



DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Part 1908

[Docket No. OSHA-2010-0010]

RIN 1218-AC32

Consultation Agreements: Proposed Changes to Consultation Procedures

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Withdrawal of proposed rule; termination of rulemaking.

SUMMARY: The Occupational Safety and Health Administration (OSHA) published a Notice of Proposed Rulemaking (NPRM) on September 3, 2010, proposing to amend its regulations for the federally-funded On-site Consultation Program to: clarify, so it more directly reflects the wording of section 21(d) of the Occupational Safety and Health Act, (OSH Act), the length of the exemption period provided to sites that have had their names removed from OSHA's Programmed Inspection Schedule; and to clarify the high priority enforcement cases when OSHA may initiate a non-programmed inspection at those sites that have achieved recognition and exemption status. The Agency has decided to withdraw the proposed rule.

DATES: This withdrawal becomes effective [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

FOR FURTHER INFORMATION CONTACT:

For press inquiries: For press inquiries about this notice contact Mr. Frank Meilinger, Director, OSHA Office of Communications, Room N-3647, U.S. Department of Labor, 200

Constitution Avenue NW., Washington, DC 20210; telephone: (202) 693-1999 or Meilinger.Francis2@dol.gov.

For general and technical information: Mr. Patrick Showalter, Director, Directorate of Cooperative and State Programs, Office of Small Business Assistance, Room N-3660, OSHA, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210; telephone: (202) 693-2220 or Showalter.Patrick@dol.gov.

SUPPLEMENTARY INFORMATION:

I. Background

OSHA administers and provides federal funding for the On-site Consultation Program, which offers free and confidential safety and health advice to small and medium sized businesses across the country, with priority given to high-hazard worksites. This program assists employers who may lack the resources to employ safety professionals, to comply with the requirements of the OSH Act, and to create safer and healthier workplaces. Trained safety and health professionals, provided either by state agencies or public universities, work with employers to identify workplace hazards, provide advice on compliance, and assist in establishing safety and health management systems. On-site Consultation services are separate from OSHA's enforcement activities and do not result in penalties or citations.

The On-site Consultation Program's Safety and Health Achievement Recognition Program (SHARP) recognizes small employers who operate an exemplary safety and health management system. Employers who successfully complete a comprehensive On-site consultation visit, correct all hazards identified during the visit, and implement an ongoing safety and health program to identify and correct workplace hazards, may be recommended for and may receive SHARP status. Those that have received SHARP status will receive an exemption

from OSHA's Programmed Inspection Schedule during a specified period. Acceptance of a worksite into SHARP from OSHA is an achievement that singles out a business as a model for worksite safety and health.

In a NPRM, published on September 3, 2010, OSHA proposed revising its regulations for the On-site Consultation Program in the Federal Register (75 FR 54064-54069). The proposed rule included three new provisions. One provision in the proposal dealt with the types of high priority federal enforcement inspections that could interrupt an ongoing consultation visit. Another provision of the proposal dealt with the circumstances under which OSHA may conduct a high priority enforcement visit at a workplace that has either achieved SHARP recognition or is working towards it. The final issue in the proposal was the length of time an employer that has qualified for SHARP may be exempted from OSHA's Programmed Inspection Schedule. Although OSH Act section 21(d) authorizes a one-year exemption, OSHA has for many years exercised its inherent discretion over inspection scheduling to extend this exemption period to two years

OSHA provided a 60-day comment period on the proposed rule. OSHA received 89 comments from various OSHA stakeholders including employers, organizations representing small business and other employers, labor unions and other worker safety advocates.

II. Reasons for Withdrawal of Proposed Rule

All the changes OSHA had proposed were very minor in nature. However, many stakeholders expressed concern that the proposed changes would reduce an employer's incentive to participate in the On-site Consultation program. Several commentators expressed concerns that these changes would increase OSHA enforcement activities at worksites that have already

demonstrated excellence in their safety and health management systems. Other commentators appeared to believe that the Agency was trying to eliminate exemptions entirely or take incentives away. OSHA did not intend any of these results. However, in light of the magnitude of the concerns expressed compared to the relatively minor changes OSHA intended, the Agency has decided to withdraw the proposed rule. All rulemaking participants agree with OSHA that the consultation program and the SHARP recognition program are valuable ways to assist and recognize small employers who are working to improve their workplaces. If the small changes OSHA proposed could have the effect of discouraging participation in the programs, the Agency does not believe it is worth amending the rule.

III. Authority and Signature

David Michaels, Ph.D., MPH, Assistant Secretary of Labor for Occupational Safety and Health, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210, directed the preparation of this notice. It is issued pursuant to 7(c), 8, 18, 21(d) and 23(g) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 656, 657, 667, 670 672) and Secretary of Labor's Order No. 1-2012 (77FR 3912), January 25, 2012; No. 3-2000 (65 FR 50017), No. 5-2007 (72 FR 31159).

Signed at Washington, DC, on July 24, 2013.

David Michaels,

Assistant Secretary of Labor
for Occupational Safety and Health.

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