



OSHA NOTICE

U.S. DEPARTMENT OF LABOR

Occupational Safety and Health Administration

DIRECTIVE NUMBER: 04-05 (CSP 02) | **EFFECTIVE DATE:** 08-25-2004

SUBJECT: Consultation Policies and Procedures Manual Chapter # 3

ABSTRACT

- Purpose:** This Notice cancels and replaces Chapter 2 (titled Promoting and Managing Consultation Services) of the Consultation Policies and Procedures Manual (CPPM), OSHA Instruction CSP 02-00-001 [TED 3.6]. It implements one of fourteen (14) chapters in the CPPM, which provides the overall policy frame work for administering the OSHA Consultation Program. This chapter outlines policy for promoting and managing consultation services.
- Scope:** This Notice applies OSHA-wide.
- References:** The IMIS Consultation Data Processing Manual [IRT 01-00-013]; Safety and Health Program Management Guidelines [FR 54: 3904-3916]; Standard Element Paragraph (STEP) Manual [CNS3.6]; 29 Code of Federal Regulations 1908, Cooperative Agreements.
- Cancellations:** OSHA Instruction CSP 02-00-001 [TED 3.6], Chapter 2, August 06, 2001.
- Expiration Date:** This Notice will expire on December 31, 2005.
- State Impact:** States operating Cooperative Agreements under Section 21 (d) of the OSH Act are required to follow the instructions outlined in this Notice. States operating their private sector consultation programs under their State plans with 23(g) funding must have requirements at least as effective as those outlined in this notice.
- Action Offices:** National, Regional, and Area Offices
- Originating Office:** Directorate of Cooperative and State Programs

Contacts: Office of Small Business Assistance
Francis Perkins Building, Room N-3700
200 Constitution Avenue NW
Washington, DC 20210
202-693-2213

By and Under the Authority of
John L. Henshaw
Assistant Secretary

Executive Summary:

This Notice cancels and replaces Chapter 2 (titled Promoting and Managing Consultation Services) of the Consultation Policies and Procedures Manual (CPPM), OSHA Instruction CSP 02-00-001 [TED 3.6]. This Notice is one of 14 chapters in the CPPM, which provides the overall policy framework for administering the OSHA Consultation Program. This notice outlines policy for promoting and managing consultation services.

Significant Change:

- A. Prioritizing and scheduling Consultation service to include OSHA's Site-Specific Targeting (SST) employers and mid-size employers (including franchise operations).
- B. Initial SHARP exemptions are being increased from one to two years. Since most programs have limited resources available for most consultation projects we feel that the increase will allow project personnel to better utilize their resources.
- C. Informational procedures on employee participation and employee representation were moved to Chapter 4 (Visit-Related Requirements).
- D. Consultation Project Managers are encouraged to work with Alliance Members, OSHA Strategic Partnership Program Participants, Area Directors and their designated staff including Compliance Assistance Specialists to promote consultation services.

TABLE OF CONTENTS

- I. Promoting Requests
 - A. Methods
 - B. Cooperative Efforts
 - C. Identifying Target Audiences
 - D. Evaluation Promotional and Outreach Activities

- II. Communicating Employer Obligations and Rights
 - A. Independence
 - B. Cost
 - C. Confidentiality
 - D. Employee Participation
 - E. No Citations or Penalties
 - F. Imminent Danger Situations
 - G. Hazard Correction
 - H. Enforcement Inspection in Progress
 - I. Enforcement Inspection Following Consultation Services
 - J. Participation in an Exemption Program
 - K. Posting the List of Hazards
 - L. Employer's Rights

- III. Prioritizing and Scheduling of Services
 - A. Imminent Danger Situations or Congressional Designation
 - B. Small, High-Hazard Employers Targeted in the Federal or the State Strategic Plan National Emphasis Program, Local Emphasis Program or other "Targeted Industries"
 - C. OSHA's Site-Specific Targeting (SST) Inspections
 - D. Small, High-Hazard Employers
 - E. Small, Non-High-Hazard Employers
 - F. Mid-Size Employers (including franchise operations)
 - G. Larger Employers

- IV. Managing Consultation Requests
 - A. Requests for Consultation Visits
 - B. Responding to Requests for Consultation
 - C. Determining the Type of Visit
 - D. Determining the Scope of the Visit
 - E. Determining Worksite-Sensitive Issues

Chapter 3 Exhibit 1: Sample Letter to Employers Receiving Low Priority

CONSULTATION POLICIES AND PROCEDURES MANUAL

Chapter 3

Promoting and Managing Consultation Services

I. Promoting Requests. Consultation Project Managers must actively promote their services to employers, especially those targeted in OSHA's or the State strategic plan. Consultation Project Managers are encouraged to work with:

- Federal and State Enforcement Programs;
- Alliance Members;
- OSHA Strategic Partnership Program Participants, and
- Area Directors and their designated staff including Compliance Assistance Specialists to promote consultation services to those who may benefit from them.

States are encouraged to promote the availability of consultation services through a variety of methods and techniques, including broad-based mass media campaigns.

Where the Consultation Project Manager is encouraged to work with Alliance/Partnership participants, they should not assume the role of leadership with these relationships. In Federal states if the Consultation Project Manager identifies an organization that would be an excellent ally, we recommend a referral be made to the Regional Administrator explaining why they think perusing an alliance or partnership would be beneficial to OSHA.

Direct solicitation involving face-to-face contact with employers and cooperative ventures is also encouraged with other state, (i.e. Small Business Development Centers) county or municipal governments.

Recognizing that each State has unique circumstances, OSHA recommends that States tailor their outreach activities to draw upon their own experience in promoting consultation, especially where positive results have been achieved. OSHA also encourages States to explore new promotional avenues to ensure that services are being provided to those employers who will most benefit from the Consultation service. States with particularly effective promotional/outreach programs are encouraged to share their methods and strategies with others so the entire Consultation Program might benefit from their success.

- A. Methods. Speeches or presentations made to employer or employee groups to provide information about the consultation service are not considered training. These types of presentations must be recorded as an intervention on the Intervention Form (Form 66). The State may engage in other outreach activities such as the following:

1. Direct solicitation of employers
 2. Public presentations (trade shows, associations meetings, etc.)
 3. Radio talk shows
 4. Cooperative training seminars
 5. Roundtable discussions
 6. Safety and health conventions
 7. Participation in association meetings
 8. Publications
 9. WEB chat rooms or bulletin boards on and safety and health
- B. Cooperative Efforts. States are encouraged to seek out and establish working relationships with professional safety and health societies.
1. Group Activities. The State may conduct cooperative activities with any recognized group so long as the primary intent and outcome is the enhancement of safety and health in the workplace.
 2. Leveraging of Resources. OSHA encourages the Consultation Projects to pool their resources with recognized safety and health organizations to provide training or other outreach activities, with the understanding that no particular group is endorsed by either OSHA or the Consultation Program.
- C. Identifying Target Audiences. To promote the Consultation Program effectively within the target audience, Projects should work closely with Federal or State enforcement authorities to identify those industries which are targeted in the Federal or State strategic plan and which are the subject of National or Local Emphasis Programs. The projects may:
1. Use State Workers' Compensation data whenever available.
 2. Focus on industries within which significant occurrences such as fatalities, catastrophes and/or the issuance of major citations and/or penalties have recently taken place.
 3. Work with new employers who are attempting to establish a business.
 4. Concentrate on industries in which newly published standards are likely to have a major impact.
 5. Use employer and employee organizations to generate requests for services.

6. Design outreach activities targeted to those employers identified in the Consultation Annual Project Plan (CAPP) or the State Performance Plan.

D. Evaluating Promotional and Outreach Activities. States should document, track and evaluate efforts to promote consultation services. Periodically, States should analyze and assess the impact of their promotional and outreach activities in generating inquiries and requests for consultative services from the target audience. A State's inability to effectively promote its consultative services to the target audience will be viewed as a significant problem warranting serious attention by State and Federal monitors. Where promotion or outreach is ineffective, new strategies must be developed and implemented to address this problem.

II. Communicating Employer Obligations and Rights. In response to any inquiry from the public regarding the program and before agreeing to an employer's request for a consultation visit the Consultation Project Manager must clearly explain the following information:

A. Independence. The Consultation Program is independent of Federal or State OSHA enforcement.

B. Cost. Consultative services are provided at no cost to the employer and are supported by Federal and State funds.

C. Confidentiality.

1. Public Disclosure. Employers participating in OSHA activity funded under 21(d) of the OSH Act will not have the results from the consultation visit publicize, they will remain confidential from State or Federal enforcement, except in situations where imminent dangers or serious hazards are not corrected as agreed upon in the employers Action Plan. Finally, per 29 CFR 1908.6(g)(2) states "...states may also disclose information contained in the consultant's report to the extent required by 29 CFR 1920.1020 (Access to Employee Exposure & Medical Records) or other applicable OSHA standards or regulations."

2. Enforcement Disclosure. The identity of employers requesting onsite consultation, as well as the findings from the consultant's report, shall not be provided to OSHA for use in any compliance activity per 29 CFR 1908.7(a)(3). The exceptions are found at 29 CFR 1908.6(f)(1) failure to eliminate imminent danger, and 29 CFR 1908.6(f)(4) failure to eliminate serious hazards.

- D. Employee Participation. Employee participation is required on all on-site visits involving hazard identification. Requirements vary depending on whether or not the site has a recognized employee representative.
- E. No Citations or Penalties. Consultants do not issue citations or propose penalties.
- F. Imminent Danger Situations. The employer must correct imminent danger situations immediately or remove employees from the danger area. Failure to remove employees from an imminent danger area will result in immediate referral to enforcement.
- G. Hazard Correction. The employer must correct all serious hazards in accordance with mutually agreed upon correction due dates and provide to the Consultation Project Manager documentation of the action taken to eliminate or control the hazards. Failure to do so will result in referral to enforcement. Employers should correct other-than-serious hazards in a timely manner but need not send verification of correction to the Consultation Project Manager, except for those employers wishing to participate in an exemption program like SHARP or Pre-SHARP.
- H. Enforcement Inspection in Progress. An enforcement inspection is considered in progress:
 - 1. From the time a compliance officer initially seeks entry to the workplace to the end of the closing conference.
 - 2. When right of entry is refused, the inspection is in progress until the Regional Administrator or State Designee seeks a warrant or determines that allowing a consultation visit to proceed is in the best interest of employees.
 - 3. During and following an enforcement inspection, no consultation visit may take place until it has been determined whether or not:
 - a. Any citations will be issued.
 - b. A citation has been issued and the contest period has expired.
 - c. Cited items have become final orders. If the consultant has reason to believe there are citations that have not become final orders, the Consultation Project Manager must contact the OSHA Area Office to determine the employer's status.

- I. Enforcement Inspections Following Consultation Services. The following conditions apply if an enforcement inspection occurs after consultation services have been provided.
 - 1. Employer's Good Faith. If the employer chooses to provide enforcement with a copy of the consultant's written report to the employer, it may be used by enforcement to determine the employer's "good faith" for purposes of adjusting any proposed penalties and judging the extent to which an inspection is required.
 - 2. No Exemption from Citations. Regardless of the advice of the consultant and the consultant's written report to the employer, in a subsequent inspection, a compliance officer is not precluded from finding hazardous conditions or violations of standards, rules or regulations for which citations would be issued and penalties proposed.
- J. Participation in an Exemption Program. If an employer satisfies all of the conditions required to participate in an exemption program administered under 21(d) (See Chapters 7 and 8), then that particular worksite may be exempt from programmed inspections for a period of two years.
- K. Posting the List of Hazards. The employer must agree to post the List of Hazards, as it was received from the Consultation Project, for either 3 working days or until the hazards identified on the list are corrected, whichever is later. Agreed-upon modifications or extensions of correction due dates must also be posted. Posting must be in a prominent place where it is readily observable by all employees. While in most instances this will entail posting a hard copy of the List of Hazards, posting by electronic means is acceptable in cases where electronic transmission is the employer's normal means of providing notices to employees and each employee is equipped with an electronic communication device. Failure to post the List of Hazards will result in the termination of the Consultation "visit in progress" status.
- L. Employer's Rights. In addition to the obligations stated above, the employer also retains the following rights during and after a consultation visit:
 - 1. Modifying the Scope of the Visit or Terminating the Visit. The employer has the right to modify the scope of the visit or terminate participation in the visit at any time, including termination of the hazard survey before its completion. The employer is responsible for correcting any serious hazards identified up to the point of termination and except in situations where imminent danger or serious hazards are not corrected as agreed upon, the employer's name and the results of the on-site visit will remain confidential in accordance with Section II.C of this chapter.

2. Correction Schedule and Report Findings. The employer has the right to disagree with the correction schedules and may, within 15 working days of receipt of the Written Report to the Employer, appeal to the Consultation Project Manager for amendment of the correction date(s) or any other substantive findings of the Report. Disagreement over or amendment of the correction schedule or report findings does not relieve the employer of the responsibility to correct serious hazards identified.
3. Informing Enforcement. If an enforcement inspection occurs after the conclusion of the consultation visit, the employer is not required to inform the CSHO of the consultation onsite visit or furnish a copy of the results, except to the extent that disclosure of information contained in such a report is required by 29 CFR 1910.1020 (Access to Employee Exposure & Medical Records) or other standards.
4. Private Discussion with the Consultant. The employer has the right to request a private meeting with the consultant to discuss matters that he or she may wish not to discuss in the presence of the employee representative.

III. Prioritizing and Scheduling of Services. The Consultation Project Manager must schedule consultation services according to a prioritizing method that serves the "worst first," as defined by the following criteria:

- A. Imminent Danger Situations or Congressional Designation. First priority must be given to employers who indicate an imminent danger situation or are in industries (or indicate hazards) designated for higher priority by Congress.
- B. Small, High-Hazard Employers Targeted in the Federal or the State Strategic Plan, National Emphasis Program, Local Emphasis Program, or other "Targeted Industries." Second priority should be given to small employers who are in a "targeted" industry as defined by the Federal or the State Strategic Management Plan, a National Emphasis Program, a Local Emphasis Program, other targeting programs or the OSHA Strategic Partnership Program.
- C. OSHA's Site-Specific Targeting (SST) Inspections. Third priority should be given to small employers who are on OSHA's Site-Specific Targeting Inspection Plan. This plan is based on establishment-specific employer Days Away, Restricted or Transferred (DART) rate and Days Away from Work Injury and Illness (DAFWII) Case Rate.

- D. Small, High-Hazard Employers. Fourth priority should be given to small employers who are in a high-hazard industry, as defined below, or who have the highest incidence rates. Establishments and operations are defined as "high-hazard" based on the following criteria:
1. High Incidence Rates. An establishment is considered "high-hazard" for OSHA consultation priority considerations if that establishment's Days Away, Restricted or Transfer (DART) rate is above the national average for that industry.
 2. High-Hazard North America Industrial Classification System (NAICS) Codes. An establishment is considered high-hazard if it is in an industry whose North American Industrial Classification System (NAICS) code is on the OSHA-generated listing of high-hazard industries (Annual OSHA High Rate Industries Listing). Currently the OSHA-generated listing is still in Standard Industry Classification (SIC) code and not in the NAICS format. Until the process of conversion over to the NAICS is completed, OSHA will continue to use the SIC.
 3. Alternative High-Hazard Listing. If an establishment is not on the OSHA-generated listing, consultants may refer to an alternative high-hazard listing developed by the State and approved for use by OSHA's Directorate of Cooperative and State Programs.
 4. Secondary NAICS. One or more hazardous work processes or work areas (for example, bindery in a publishing house) may be located within an establishment in an industry that is not on the high-hazard list. If such a process or area is the focus of a visit, a secondary code may be used to classify the establishment and, therefore, the priority for receiving a visit, as high-hazard. To be used, the secondary NAICS must be either on the OSHA-generated high-hazard listing or on the OSHA-approved alternative State listing.
 5. Hazardous Processes. An establishment may also be classified as "high-hazard" based on the number of hazardous operations required to complete a work process and which cannot be described by a Secondary NAICS code. OSHA's criteria for hazardous processes include the following:
 - a. A substance in regular use at the establishment has a health code of HE1 - HE4 (carcinogen, chronic toxicity and acute toxicity) located under Health Factors of the Chemical Sampling Information web site.
(www.osha.gov/dts/chemicalsampling)

- b. A substance in regular use at the establishment is explosive, or working conditions or work processes in use at that site pose an explosion hazard.
- E. Small, Non-High-Hazard Employers. Fifth priority should be given to small employers who are not in a high-hazard industry, or who have lower workplace incidence rates.
- F. Mid-Size Employers (including franchise operations). Sixth priority should be given to mid-size employers (including franchise operations) who employ fewer than 250 employees at the site but more than 500 employees corporation-wide. The Consultation Project Manager should consider whether the corporate home office supports the safety and health management operations at the site or provides only minimal support.
- G. Larger Employers. The lowest priority should be given to employers who employ more than 250 employees at the site or more than 500 employees corporation-wide. Services to employers in this size range will often be limited in scope but are allowed only as resources permit.

IV. Managing Consultation Requests.

- A. Requests for Consultation Visits. The Consultation Project Manager must ensure that the following criteria are met before providing consultation services:
 - 1. No on-site consultative visit may be provided in the absence of a request by the employer.
 - 2. A request for on-site consultation services must always include a request for a hazard survey unless a consultation hazard survey, OSHA inspection or private consultation survey conducted in the past twelve months provides adequate foundation for conducting a training visit.
 - 3. If an employer requests a consultation visit for more than one site under his or her control, each site must be dealt with as a distinct request.
 - 4. Employers who cannot be promptly scheduled for a consultation visit because of low scheduling priority or other project considerations must be informed of their statutory responsibility to maintain a safe and healthful workplace. See Sample Letter in Chapter 3, Exhibit 1.
 - 5. Construction Sites
 - a. While assistance may be provided to subcontractors away from the worksite on safety and health management systems (off-site assistance), a subcontractor request for on-site consultation may be accepted only with the approval of

the general contractor or the controlling employer at the site.

- b. The general contractor or controlling employer must accept responsibility for ensuring the correction of any serious hazard identified during the course of the visit. This includes hazards that were not created by the general contractor and those that might not be under the requesting subcontractor’s control.
- c. If a company's headquarters is in another State, Consultation Project Managers may need to cooperate across state lines.
- d. The same scheduling priorities must be applied to requests from construction sites as for other employers requesting consultative assistance.

B. Responding to Requests for Consultation. When responding to requests for information or consultation visits, the individual taking the request must first explain the information outlined in Section II "Communicating Employer Obligations and Rights," located in this chapter. Additionally, the individual should complete the OSHA Consultation Request Form (OSHA Form 20).

C. Determining the Type of Visit. The Consultation Project Manager must determine the type of visit being requested based on the following criteria.

A visit is a(n):	if its purpose is:
Initial Visit	to provide a hazard assessment by a safety or health consultant. An initial visit must consist of an opening conference, an examination of all aspects of the safety and health management system relating to the scope of the visit, a walk-through of the workplace, and a closing conference. Only one initial visit may be recorded by each discipline (safety or health) at the site within one year.
Training and Assistance Visit	to provide information or training to employers and their employees in hazard identification and correction or in safety and health program development. A training visit may only be provided in conjunction with a hazard assessment visit.
Follow-up Visit	to verify the correction of previously identified hazards and/or the implementation of a safety and health management system.

- D. Determining the Scope of the Visit. The Consultation Project Manager must determine the scope of the visit based on the employer's request.

If the employer requests:	then the Scope of the Visit is:
a complete safety and/or health hazard assessment of all working conditions, equipment, and processes at the worksite.	Full Service
a focused assessment of a particular work process or type of hazard or an assessment that is conducted by only one discipline safety or health.	Limited Service

Determining Worksite-Sensitive Issues. The Consultation Project Manager must evaluate the site-specific information from the Consultation-20 Request Form and determine any special circumstances that the consultant should prepare for prior to entering the worksite, including:

1. Worksite Rules and Practices. The consultant must observe all of the employer's safety and health rules and practices, including safety clothing or other personal protective equipment.
2. Immunizations or Other Special Entrance Requirements. Immunizations and other special entrance requirements must be observed. The Consultation Project Manager must ensure that the consultant has the proper immunizations for these situations.
3. Personal Security Clearance. Where personal security clearances are required, the Consultation Project Manager must assign a consultant who has the proper clearances or ensure that appropriate ones are secured.
4. Classified Information and Trade Secrets. Any classified or trade secret information and/or personal knowledge of such information by State personnel must be handled in accordance with 29 CFR 1908.6(h).

Chapter 3 Exhibit 1

Sample Letter to Employers Receiving Low Priority

Dear:

Thank you for requesting an occupational safety and health consultation visit and for your interest in improving the worksite safety and health for your employees. Unfortunately, we are unable to provide consultation services to your company at this time. Our policies specifically require us to give first priority to requests from the smallest employers with the most hazardous conditions. However, we will keep your request on file in the event that we are able to provide services to you in the future.

Even though we are unable to provide services to you at this time, you are still responsible for providing a safe and healthful workplace for your employees. Therefore, I would encourage you to seek other sources of safety and health assistance available to employers in your industry (e.g., your insurance carrier).

Thank you for requesting assistance from the [name of consultation service]. If we can provide any further information, please feel free to contact us.

Sincerely,

Consultation Project Manager