

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

(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.

[49 FR 25094, June 19, 1984, as amended at 65 FR 64290, Oct. 26, 2000]

#### § 1908.2 Definitions.

As used in this part:

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

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

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

*Consultant* means an employee under a Cooperative Agreement pursuant to this part who provides consultation.

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

*Cooperative Agreement* means the legal instrument which enables the States to collaborate with OSHA to provide consultation in accord with this part.

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

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

*Employee* means an employee of an employer who is employed in 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.

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

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

*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.

*Offsite consultation* means the provision of consultative assistance on occupational safety and health issues away from an employer's worksite by such means as telephone and correspondence, and at locations other than the

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employer's worksite, such as the consultation project offices. It may, under limited conditions specified by the Assistant Secretary, include training and education.

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

*OSHA* means the Federal Occupational Safety and Health Administration or the State agency responsible under a Plan approved under section 18 of the Act for the enforcement of occupational safety and health standards in that State.

*Other-than-serious hazard* means any condition or practice which would be classified as an other-than-serious violation of applicable federal or state statutes, regulations or standards, based on criteria contained in the current OSHA field 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.

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

*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 stand-

ards, 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.

*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.

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#### § 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.

(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.