests.*—(1) *State responsibility.* The State shall be responsible for encouraging employers to request consultative assistance and shall publicize the availability of its consultative service and the scope of the service which will be provided. The Assistant Secretary will also engage in activities to publicize and promote the program.

(2) *Promotional methods.* To inform employers of the availability of its consultative service and to encourage requests, the State may use methods such as the following:

(i) Paid newspaper advertisements;  
(ii) Newspaper, magazine, and trade publication articles;  
(iii) Special direct mailings or telephone solicitations to establishments based on workers' compensation data or other appropriate listings;

(iv) In-person visits to workplaces to explain the availability of the service, and participation at employer conferences and seminars;

(v) Solicitation of support from State business and labor organizations and leaders, and public officials;

(vi) Solicitation of publicizing by employers and employees who have received consultative services;

(vii) Preparation and dissemination of publications, descriptive materials, and other appropriate items on consultative services;

(viii) Free public service announcements on radio and television.

(3) *Scope of service.* In its publicity for the program, in response to any inquiry, and before an employer's request for a consultative visit may be accepted, the State shall clearly explain that the service is provided at no cost to an

employer through Federal and State funds for the purpose of assisting the employer in establishing and maintaining effective programs for providing safe and healthful places of employment for employees, in accord with the requirements of the applicable State or Federal laws and regulations. The State shall explain that while utilizing this service, an employer remains under a statutory obligation to provide safe and healthful work and working conditions for employees. In addition, while the identification of hazards by a consultant will not mandate the issuance of citations or penalties, the employer is required to take necessary action to eliminate employee exposure to a hazard which in the judgment of the consultant represents an imminent danger to employees, and to take action to correct within a reasonable time a hazard which would be classified as a serious hazard. The State shall emphasize, however, that the discovery of such a hazard will not initiate any enforcement activity, and that referral will not take place, unless the employer fails to eliminate the identified hazard within the established time frame. The State shall also explain that when an employer requests and receives a consultative visit covering all conditions and operations in the place of employment related to occupational safety and health and meets the other conditions set forth in § 1908.7(b)(4), the employer may, upon request, be exempt from a general schedule OSHA enforcement inspection for a period of one year from the end of the closing conference of the consultative visit.

(b) *Employer requests.* (1) An onsite consultative visit will be provided only at the request of the employer, and shall not result from the enforcement of any right of entry under State law.

(2) When making a request, an employer in a small, high hazard establishment shall generally be encouraged to include within the scope of such request all working conditions at the worksite and the employer's entire safety and health program. However, a more limited scope may be encouraged in larger and less hazardous establishments. Moreover, any employer may specify a more limited scope for the visit by indicating working conditions, hazards, or situations on which onsite consultation will be focused. When such limited requests are at issue, the consultant will limit review and provide assistance only with respect to those working conditions, hazards, or situations specified; except that if the consultant observes, in the course of the



onsite visit, hazards which are outside the scope of the request, the consultant must treat such hazards as though they were within the scope of the request.

(3) Employers may request onsite consultation to assist in the abatement of hazards cited during an OSHA enforcement inspection. However, an onsite consultative visit may not take place after an inspection until the conditions set forth in § 1908.7(b)(3) have been met.

(c) *Scheduling priority.* Priority shall be assigned to requests from businesses with the most hazardous operations, with primary attention to smaller businesses. Preference shall be given to the smaller businesses which are in higher hazard industries or which have the most hazardous conditions at issue in the request.

#### § 1908.6 Conduct of a visit.

(a) *Preparation.* (1) An onsite consultative visit shall be made only after appropriate preparation by the consultant. Prior to the visit, the consultant shall become familiar with as many factors concerning the establishment's operation as possible. The consultant shall review all applicable codes and standards. In addition, the consultant shall assure that all necessary technical and personal protective equipment is available and functioning properly.

(2) At the time of any promotional visit conducted by a consultant to encourage the use of the onsite consultative services, a consultation may be performed without delay if the employer so requests and the consultant is otherwise prepared to conduct such consultation.

(b) *Structured format.* An initial onsite consultative visit will consist of an opening conference, an examination of those aspects of the employer's safety and health program which relate to the scope of the visit, a walk through the workplace, and a closing conference. An initial visit may include training and education for employers and employees, if the need for such training and education is revealed by the walk through the workplace and the examination of the employer's safety and health program and if the employer so requests. The visit shall be followed by a written report to the employer. Additional visits may be conducted as the employer requests to provide needed education and training, assistance with the employer's safety and health program, or technical assistance in the correction of hazards, or as necessary to verify the correction of serious hazards identified during previous visits. A compliance inspection may, in some

cases, be the basis for a visit limited to education and training, assistance with the employer's safety and health program, or technical assistance in the correction of hazards.

(c) *Employee participation.* (1) The consultant shall retain the right to confer with individual employees during the course of the visit in order to identify and judge the nature and extent of particular hazards within the scope of the employer's request, and to evaluate the employer's safety and health program. The consultant shall explain the necessity for this contact to the employer during the opening conference, and an employer must agree to permit such contact before a visit can proceed.

(2) In addition, employees, their representatives, and members of a workplace joint safety and health committee may participate in the onsite consultative visit to the extent desired by the employer. In the opening conference, the consultant shall encourage the employer to allow employee participation to the fullest extent practicable.

(d) *Opening conference.* In addition to the requirements of § 1908.6(c), the consultant shall, in the opening conference, explain to the employer the relationship between onsite consultation and OSHA enforcement activity and shall explain the obligation to protect employees in the event that certain hazardous conditions are identified.

(e) *Onsite activity.* (1) Activity during the onsite consultative visit will focus primarily on those areas, conditions, or hazards regarding which the employer has requested assistance. An employer may expand or reduce the scope of the request at any time during the onsite visit. The consultant shall, if prepared and if scheduling priorities permit, expand the scope of the visit at the time of the request. If the employer's request for expansion necessitates further preparation by the consultant or the expertise of another consultant, or if other employer requests may merit higher priority, the consultant shall refer the request to the consultation manager for scheduling. In all cases in which the scope of the visit is reduced, the consultant remains obligated to work with the employer to ensure correction of those serious hazards which are identified during the visit.

(2) The consultant shall advise the employer as to the employer's obligations and responsibilities under applicable Federal or State law and implementing regulations.

(3) Within the scope of the employer's request, consultants shall review the employer's safety and health program and provide advice on modifications or

additions to make such programs more effective.

(4) Consultants shall identify and provide advice on correction of those hazards included in the employer's request and any other safety or health hazards observed in the workplace during the course of the onsite consultative visit. This advice shall include basic information indicating the possibility of a solution and describing the general form of the solution. The consultant shall conduct sampling and testing, with subsequent analyses, as may be necessary to confirm the existence of safety and health hazards.

(5) Advice and technical assistance on the correction of identified safety and health hazards may be provided to employers during and after the onsite consultative visit. Descriptive materials may be provided on approaches, means, techniques, and other appropriate items commonly utilized for the elimination or control of such hazards. The consultants shall also advise the employers of additional sources of assistance, if known.

(6) When a hazard is identified in the workplace, the consultant shall indicate to the employer the consultant's best judgment as to whether the situation would be classified as a "serious" or "other-than-serious" hazard.

(7) At the time the consultant determines that an identified serious hazard exists, the consultant shall assist the employer to develop a specific plan to correct the hazard, affording the employer a reasonable period of time to complete the necessary action. The State shall provide, upon request from the employer within 15 working days of receipt of the consultant's report, an opportunity for an expeditious informal discussion with the consultation manager regarding the period of time established for the correction of a hazard or any other substantive finding of the consultant.

(8) The employer shall be encouraged to advise affected employees of the hazards when they are identified, and to notify them of their correction.

(f) *Employer obligations.* (1) An employer must take immediate action to eliminate employee exposure to a hazard which, in the judgment of the consultant, presents an imminent danger to employees. If the employer fails to take the necessary action, the consultant must immediately notify the affected employees and the appropriate OSHA enforcement authority and provide the relevant information.

(2) An employer must also take the necessary action in accordance with the plan developed under § 1908.6(e)(7) to



eliminate or control employee exposure to any identified serious hazard. In order to demonstrate that the necessary action is being taken, an employer may be required to submit periodic reports, permit a followup visit, or take similar action.

(3) An employer may request, and the consultation manager may grant, an extension of the time frame established for correction of a serious hazard when the employer demonstrates having made a good faith effort to correct the hazard within the established time frame; shows evidence that correction has not been completed because of factors beyond the employer's reasonable control; and shows evidence that the employer is taking all available interim steps to safeguard the employees against the hazard during the correction period.

(4) If the employer fails to take the action necessary to correct a serious hazard within the established time frame or any extensions thereof, the consultation manager shall immediately notify the appropriate OSHA enforcement authority and provide the relevant information. The OSHA enforcement authority will make a determination, based on a review of the facts, whether enforcement activity is warranted.

(5) After correction of all serious hazards, the employer shall notify the consultation manager by written confirmation of the correction of the hazards, unless correction of the serious hazards is verified by direct observation by the consultant.

(g) *Written report.* A written report shall be prepared for each visit which results in substantive findings or recommendations, and shall be sent to the employer. The timing and format of the report shall be approved by the Assistant Secretary. The report shall restate the employer's request and describe the working conditions examined by the consultant; shall, within the scope of the request, evaluate the employer's program for ensuring safe and healthful employment and provide recommendations for making such programs effective; shall identify specific hazards and describe their nature, including reference to applicable standards or codes; shall identify the seriousness of the hazards; and, to the extent possible, shall include suggested means or approaches to their correction. Additional sources of assistance shall also be indicated, if known, including the possible need to procure specific engineering consultation, medical advice and assistance, and other appropriate items. The report shall also include reference to the completion dates for the

situations described in § 1908.6(f) (1) and (2).

(h) *Confidentiality.* The consultant shall preserve the confidentiality of information obtained as the result of a consultative visit which contains or might reveal a trade secret of the employer.

#### § 1908.7 Relationship to enforcement.

(a) *Independence.* (1) Consultative activity by a State shall be conducted independently of any OSHA enforcement activity.

(2) The consultative activity shall have its own identifiable managerial staff. In States with Plans approved under section 18 of the Act, this staff will be separate from the managing of compliance inspections and scheduling.

(3) The identity of employers requesting onsite consultation, as well as the file of the consultant's visit, shall not be forwarded or provided to OSHA for use in any compliance inspection or scheduling activity, except as provided for in § 1908.6(f) (1) and (4) and § 1908.7(b)(4).

(b) *Effect upon scheduling.* (1) An onsite consultative visit already in progress will have priority over OSHA compliance inspections except as provided in § 1908.7(b)(2). The consultant and the employer shall notify the compliance officer of the visit in progress and request delay of the inspection until after the visit is completed. An onsite consultative visit shall be considered in progress in relation to the working conditions, hazards, or situations covered by the request from the beginning of the opening conference through the end of the closing conference; except that for periods which exceed 30 days from the initiation of the opening conference, the RA may determine that the inspection will proceed. For working conditions, hazards, or situations not covered by the request, the onsite consultative visit shall be considered in progress only while the consultant is at the place of employment.

(2) The consultant shall terminate an onsite consultative visit already in progress where one of the following kinds of OSHA compliance inspections is about to take place:

- (i) Imminent danger investigations;
- (ii) Fatality/catastrophe investigations;
- (iii) Complaint investigations;
- (iv) Other critical inspections as determined by the Assistant Secretary.

(3) An onsite consultation visit may not take place while an OSHA enforcement inspection is in progress at the establishment. An enforcement inspection shall be deemed "in

progress" from the time a compliance officer initially seeks entry to the workplace to the end of the closing conference. An enforcement inspection will also be considered "in progress" in cases where entry is refused, until such times as: the inspection is conducted; the RA determines that a warrant to require entry to the workplace will not be sought; or the RA determines that allowing a consultative visit to proceed is in the best interest of employee safety and health. An onsite consultative visit shall not take place subsequent to an OSHA enforcement inspection until a determination has been made that no citation will be issued, or if a citation is issued, onsite consultation shall only take place with regard to those citation items which have become final orders.

(4) When an employer requests and undergoes a consultative visit at an establishment covering all conditions and operations in the place of employment related to occupational safety and health; corrects all hazards that have been identified during the course of the consultative visit within established time frames, and posts notice of their correction when such is completed; demonstrates to the consultant that certain core elements of an effective safety and health program are in effect, and that the remaining elements of an effective safety and health program will be implemented within a reasonable, established time frame; and agrees to request a consultative visit if major changes in working conditions or work processes occur which may introduce new hazards, the employer may, upon request, be exempt from a general schedule OSHA enforcement inspection for a period of one year from the end of the closing conference of the consultative visit. Between the time of election to participate in the process required to qualify for the exemption and the completion of the process, the employer must post a notice of such participation.

(5) When an employer requests consideration for an inspection exemption under § 1908.7(b)(4), the provisions of § 1908.6 (e)(7), (f)(3) and (f)(5) shall apply to other-than-serious hazards as well as serious hazards.

(c) *Effect upon enforcement.* (1) The advice of the consultant and the consultant's written report will not be binding on a compliance officer in a subsequent enforcement inspection. In a subsequent inspection, a compliance officer is not precluded from finding hazardous conditions, or violations of standards, rules or regulations, for



which citations would be issued and penalties proposed.

(2) The hazard identification and correction assistance given by a State consultant, or the failure of a consultant to point out a specific hazard, or other possible errors or omissions by the consultant, shall not be binding upon a compliance officer and need not affect the regular conduct of a compliance inspection or preclude the finding of alleged violations and the issuance of citations, or constitute a defense to any enforcement action.

(3) In the event of a subsequent inspection, the employer is not required to inform the compliance officer of the prior visit. The employer is not required to provide a copy of the State consultant's written report to the compliance officer, except to the extent that disclosure of information contained in such a written report is required by 29 CFR 1910.20.

(4) If, however, the employer chooses to provide a copy of the consultant's report to a compliance officer, it may be used as a factor in determining the extent to which an inspection is required and as a factor in determining proposed penalties. When, during the course of a compliance inspection, an OSHA compliance officer identifies the existence of serious hazards previously identified as a result of a consultative visit, the Area Director shall have authority to assess minimum penalties if the employer is in good faith complying with the recommendations of a consultant after such consultative visit.

#### § 1908.8 Consultant specifications.

(a) *Number.* (1) The number of consultant positions which will be funded under a Cooperative Agreement pursuant to this Part for the purpose of providing consultation to private sector employers will be determined by the Assistant Secretary on the basis of program performance, demand for services, industrial mix, resources available, and the recommendation of the RA, and may be adjusted periodically.

(2) States shall make efforts to utilize consultants with the safety and health expertise necessary to properly meet the demand for consultation by the various industries within a State. The RA will determine and negotiate a reasonable balance with the State on an annual basis.

(b) *Qualifications.* (1) All consultants utilized under Cooperative Agreements pursuant to this part shall be employees of the State, qualified under State requirements for employment in occupational safety and health. They must demonstrate adequate education

and experience to satisfy the RA before assignment to work under an Agreement, and annually thereafter, that they meet the requirements set out in § 1908.8(b)(2), and that they have the ability to perform satisfactorily pursuant to the Cooperative Agreement. Persons who have the potential but do not yet demonstrate adequate education and experience to satisfy the RA that they have the ability to perform consultant duties independently may, with RA approval, be trained under a Cooperative Agreement to perform consultant duties. Such persons may not, however, perform consultant duties independently until it has been determined by the RA that they meet the requirements and have the ability indicated. All consultants shall be selected in accordance with the provisions of Executive Order 11246 of September 24, 1965, as amended, entitled "Equal Employment Opportunity."

(2) Minimum requirements of consultants shall include the following:

(i) The ability to identify hazards; the ability to assess employee exposure and risk; knowledge of OSHA standards; knowledge of hazard correction techniques and practices; knowledge of workplace safety and health program requirements; and the ability to effectively communicate, both orally and in writing.

(ii) Consultants shall meet any additional degree and/or experience requirements as may be established by the Assistant Secretary.

(c) *Training.* As necessary, the Assistant Secretary will specify immediate and continuing training requirements for consultants. Expenses for training which is required by the Assistant Secretary or approved by the RA will be reimbursed in full.

#### § 1908.9 Monitoring and evaluation.

(a) *Assistant Secretary responsibility.* A State's performance under a Cooperative Agreement will be regularly monitored and evaluated by the Assistant Secretary as part of a systematic Federal plan for this activity. The Assistant Secretary may require changes as a result of these evaluations to foster conformance with consultation policy. If the State policies or practices which require change are such that the State's assurance of correction of serious hazards and of the effectiveness of employers' safety and health programs is in doubt, the Assistant Secretary may, pending the completion of the changes, suspend recognition of a State's consultative visits as a basis for exemption from compliance inspection as permitted under § 1908.7(b)(4).

(b) *Consultant performance.*—(1) *State activity.* The State shall establish and maintain an organized consultant performance monitoring system under the Cooperative Agreement:

(i) Operation of the system shall conform to all requirements established by the Assistant Secretary. The system shall be approved by the Assistant Secretary before it is placed in operation.

(ii) A performance evaluation of each State consultant performing consultation services for employers shall be prepared annually. All aspects of a consultant's performance shall be reviewed at that time. Recommendation for remedial action shall be made and acted upon. The annual evaluation report shall be a confidential State personnel record and may be timed to coincide with regular personnel evaluations.

(iii) Performance of individual consultants shall be measured in terms of their ability to identify hazards in the workplaces which they have visited; their ability to determine employee exposure and risk, and in particular their performance under § 1908.6 (e) and (f); their knowledge and application of applicable Federal or State statutes, regulations or standards; their knowledge and application of appropriate hazard correction techniques and approaches; their knowledge and application of the requirements of an effective workplace safety and health program; and their ability to communicate effectively their findings and recommendations and the reasons for them to employers, and relevant information, skills and techniques to employers and employees.

(iv) Accompanied visits to observe consultants during onsite consultative visits shall be conducted periodically in accord with a plan established in each annual Cooperative Agreement. The State may also conduct unaccompanied visits to workplaces which received onsite consultation, for the purpose of evaluating consultants. A written report of each visit shall be provided to the consultant. These visits shall be conducted only with the expressed permission of the employer who requests the onsite consultative visit.

(v) The State will report quarterly to the RA on system operations, including copies of accompanied visit reports completed that quarter.

(2) *Federal activity.* State consultant performance monitoring as set out in § 1908.9(b)(1) shall not preclude Federal monitoring activity by methods determined to be appropriate by the Assistant Secretary.



(c) *State reporting.* For Federal monitoring and evaluation purposes, the State shall compile and submit such factual and statistical data in the format and at the frequency required by the Assistant Secretary. The State shall prepare and submit to the RA any narrative reports, including copies of written reports to employers as may be required by the Assistant Secretary.

#### § 1908.10 Cooperative Agreements.

(a) *Who may make Agreements.* The Assistant Secretary may make a Cooperative Agreement under this part with the Governor of a State or with any State agency designated for that purpose by the Governor.

(b) *Negotiations.* (1) Procedures for negotiations may be obtained through the RA who will negotiate for the Assistant Secretary and make final recommendations on each Agreement to the Assistant Secretary.

(2) States with Plans approved under section 18 of the Act may initiate negotiations in anticipation of the withdrawal from the Plan of Federally funded onsite consultation services to private sector employers.

(3) Renegotiation of existing Agreements funded under this Part shall be initiated within 30 days of the effective date of these revisions.

(c) *Contents of Cooperative Agreement.* (1) Any Agreement and subsequent modifications shall be in writing and signed by both parties.

(2) Each Agreement shall provide that the State will conform its operations under the Agreement to:

(i) The requirements contained in this Part 1908;

(ii) All related formal directives subsequently issued by the Assistant Secretary implementing this regulation.

(3) Each Agreement shall contain such other explicit written commitments in conformance with the provisions of this part as may be required by the Assistant Secretary. Each Agreement shall also include a budget of the State's anticipated expenditures under the Agreement, in the detail and format required by the Assistant Secretary.

(d) *Location of sample Cooperative Agreement.* A sample Agreement is available for inspection at all Regional Offices of the Occupational Safety and Health Administration of the U.S. Department of Labor.

(e) *Action upon requests.* The State will be notified within a reasonable period of time of any decision concerning its request for a Cooperative Agreement. If a request is denied, the State will be informed in writing of the reasons supporting the decision. If a Cooperative Agreement is negotiated,

the initial finding will specify the period for the Agreement. Additional funds may be added at a later time provided the activity is satisfactorily carried out and appropriations are available. The State may also be required to amend the Agreement for continued support.

(f) *Termination.* Either party may terminate a Cooperative Agreement under this part upon 30 days' written notice to the other party.

#### § 1908.11 Conclusions.

A Cooperative Agreement under this part will not restrict in any manner the authority and responsibility of the Assistant Secretary under sections 8, 9, 10, 13, and 17 of the Act, or any corresponding State authority.

*Note.*—Attachments I and II will not appear in the Code of Federal Regulations.

#### Attachment I

##### Exhibit 3.—Commenters on Proposal

- 3:1 Delaney Kinchen, Safety Administrator, Arkansas Department of Labor, Little Rock, AR
- 3:2 John F. Kirk, Jr., Director, Division of Industrial Affairs, Delaware Department of Labor, Wilmington, DE
- 3:3 William B. Huelsen, Vice President, Environmental Affairs, American Foundryman Society, Des Plaines, IL
- 3:4 Henry L. Laird, Director, Branch of Occupational Safety and Health, Mississippi State Board of Health, Jackson, MS
- 3:5 Stephen G. Brown, Corporate Safety Engineer, Tektronic Inc., Beaverton, OR
- 3:6 Linda Reivitz, Secretary, Wisconsin Department of Health and Social Services, Madison, WI
- 3:7 William D. Kane, Director of Industry Affairs, Associated General Contractors of Mass., Inc., Wellesley, MA
- 3:8 William J. Brown, Director, Oregon Worker's Compensation Department, Labor and Industries Building, Salem, OR
- 3:9 Alvin F. Meyer, Jr., President, A. F. Meyer and Associates, Inc., Environmental, System Safety and Occupational Health Consultants, McLean, VA
- 3:10 K. L. Patrick, Director, Safety Western Wood Products Assoc., Portland, OR
- 3:11 Jack Geissert, Team Leader, Colorado Occupational Health and Safety Consultation Program, Colorado State University, Fort Collins, CO
- 3:12 Dan C. Edwards, Director, Health and Safety Department, Oil Chemical and Atomic Workers International Union, AFL-CIO, Denver, CO
- 3:13 Keith Brooks, President, Safe and Sound Inc., Storrs, CT
- 3:14 Douglas R. Earle, Director, Bureau of Safety and Regulation, Michigan Department of Labor, Lansing, MI
- 3:15 Donald L. Spatz, Director of Occupational Safety and Health, International Brotherhood of Boilermakers, Iron Ship Builders, Blacksmiths, Forgers and Helpers, Kansas City, KS
- 3:16 V. C. Eissler, Vice President, North American Production, Conoco Inc., Houston, TX
- 3:17 William C. Ahearn, Ahearn and Associates, Occupational Health Consultants, Phoenix, AZ
- 3:18 Thomas J. Reilly, President-Elect, American Society of Safety Engineers, Park Ridge, IL
- 3:19 Hal Draper, Vice President, Safety and Health Department, West Gulf Maritime Association, Houston, TX
- 3:20 Nancy B. Burkheimer, Deputy Commissioner of Labor and Industry, Division of Labor and Industry, Maryland Department of Licensing and Regulation, Baltimore, MD
- 3:21 Raymond W. Thorn, Director, Division of Environmental Health, Minnesota Department of Health, Minneapolis, MN
- 3:22 Joseph S. Godsoe, Chief, Voluntary Compliance, Alaska Department of Labor, Anchorage, AK
- 3:23 Michael I. Fanning, Director, Safety and Health Services, The Associated General Contractors of America, Washington, D.C.
- 3:24 Charles A. Roberts, 11401 Woodson Avenue, Kensington, MD
- 3:25 Suzanne J. Kossen, Industrial Hygienist, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers, Washington, D.C.
- 3:26 Howard L. Kusnetz, Chairman, Texas Occupational Safety Board, Houston, TX
- 3:27 C. T. Sawyer, American Petroleum Institute, Washington, D.C.
- 3:28 Donald D. Owsley, Health and Safety Administrator, Wyoming Occupational Health and Safety, Cheyenne, WY
- 3:29 Donald D. Owsley, Health and Safety Administrator, Wyoming Occupational Health and Safety, Cheyenne, WY
- 3:30 James E. Hickey, Chief, Division of Occupational Health and Radiation Control, Rhode Island Department of Health, Providence, RI
- 3:31 Walter G. Martin, Director, Division of Occupational Safety and State Safety Engineer, Texas Department of Health, Austin, TX
- 3:32 Joseph H. Alleva, Program Manager, Division of Safety and Health, New York Department of Labor, New York, NY
- 3:33 Flint C. Watt, Chief, Office of Special Programs, Michigan Department of Public Health, Lansing, MI
- 3:34 Stephen B. Kemp, Safety/Medical Superintendent, Occidental Chemical Co., White Springs, FL
- 3:35 Mattie I. Taylor, Deputy Director, District of Columbia Department of Employment Services, Washington, D.C.
- 3:36 John C. Glenn, 7(c)(1) Program Director, Florida Department of Labor and Employment Security, Tallahassee, FL
- 3:37 Michael Rodgers, Director, Voluntary Safety Compliance and Training, Virginia Department of Labor and Industry, Richmond, VA
- 3:38 Franklin E. Mirer, Health and Safety Department, International Union, UAW, Detroit, MI
- 3:39 Timothy M. Tierney, Director/Project Manager, Minnesota Consultation Division—7(c)(1), St. Paul, MN



- 3:40 William C. Abernathy, Director of Industry Affairs, Mechanical Contractors Assoc. of America, Inc., Chevy Chase, MD
- 3:41 Emmett E. Jones, Chief, Cal/OSHA Consultation Service, California Department of Industrial Relations, San Francisco, CA
- 3:42 Ghay E. Holcomb, Assistant Director, Ohio Department of Industrial Relations, Columbus, OH
- 3:43 Ronald A. Lang, Executive Director, SOCMA, Scarsdale, NY
- 3:44 William H. Bywater, President, International Union of Electronic, Electrical, Technical, Salaried and Machine Workers, AFL-CIO, Washington, D.C.
- 3:45 Mary-Win O'Brien, Assistant General Counsel, United Steelworkers of America, Pittsburgh, PA
- 3:46 Harry A. Partlow, President, American Society of Safety Engineers, Park Ridge, IL
- 3:47 Joshua C. Aagsalud, Director, Hawaii Department of Labor and Industrial Relations, Honolulu, HI
- 3:48 Wayne E. Glenn, President, United Paperworkers International Union, Nashville, TN

- 3:49 Jerry Shelor, Secretary of Human Resources, Kansas Department of Human Resources, Topeka, KS
- 3:50 H. M. Bergesen, Director, Utah Job Safety and Health Consultation Services, Salt Lake City, UT
- 3:51 Margaret Seminario, Associate Director, Department of Occupational Safety, Health and Social Security, AFL-CIO, Washington, D.C.
- 3:52 Randel K. Johnson, Associate Director, Loss Prevention and Control, National Association of Manufacturers, Washington, D.C.
- 3:53 Ralph J. Vernon, President, Board of Certified Safety Professionals of the Americas, Inc., Savoy, IL
- 3:54 Harry J. Ettinger, Chairman, American Board of Industrial Hygiene, Akron, OH

**Attachment II.—Addresses of OSHA Regional Administrators**

*Region and address*

- I—US Department of Labor—OSHA, 16-18 North Street, 1 Dock Square Building, 4th Floor, Boston, Massachusetts 02109
- II—US Department of Labor—OSHA, 1515 Broadway, Room 3445, New York, New York 10039

- III—US Department of Labor—OSHA, Gateway Building, Suite 2100, 3535 Market Street, Philadelphia, Pennsylvania 19104
- IV—US Department of Labor—OSHA, 1375 Peachtree Street, NE., Suite 587, Atlanta, Georgia 30367
- V—US Department of Labor—OSHA, 230 Dearborn Street, Room 3230, Chicago, Illinois 60604
- VI—US Department of Labor—OSHA, 555 Griffin Square, Room 602, Dallas, Texas 75202
- VII—US Department of Labor—OSHA, 911 Walnut Street, Room 406, Kansas City, Missouri 64106
- VIII—US Department of Labor—OSHA, Federal Office Building, 1961 Stout Street, Room 1554, Denver, Colorado 80294
- IX—US Department of Labor—OSHA, 450 Golden Gate Avenue, Room 11349, P.O. Box 36017, San Francisco, California 94102
- X—US Department of Labor—OSHA, Federal Office Building, Room 6003, 909 First Avenue, Seattle, Washington 98174

[FR Doc. 84-15876 Filed 6-18-84; 8:45 am]

BILLING CODE 4510-28-M