

counterpart, except that the element of employer knowledge shall not be considered.

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

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

§ 1908.3 Eligibility and funding.

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

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

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

(i) In all States with Plans approved under section 18 of the Act, consultation provided to State and local governments, as well as the remaining range of voluntary compliance activities referred to in 29 CFR 1902.4(c)(2)(xiii), will not be affected by the provisions of this part. Federal reimbursement for these activities will be made in accordance with the provisions of section 23(g) of the Act.

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

§ 1908.4 Offsite consultation.

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

§ 1908.5 Requests and scheduling for onsite consultation.

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

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

- (i) Paid newspaper advertisements;
- (ii) Newspaper, magazine, and trade publication articles;
- (iii) Special direct mailings or telephone solicitations to establishments based on workers' compensation data or other appropriate listings;
- (iv) In-person visits to workplaces to explain the availability of the service, and participation at employer conferences and seminars;
- (v) Solicitation of support from State business and labor organizations and leaders, and public officials;
- (vi) Solicitation of publicizing by employers and employees who have received consultative services;
- (vii) Preparation and dissemination of publications, descriptive materials, and other appropriate items on consultative services;
- (viii) Free public service announcements on radio and television.

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

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

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

(2) When making a request, an employer in a small, high hazard establishment shall generally be encouraged to include within the scope of such request all working conditions at the worksite and the employer's entire safety and health program. However, a more limited scope may be encouraged in larger and less hazardous establishments. Moreover, any employer may specify a more limited scope for the visit by indicating working conditions, hazards, or situations on which onsite consultation will be focused. When

such limited requests are at issue, the consultant will limit review and provide assistance only with respect to those working conditions, hazards, or situations specified; except that if the consultant observes, in the course of the onsite visit, hazards which are outside the scope of the request, the consultant must treat such hazards as though they were within the scope of the request.

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

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

§ 1908.6 Conduct of a visit.

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

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

(b) *Structured format.* An initial onsite consultative visit will consist of an opening conference, an examination of those aspects of the employer's safety and health program which relate to the scope of the visit, a walk through the workplace, and a closing conference. An initial visit may include training