

DEPARTMENT OF LABOR**Occupational Safety and Health Administration****29 CFR Part 1908****[Docket No. CO-5]****Consultation Agreements: Changes to Consultation Procedures**

AGENCY: Occupational Safety and Health Administration (OSHA), U.S. Department of Labor.

ACTION: Final rule.

SUMMARY: This final rule amends the Occupational Safety and Health Administration's (OSHA) regulations for federally-funded onsite safety and health consultation visits to: provide for greater employee involvement in site visits; require that employees be informed of the results of these visits; provide for the confidential treatment of information concerning workplace consultation visits; and update the procedures for conducting consultation visits.

EFFECTIVE DATE: This final rule will become effective on December 26, 2000.

ADDRESSES: In compliance with 28 U.S.C. 2112(a), the Agency designates for receipt of petitions for review of the regulation the Associate Solicitor for Occupational Safety and Health, Office of the Solicitor, Room S-4004, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210.

FOR FURTHER INFORMATION CONTACT: E. Tyna Coles, Director, Office of Cooperative Programs, Directorate of Federal-State Operations—OSHA, Rm. N-3700, 200 Constitution Avenue NW., Washington DC, 20210. Telephone: (202) 693-2213.

SUPPLEMENTARY INFORMATION:**I. Background: The OSHA Onsite Consultation Program**

The Occupational Safety and Health Administration (OSHA), under cooperative agreements with agencies in 48 states, the District of Columbia, and several U.S. territories, administers and provides federal funding for an onsite consultation program which makes trained health and safety personnel available at an employer's request and at no cost to the employer to conduct worksite visits to identify occupational hazards and provide advice on compliance with OSHA regulations and standards. (In the remaining 2 states and 2 territories, onsite consultation services are provided to small employers in the private sector as part of an OSHA-approved state plan funded by federal

grants under section 23(g) of the Occupational Safety and Health (OSH) Act, rather than under cooperative agreements.) Priority in providing onsite consultation visits is accorded to smaller employers in more hazardous industries. (Various OSHA directives currently specify that priority for consultation services be given to employers having not more than 250 workers at the site receiving the consultation, and not more than 500 workers nationwide.) The consultation program was first authorized by Congressional appropriations action in 1974.

Section 21(c) 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 employments 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 recognition of hazards in the workplace can be 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.

Onsite consultation services can be provided 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. The rule was again amended on June 19, 1984 (49 FR 25082), to clarify various provisions to reflect the experience gained after 1977. The 1984 amendment also contained provisions allowing OSHA to grant inspection exemptions to employers who meet certain requirements.

On July 16, 1998, President Clinton signed into law the Occupational Safety and Health Administration Compliance Assistance Authorization Act (CAAA), Public Law 105-197, which codifies this important OSHA program as a new subsection 21(d) of the Occupational Safety and Health Act. The regulations at 29 CFR part 1908 remain the rules under which the OSHA onsite consultation program is administered and provide, among other things, rules and procedures for state consultants performing worksite visits. On July 2, 1999 (64 FR 35972), OSHA published a document in the **Federal Register** requesting public comments on proposed changes to 29 CFR part 1908. The proposed rule was intended to implement the CAAA, to meet OSHA's goals for the consultation programs as established in the National Performance Review (NPR) of 1995, and to reflect current consultation policies and procedures. The proposal presented a number of new issues including: (a) Employees' right to participate in the consultation visit; (b) employees' right to be notified of hazards identified; and (c) OSHA's use of the consultants' report during an enforcement proceeding. OSHA received views and comments from state consultation service providers, OSHCON (the association representing state consultation service providers), employers, organizations representing employer groups, labor unions, members of congress and interested members of the public during a 90-day public comment period that ended on September 30, 1999. Most comments focused on the issues delineated above.

II. Summary and Explanation of Final Rule

This section includes an analysis of the public record and the policy considerations underlying the decision on various provisions of the rule. In today's final rule, OSHA has made various changes to the proposed language. 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 on substantive issues raised in the proposal.

OSHA has cited public comments in the record by identifying exhibits parenthetically. The comments are included in Exhibit 2. 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. 2: 2, 3, 4) means Exhibit 2: comment numbers 2, 3, and 4. The names and exhibit numbers of commenters are listed in Attachment I.

Section 1908.1 Purpose and scope.

This section describes in general terms the purpose of the cooperative agreements between OSHA and state governments to provide consultation services to employers. In its present form, the rule cites sections 7(c)(1) and 21(c) of the Occupational Safety and Health Act of 1970 as its source of authority. The rule currently does not explain the obligation of states, operating plans with consultation program components under section 18(b) of the Act, to operate consultation programs that are "at least as effective as" the 7(c)(1) programs.

The proposed rule revised the section to establish section 21(d), the Occupational Safety and Health Administration Compliance Assistance Authorization Act of 1998, as the primary source of authority for this program. The proposal also clarified the obligation of the State plans to establish consultation programs that are "at least as effective as" the 21(d) consultation programs. There were no objections to these proposals. The proposed language is retained in the final rule without change.

Section 1908.2 Definitions

This section contains definitions of terms used throughout the rule. The proposed rule included revised definitions of "Employee", "Employer", "Other-than-serious hazards", and "Serious-hazards", and new definitions of "List of Hazards", "Programmed inspection", "Programmed inspection schedule", and "Recognition and exemption program" for the purpose of part 1908.

There were no comments on the definitions of "Employee", "Employer", "Other-than-serious hazards", "Serious-hazards", "Programmed inspection", "Programmed inspection schedule", and "Recognition and exemption program". Those definitions are retained in the final rule without change.

Two state agencies commented that the definition of "List of Hazards" needs to be further clarified with regard to what is to be included in the list, and whether there is a new requirement to verify the correction of other-than-serious hazards that are posted. The requirement to post the "List of Hazards" is intended as a means of informing employees about hazards in the workplace. OSHA does not intend to

require the consultation projects to verify correction of other-than-serious hazards. Some commenters noted that requiring the employer to post the "List of Hazards," including the recommended corrective action, would be counter-productive because of the volume and detail of a consultant's recommended corrective action. Others pointed out that the employer is not bound exclusively to the consultant's recommended action. OSHA agrees that the objective of informing employees about hazards identified by the consultant can be achieved without posting the recommended corrective action, and without requiring the posting of other-than-serious hazards. The definition of "List of Hazards" in the final rule, therefore, does not include the recommended corrective action and other-than-serious hazards. The final rule will require the employer to make the consultant's recommended corrective action and information on other-than-serious hazards available at the worksite for examination by affected employees or their representatives.

With respect to the definition of "recognition and exemption program," one commenter noted that the recognition and exemption program should recognize and grant exemptions to sites with "good basic" safety and health programs rather than "exemplary" programs. (Ex. 2:13.) Two state agencies commented that the "recognition and exemption program should recognize 'exemplary' program(s) and not 'basic' programs as some have suggested." (Ex. 2: 9, 134.) The term "exemplary" programs, as used in this rule, refers to programs that meet the requirements of the agency's Safety and Health Management Guidelines of 1989 (42 FR 3904) with respect to hazards covered by the Act. OSHA believes that the requirements of the 1989 guidelines can be met by every employer in the nation. For those genuinely working to achieve recognition and exemption status, the rule also permits the deferral of inspections. The definition is retained without change in the final rule.

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 the agreement. The section was amended to clarify that a state operating an approved section 18(b) state plan cannot receive funding for consultation programs under section 21(d) while continuing to receive funding for the same consultation program under section 23(g) of the Act. One commenter

stated that the proposed rule is inconsistent with the CAAA because it will deny training and education funds to section 18(b) state plans with consultation programs funded under section 23(g). (Ex. 2:17.) This rule does not change the existing policy on funding of consultation programs but merely clarifies the policy. All State-Plan states will continue to be eligible for training and education program funding independent of funding for onsite consultation programs. The final rule retains the proposed language without change.

1908.5 Requests and Scheduling for Onsite Consultation

This section includes requirements for state consultation agencies to encourage employers to request onsite consultation visits and to publicize the availability and scope of services provided. The proposed language changes the last sentence in § 1908.5(a)(3) to reflect the change from Inspection Exemption Through Consultation (IETC) to the proposed recognition and exemption program, implemented as the Safety and Health Achievement Recognition Program (SHARP) in federal enforcement states. Even though no other changes were proposed to the rest of § 1908.5(a)(3), one commenter stated that the language in the section was clearer in the existing rule. (Ex. 2:124.) Another commenter noted that the rights and obligations of the employer are explained in promotional materials, public presentations, and in the opening conference and need no further emphasis when the request is received. (Ex. 2:165.) OSHA understands the need of the various states to tailor their promotional and outreach materials to their unique markets, and that these promotional and outreach material may vary from state to state. It is, however, essential that regardless of the state providing the consultation service certain pertinent information must be provided to all employers who request a consultation visit. To that end, § 1908.5(a)(3) outlines the required information. When this rule becomes effective, OSHA expects the promotional materials developed by the states to include information on the exemption and recognition program rather than the inspection exemption through consultation.

Section 1908.5(b) includes a proposal to require consultation projects to inform employers about the requirement to post the "List of Hazards" when taking requests for consultation services. One state agency expressed the opinion that explaining the requirement to post

the "List of Hazards" when taking such a request will intimidate the employer. (Ex. 2:165.) OSHA does not believe that a thorough explanation of the reason for requiring the posting of the "List of Hazards," together with an explanation of the benefits of the consultation service, including the benefits of "consultation in progress" at § 1908.7(b)(1), will intimidate an employer who is willing to work in good faith with the consultation project. The following change is made in the final rule to allow the states more flexibility in explaining the requirement to post the "List of Hazards" to an employer. The last sentence originally proposed to be added to § 1908.5(b) (requiring the states to explain the employer's obligation to post the "List of Hazards" during the opening conference) is added to the end of the cautionary statements in § 1908.5(a)(3).

Section 1908.6 Conduct of a Visit

This section establishes the rules for the actual conduct of a consultation visit. The proposed rule was designed to change this section in two ways. Section 1908.6(c)(2) provides for employee participation in the walkaround phase of the visit. The section provides that, at unionized sites, a duly appointed employee representative will be given the opportunity to accompany the consultant and the employer's representative in the walkaround phase of the visit. The section provides further that, at all other sites, the consultant will confer with a reasonable number of employees. The proposal codifies the current policy on employee participation as found in the Consultation Policies and Procedures Manual (CPPM) (TED 3.5B, p. VI-9, 1996). Several commenters noted that, even though they presently allow their employees to participate in the process, they are opposed to OSHA making employee participation a requirement for providing the consultative service. Many of them asserted that employee participation must be left to the discretion of the employer. (Ex. 2: 50, 54, 58, 62, 68, 79, 100, 101, 106, 110, 171, 183, 184, 191, 197, and 203.) Other commenters objected to this change, noting that the current rule allows for employee participation, and that the CPPM adequately addresses the substance of the proposed rule. (Ex. 2: 17, 73, 121, 124, 132, 142, 147, 155.) Several employers and state agencies, however, agreed with the change and many noted that this is already the practice. (Ex. 2: 3, 10, 12, 15, 25, 77, 83, 85, 86, 107, 133, 145, 158, 159, 162, 189, and 201.) OSHA believes that because a consultation visit is ultimately intended

to benefit employees (by assisting the employer to provide a workplace free of recognized hazards,) affected employees and/or their representatives must be provided the opportunity to participate in the process. This position is consistent with legislative history of the Occupational Safety and Health Compliance Assistance Authorization Act of 1998. The final rule retains the proposed language without change.

The meaning of the term "employee representative" as used in the proposed rule caused concern among some commenters. They were concerned that allowing participation by undefined employee representatives would unduly burden small employers, and that there are situations where such employee participation may not be necessary. (Ex. 2: 19, 20, 31, 32, 42, 46, 51, 66, 67, 72, 80, 119, 125, and 174.) Others completely objected to the section on the grounds that it had an enforcement tone and would reduce employers' willingness to participate in the program. (Ex. 2: 34, 49, 111, 130, 136, 146, and 190.) One commenter wanted OSHA to clarify the meaning and applicability of the section. (Ex. 2: 8.) Therefore, a definition of "employee representative" has been added to the final rule to clarify that, as used in this rule, the term refers only to duly appointed representatives of employees at unionized sites. At all other sites, the current practice where the consultant confers with a reasonable number of employees will continue.

Despite this existing practice, there were explicit and implicit comments that OSHA's prescription for employee participation is a "one-size-fits-all" solution, while others observed that OSHA gives no indication of the meaning of "reasonable number of employees". (Ex. 2: 152, 192 and 197.) The proposed rule leaves the details of employee participation at non-unionized sites to the discretion of the consultant. The consultant determines based on the unique site conditions when, how and how frequently to confer with employees. This rule does not preempt any existing state rule that provides for comparable employee participation.

To remove any confusion regarding the role of employees in the consultation visit, the phrase "In addition" is added to the final rule at § 1908.6(c)(2)(i) to clearly indicate that the requirements in the whole of § 1908.6(c)(2) are in addition to the requirements in § 1908.6(c)(1). Further, the phrase "or if the employee representative declines the offer to participate" is added to § 1908.6(c)(2)(ii) of the final rule to allow the consultant

the flexibility of proceeding where the duly appointed employee representative voluntarily declines the offer to participate in the visit. On a related matter, one commenter wanted a clarification on what happens if the employer refuses to allow employee participation. (Ex. 2: 188.) The CPPM (OSHA Instruction TED 3.5A 1996, p IV-3) provides clearly that, at unionized sites, the employer must afford the employee representative an opportunity to participate in the walkaround phase as well as the opening and closing conferences of the visit. The same section of the CPPM reserves the right of the consultant to confer privately with employees. The final rule continues this policy. The consultation visit will not proceed if the employer refuses to allow employee participation as prescribed in the final rule and the CPPM.

The proposal in § 1908.6(d) provided for participation by employee representatives in an opening and closing conference, and for notification of affected employees of the scope and purpose of the visit. Some commenters objected to this proposal on the grounds that it will undermine the right of the employer to control the visit and to voluntarily determine who participates in the process. (Ex. 2: 79, 100, 111, 120, 146.) Others commented that mandating participation by employee representatives in the opening and closing conference will undermine the confidential nature of the process, and that it is inconsistent with the intent of Pub. L. 105-197. (Ex. 2: 17, 78, 101, 106, 110, 121, 169, 184.) Another group of commenters objected to separate conferences on the grounds that it could be divisive and may put the consultant in an "untenable position as a labor advocate". (Ex. 2: 9, 77, 86, 134, 147, 155.) There were also commenters who noted that allowing employee representatives to participate in the opening and closing conference would be time consuming, burdensome, costly to employers, and reduce the level of participation. (Ex. 2: 89, 97, 119, 121, 181.) Some commenters were supportive of the proposal and applauded OSHA's effort to encourage the inclusion of employees represented by organized labor in the consultative process. (Ex. 2: 83, 107, 122, 133, 137, 145, 158, 159, 162, 189, 201, 205.) OSHA notes that the proposal to allow employee representatives in the opening and closing conference only affects unionized sites, which constitute only about 14% of all sites served by the consultation projects. The provision permitting a request for a separate

opening and closing conference is equally available to the employer and the employee representative. Requests for separate opening and closing conferences may or may not reflect divisions between labor and management. Be that as it may, the consultant's role is to identify the hazards in the workplace, to advise affected employees about those hazards, to advise the employer on methods for correcting the hazards, and to assist the employer in establishing or improving safety and health programs. That function does not require the consultant to take sides in any internal disputes.

The opening conference provides an opportunity for the consultant to explain the purpose and scope of the visit, to emphasize the obligations of the employer, and to reaffirm the rights and the authority of the employer to control the visit by expanding, limiting or terminating the visit at anytime. The closing conference provides an opportunity for the consultant to discuss findings, to advise the employer of interim protective methods, and to establish correction due dates. OSHA understands that there may be matters that the employer may want to discuss privately. OSHA intends to issue a guideline on matters that should be addressed privately with the employer, at the employer's request. Such matters will include the critique of workplace management systems for occupational safety and health.

Some commenters expressed concern over the ability of employees to speak freely with the consultant in the presence of the employer without fear of retaliation. One commenter wanted the rule to expressly allow the consultant to confer privately with the employee, and raised the question of anti-discrimination protection and walkaround pay. (Ex. 2: 137.) The final rule retains § 1908.6(c)(1) of the present rule, which specifies that the consultant retains the right to confer individually with an employee if the consultant so wishes. Further, OSHA believes that any discrimination issue that may arise out of the consultation process is adequately addressed by section 11(c) of the Occupational Safety and Health Act of 1970, as implemented through 29 CFR part 1977, and needs no further emphasis in this rule. With regard to walkaround pay, OSHA believes that this issue should be resolved by the employer and the union when the request is made.

Regarding the requirement for the consultant to notify affected employees of the visit, one commenter noted that § 1908.6(d)(1) is vague, and that its implementation could be problematic in

some cases. (Ex. 2: 181.) The section is intended to encourage the consultant to use his or her best judgment in informing as many employees as possible of the purpose of the visit, and to increase interaction with employees covered by the scope of the visit. The final rule is changed to clarify that the provision is not intended to require the states to provide notice of the visit to all affected employees, but rather to inform employees with whom the consultant confers, of the visit's purpose.

Concerning the proposal at § 1908.6(d)(2), one commenter noted that the section should be changed to include the employee representative in the discussion of the relationship between onsite consultation and OSHA enforcement activity. (Ex. 2: 162.) The section is intended to be a cautionary statement to the employer. The consultation agreement is between the consultant and the employer, and imposes no duty on the employee representative. That section of the final rule therefore directs those cautionary statements exclusively to the employer. In order to consolidate all the cautionary statements in one section, the language in § 1908.6(d)(3) is added to § 1908.6(d)(2.) Section 1908.6(d)(4) is renumbered as § 1908.6(d)(3).

The proposal at § 1908.6(e)(7), which provides that the consultant will assist the employer in the development of a hazard correction plan and provides a dispute resolution mechanism for the consultation project manager, is substantively the same as the language adopted and published in the **Federal Register** of June 1984 (49 FR 25094). The only changes to the paragraph was to replace the phrase "an identified serious hazard exists" with the phrase "a serious hazard exist" and to replace the word "shall" with "must". A few commenters, however, noted that the dispute resolution mechanism is an added burden, and that it gives the consultation program an enforcement flavor. (Ex. 2: 134, 152.) The intent of the section is to give the employer an opportunity to discuss any objections to the consultant's findings, categorization of hazards, or the established correction period with the consultation project manager. When an employer refuses to correct a serious hazard, it is eventually referred to OSHA for enforcement. It is therefore important for the consultation project manager to provide an informal forum to resolve any disputes or disagreements. This avenue for resolving disagreements between the employer and the consultant will become even more important with the new requirement to post the "List of Hazards".

With respect to the development of the hazard correction plan, some commenters wanted the section changed to grant employee representatives the right to participate in developing the hazard correction plan. (Ex. 2: 145, 159, 162, 189, 201.) OSHA agrees that employee participation in the development of the plan is desirable. Nevertheless, the responsibility of correcting hazards is solely the employer's. The consultant is required to assist the employer in developing the plan. However, the employer does not have to accept the consultant's assistance, and may choose to develop the plan on his or her own. By the same token, the employee representative may offer to assist the employer in developing the hazard correction plan. The employer is, however, free to accept or decline the offer.

At § 1908.6(e)(8), OSHA proposed to inform employees of hazards identified by the consultant by requiring the posting of a "List of Hazards", and by making a copy of the list available to the authorized employee representative who participates in the visit. Several commenters opposed the proposal, citing the following objections: (1) the list could be used adversely against the employer by OSHA, attorneys, competitors, and disgruntled employees; (2) posting the list will undermine the voluntary and confidential nature of the process; and (3) that the requirement is not in line with PL 105-197. (Ex. 2: 34, 98, 106, 110, 123, 124, 141, 154, 157, 171, 184, 188.) Another group of commenters asserted that employers participating in the process in good faith should not be forced to advertise hazards in their workplace. (Ex. 2: 19, 31, 32, 42, 46, 51, 66, 67, 72, 80, 101, 174.) There are several provisions in the final rule that are intended to assuage the concerns expressed. Section 1908.7(b)(1) will ensure that the employer is not subjected to OSHA enforcement while working within the established time frame to correct hazards identified by the consultant. In addition, the final rule includes language providing that complaints resulting from the posting of hazards will not result in enforcement action, as long as the employer is meeting his or her obligation with respect to interim protection and the correction time frame. Further, OSHA will require that the "List of Hazards" includes language that clearly states that the list is not a citation. It will acknowledge the employer's good faith effort in working cooperatively and voluntarily with the consultation project to provide a workplace free of

recognized hazards. OSHA believes that the list will serve the intent of Public Law 105-197 (as reflected in House Report 105-444 accompanying the Act) by providing a means to inform affected employees and their representatives of hazards in the workplace.

With regards to employer adherence to the posting requirements, some commenters were concerned that the proposal will be unenforceable. (Ex. 2: 86, 92, 131, 147.) An employer who agrees to the requirements for receiving the consultation service but subsequently refuses to post the "List of Hazards" will be deemed to have unilaterally terminated the consultation visit. Such an employer will not receive the benefit of any inspection deferrals, including the protection contained at § 1908.7(b)(1), and will be denied participation in the recognition and exemption program at § 1908.7(b)(4). Some commenters were of the opinion that the posting requirement entailed verification by consultants. They noted that verification of posting will be time consuming and will result in fewer actual consultative visits. (Ex. 2: 86, 89.) One commenter (Ex. 2: 92) stated that it will be impractical to require verification of posting, while others (Ex. 2: 32, 165) noted that it should be the responsibility of the employer to inform his or her employees of hazards in the workplace. While OSHA agrees that it is the duty of the employer to identify and inform employees of the hazards in the workplace, OSHA feels that the consultant also has an obligation to inform employees of identified hazards that could cause injury, illness, or death. As such, OSHA believes that the "List of Hazards" is a continuation of the communication between the consultant and the beneficiaries of the service, and could be the beginning of the dialogue on workplace safety and health between the employer and his employees. The employer is responsible for providing additional information to his employees as needed. On the issue of follow-up visits, OSHA will not require any additional visits beyond what is presently required. Requirements to inform employees about hazards are not, in fact, an entirely new addition to the consultation program. As indicated in some of the comments received, some states already require posting or sharing of the report with employees without a detrimental effect on their program. Furthermore, several employers stated that they always post and share the consultant's report with their employees, or that they have no objection to the proposal. (Ex. 2: 3, 10,

11, 49, 52, 83, 107, 125, 136, 158.) In addition, the revised regulation does not prohibit posting by electronic means. While in most instances it will be necessary to post a hard copy of the list of identified hazards in order to provide adequate notice to affected employees, posting may be by electronic means when the employer demonstrates that electronic transmission is the employer's normal means of providing notices to employees; that each employee is equipped with an electronic communication device; and that electronic posting will provide notice to each affected employee equivalent to hard-copy posting at the worksite.

At § 1908.6(h)(2), OSHA proposed to add a provision expressly designating consultation data which identifies employers who have requested or received a consultation visit as confidential information. In a related provision dealing specifically with the consultant's written report, OSHA proposed a new § 1908.6(g)(2) which would have provided that consultant's written reports shall not be disclosed by the state except to the employer for whom it was prepared, or, upon request, to OSHA for use in any relevant enforcement proceedings. As discussed below, a provision for non-disclosure of consultation data to the public is included in today's final rule. Provisions relating to access to the consultant's report for enforcement however, have been revised in light of extensive comment received from states and other participants.

Nondisclosure to the public of consultation data: The final rule at § 1908.7(h)(2) allows OSHA to obtain employer specific information for evaluating the consultation program. As was explained in the proposed rule, non-enforcement federal OSHA personnel must at times obtain access to confidential material during the course of evaluating state consultation programs or rendering program assistance. OSHA has needed access to such information more frequently in recent years as the agency has begun to incorporate consultation program information in federal databases such as the Integrated Management Information System (IMIS), and as the agency has implemented the program measurement activity mandated by the Government Performance and Results Act (GPRA). Federally-collected data includes, for example, worksite-specific injury and illness data to help measure the effect of the consultation program on participating employers' injury and illness rates.

Consultation-related information retained by federal OSHA is generally subject to the federal Freedom of Information Act (FOIA), 5 U.S.C. 552. The FOIA provides that records maintained by federal agencies must be disclosed to members of the public upon request unless one of the nine exemptions listed in the act applies. Exemption 4 of the FOIA exempts from disclosure "commercial or financial information obtained from a person [that is] privileged or confidential." Information that relates to an employer's business decision to engage a consultant, and workplace information reviewed by that consultant during the visit, would appear to qualify as "commercial" information as that term has been broadly construed by the courts. Information collected by consultants under 29 CFR part 1908 is clearly "obtained by a person" within the meaning of FOIA.

OSHA believes that such information also qualifies as "confidential", the remaining criterion for non-disclosure under Exemption 4. Federal court decisions establish that commercial information voluntarily submitted by a person to the government is "confidential" if it is the kind of information not customarily made public by the person from whom it was obtained. *Critical Mass Energy Project v. NRC*, 975 F.2d 871 ("Critical Mass III") (D.C. Cir. 1992). Even if submission of the information were mandatory, the information would qualify as confidential under Exemption 4 if disclosure would impair the effectiveness of the government program under which the information was submitted. *Critical Mass Energy Project v. NRC*, 931 F.2d 939, 944-45 ("Critical Mass II") (D.C. Cir. 1990).

States and employers who filed comments almost unanimously predicted a sharp fall off in employer participation if confidentiality could not be guaranteed, a belief also emphasized in comments by OSHCON. (Ex. 2: 147.) The American Society of Safety Engineers stated that in the private sector it would be considered an ethical violation for a consultant to disclose an employer's identity without his consent. (Ex. 2: 109.) Most states indicated the material is now treated as confidential.

OSHA finds that site specific information and data collected by consultants during the consultation visit generally constitutes confidential commercial information under FOIA exemption 4, and qualifies for protection from release to the public. OSHA believes that the public disclosure provisions of proposed § 1908.6(g) and (h) are necessary both to

protect the confidentiality interests of employers in confidential commercial information voluntarily provided to the state consultant, and to avoid the potential damage which widespread disclosure might do to this voluntary program whose objective is to promote the correction of workplace hazards by assuring continued participation of employers. Accordingly, the final rule includes provisions for non-disclosure of such information. Additionally, although OSHA has revised the wording of proposed § 1908.6(g) relating to OSHA access, the requirement that the consultant's written report may be disclosed only to the employer for whom it was prepared, which reflects the status of these reports as confidential commercial information not subject to public disclosure, has been retained in the final rule.

Access to consultant's reports for enforcement purposes: The proposed § 1908.6(g) would, among other things, have required states to provide a copy of a consultant's written report to OSHA upon request, for use in enforcement proceedings to which the information was relevant. Although the preamble to the proposal stated that the enforcement cases in which OSHA would seek to obtain these reports have been and would continue to be extremely rare, the volume of comments in opposition to this proposal has caused the agency to carefully reexamine this issue and revise the language of the final rule. A number of commenters, including state agencies, expressed concern that the proposal undermines the wall of separation between the consultation projects and OSHA, and some argued the proposal violates the spirit of the CAAA. Several commenters worried that the proposal will lead to decreased usage and ultimate demise of the program (Ex. 2: 13, 39, 92, 188,) and many employers stated they would not use the services of state consultants if they were not assured of confidentiality. (Ex. 2: 3, 59, 107, 160, 183.) A group of commenters, however, agreed with the proposal, asserting that it strikes the proper balance between the use of the service by the employer and the need for employee protection. (Ex. 2: 25, 133.) Several state agencies proposed that, when necessary, OSHA should obtain the report from the employer rather than the state. (Ex. 2: 77, 134, 145, 162, 165, 181, 189.) OSHA shares the concern of the commenters that the perception of routine access to these reports for enforcement purposes would adversely affect employer participation in the consultation program. OSHA recognizes the need to preserve a careful balance

between ensuring effective worker protection and encouraging employer participation. Accordingly, the final rule has been revised to further limit and specify situations in which consultation reports could be used for enforcement purposes. First, the final rule eliminates a proposed provision of § 1908.6, to which many states objected, which would have required state consultants or consultation agencies to furnish written consultation reports to OSHA "upon request" for enforcement use. Subsection 1908.6(g) of the final rule has been rephrased to make clear that state consultation agencies will be required to furnish their written reports to OSHA only as provided in § 1908.7(a)(3)—that is, only when the state makes a referral to enforcement because an employer has failed to correct a hazard identified by the consultant, or where there is information in the report to which access must be provided under 29 CFR 1910.1020 or other applicable OSHA standards or regulations.

Moreover, OSHA has removed from the text of § 1908.6(g)(2) the broad language which would have given OSHA unlimited access to the consultant's written report in "enforcement proceedings to which the information is relevant." The final rule allows OSHA more limited access. Aside from rare instances in which OSHA will seek a copy of the report as part of the § 1908.6(f)(4) referral process, the revised § 1908.7(c)(3) provides that OSHA may obtain the report from the employer only where OSHA independently determines there is reason to believe that the employer has failed to correct hazards identified by a consultant or created the same hazards again, or has made false statements to the state or OSHA in connection with participation in the consultation program. Once an OSHA inspection (or investigation) independently results in the identification of hazards in the workplace, the employer and employee interview as well as a review of documents provided by the employer may yield information that indicates that the hazard had been previously identified but had not been corrected by the employer, or that the employer had allowed the hazard to reoccur.

Related to the concerns about the confidentiality of the consultants' written report, one commenter expressed concern that the confidentiality provisions of the proposed rule would conflict with the access rights of certified collective bargaining representations under the National Labor Relations Act (NLRA). (Ex. 2:162.) The final rule places no

limitations on disclosure of consultation-related reports or information by the employer with whom the consultation was performed, and in no way limits the access rights of an employee organization under a collective bargaining agreement or the NLRA.

Section 1908.7 Relationship to Enforcement

This section generally provides that the state consultation program be operated independently of federal and state OSHA enforcement programs. This principle of independent program administration is reflected in current and previous versions of 29 CFR part 1908, and is consistent with section 21(d) of the OSH Act. The proposed changes at § 1908.7(a)(3) were intended to clarify the limits of information-sharing between consultation and enforcement to achieve common program objectives. OSHA believes that information sharing under § 1908.7(a)(3) is critical to ensure that qualified employers are granted inspection exemptions and deferrals, and that the files of employers not meeting their obligation are forwarded to OSHA for enforcement action. The final rule is changed to delete references to the confidentiality provision in § 1908.6(g)(2) and (h)(2), and to add the inspection deferral provision under § 1908.7(b)(1).

At § 1908.7(b)(1), OSHA proposed to change the meaning of consultative visit "in progress". One commenter was concerned that "in progress" could become open ended and allow excessive correction due dates. The commenter suggested that a cap of 60 days should be placed on the duration of consultative visits "in progress". (Ex. 2:6.) OSHA is mindful of the concern expressed by this commenter. However, OSHA believes that consultation projects are in the best position to determine reasonable correction due dates and are therefore better able to establish the cap on consultative visits "in progress" on a case-by-case basis. OSHA intends through its monitoring and evaluation of the consultation projects to assist the states in maintaining a reasonable schedule of "correction due dates". A number of commenters expressed strong support for the proposed change to the meaning of the consultation visit "in progress", observing that the change allows the employer to complete the corrective action as part of the consultative process. (Ex. 2: 1, 24, 86, 89, 92, 119, 131, 134, 147, 149, 157, 165.) One commenter noted that the proposal does not go far enough. That commenter

wanted consultation "in progress" to extend from "when a request is received by the Consultation Program through the end of the correction period, including any approved extensions". The commenter additionally recommended that language be added to the provision that permits OSHA, in scheduling compliance inspections, to grant lower priority to worksites that have completed a consultative visit. (Ex. 2: 77.) One commenter noted that in his state, consultation in progress begins 10 days before the opening conference and terminates at the end of the correction due dates. (Ex. 2: 188.) OSHA believes that the language in § 1908.7(b)(1) (inspection deferral to sites with consultative visit pending,) and (b)(4)(i)(A) (inspection deferrals to sites working to achieve recognition and exemption status,) together with the expanded meaning of the consultation visit "in progress", provide flexibility for granting inspection deferrals to employers who are committed to working with the consultation projects.

The proposal at § 1908.7(b)(4) was intended to provide the framework for a recognition and exemption program that replaces the "inspection exemption through consultation". There were two aspects to the proposal. Section 1908.7(b)(4)(i)(A) was designed to allow OSHA in exercising its authority to schedule compliance activity to defer inspections to sites working with the consultation projects to achieve the recognition and exemption status, while § 1908.7(b)(4)(i)(B) established the minimum standard for achieving the recognition and exemption status.

A few commenters wanted a clarification of the use of the word "may" instead of "shall" in the proposal in section 1908.7(b)(4)(i)(A). (Ex. 2: 9, 13, 34.) Some commenters stated that the proposal was inconsistent with section 21(d) of the CAAA. OSHA's experience with the "inspection exemption through consultation" program cautions against granting mandatory inspection exemptions or deferrals where the requirement for achieving an acceptable level of performance is subject to varied interpretations. Further, states operating their own enforcement programs should have reasonable flexibility to determine how best to achieve the objective of this section. OSHA's position is supported by the language at section 21(d)(4) of the CAAA. OSHA will provide guidelines to the States to ensure uniformity in developing acceptable milestones for inspection deferrals, and to ensure that states will only grant deferrals to employers working with the consultation projects to achieve specific

milestones. One commenter objected to the section, noting that the reference to "effective safety and health program" is OSHA's way of forcing employers to implement requirements beyond the intent of the CAAA. (Ex. 2: 17.) The reference to "effective safety and health program" does not impose requirements beyond the scope of the CAAA. OSHA notes that the section 21 (d)(4)(C) of the CAAA reflects the framework of an effective safety and health program. These criteria are further described in OSHA's voluntary Safety and Health Program Management Guidelines, which was published in 1989 to help employers establish and maintain management systems to protect their workers. OSHA's experience with the Safety and Health Achievement Recognition Program (SHARP) and with the Voluntary Protection Program (VPP) has shown that the guidelines can be implemented successfully by employers regardless of size. OSHA believes that the criteria set forth in § 1908.7(b)(4)(i)(B), including the "safety and health program" requirement, are needed to demonstrate that type of commitment and ensure the continued protection of employees' safety and health even with a lower level of inspection activity. It is important to note that in addition to granting inspection exemptions to employers with exemplary safety and health programs, this section also contains provisions allowing OSHA to grant inspection deferrals to employers working towards an effective safety and health program with respect to hazards covered by the Act.

Several commenters expressed their support for the recognition and inspection exemption provision at § 1908.7(b)(4)(i)(B). (Ex. 2: 1, 50, 54, 73, 119, 134, 164.) A few states operating their own enforcement programs indicated their satisfaction with the section, noting that it would allow them the flexibility of adopting and implementing their own program. (Ex. 2: 1, 9, 137.) One commenter objected to the requirement that states operating their own enforcement adopt an equivalent "recognition and exemption" program. (Ex. 2: 25.) OSHA believes that a "recognition and exemption" program achieves multiple purposes, two of which are to encourage employers to work towards voluntary compliance with the requirements of the OSH Act and to allow enforcement programs to strategically focus their resources. OSHA believes that all employers should have the opportunity to showcase their excellence, to be recognized for their achievement, and to

be exempted from inspections where appropriate. The requirement of this section is therefore maintained without change in the final rule.

Under § 1908.7(c)(3), the employer is not required to provide a copy of the state consultant's report to a compliance officer. As noted in the discussion on confidentiality of the consultant's written report (§ 1908.6(g)(2)), several states urged that when needed the report should be obtained from the employer and not from the project. One state agency, while asserting that states should be allowed to keep the consultant's written report confidential, recommended that the current confidentiality rule be maintained, and that section 1908.7(c)(3) should be deleted to allow OSHA to obtain the report directly from the employer when necessary. (Ex. 2: 165.) As previously mentioned in the discussion under confidentiality of the consultants' written report, several state agencies were similarly inclined. Because this section of the rule is very important in furthering OSHA's policy of not allowing compliance officers to make initial requests for the consultant's written report and not allowing the use of the report as a means of identifying hazards upon which to focus inspection activity, the final rule includes a revised 7(c)(3). The new rule now provides that while employers generally will not be required to provide a copy of the consultant's report to the compliance officer during a subsequent enforcement visit, OSHA may obtain the report from the employer when OSHA independently determines there is reason to believe that the employer failed to correct serious hazards identified during the course of a consultation visit; created the same hazard again; or made false statements to the state or OSHA in connection with participation in the consultation program.

III. Final Economic Analysis

The OSHA onsite consultation program is entirely voluntary both for employers who seek this free service and for states which elect to provide it. Some of the new procedures codified in today's final rule may add incrementally to the time or cost incurred in providing OSHA-funded consultation services, but OSHA believes that any additional demand on resources will be more than offset by the benefits of employee participation, and will not have any significant measurable economic impact either on employers or state consultation agencies. The provision that consultation visits include an opportunity for employee participation

is unlikely to add significantly to the time spent by state consultants in conducting their visits. OSHA's consultation program directive has for many years required an opportunity for walkaround participation by the authorized representative in unionized facilities which are undergoing a consultation visit. A review of our Integrated Management Information System (IMIS) data indicates that in fiscal year 1998, there was some form of employee participation in all consultation visits. The IMIS data indicate that a majority of visits included some degree of employee participation in the walkaround, and many employers have voluntarily allowed participation including opening and closing conferences, walkaround, and employee interviews.

The requirements included in these revisions to part 1908 are a codification of what already exists in practice and will ensure that employees are afforded an opportunity to participate in all aspects of the consultation visit. Employee participation will produce heightened awareness by the workforce and will result in a positive contribution to ensure a safer and healthier workplace. OSHA believes that the economic cost to employers resulting from employee involvement in consultation visits is minimal, and in any event employers receive these consultative services free of charge, and no employer is required to undergo a consultation visit. Similarly, OSHA believes that the final rule's provision requiring notification of employees of hazards identified during the consultation visit (i.e. posting the list of serious hazards, requiring the employer to make information on corrective actions and other-than-serious hazards available to affected employees and employee representatives) will increase the responsibilities of participating employers only slightly. This cost however, is more than offset by the value of greater employee participation in the consultation process and enhanced employee awareness.

Finally, provisions of the final rule dealing with the availability of the consultant's written report for enforcement purposes have been modified from those in the proposal in response to numerous state comments that unrestricted availability of this information to compliance officers would discourage employers from requesting consultation visits. OSHA believes that continued employer participation is essential to the success of this program. The agency has formulated a final rule which balances confidentiality of consultation visits

with the ultimate objective of ensuring the correction of workplace hazards.

IV. Executive Order 12866

In terms of economic impact, the rule proposed today does not constitute an economically significant regulation within the meaning of Executive Order 12866, because it does not have an annual effect on the economy of \$100 million or more; materially affect any sector of the economy; interfere with the programs of other agencies; materially affect the budgetary impact of grant or entitlement programs; nor result in other adverse effects of the kind specified in the Executive Order. However, it is deemed to be a significant regulation because it raises novel legal and policy issues, and has therefore been reviewed and approved by OMB under Executive Order 12866.

V. Regulatory Flexibility Act Certification

Pursuant to the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), the Assistant Secretary hereby certifies that the final rule will not have a significant economic impact on a substantial number of small entities. Participation in the consultation program both by states and employers is entirely voluntary. The state agencies which have elected to furnish onsite consultation services under cooperative agreements with OSHA are not covered entities under the RFA. Since the consultation program is historically targeted to small, high-hazard workplaces, employers affected by the rule would tend to include a substantial number of small entities but, as indicated in the foregoing discussion of regulatory impacts, the final rule should have virtually no measurable economic impact on employers.

VI. Paperwork Reduction Act

This final rule contains collection of information requirements which are identical to those in the existing consultation agreement regulations, except that OSHA is adding a new requirement for the states to generate and transmit a "List of Hazards" identified during the visit to the employer, and for the employer to post the list. Under the Paperwork Reduction Act of 1995, all collection of information requirements must be submitted to OMB for approval. The existing requirements for collection of information are approved by OMB under control number 1218-0110. As a first step in its review of the rule being issued today, OSHA published a request for public comment on information collection in the **Federal Register** (63 FR

67702) on December 8, 1998. That request included additional collections anticipated with the revision of this rule. OSHA received no comments on existing and the proposed information collection. OSHA has submitted a request to OMB for revision of the currently approved collection to reflect the paperwork requirements imposed by this final rule.

VII. Federalism

Executive Order 13132, "Federalism" (64 FR 43255; August 10, 1999,) sets forth fundamental federalism principles, federalism policymaking criteria, and provides for consultation by federal agencies with state or local governments when policies are being formulated which potentially affect them. The revisions to 29 CFR part 1908 were issued as a proposed rule on July 2, 1999, prior to the effective date of this Executive Order, and accordingly the specific intergovernmental consultation process provided under this Executive Order was not conducted. However, as discussed below, OSHA has engaged in extensive discussion of the proposed rule with affected state agencies, and has incorporated many of the concerns expressed by affected states in the language of the final rule issued today.

Federal OSHA meets regularly with representatives of state-operated onsite consultation programs, both individually and at meetings of the National Association of Occupational Safety and Health Consultation Programs (OSHCON). OSHA additionally has established a Consultation Steering Committee on which both OSHA and the states are represented. OSHA also maintains extensive and frequent communications with its state plan partner agencies, both individual states and through the Occupational Safety and Health State Plan Association (OSHSPA), the association of state plan states. The revisions to part 1908 have been discussed with all affected states via OSHCON, the Consultation Steering Committee and the OSHSPA, and many state comments are already reflected in the proposal being issued today.

OSHA has reviewed the revisions to part 1908 and finds them to be consistent with the policymaking criteria outlined in Executive Order 13132. It should be noted that cooperative agreements pursuant to section 21 of the OSH Act, and state plans submitted and approved under section 18 of the Act, are entirely voluntary federal programs which do not involve imposition of an intergovernmental mandate and accordingly are not covered by the

Unfunded Mandates Reform Act, *see* 2 U.S.C. 1502, 658(5). The designated federalism official for the Department of Labor has certified that OSHA has complied with the requirements of Executive Order 13132 for these revisions to 29 CFR part 1908.

VIII. Authority

This document was prepared under the direction of Charles N. Jeffress, Assistant Secretary of Labor for Occupational Safety and Health. It is issued under sections 7(c), 8, and 21(d) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 656, 657, 670) and Secretary of Labor's Order No. 6-96 (62 FR 111, January 2, 1997).

List of Subjects in 29 CFR Part 1908

Confidential business information, Grant programs—labor, Intergovernmental relations, Occupational safety and health, Reporting and recordkeeping requirements, Small businesses, Technical assistance.

Signed this 16 day of October, 2000 in Washington, DC.

Charles N. Jeffress,

Assistant Secretary of Labor.

Accordingly, 29 CFR part 1908 is amended as set forth below:

PART 1908—CONSULTATION AGREEMENTS

1. The authority citation for 29 CFR part 1908 is revised to read as follows:

Authority: Secs. 7(c), 8, 21(d), Occupational Safety and Health Act of 1970 (29 U.S.C. 656, 657, 670) and Secretary of Labor's Order No. 6-96 (62 FR 111, January 2, 1997).

2. Section 1908.1 is amended by revising paragraphs (a) and (c) to read as follows:

§ 1908.1 Purpose and scope.

(a) This part contains requirements for Cooperative Agreements between states and the Federal Occupational Safety and Health Administration (OSHA) under sections 21(c) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 651 *et seq.*) and section 21(d), the Occupational Safety and Health Administration Compliance Assistance Authorization Act of 1998 (which amends the Occupational Safety and Health Act,) under which OSHA will utilize state personnel to provide consultative services to employers. Priority in scheduling such consultation visits must be assigned to requests received from small businesses which are in higher hazard industries or have the most hazardous conditions at issue

in the request. Consultation programs operated under the authority of a state plan approved under Section 18 of the Act (and funded under Section 23(g), rather than under a Cooperative Agreement) which provide consultative services to private sector employers, must be "at least as effective as" the section 21(d) Cooperative Agreement programs established by this part. 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 off-site 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.

(c) States operating approved Plans under section 18 of the Act shall, in accord with section 18(b), establish enforcement policies applicable to the safety and health issues covered by the State Plan which are at least as effective as the enforcement policies established by this part, including a recognition and exemption program.

3. Section 1908.2 is amended by revising the definitions of "Employee", "Employer", "Other-than-serious hazard", and "Serious-hazard", and by adding, in alphabetical order, the definitions of "Employee representative", "List of Hazards", "Programmed inspection", "Programmed inspection schedule", and "Recognition and exemption program" to read as follows:

§ 1908.2 Definitions.

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

Employee representative, as used in the OSHA consultation program under this part, means the authorized representative of employees at a site where there is a recognized labor organization representing employees.

Employer means a person engaged in a business who has employees, but does not include the United States (not including the United States Postal Service,) or any state or political subdivision of a state.

* * * * *

List of Hazards means a list of all serious hazards that are identified by the consultant and the correction due dates agreed upon by the employer and the consultant. Serious hazards include hazards addressed under section 5(a)(1) of the OSH Act and recordkeeping requirements classified as serious. The List of Hazards will accompany the consultant's written report but is separate from the written report to the employer.

* * * * *

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 instructions or approved State Plan counterpart.

Programmed inspection means OSHA worksite inspections which are scheduled based upon objective or neutral criteria. These inspections do not include imminent danger, fatality/catastrophe, and formal complaints.

Programmed inspection schedule means OSHA inspections scheduled in accordance with criteria contained in the current OSHA field instructions or approved State Plan counterpart.

* * * * *

Recognition and exemption program means an achievement recognition program of the OSHA consultation services which recognizes small employers who operate, at a particular worksite, an exemplary program that results in the immediate and long term prevention of job related injuries and illnesses.

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 instructions or approved State Plan counterpart, except that the element of employer knowledge shall not be considered.

* * * * *

4. Section 1908.3 is amended by revising paragraph (a) to read as follows:

§ 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 as a part of its plan.

* * * * *

5. Section 1908.5 is amended by revising paragraphs (a)(3) and (b)(1) to read as follows:

§ 1908.5 Requests and scheduling for onsite consultation.

(a) * * *

(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 with 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 any serious hazards that are identified. 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 the requirements for participation in the recognition and exemption program as set forth in § 1908.7(b)(4), and shall ensure that the employer understands his or her obligation to post the List of Hazards accompanying the consultant's written report.

(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.

* * * * *

6. Section 1908.6 is amended by:

- a. Revising paragraphs (b), (c)(2), (d), (e)(7), (e)(8), and (f)(2);
- b. Redesignating the text of paragraph (g) following the paragraph heading as paragraph (g)(1);
- c. Redesignating the text of paragraph (h) following the paragraph heading as paragraph (h)(1); and
- d. Adding new paragraphs (g)(2) and (h)(2).

The revisions and additions read as follows:

§ 1908.6 Conduct of a visit.

* * * * *

(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 walkthrough of 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 walkthrough of 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 at the employer's request to provide needed education and training, assistance with the employer's safety and health program, 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) * * *

(2)(i) In addition, an employee representative of affected employees must be afforded an opportunity to accompany the consultant and the employer's representative during the physical inspection of the workplace. The consultant may permit additional employees (such as representatives of a joint safety and health committee, if one exists at the worksite) to participate in the walkaround, where the consultant determines that such additional representatives will further aid the visit.

(ii) If there is no employee representative, or if the consultant is unable with reasonable certainty to determine who is such a representative, or if the employee representative

declines the offer to participate, the consultant must confer with a reasonable number of employees concerning matters of occupational safety and health.

(iii) The consultant is authorized to deny the right to accompany under this section to any person whose conduct interferes with the orderly conduct of the visit.

(d) *Opening and closing conferences.*

(1) The consultant will encourage a joint opening conference with employer and employee representatives. If there is an objection to a joint conference, the consultant will conduct separate conferences with employer and employee representatives. The consultant must inform affected employees, with whom he confers, of the purpose of the consultation visit.

(2) In addition to the requirements of paragraph (c) of this section, the consultant will, in the opening conference, explain to the employer the relationship between onsite consultation and OSHA enforcement activity, explain the obligation to protect employees in the event that certain hazardous conditions are identified, and emphasize the employer's obligation to post the List of Hazards accompanying the consultant's written report as described in paragraph (e)(8) of this section.

(3) At the conclusion of the consultation visit, the consultant will conduct a closing conference with employer and employee representatives, jointly or separately. The consultant will describe hazards identified during the visit and other pertinent issues related to employee safety and health.

(e) * * *

(7) At the time the consultant determines that a serious hazard exists, the consultant will 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 must provide, upon request from the employer within 15 working days of receipt of the consultant's report, a prompt opportunity for an 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) As a condition for receiving the consultation service, the employer must agree to post the List of Hazards accompanying the consultant's written report, and to notify affected employees when hazards are corrected. When received, the List of Hazards must be posted, unedited, in a prominent place where it is readily observable by all

affected employees for 3 working days, or until the hazards are corrected, whichever is later. A copy of the List of Hazards must be made available to the employee representative who participates in the visit. In addition, the employer must agree to make information on the corrective actions proposed by the consultant, as well as other-than-serious hazards identified, available at the worksite for review by affected employees or the employee representative. OSHA will not schedule a compliance inspection in response to a complaint based upon a posted List of Hazards unless the employer fails to meet his obligations under paragraph (f) of this section, or fails to provide interim protection for exposed employees.

(f) * * *

(2) An employer must also take the necessary action in accordance with the plan developed under paragraph (e)(7) of this section to eliminate or control employee exposure to any identified serious hazard, and meet the posting requirements of paragraph (e)(8) of this section. In order to demonstrate that the necessary action is being taken, an employer may be required to submit periodic reports, permit a follow-up visit, or take similar action that achieves the same end.

* * * * *

(g) *Written report.* (1) * * *

(2) Because the consultant's written report contains information considered confidential, and because disclosure of such reports would adversely affect the operation of the OSHA consultation program, the state shall not disclose the consultant's written report except to the employer for whom it was prepared and as provided for in § 1908.7(a)(3). The state may also disclose information contained in the consultant's written report to the extent required by 29 CFR 1910.1020 or other applicable OSHA standards or regulations.

(h) *Confidentiality.* (1) * * *

(2) Disclosure of consultation program information which identifies employers who have requested the services of a consultant would adversely affect the operation of the OSHA consultation program as well as breach the confidentiality of commercial information not customarily disclosed by the employer. Accordingly, the state shall keep such information confidential. The state shall provide consultation program information requested by OSHA, including information which identifies employers who have requested consultation services. OSHA may use such information to administer the

consultation program and to evaluate state and federal performance under that program, but shall, to the maximum extent permitted by law, treat information which identifies specific employers as exempt from public disclosure.

* * * * *

7. Section 1908.7 is amended by revising paragraphs (a)(3), (b)(1), (b)(4), (b)(5) and (c)(3) to read as follows:

§ 1908.7 Relationship to enforcement.

(a) * * *

(3) The identity of employers requesting onsite consultation, as well as the file of the consultant's visit, shall not be provided to OSHA for use in any compliance activity, except as provided for in § 1908.6(f)(1) (failure to eliminate imminent danger,) § 1908.6(f)(4) (failure to eliminate serious hazards,) paragraph (b)(1) of this section (inspection deferral) and paragraph (b)(4) of this section (recognition and exemption program).

(b) *Effect upon scheduling.* (1) An onsite consultative visit already in progress will have priority over OSHA compliance inspections except as provided in paragraph (b)(2) of this section. 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 visit from the beginning of the opening conference through the end of the correction due dates and any extensions thereof. OSHA may, in exercising its authority to schedule compliance inspections, assign a lower priority to worksites where consultation visits are scheduled.

* * * * *

(4) The recognition and exemption program operated by the OSHA consultation projects provide incentives and support to smaller, high-hazard employers to work with their employees to develop, implement, and continuously improve the effectiveness of their workplace safety and health management system.

(i) *Programmed Inspection Schedule.*

(A) When an employer requests participation in a recognition and exemption program, and undergoes a consultative visit covering all conditions and operations in the place of employment related to occupational safety and health; corrects all hazards that were identified during the course of the consultative visit within established time frames; has begun to implement all

the elements of an effective safety and health program; and agrees to request a consultative visit if major changes in working conditions or work processes occur which may introduce new hazards, OSHA's Programmed Inspections at that particular site may be deferred while the employer is working to achieve recognition and exemption status.

(B) Employers who meet all the requirements for recognition and exemption will have the names of their establishments removed from OSHA's Programmed Inspection Schedule for a period of not less than one year. The exemption period will extend from the date of issuance by the Regional Office of the certificate of recognition.

(ii) *Inspections.* OSHA will continue to make inspections in the following categories at sites that achieved recognition status and have been granted exemption from OSHA's Programmed Inspection Schedule; and at sites granted inspection deferrals as provided for under paragraph (b)(4)(i)(A) of this section:

(A) Imminent danger.

(B) Fatality/Catastrophe.

(C) Formal Complaints.

(5) When an employer requests consideration for participation in the recognition and exemption program under paragraph (b)(4) of this section, the provisions of § 1908.6(e)(7), (e)(8), (f)(3), and (f)(5) shall apply to other-than-serious hazards as well as serious hazards.

(c) * * *

(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 the report is required by 29 CFR 1910.1020 or other applicable OSHA standard or regulation. If, during a subsequent enforcement investigation, OSHA independently determines there is reason to believe that the employer: failed to correct serious hazards identified during the course of a consultation visit; created the same hazard again; or made false statements to the state or OSHA in connection with participation in the consultation program, OSHA may exercise its authority to obtain the consultation report.

* * * * *

Note: The following attachment will not appear in the Code of Federal Regulations.

Attachment I to Preamble*Exhibit 2—Commenters on Proposal*

- 2:1 Virginia Anklin, Maryland OSHA, Laurel, MD
- 2:2 Benjamin Studebaker, Principal Safety Engineer, Videojet Systems International, Wood Dale, IL
- 2:3 Jill Davis, Safety & Health Director, Federal Foam Technologies, Ellsworth, WI
- 2:4 Jim Ramsay, The Kansas Contractors Association, Inc., Topeka, KS
- 2:5 Carin Clauss, Professor of Law, University of Wisconsin-Madison, Madison, WI
- 2:6 Richard Terrill, Regional Administrator, OSHA, Seattle, WA
- 2:7 Dick Hughes, Executive Vice President, Excellence in Safety, Inc., Falmouth, MA
- 2:8 Wyatt Buchanan, Regulatory Compliance Director, C.H. Thompson Co., Incorporated, Binghamton, NY
- 2:9 John Barr, Commissioner, Virginia Dept. of Labor and Industry, Richmond, VA
- 2:10 Leland Slay, Vice President of Human/Industrial Relations, Associated Grocers of the South, Birmingham, AL
- 2:11 Diane Coppage, Corporate Secretary, Owego Contracting Co., Inc., Candor, NY
- 2:12 Howard Eggerman, National Health and Safety Representative, American Federation of Government Employees, Oakland, CA
- 2:13 Charles Kramer, Consultation Officer, OSHA Region III, Philadelphia, PA
- 2:14 John Hartman, President, JH Robotics, Inc., Johnson City, NY
- 2:15 Paul Sadlon, Administrator, Susquehanna Nursing Home, Johnson City, NY
- 2:16 Raelyn Pearson, Treasurer, Washburn Iron Works, Inc., Washburn, WI
- 2:17 Cass Ballenger, Chairman, House Subcommittee on Workforce Protection, Washington, D.C.
- 2:18 Gerald Taylor, President, Milwaukee Machine and Engineering Corp., New Berlin, WI
- 2:19 Francis Sawyer, Secretary/Treasurer, Acro-Fab, Hannibal, NY
- 2:20 Gilbert Jones, Chief Financial Officer, Darman Manufacturing Co., Inc., Utica, NY
- 2:21 Steven Quandt, Executive Vice President, Columbus Chemical Industries, Columbus, NY
- 2:22 David Mlekoday, Facility Manager, Milwaukee Center for Independence, Milwaukee, WI
- 2:23 Anthony DiRenzo, DiRenzo Bros. Bakery, Inc., Binghamton, NY
- 2:24 Donald Heckler, Acting Director, Connecticut OSHA, Wethersfield, CT
- 2:25 Mel James, Consultation-Compliance Manager, WISHA, Olympia, WA
- 2:27 Mary Werheim, President, Stanek Tool, New Berlin, WI
- 2:28 Ken Woodring, General Manager, Dern Moore Machine Company, Lockport, NY
- 2:29 Robin Gynnild, Human Resources and Safety Director, Bauman Construction of Chippewa Falls, Chippewa Falls, WI
- 2:30 Matthew Cady, Safety Manager, Ark-Les, U.S. Controls Corp., New Berlin, WI
- 2:31 Donna Haley, Onandaga Asphalt Products, LLE., East Syracuse, NY
- 2:32 Brian Letcher, President, Syracuse Constructors, Inc. East Syracuse, NY
- 2:33 Patrick Foley, Foley Wood Products, Inc., Ellsworth, WI
- 2:34 Richard Muellerleile, President, Star Gas Products, Inc., Poughkeepsie, NY
- 2:35 "Management", Eden Tool and Die, Eden, NY
- 2:36 Jesse Didio, Manager, Human Resources, Bartell Machinery Systems, L.L.C., Rome, NY
- 2:37 Jane Mulvihill, President, DI Highway Sign and Structure Corp., New York, NY
- 2:38 Vincent Perello, Personnel/Purchasing Manager, Diamond Saw Works, Inc., Chaffee, NY
- 2:40 Mark Forster, Vice President, Badger Iron Works, Menomonie, WI
- 2:41 David Bernstein, Manager, Human Resources, Unit Drop Forge Co., Inc., West Allis, WI
- 2:43 Paul Engel, President, American Boiler Tank & Welding Co., Inc., Albany, NY
- 2:44 Darcy Fields, State of Wisconsin, Eau Claire, WI
- 2:45 Margaret O'Brien, Safety Coordinator, Stride Tool, Ellicottville, NY
- 2:46 E.W. Tucker, President, F.W. Tucker & Son, Inc., Oswego, NY
- 2:47 Pat McGowan, Vice President-Operations, Brunzell Lumber & Millwork, Madison, WI
- 2:48 Jay Czerniak, President, Niagara Punch & Die Corporation, Buffalo, NY
- 2:49 Clifford Ross, President, Easter Castings Corp., Cambridge, NY
- 2:50 Rick Wells, President, Mohawk Resources, Amsterdam, NY
- 2:51 Donna Hale, Safety Director, U.S. Highway Products, Canastota, NY
- 2:52 Bob Kellog, Vice President, Warren Tire Service Center, Queensbury, NY
- 2:53 R.W. Whitman, President, ESSCO Incorporated, Green Bay, WI
- 2:54 James Porter, Vice President, Solvay Paperboard, Syracuse, NY
- 2:55 Gail Lipka, Plant Manager, Greenbelt Industries, Buffalo, NY
- 2:56 Jeff Trembly, Vice President, Oshkosh Coil Spring, Inc., Oshkosh, WI
- 2:57 Wayne Trembly, President, Oshkosh Coil Spring, Inc., Oshkosh, WI
- 2:58 Douglas Hooper, ES&H Manager, Luminescent Systems, East Aurora, NY
- 2:59 Brian Riemer, Plant Manager, NY
- 2:60 Ted Dankert, President, The Kansas Contractors Association, Inc., Topeka, KS
- 2:61 John Tarrant, President, Tarrant Manufacturing Co., Inc., Saratoga, NY
- 2:62 W. Romer, Personnel Director, Clear View Bag Co., Inc., Albany, NY
- 2:63 Ray Seeley, Operations Manager, Trussworks, Inc., Hayward, WI
- 2:64 David Clark, Plant Manager, Avon Automotive, Lockport, NY
- 2:65 Judith Scheitair, Office Manager, Stainless Steel Brakes Corp., Clarence, NY
- 2:67 Donna Haley, Safety Director, Santaro, East Syracuse, NY
- 2:68 Tech Steel Service, Farmingdale, NY
- 2:69 Bill Petrillo, Building Manager, Center Ithaca-TSD Associates, Ithaca, NY
- 2:70 Clarence Cammers, Safety Manager, The Colman Group, Inc., Elhorn, WI
- 2:71 Scott Kantar, Plant Engineer, Jada Precision Plastics Co., Inc., Rochester, NY
- 2:72 Donna Haley, Sel Ventures, LLC., East Syracuse, NY
- 2:73 Nora Eberl, Controller, Eberl Iron Works, Inc., Buffalo, NY
- 2:74 Robert Eck, President, Eck Plastic Arts, Inc., Binghamton, NY
- 2:75 Jack Ireton-Hewitt, General Manager, Champion Home Builders Co., Sangerfield, NY
- 2:76 James Haney, President, Wisconsin Manufacturers & Commerce, Madison, WI
- 2:77 Worth Joyner, Chief-Bureau Consultative Services, NC-DOL, Raleigh, NC
- 2:78 William Torrence, President, Torrance Casting, Inc., La Crosse, WI
- 2:79 Michael Camardello, Ph.D., President, Sharon's Distributors, Inc., Schenectady, NY
- 2:80 Erick Austin, Safety Manager, Felix Shoeller, Pulaski, NY
- 2:81 Susan Martin, Safety Director, De Kalb Forge Company, De Kalb, IL
- 2:82 Raymond Charbonneau, Plant Manager, Majic Corrugated, Inc., Batavia, NY
- 2:83 Richard Couchenour, Jamestown Advanced Products, Inc., Jamestown, NY
- 2:84 Daniel Hill, President, Metweld, Altamont, NY
- 2:85 Judy Betz, ITO Safety Team Member, ITO Industries, Inc., Bristol, WI
- 2:86 Robert Simmons, Assistant Director-Missouri On-Site Consultation Division of Labor Standards, Missouri-DOL, Jefferson City, MO
- 2:87 Jim Harrison, Medical Director, North Woods Community Health Center, Minong, WI
- 2:88 Fred Zeitz, DDS., Family Dentistry and Orthodontics, Middleton, WI
- 2:89 Louis Lento, Director-New Jersey Department of Labor, On-Site Consultation Program, NJ-DOL-OSHA, Trenton, NJ
- 2:90 Matthew Kucerak, Operations Manager, Sharon's Distributors, Inc., Schenectady, NY
- 2:91 Barbara Davis, President, Cowee, Berlin, NY
- 2:92 Karl Arps, Director-Bureau of Manufacturing and Technology Development, Wisconsin Dept. of Commerce, Madison, WI
- 2:93 Todd Samolinski, Vice President-Manufacturing, Fallon, Antigo, WI
- 2:94 Doug Wilcox, General Manager, McGregor, Binghamton, NY
- 2:95 Frances Miller, Health & Safety Administrator, Getinge/Castle Inc., Rochester, NY
- 2:96 Michael Mulcahy, GEHL, West Bend, WI
- 2:97 Neil Manasse, President, Harris Pallet Co., Inc., Albany, NY
- 2:98 John Kwiatkowski, Vice President-Operations, Owl Homes/Hawk Homes, Allegany, NY
- 2:99 Brian Flannagan, President, Primary Plastics, Inc., Endwell, NY
- 2:100 Bruce Richards, Wagner Millwork, Inc., Owego, NY
- 2:101 John Donaldson, President, Donaldson's Volkswagen-Audi-Subaru, Sayville, NY
- 2:102 Larry Lindesmith, M.D., Gunderson Lutheran Medical Center, La Crosse, WI
- 2:103 Gary Blasiman, Environmental & Safety Engineer, Colfor Manufacturing, Inc., Malvern, OH

- 2:104 Scott Kuhlmeier, Safety Coordinator, Shur-Line, Lancaster, NY
- 2:106 Bill Welch, Safety Director, BRB Contractors, Inc., Topeka, KS
- 2:107 William MacGuane, Safety & Security Supervisor, Quesbecor Printing, Buffalo Inc., Depew, NY
- 2:108 Robert Green, Safety Director, K. J. Transportation, Farmington, NY
- 2:109 Frank Perry, President, American Society of Safety Engineers, Des Plaines, IL
- 2:110 Deborah Kruesi, Chief Operating Officer, ComposiTools, Inc., Albany, NY
- 2:111 Kevin Burke, Vice President-Government Relations, Food Distributors International, Falls Church, VA
- 2:112 Thomas Herrman, DEEP Administrator, Niagara Frontier Automobile Dealers Association, Williamsville, NY
- 2:113 George Frazer, Safety and Health Engineering Technician, Jensen Fittings Corporation, North, NY
- 2:114 Ralph Krall, Manager of Safety and Human Resources, Clifford-Jacobs Forging Company, Champaign, IL
- 2:115 J.D. Teclaw, Human Resource Director, Mapleton Wood Products, Thorp, WI
- 2:116 T.G. Getz, President, Moline Forge, Moline, IL
- 2:117 Brian Grossman, Assistant Environmental & Safety Manager, Portland Forge, Portland, IN
- 2:118 David Johnson, President, Corfu Machine Co., Inc., Corfu, NY
- 2:119 Kenneth Reichard, Commissioner of Labor and Industry, Maryland-DLLR, Baltimore, MD
- 2:120 Thomas O'Connor, Director of Technical Services, National Grain and Feed Association, Washington, D.C.
- 2:121 Marsha Greenfield, Public Policy Attorney, American Association of Homes and Services, Washington, D.C.
- 2:122 Joe Lekan, Secretary, Wisconsin Department of Health and Family Services, Madison, WI
- 2:123 Thomas Sullivan, Regulatory Policy Council, National Federation of Independent Business, Washington, D.C.
- 2:124 Connie Varcasia, NY-DOL, Albany, NY
- 2:125 Beth Van Emburgh, Associate Manager, Regulatory Affairs, American Association of Airport Executives, Alexandria, VA
- 2:126 Karen Gilbert, Office Manager, Trevor Industries, Inc., Eden, NY
- 2:127 Stephan Foster, Safety Assistant Administrator, Department of Employment, Cheyenne, WY
- 2:128 Raymond Wilson, Safety Director, n/a, Rome, NY
- 2:129 Nancy Stumpf, CEO, Dream Wing, Hartland, WI
- 2:130 Michael Kelly, Facilities Manager, Deridder, Rochester, NY
- 2:131 Terry Haden, Facilitator, Salina Safety Network, Salina, KS
- 2:132 Rudolph Leutzing, Project Manager, Kansas City Department of Human Resources, Topeka, KS
- 2:133 James Frederick, Health Safety and Environment Department, United Steelworkers of America, Pittsburgh, PA
- 2:134 Lisa Blunt-Bradley, Secretary of Labor, Delaware-DOL, Wilmington, DE
- 2:136 Douglas Gaffney, Controller, Niagara Transformer Corp., Buffalo, NY
- 2:137 Joe Norsworthy, Secretary of Labor, Commonwealth of Kentucky Labor Cabinet, Frankfort, KY
- 2:138 Edward Owsinski, Director of Engineering, Paz Systems, Farmingdale, NY
- 2:139 Jeffrey Woitha, Vice President, Carbo Forge & Machining, Fremont, OH
- 2:140 Michael Marsala, Environmental Engineer, Guardian Industries Corp., Geneva, NY
- 2:141 Zwack, Inc., Stephentown, NY
- 2:142 Hawaii-OSH, Honolulu, HI
- 2:143 Jim Redmon, Director Safety & Health Services, GBC Safety and Construction Services, Inc., Albany, NY
- 2:144 Fred Kohloff, Director, Environmental Health & Safety, American Foundrymen's Society, Inc., Washington, D.C.
- 2:145 Peg Seminario, Director-Department of Occupational Safety & Health, A.F.L.C.I.O., Washington, D.C.
- 2:147 William Weems, Presidnet, OSHCON, Tuscaloosa, AL
- 2:148 Holly Evans, Vice President-Governmental Relations, IPC-Association Connecting Electronics Industries, Northbrook, IL
- 2:149 John Engler, Program Director, PA-OSHA, Indiana, PA
- 2:150 Douglas Capell, Personnel Director, Trek, Medina, NY
- 2:151 Holly Bodnar, Secretary, Pine Bush Equipment Co., Inc., Pine Bush, NY
- 2:152 Owen Wagner, Director—Occupational Safety & Health Division, Ohio Bureau of Employment Services, Columbus, OH
- 2:153 David Stangel, Plant Manager, Copeland Coating Co., Inc., Nassau, NY
- 2:154 Douglas Greenhaus, Director—Environment, Health & Safety, National Automobile Dealers Association, McLean, VA
- 2:155 Allen Williams, Assistant Director for Occupational Safety and Health, Safe-State-University of Alabama, AL
- 2:156 Brian Gitt, President, Paceline Construction Corporation, Warwick, NY
- 2:157 Jennifer Burgess, Director—Safety Section, West Virginia, DOL, Charleston, WV
- 2:158 Ned Murphy, Safety Manager, Hammond & Irving, Auburn, NY
- 2:159 Jacqueline Nowell, Director, Occupational Safety and Health Office—Field Services Department, United Food and Commercial Workers International Union, Washington, D.C.
- 2:160 Patty Kelley, Operations Coordinator, Crescent Manufacturing, Eden, NY
- 2:161 John Patchett, Executive Vice President, State Medical Society of Wisconsin, Madison, WI
- 2:162 Eric Frumin, Director—Occupational Safety and Health, UNITE, New York, NY
- 2:163 Steve and Marie Daigle, Owners, Daigle Brothers Inc., Tomahawk, WI
- 2:165 Brenda Reneau, Commissioner of Labor, Oklahoma-DOL, Oklahoma City, OK
- 2:166 Richard Rohm, Plant Manager, Pilotron Company of America LLC, Niagara Falls, NY
- 2:168 Gary Buckner, Business Manager, Spooner Creek Designs, Shell Lake, WI
- 2:169 Ross Pepe, President, Construction Industry Council, Tarrytown, NY
- 2:170 W.D. Price, Vice President-Finance and Administration, Canton Drop Forge, Canton, OH
- 2:171 Dan Marx, Senior Associate-Government Affairs, Graphic Arts Technical Foundation, Sewickley, PA
- 2:171 David Munschhauer, President, S.E.H. Metal Fabricators, Inc., Buffalo, NY
- 2:172 Jacqueline Schommer, Vice President-Human Resources, Durex Products, Inc., Luck, WI
- 2:173 Paul Evans, Plant Manager, Robbins Sports Surfaces, White Lake, WI
- 2:174 Marvin Smith, General Manager, Frazier Industrial Company, Waterloo, NY
- 2:175 Gary Bouffard, Executive Vice President and Chief Operating Officer, Ideal Forging Corporation, Southington, CT
- 2:176 James Koczak, Vice President Human Resources, Ideal Forging Corporation, Southington, CT
- 2:177 Sal Lento, Plant Manager, Ideal Forging Corporation, Southington, CT
- 2:178 Francis Gualtieri, Safety/Environmental Coordinator, Ideal Forging Corporation, Southington, CT
- 2:179 Pam McDonough, Director, Illinois Department of Commerce and Community, Springfield, IL
- 2:180 Muskego, Windlake Animal Hospital, Muskego, WI
- 2:181 Gary Sloop, CSP, State Consultant, Las Vegas, NV
- 2:182 Cory Tomczyk, Industrial Recyclers of Wisconsin, Mosinee, WI
- 2:183 Margaret Buchmann, Treasurer, Brown County Cabinets, Green Bay, WI
- 2:184 Norb Plassmeyer, Vice President and Director of Environmental Affairs, Associated Industries of Missouri, Jefferson City, MO
- 2:185 Robert Ehlert, Safety Director, Bassett Mechanical, Kaukauna, WI
- 2:187 Peter Pipp, Safety Director, Cudahy Tanning Co., Inc., Cudahy, WI
- 2:188 James Collins, MNOSHA Management Team Director, Minnesota Department of Labor and Industry, St. Paul, MN
- 2:189 Michael Sprinker, Director ICWUC Health and Safety Department, International Chemical Workers Union Council, Akron, OH
- 2:190 Charles Maresca, Director—Legal and Regulatory Affairs, Associated Builders and Contractors, Rosslyn, VA
- 2:191 Martin David, NY
- 2:192 John Sweeney, Member of Congress, House of Representatives, Washington, D.C.
- 2:193 Andy Mayts, NUCA President, National Utility Contractors Association, Arlington, VA
- 2:195 Timothy Joyce, Commissioner, Indiana-DOL, Indianapolis, IN
- 2:196 Travis Beason, Corporate Safety/Environmental Director, Zero Mountain, Inc., Ft. Smith, AR
- 2:197 Wendy Gramm, Director—Regulatory Studies Program, Mercatus Center, Arlington, VA
- 2:198 Robert Mitvalsky, Director of Plant Operations, Chamberlain, Scranton, PA

2:199 Douglas DiGesare, Coordinator of
Satellite Services, Heritage Centers,
Buffalo, NY

2:201 Franklin Mirer, Director—Health and
Safety Department, International Union-
UAW, Detroit, MI

2:202 Manuel Rosas, Trainer, NC-DOL,
Pineville, NC

2:203 National Roofing Contractors
Association, Washington, D.C.

2:204 Michael Duggan, President, Vulcan
Steam Forging Co., Buffalo, NY

2:205 Major Owens, Member of Congress,
House of Representatives, Washington,
D.C.

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