

§ 1908.6

29 CFR Ch. XVII (7–1–07 Edition)

though they were within the scope of the request.

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

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

[49 FR 25094, June 19, 1984, as amended at 65 FR 64291, Oct. 26, 2000]

§ 1908.6 Conduct of a visit.

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

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

(b) *Structured format.* An initial onsite consultative visit will consist of an opening conference, an examination of those aspects of the employer's safety and health program which relate to the scope of the visit, a 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) *Employee participation.* (1) The consultant shall retain the right to confer with individual employees during the course of the visit in order to identify and judge the nature and extent of particular hazards within the scope of the employer's request, and to evaluate the employer's safety and health program. The consultant shall explain the necessity for this contact to the employer during the opening conference, and an employer must agree to permit such contact before a visit can proceed.

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

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

(3) Within the scope of the employer's request, consultants shall review the employer's safety and health program

and provide advice on modifications or additions to make such programs more effective.

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

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

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

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

(2) An employer must also take the necessary action in accordance with the plan developed under 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.

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

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

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

(g) *Written report.* (1) A written report shall be prepared for each visit which results in substantive findings or recommendations, and shall be sent to the employer. The timing and format of the report shall be approved by the Assistant Secretary. The report shall restate the employer's request and describe the working conditions examined by the consultant; shall, within the scope of the request, evaluate the employer's program for ensuring safe and healthful employment and provide recommendations for making such programs effective; shall identify specific hazards and describe their nature, including reference to applicable standards or codes; shall identify the seriousness of the hazards; and, to the extent possible, shall include suggested means or approaches to their correction. Additional sources of assistance shall also be indicated, if known, including the possible need to procure specific engineering consultation, medical advice and assistance, and other appropriate items. The report shall also include reference to the completion dates for the situations described in § 1908.6(f) (1) and (2).

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

(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.

(Approved by the Office of Management and Budget under control number 1218-0110)

[49 FR 25094, June 19, 1984, as amended at 54 FR 24333, June 7, 1989; 65 FR 64291, Oct. 26, 2000]

§ 1908.7 Relationship to enforcement.

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

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

(3) The identity of employers requesting onsite consultation, as well as the file of the consultant's visit, shall not be 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.

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

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

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