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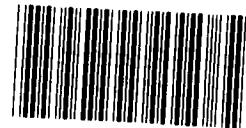
BY THE COMPTROLLER GENERAL

Report To The Congress

OF THE UNITED STATES

Labor Needs To Manage Its Workplace Consultation Program Better

Workplace consultations can help employers, especially small or high-risk businesses, to comply with safety and health standards and prevent occupational injuries and illnesses. The Department of Labor's Occupational Safety and Health Administration has not established or enforced adequate requirements for planning, conducting, or evaluating the consultation program. GAO recommends several improvements.



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COMPTROLLER GENERAL OF THE UNITED STATES
WASHINGTON, D.C. 20548

B-163375

To the President of the Senate and the
Speaker of the House of Representatives

This report discusses the need for the Occupational Safety and Health Administration to do a better job of managing its workplace consultation program. Consultations are intended to help employers identify and correct workplace hazards.

We made this review because of congressional and public interest in assuring that employers receive help in complying with occupational safety and health standards and that workers are adequately protected. We made our review pursuant to the Budget and Accounting Act, 1921 (31 U.S.C. 53), and the Accounting and Auditing Act of 1950 (31 U.S.C. 67).

Copies of the report are being sent to the Director, Office of Management and Budget, and to the Secretary of Labor.

A handwritten signature in black ink, reading "Thomas A. Staats".

Comptroller General
of the United States



D I G E S T

Labor has not adequately planned, directed, or evaluated its consultative services program--a program to help employers comply with occupational safety and health standards and thus prevent workplace injuries and illnesses. As a result, although most employers who received services were satisfied, there is little assurance that the program

--is directed toward the employers that need it most,

--offers adequate services, and

--results in serious workplace hazards being corrected.

Labor's policy prohibits its employees from consulting with employers at workplaces because the Occupational Safety and Health Act of 1970 requires citations for violations found and prohibits advance notice of visits.

In October 1972 Labor authorized States having approved safety and health plans to provide consultations. A consultation differs from an inspection in that it comes only at the employer's request and imposes no penalties for violations of safety or health standards. However, consultants must make sure that serious hazards are corrected. If not, they are to be referred to enforcement personnel.

Labor has taken several actions to expand the consultation program. In May 1975 it issued policies and procedures by which States not participating through State plans could provide consultations through contracts with Labor.

As of June 30, 1978, 39 States and jurisdictions offered onsite consultation through these plans or contracts.

Labor has done little to evaluate the program. Necessary information has not been sought. Available information has been neither analyzed nor provided to State and Labor regional officials who need it for program management. Labor monitoring of consultants' performance, especially for contract States, has been quite limited. (See p. 25.)

The availability of services varied significantly among the six States GAO visited--from West Virginia's extremely limited health coverage and safety coverage in only part of the State to Michigan's comprehensive safety program. States providing consultation under State plans are not required to provide health consultations--some had little or no capability to do so. Some States encouraged complete workplace inspections, whereas others limited their work to the area of concern to employers.

Labor needs to determine what level of service it will support and do more to help expand health capability through cross-training of safety consultants. (See p. 10.)

Policies and practices for classifying hazards as violations and assuring that serious violations are corrected differed among and within the States. Some States did not identify the specific standards violated. (See p. 13.)

State officials were reluctant to follow up on serious violations or to refer uncorrected serious violations to enforcement personnel. They believed that followup and referral requirements inhibit requests for consultation. Labor, although recognizing that these requirements may deter requests, has repeatedly stated its policy that consultants must assure that serious violations are abated.

However, Labor has not acted to assure that States comply with its policy. GAO believes that this lack of action is due to a reluctance to resolve an important, but controversial, issue. (See p. 18.)

The consultation program has been greatly expanded since 1975 to meet a large anticipated demand, especially from small businesses. This demand has not materialized. Also, larger businesses apparently received a disproportionate share of consultations.

The program has been publicized. Labor distributed 2 million pamphlets about it. All the States visited had publicized it to some extent. Some States used extensive publicity or direct contact to keep their consultants busy; others limited publicity to avoid or reduce a large backlog of requests. (See p. 7.)

Labor needs to decide whether the consultation program should respond to a demand or stimulate one. Program effectiveness information, now lacking, is needed for this decision. If Labor decides that States should actively seek requests, it should assure that solicitation is aimed at those that need it most--small and high-risk businesses.

RECOMMENDATIONS

GAO recommends that Labor:

- Define the priorities for providing consultations, the scope of services to be provided, and the extent to which the demand for consultations should be stimulated.
- Assure that each State is capable of providing both safety and health consultations.
- Require States to properly classify hazards and assure that serious violations are abated.

- Monitor and evaluate the State programs.
(See p. 31.)

LABOR AND STATES' COMMENTS

Labor and the States agreed with most of GAO's conclusions and said that significant improvements had been made since GAO completed its work. Labor said that States providing consultations under State plans will be required to implement key program requirements which previously had been required only of States offering consultations under contract. Labor also said that

- it would remind States to gear publicity to small and high-risk businesses and would monitor States' activity,
- although the employer's request should dictate the scope of service provided, consultants should encourage small businesses to request a comprehensive review of their operations,
- States will be required to have a reasonable ratio of safety and health consultants and safety consultants will receive training in recognizing health hazards,
- contract consultants had now received training in the proper classification of violations and will use the same criteria as enforcement officials,
- consultants will be required to follow regulations to insure serious hazards identified are corrected,
- it will now implement a new system for monitoring consultants' performance and require special State or contractor monitors to periodically accompany and evaluate consultants,

--it will design an evaluation methodology for evaluating the impact of the consultative services program,

--all consultants will be required to give employers a written report of the consultants findings, and

--consultations by private organizations under contract with Labor will be in accord with requirements placed on States. (See p. 31.)



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ABBREVIATIONS

GAO	General Accounting Office
OSHA	Occupational Safety and Health Administration

CHAPTER 1

INTRODUCTION

The Occupational Safety and Health Act of 1970 (29 U.S.C. 651) is designed to assure, as much as possible, that every worker in the Nation has safe and healthful working conditions. The Department of Labor was given primary responsibility for administering the act. It delegated that responsibility to the Occupational Safety and Health Administration (OSHA), which was created on April 28, 1971.

The 1970 act authorizes the Secretary of Labor to consult with and advise employers and employees about effective ways of preventing occupational injuries and illnesses.

CONSULTATIVE SERVICES

Although the act authorized OSHA to consult with employers, it did not specifically authorize consultative visits to the workplace. OSHA's policy is that its employees consult with employers away from workplaces. OSHA believes the act precludes Federal onsite consultations because it requires citations for standards' violations found at workplaces and prohibits advance notice of visits to workplaces. Therefore, OSHA does not make onsite consultations. In October 1972 OSHA authorized States having approved safety and health plans 1/ to provide onsite consultations. OSHA policy permits States to include consultation in their State plans if it is "over and above" the enforcement program and does not impair or detract from that program.

In May 1975 OSHA issued policies and procedures by which States not participating through State plans could provide onsite consultations under contracts with OSHA. These policies and procedures resulted from congressional hearings over a 2-year period. The legislative history of the 1975 appropriations act shows that national business

1/States may enforce safety and health standards if OSHA determines that their standards and enforcement are, or will be, at least as effective as OSHA's. As of June 30, 1978, OSHA had approved enforcement plans for 23 States. These States inspect workplaces and enforce standards, and OSHA has or plans to let them assume full responsibility for safety and health enforcement. The States receive grants covering up to 50 percent of their costs.

associations believed that such services would aid millions of small businesses that needed help in their compliance efforts. The Secretary of Labor agreed that such services were highly desirable.

This program provided 50-percent Federal reimbursement to States that entered into contracts. This figure was established to maintain parity with the State plan arrangement.

In June 1976 the Senate Appropriations Committee concluded that the funding level had deterred States from contracting. Less than half of the States without State plans for providing onsite consultation had chosen to participate. The Committee directed OSHA to increase its funding percentage to a level that would assure full State participation.

In August 1977 OSHA issued new policies and procedures for the State contract program and increased Federal funding to 90 percent. Also, plan States were authorized to convert their onsite consultative services to contracts.

OSHA also contracted with two associations to provide onsite consultative services. One contract was awarded to the American Association of Community and Junior Colleges to explore the feasibility of using community colleges to provide consultation. Under the contract, two institutions, located in Illinois and Florida, States without a State plan or contractual agreement, provided onsite consultations from March to December 1976. The American Industrial Hygiene Association was awarded a contract to provide for training and some onsite consultation through occupational health centers at five universities.

The conference report on Labor's fiscal year 1978 appropriations bill directed OSHA to develop a detailed plan for making consultative services available to all small businesses in all States. OSHA recognizes that some States will not provide consultations regardless of how much of the cost is borne by the Federal Government. Therefore, OSHA has solicited proposals from other sources (such as consulting firms) to provide consultations in States not participating through State plans or contracts.

STATE PARTICIPATION AND RELATED FEDERAL FUNDING

As of June 30, 1978, of the 56 States and jurisdictions, 16 provided consultations through OSHA-approved State plans, 23 offered the services under contracts with OSHA, and 17 did not participate in OSHA-funded programs. The map on the following page shows the availability of federally funded onsite consultations by State as of June 30, 1978. (The map does not include Guam, American Samoa, and the Trust Territories, which do not offer OSHA-funded consultations.) See appendix I for details on State participation and estimated Federal funding in 1978. OSHA plans to fund onsite consultations in each of the 56 States and jurisdictions during 1979. (See p. 55.)

OSHA began compiling statistics on consultative visits in July 1975. Through March 30, 1978, according to OSHA, plan States made 55,400 consultative visits and contract States made 28,200 visits.

OSHA REQUIREMENTS FOR ONSITE CONSULTATION

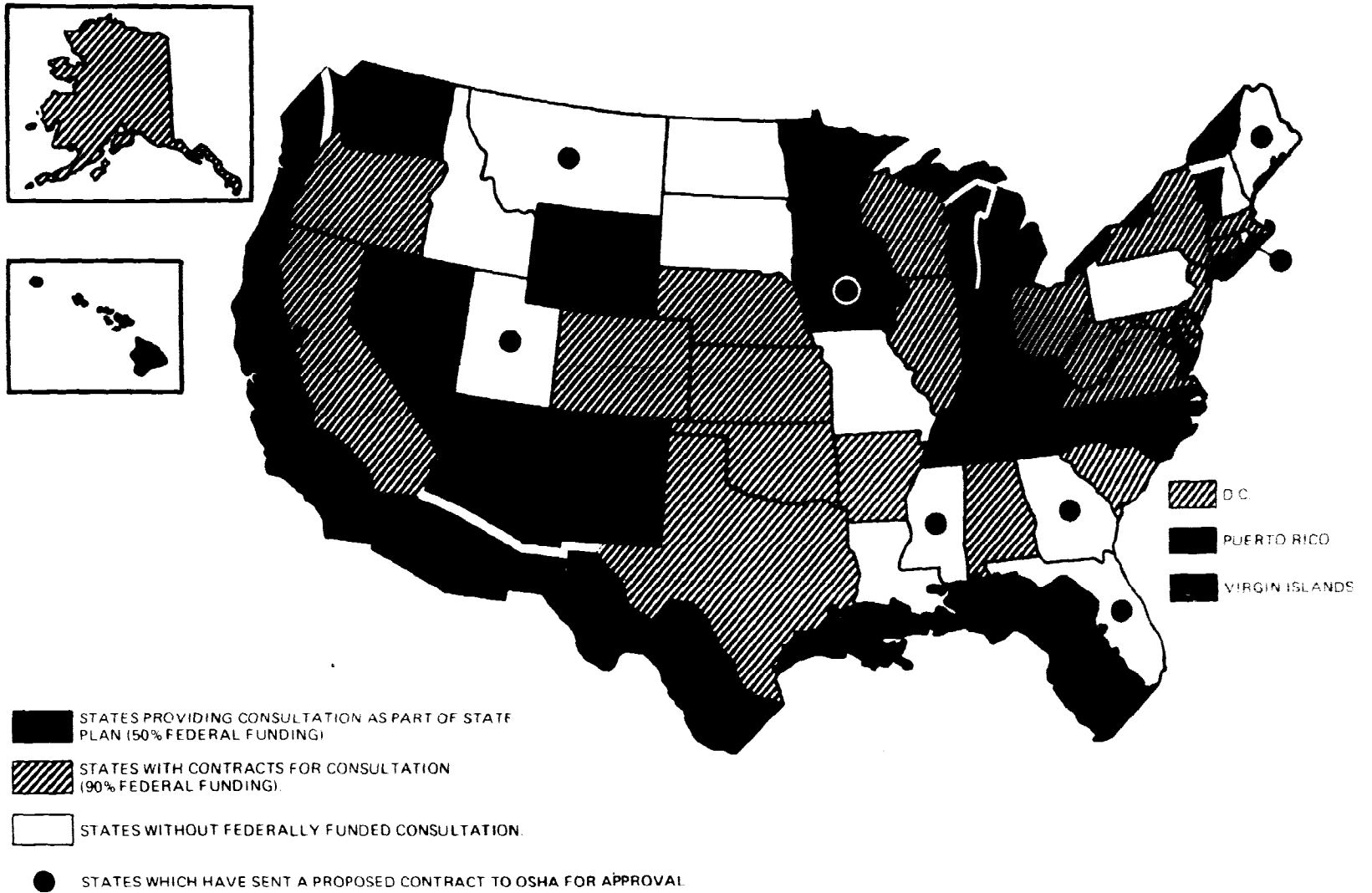
OSHA has established certain requirements for States providing onsite consultation. For both plan and contract States, OSHA requires that

- consultation and enforcement be separate,
- a priority-setting approach directed toward small businesses and high-risk industries be used,
- the employer be informed that consultation will not provide immunity from future enforcement, and
- hazards be identified and classified and those that could result in death or serious physical harm be abated.

In addition, contract States must

- provide both safety and health consultations;
- publicize the program;
- obtain the employer's permission to consult with employees before a visit;

AVAILABILITY OF FEDERALLY FUNDED ONSITE CONSULTATIONS



BASED ON A MAP PUBLISHED BY THE DEPARTMENT OF LABOR IN *JOB SAFETY AND HEALTH*

- classify hazards based on criteria in OSHA's Field Operations Manual;
- give the employer a written report identifying specific hazards, their seriousness, and suggested ways of abating them;
- submit data to OSHA for each consultative visit; and
- monitor and report quarterly to the OSHA regional office on program operations.

OTHER SOURCES OF CONSULTATIVE SERVICES

The Department of Health, Education, and Welfare provides free onsite toxicity determinations for materials used or found in the workplace upon written requests by employers or employee representatives. A report, including recommendations for controlling hazards, is sent to the employer, the employee representative, and OSHA.

Several States offer onsite consultation without OSHA funding. For example, Florida has about 40 employees that provide consultations. Some insurance and consulting firms provide their clients with a similar service.

SCOPE OF REVIEW

Our review was made at OSHA headquarters, seven OSHA regional and area offices, and State agencies responsible for onsite consultation in six States--three contract States (Massachusetts, West Virginia, and Wisconsin) and three plan States (California, 1/ Michigan, and North Carolina).

The review included discussions with OSHA and State officials responsible for administering the onsite consultation program and an examination of pertinent laws, regulations, procedures, and records. We (1) interviewed some employers who had received onsite consultations and officials of chambers of commerce and (2) reviewed two contract studies involving consultation. We also took a sample of consultations made during fiscal year 1977 in each of the six States and reviewed the case files and related data to determine who received consultations, what the scope of the consultations was, what types of hazards were identified, and whether actions were taken to assure that serious hazards were corrected.

1/Effective October 1, 1977, California provided consultation under a contract.

CHAPTER 2

MORE EMPLOYERS COULD BENEFIT

IF PUBLICITY AND SERVICES WERE IMPROVED

Most employers we talked to who had received consultations were generally satisfied. However, some employers have not received the program's benefits because some States (1) were not actively publicizing the program and (2) had provided little help to employers in dealing with toxic substances and other health hazards.

States have provided widely different services, ranging from limiting visits to particular problems to making frequent visits and providing training programs. Although the program was primarily intended to help small businesses, some States were providing a disproportionate share of the services to larger businesses.

EMPLOYERS' OPINIONS OF CONSULTATIVE SERVICES

We contacted 26 employers who had received consultations; nearly all were pleased with the services. They said that the consultants appeared capable and thorough. They added that the consultants (1) fulfilled the requests, (2) suggested ways to eliminate hazards, and (3) provided helpful technical reports.

A foundry operator in Wisconsin told us that the consultant gave advice which enabled him to greatly reduce silica concentrations. A Massachusetts employer said that the consultant's visit led to correction of machine guarding and electrical grounding hazards and to improved storage of flammable materials. Several other employers described actions, which should improve the safety and health environment of their workers, that they have taken or plan to take as a result of consultants' advice.

According to two trade associations and one chamber of commerce official we contacted, the program was providing worthwhile assistance to employers. Another chamber of commerce official, however, said his organization would not publicize the program because he believed consultative visits might lead to enforcement inspections.

NEED TO DETERMINE HOW BEST
TO PUBLICIZE SERVICE

The consultation program was intended primarily for small businesses, and a large demand for the services by such businesses was expected. Although "small business" has no precise definition, Bureau of Census statistics show that nationwide, and in the six States we visited, over 90 percent of the businesses had fewer than 50 employees.

OSHA requires States to give priority to small businesses, placing special emphasis on highly hazardous workplaces. According to Bureau of Labor statistics, 20 percent of all small businesses are in high-risk industries. However, OSHA has not given the States any guidance on (1) what is a small business, (2) which types of businesses are considered most hazardous, and (3) what amount of resources should be devoted to the priority areas.

Plan States are not required to publicize the program. Contract States are required to do so, but OSHA has not told them how much of an effort to make.

The anticipated demand by small businesses for consultations has not materialized. Most States did not have significant backlogs of requests, and many requests were from large businesses. The following table shows, by the number of employees, businesses receiving consultations.

Size of Businesses Receiving Consultative Services

State	Visits sampled (note a)	Fewer than 50 employees		50 to 99 employees		100 to 249 employees		250 or more employees	
		Number	Percent	Number	Percent	Number	Percent	Number	Percent
California:									
Safety	37	21	57	8	22	0	0	8	22
Health	40	23	58	5	12	7	18	5	12
Massachusetts:									
Safety	73	36	49	21	29	10	14	6	8
Health	34	10	29	10	29	6	18	8	24
Michigan:									
Safety	73	12	16	13	18	24	33	24	33
Health	23	11	48	1	4	4	17	7	30
North Carolina	88	71	81	8	9	4	5	5	6
West Virginia	130	115	88	8	6	3	2	4	3
Wisconsin:									
Safety	49	24	49	12	24	8	16	5	10
Health	50	27	54	8	16	6	12	9	18

a/Consultants in California and Michigan did not always show the number of employees. The above numbers for those States only include consultations in our sample for which the number of employees was shown.

Note: Percentages for some States do not total 100 percent due to rounding.

The large percentage of consultations going to employers with 50 employees or more in some States may result from the publicity methods used. Some officials said that small businesses are difficult to reach. However, some States were either not publicizing the program or not targeting their publicity toward small businesses.

OSHA has distributed about 2 million copies of a "Handbook for Small Businesses," which describes the consultation program and tells who employers should contact to receive the service. OSHA does not know to what extent this has encouraged small businesses to request consultations.

States' attempts to elicit requests have ranged from door-to-door solicitation to little publicity. Three States were limiting their publicity to avoid overburdening their consultants.

Intensive publicity

A West Virginia official told us that, when the program started in July 1975, there were not enough requests to keep the consultants busy. Consequently, the State began door-to-door solicitation.

In February 1976 the OSHA regional office advised West Virginia that door-knocking was improper ^{1/} and gave examples of other States' publicity efforts. The State began telephone solicitation. A State official said that such solicitation generated about 75 percent of the consultant's work. Of the 130 consultative visits made between January and June 1977 that we reviewed, 92 were shown as being made on the same day the employer "requested" assistance.

The State's publicity efforts were directed at small businesses without regard to the extent of risk they presented. Of the 130 consultations, 30 percent were made to retail businesses and only 34 percent to high-risk businesses.

The limited demand for services in West Virginia may result from the limited services available in the more industrialized part of the State. A State official said that

^{1/}In August 1977 OSHA permitted door-knocking to publicize consultation, as long as the consultation was not made at the same time. OSHA believed consultants needed time to prepare for an effective consultation.

consultants had not been permanently assigned to the southern part of the State--a highly industrialized area--for about 18 months. According to him, employment agreements did not permit the State to transfer consultants and low pay hampered recruitment.

North Carolina officials told us the State publicized consultations through direct mailing, newspapers, and radio and during training seminars on occupational hazards. The State aimed its publicity at high-risk businesses regardless of size. A State official said that to provide service in high-risk industries, the State often has to stimulate the requests.

The officials said that North Carolina emphasized covering industries with high injury rates, such as the lumber industry. Because normal publicity did not generate enough requests from that industry, the State offered employers free onsite consultations before enforcement inspections. According to a State official, telephone calls to hesitant employers proved successful and full industry participation was achieved.

Controlling employer requests

The other four States have used various publicity methods, including news releases, direct mailing, speeches, seminars, and exhibits. Two States were limiting their publicity to maintain a manageable backlog.

A Massachusetts safety consultation program official said that the extent of publicity is based on the number of requests received. If enough requests are received without publicity, the program is not publicized. He said that the safety program had only about a 1-day backlog and that an extensive publicity campaign aimed at businesses of all sizes was being planned. The State's health consultation program had not been directly publicized. A State health program official told us the State's publicity for safety had generated requests for health consultations. He said if the program were widely publicized the consultants would be overwhelmed with requests. There was a 5-week backlog of requests.

According to a Wisconsin official, the health program was not being publicized because safety program publicity resulted in many requests for health consultations. The State had a 10-week backlog of health requests, and the official believed additional publicity would generate an overwhelming number of requests. Wisconsin, which had seven health consultants, was recruiting eight more health consultants and four assistants.

Wisconsin's safety publicity was directed towards small businesses. A State safety official said the program had a 12-week backlog. However, according to the program director, this backlog could be doubled through door-to-door solicitation.

California officials had given limited publicity to the safety consultation program and none at all to the health consultation program. According to a State safety official, the program had not been extensively publicized because there were not enough consultants to handle the possible additional requests. A health official said that his program had not been publicized because the State placed a low priority on health consultation. Safety consultants reportedly would often refer employers directly to local public health offices.

Michigan's safety program was being publicized through seminars, workshops, and limited door-to-door solicitation. According to a State safety official, consultants solicited door-to-door only when they needed something to do near the end of a workday. Such solicitation generated about 10 percent of Michigan's safety requests.

Michigan's health consultation program was being publicized through bulletins, seminars, and workshops. A State health official said that previously, publicity had been limited because of a lack of personnel to handle additional requests.

SCOPE OF SERVICES DIFFERS

North Carolina, West Virginia, and Wisconsin officials said consultants generally encouraged employers to permit a complete inspection of the workplace. California and Massachusetts usually limited their inspections to the area or equipment about which the employer expressed concern. Michigan encouraged complete safety inspections but limited health inspections to areas of concern.

Wisconsin, West Virginia, and Massachusetts, as required by OSHA regulations, provided employers with detailed written reports. Plan States are not required to provide written reports, and prior to November 1976, North Carolina did not do so. California provided written reports on health consultations, but only reported on safety consultations when serious hazards were involved. Michigan provided reports for health consultations but not for safety consultations.

Michigan safety consultants encouraged employers to participate in the State's Safety Director Program. This comprehensive program included (1) a check of accident records, (2) a plant survey, (3) a needs analysis to identify problem areas, and (4) training and education programs. The workplace was usually visited many times to help ensure employee safety. After the program was completed, the consultant would usually make followup visits at least quarterly for a year. In comparison, a Michigan official said health consultants usually did not make comprehensive surveys at the workplace because of limited staff.

Sampling procedures to identify potential health hazards varied among the States. For example, a Michigan health official said consultants took enough samples to identify problem areas, but not enough to legally prove a violation. According to a Wisconsin health official, consultants were following the sampling procedures of the OSHA Industrial Hygiene Manual, which enabled them to identify violations. Samples were not taken in some California and Massachusetts consultations even though consultants determined that workers were exposed to potential health hazards.

INADEQUATE EMPHASIS ON HEALTH

OSHA has not assured that consultants give enough attention to health hazards. OSHA has not (1) required all States providing consultative services to be capable of providing both safety and health consultations and (2) adequately implemented OSHA's cross-training programs to educate safety consultants on health matters.

States' consultant staff composition

Historically, OSHA's enforcement program has focused on safety hazards. Because of the magnitude of health hazards, OSHA is now trying to have as many industrial hygienists as safety compliance officers. In December 1977 OSHA issued a program directive defining the minimum acceptable health and safety staffing levels for the enforcement program.

Since August 16, 1977, contract States have been required to provide both safety and health consultations. OSHA is to determine the number of consultant positions in these States on the basis of program performance, demand for services, and resources available.

The regulations require OSHA regional administrators to determine the safety-health consultant ratio. However, some

OSHA officials said States were allowed to determine their own ratios based on their individual needs. We agree that States' needs differ, but program needs do not appear to be the determining factor in staffing ratios. For example, Massachusetts officials told us the State has 17 safety consultants and only 2 health consultants because of personnel ceilings on the State's health department.

The regulations also require contract States to develop a specific plan to upgrade the consultants' qualifications based on OSHA guidelines. However, as of June 30, 1978, an OSHA official said the agency had not established those guidelines.

OSHA does not require plan States to provide health consultations. As of August 1977, 8 of the 23 plan States were providing consultative services with little or no health capability. 1/ OSHA should do more to see that the consultation program is better balanced between safety and health.

Cross-training

OSHA has begun industrial hygiene training courses for safety consultants and industrial hygiene trainees to increase their understanding of potential health hazards. An OSHA official said that enforcement staffs are given first consideration for cross-training courses and that, as of January 1978, no safety consultants in contract States had received this training. According to officials in four States we visited, their safety consultants had knowledge of the health area through State training programs or from experience.

A West Virginia official had requested that his safety consultants be given OSHA's cross-training. However, the training was not provided because of the low priority OSHA gave to consultative services. Also, due to OSHA's failure to provide cross-training, Massachusetts officials had planned training programs on potential health hazards for their safety specialists.

1/Since August 1977 several States, including two that had limited health capability, began providing consultations under contract.

CHAPTER 3

DO ONSITE CONSULTATIONS

HELP ELIMINATE SERIOUS HAZARDS?

OSHA regulations require consultants in both contract and plan States to insure that serious violations observed are eliminated. Hazards posing an imminent danger must be eliminated immediately. Serious violations that do not pose an imminent danger are to be corrected in a reasonable time. Consultants are to notify enforcement personnel when serious violations are not corrected in a reasonable time. 1/

We found that

- some serious hazards were not being classified as serious violations,
- employers were not always told that hazards in their workplaces might be considered serious violations by enforcement personnel,
- consultants did not follow up to assure that serious hazards were corrected, and
- States were reluctant to refer hazards to enforcement personnel.

FEW HAZARDS IDENTIFIED AS SERIOUS

Most States visited were classifying very few hazards identified in the cases we sampled as serious violations of occupational safety and health standards. In West Virginia, in North Carolina, and in Wisconsin's safety program, less than 1 percent of the hazards identified were classified as serious violations. In Massachusetts, about 4 percent of the health hazards identified were classified as serious.

In Michigan and California, consultants generally did not record the nature or severity of many hazards in consultation files. Michigan officials said employers were advised on safety conditions and practices but generally were not

1/In July 1974 OSHA eliminated the requirement that plan States refer uncorrected serious violations to enforcement personnel. However, in June 1976 this requirement was reinstated.

told which standards were violated. California began listing and classifying specific hazards when it began operating under a consultation contract in October 1977.

According to West Virginia and North Carolina officials, they were referring requests for health consultations to other State agencies. Consultation program officials took no action on the results of the referred consultations and were generally not aware of the severity of any hazards detected.

We identified hazards that should have been, but were not, classified as serious violations. In some cases, the States agreed that hazards had been incorrectly classified. In other cases, they said they did not classify conditions that could result in serious injury as serious violations because (1) the likelihood of an accident appeared remote, (2) they did not see anyone exposed to the hazard, and (3) the employer corrected or promised to correct the hazard.

These reasons, however, would not have precluded a compliance officer from citing the employer for a serious violation.

Identifying and classifying hazards

OSHA's regulations do not define a serious hazard. Criteria exist only for classifying a hazard as to the seriousness of the violation. According to OSHA's Field Operations Manual, a hazardous condition which violates an OSHA standard is to be cited by a compliance officer as a violation when a worker is exposed, or may be exposed, to the hazard. Such exposure must have occurred within the preceding 6 months.

Employee exposure exists if (1) the employee could come into the hazardous area while working, resting, or eating at the jobsite or entering or exiting his assigned workplace or (2) in the case of unsafe machinery or equipment, if the employee could use the equipment in his work. The compliance officer would not issue a citation if the employer had an adequately enforced policy or program to prevent employee exposure, including accidental exposure, to the hazard. Upon determining that a standard has been violated, the compliance officer classifies the violation.

OSHA's criteria for classifying violations defines a "serious violation" as one that presents a situation in which there is a substantial probability that serious physical harm or death could result. The "probability" refers to the

probability that the accident's results would be serious, not to the probability of the accident happening. "Serious physical harm" was defined as that which can result in a permanent, prolonged, or disabling injury or could shorten life or significantly reduce physical or mental efficiency.

Some consultants believe it unnecessary to classify standard violations as enforcement officials do because they are not citing the employer. They consider it sufficient to point out the hazard and recommend how it can be corrected. Safety consultation officials in Michigan believed it sufficient to identify hazardous situations without noting which standards are violated.

The following table shows the consultants' classifications of violations for the cases we sampled.

<u>State</u>	<u>Cases sam- pled</u>	<u>Number of violations identified</u>				
		<u>Total</u>	<u>Nonseri- ous</u>	<u>Per- cent</u>	<u>Serious (note a)</u>	<u>Per- cent</u>
West Virginia	130	597	595	99.7	2	0.3
Wisconsin:						
Safety	48	904	898	99.3	6	0.7
Health	49	45	39	86.7	6	13.3
Massachusetts:						
Safety	73	1,286	1,011	78.6	275	21.4
Health	34	95	91	95.8	4	4.2
North Carolina	92	507	506	99.8	1	0.2
Michigan (note b)						
California (note b)						

a/This category includes nine imminent danger situations for Massachusetts safety.

b/Case documentation not specific on hazards.

A North Carolina consultant said that during his visits he had identified seven serious hazards but did not record them because they were corrected immediately. After we discussed this with State officials, they notified the consultants that serious hazards must be noted in the report even if they are corrected.

We discussed with West Virginia, Massachusetts, and Wisconsin consultants hazards that, based on the consultants' descriptions in their reports, appeared potentially serious but were classified as nonserious.

West Virginia consultants told us that six of the nine safety hazards we discussed would have been classified serious if employees had been exposed during the consultants' visits.

We discussed 19 consultations involving 52 hazards with Wisconsin safety consultants. The hazards were classified as nonserious but were of the type frequently cited by OSHA as serious. They mostly involved lack of guarding for presses, saws, molds, and platforms. The consultants said that two hazards should have been classified as serious, but were not, due to an oversight. Various reasons were given as to why the other 50 were not classified as serious. The reasons included:

- There was no exposure at the time of the consultation.
- There was only limited exposure, thus reducing the likelihood of an accident.
- The hazard was so obvious that the employee would have to be negligent to get hurt.
- Although protective devices technically did not meet standards, they were adequate.
- Any injury suffered would not be serious.

Since we did not observe the hazards in the workplace and the consultants' records did not completely describe the work practices or environment, in most cases it was difficult to evaluate their judgment in classifying hazards. However, in some cases, their reasons for not classifying hazards as serious were not consistent with OSHA's procedures. For example:

- Large openings permitted employees to reach into power presses. The hazards were not classified as serious because the unguarded openings were large and conspicuous. The consultant said employees would have to be negligent to get hurt.
- A cutter, a cut-off saw, and an automatic stud nailer did not have guarding to prevent exposure. The consultant classified the hazards as nonserious because there was no exposure at the time of his visit. Had the operators been present and had their hands been

near the points of operation, he would have classified the hazards as serious.

--A consultant recommended that two-hand controls be installed to prevent employees from putting their hands in molds containing hot metal. He did not classify the hazards as serious because there was little chance of a serious accident. He said that the nature of the operations served as a guard, that is, the employees knew it was dangerous because it was a hot operation.

We discussed 13 consultations involving 20 health hazards classified as nonserious with the chief of Massachusetts' health consultation program. He said that 5 of the hazards should have been classified as serious. For three others, samples should have been taken to determine whether exposures to toxic substances were excessive. For two hazards, samples were not taken because the laboratory did not know how to evaluate the contamination level.

One hazard involved exposures to wood dust--a suspected carcinogen. The consultant did not classify the hazard as serious because OSHA did not have a specific standard for wood dust. However, the employer was advised that exposure in one area was borderline and in another was alarmingly excessive.

In another situation, air samples for dust revealed areas with high readings; two samples were more than seven times the threshold limit. The State official said the alleged violation was not classified as serious because (1) there were no definitive OSHA guidelines to classify the alleged violations, (2) engineering controls are costly, (3) the consultant failed to use the recommended device for testing cotton dust, and (4) the workers were wearing respirators.

The other eight hazards were not considered serious because exposures in the work area did not exceed safe levels or they were not of sufficient duration to be hazardous.

We discussed with OSHA industrial hygienists several cases in which States' consultants' reports (1) were unclear about the seriousness of hazards or (2) did not classify hazards as serious even though OSHA's permissible exposure levels were exceeded. We wanted to determine whether, based on OSHA's criteria, the hazards were correctly classified. We discussed hazards from 18 cases with an OSHA headquarters industrial hygienist. He said five cases involved exposures that were from 1 to 15 times OSHA's permissible level and should have been classified as serious. They involved

overexposures to vinyl chloride (a carcinogen) and toluene and three cases of exposure to silica. Three cases lacked sufficient information to make a determination. They involved exposures to benzene (a carcinogen), lead, and noise. He said the other 10 cases would not have been classified as serious violations by OSHA.

Another OSHA industrial hygienist reviewed reports on six health consultations prepared by a North Carolina health agency at the request of the consultation staff. The hygienist said one of the cases, involving exposure to a suspected carcinogen, should have been considered a serious violation. The other five reports did not indicate either the exposure level or the duration of the sample, thus precluding a judgment by the hygienist.

INADEQUATE FOLLOWUP TO ASSURE
CORRECTION OF SERIOUS HAZARDS

When serious hazards were identified, some States were not following up to assure that employers corrected the hazards. To ensure that serious hazards are corrected, OSHA's manual for compliance officers requires a followup visit after an employer has been cited for a serious violation, unless the officer is certain the hazard has been abated (for example, corrected at the time of the original inspection). ^{1/}

OSHA's criteria for consultants to assure timely abatement of serious hazards is less specific in that it does not require consultants to revisit the workplace. Plan States are required to " * * * assure the timely abatement of situations involving imminent danger or a substantial probability of death or serious physical harm." For imminent danger situations, the consultant must immediately notify affected employees and enforcement personnel if the employer fails to eliminate or control the dangerous situation. For situations involving a substantial probability of death or serious physical harm, the consultant must give the employer reasonable time to correct the condition and then be " * * * satisfied through a further consultative visit, documentary evidence, or otherwise that such abatement has taken place * * *."

^{1/}On June 22, 1978, OSHA revised its procedures to permit compliance officers to follow up without visiting the workplace in certain circumstances, when available resources and backlogs do not permit such visits. However, if staff are available the abatement of serious violations is to be assured by visiting the workplace.

Contract States' consultants are required to follow the same procedures for imminent danger. Consultants are to work with the employer to develop a plan to eliminate any hazards that would be classified as serious violations and give the employer a reasonable time to correct them. To insure correction, the consultant may require the employer to submit periodic reports or permit a followup visit.

Massachusetts officials told us they believed they were only required to follow up on imminent danger situations that posed an immediate threat of serious physical harm or death. Consequently, they had not made many followup visits. Massachusetts safety consultants had identified over 250 serious violations in the 73 consultative visits we reviewed without making followup visits to determine whether the hazards were corrected. Massachusetts officials said some hazards were corrected during the initial visit.

Wisconsin officials told us that before October 1977, consultants were only required to follow up in cases of imminent danger. Wisconsin's current policy requires consultants to assure that all situations involving serious violations and imminent dangers are eliminated. However, the policy did not specifically state how this should be done. Some consultants believed that the employer's promise to correct the hazard was sufficient assurance. We reviewed seven violations classified as serious by Wisconsin safety consultants. Three were considered corrected based on employers' statements, three were corrected during the consultant's visit, and for one the time agreed for correction had not passed.

Wisconsin's health consultants had classified six violations as serious. In two cases, the consultant had not determined whether the hazards had been corrected. In another case, the hazard was not corrected. According to the consultant, he made the visits before learning that he was required to insure that hazards were corrected and he had not returned. For the other three hazards, the consultants had verified that two were abated through followup visits and the other was scheduled for such a visit.

California health consultants did not have a policy for following up to insure that serious hazards were corrected. A State official said this was left to each consultant's judgment.

A consultant who had been reassigned to a training function said that no followup had been made on seven cases

in which he identified serious hazards. Hazards involved included

- overexposure of 69 workers to about 12 times the permissible level for chemical solvents during a silk screening operation,
- workers exposed to iron oxide fumes and noise well in excess of allowable limits,
- mercury levels about 4 times the acceptable level, and
- a worker exposed to excessive levels of perchloroethylene.

The chief of the California health program did not know whether these and other serious hazards identified by consultants were corrected by employers.

California's safety program had a policy requiring employers to provide written notice to the consultants that serious violations had been corrected. If the consultant was not satisfied with the employer's response, he was to revisit the workplace. Some case files contained no notification from the employer that the hazard had been corrected and no indication that the consultant revisited the workplace.

North Carolina's policy was to follow up to insure that serious violations were abated. West Virginia's policy was that followup visits "may" be made. Neither State classified more than a few violations as serious, and when they did, they indicated that the hazard had been corrected at the time of the visit. As stated on page 14, both States referred requests for health consultations to another State agency and did not determine whether serious hazards were identified.

Although health violations were not classified as to seriousness in Michigan's records, the head of the State health consultation program said that seven of the hazards found during consultations would be considered serious violations. He said that Michigan's policy is to follow up all serious hazards identified which threaten employee health and that he was establishing a system for following up on cases he considered serious. Consultation officials advised us that, although some followup visits had been scheduled, none had been made.

In commenting on a draft of this report in September 1978, a Michigan health official said that for five of the seven serious hazards, followup inspections were made. In the other two instances, the hazards had been cited by enforcement officials prior to the consultation and the consultants were relying on the enforcement personnel to insure correction.

Michigan's policy for safety consultations was that the consultants should urge correction of a serious hazard and return after a reasonable time to "discreetly" observe whether the correction had been made. Consultants said that they do check for correction on some return visits. However, return visits are not usually scheduled solely for followup but rather as a part of the State's regular periodic visits to the employer under the State's Safety Director Program. The reports of these visits generally do not indicate whether hazards previously identified by the consultant were followed up by the consultant and corrected by the employer.

STATES RELUCTANT TO REFER
SERIOUS VIOLATIONS TO
ENFORCEMENT PERSONNEL

OSHA regulations require that serious violations not corrected by the employer after a reasonable abatement period be referred to enforcement personnel. These personnel issue citations for violations, assess penalties, and set mandatory abatement dates.

According to an OSHA official, only 3 of 20,000 visits by contract State consultants have resulted in referrals. State officials believed that employers correct serious hazards. However, as previously stated, consultants often did not follow up to determine whether this was true.

Although OSHA has clearly stated its desire to insure that uncorrected serious hazards are referred for enforcement action, States are reluctant to do so. They believe that such a practice would seriously undermine the credibility of their program, which is intended to offer free advice and help to employers. In their opinion, employers will not request consultations if they know they may be subjected to enforcement action.

In April 1977, OSHA proposed amended regulations for contract States. These regulations provided in part that:

" * * * If the employer fails immediately to eliminate an imminent danger, the consultant shall immediately notify the affected employees and notify the employer that the appropriate OSHA enforcement authority is being advised."

" * * * If a serious violation, as described in the current OSHA Field Operations Manual (with the exception of the element of employer knowledge, which shall not be considered) is disclosed as a result of a consultative visit, the consultant shall immediately notify the employer of such violation and shall afford the employer a reasonable time to eliminate such violation. If the consultant is not satisfied through a further consultation visit, documentary evidence, or otherwise that such elimination has taken place, the consultant shall notify the employer that the appropriate OSHA enforcement authority is being advised."

Except for the requirement to use the Field Operations Manual, this provision was a restatement of previous requirements.

In May 1977, when commenting on OSHA's proposed regulation, the States made the following comments:

The proposal " * * * will substantially inhibit the effectiveness of the consultation program * * * This change appears to put the consultant into the enforcement business. It also casts a cloud over the fact that consultations are confidential as between the consultant and the employer * * * The proposed approach in the regulations will substantially reduce the number of consultation requests, particularly from small businesses. * * * We suggest that referral for enforcement be limited to imminent danger situations." (Massachusetts)

" * * * Setting abatement controls and pursuing follow-up will not encourage voluntary compliance on the part of the employer * * * A follow-up procedure in a consultation program is not feasible or proper when regulations clearly allow consultations only at the request of the employer * * *. Limited consultation resources and logistics will not allow for follow-up activity whether by visit or telephone. Receipt of progress reports is and has been encouraged. It is extremely important to maintain the required independence between

consultation and enforcement * * *. The requirement for handling serious violations * * * will appear to an employer as enforcement action."

* * * * *

"A major problem * * * has been in convincing employers that their request for consultation will not generate an OSHA enforcement action * * * we do not agree with the concept of abatement or control programs and follow-up procedures."
(Wisconsin safety)

"* * * employers are most reluctant to use the consultation service if there is the chance, even though remote, that such use may trigger enforcement action. * * * We suggest that these provisions be modified to limit the contacting of enforcement authorities to imminent hazard situations where the employer fails to eliminate the imminent hazard. * * *" (California)

"* * * such a referral action for enforcement appears to present a threat to employers which will be misunderstood and have very negative implications to the program * * * it appears that this provision will reduce the number of requests for consultative services among those employers who have the greatest need for such services."
(Michigan)

North Carolina and West Virginia agreed that uncorrected serious violations should be referred for enforcement action.

The referral provisions of the regulations were adopted, essentially as proposed, in August 1977.

Officials in most States we visited indicated that referring uncorrected serious hazards to enforcement personnel would discourage employer requests for the service. Massachusetts officials maintained that the regulations only required the referral of unabated imminent dangers--a position not consistent with their comments on the regulation when it was proposed.

States' reluctance to refer serious violations may affect their classification of hazards and explain why so few violations are classified as serious.

CHAPTER 4

EFFECTIVENESS OF SERVICES NOT EVALUATED

OSHA has not determined whether consultative services are adequate or whether they result in safer workplaces. More data and more analyses of available data are needed.

OSHA'S DATA COLLECTION EFFORTS

OSHA has not required uniform data from States providing consultative services, and the data that has been required, except for the number of requests received and visits made, have generally not been summarized.

OSHA does not know (1) what size and type of businesses are requesting the services, (2) how quickly consultants are able to respond to requests, (3) what kind of hazards are being identified, how many, and how severe, and (4) how frequently consultants follow up to insure serious hazards are corrected. This information is essential to manage the program effectively and to insure that program objectives are attained. Such information could also help OSHA plan its education and training efforts to help employers, employees, and compliance officers prevent accidents by becoming better aware of serious hazards most often found in the workplace.

The plan States are only required to submit quarterly summary reports on the number of consultations, the type of industry visited, and the number of consultants involved.

OSHA requires contract States to submit a data sheet to OSHA headquarters for each consultative visit. The sheet shows the type of business, the number of employees, the type of consultation (safety or health), the nature of the visit (initial or subsequent), the date of the visit, the date of the final report, serious hazards identified/eliminated, hazards classified by OSHA standard, and number of hazards found. OSHA was to tabulate this data monthly and provide summary information to its regional offices and the States.

For almost 2 years, OSHA had not tabulated the data because of computer programming problems. An official said there were problems with the consultation management information system, which was not operational from August 1976 to early 1978. System problems were corrected by May 1978. However, reports are not being distributed because the needs of potential users are unknown.

According to the Chief of the Voluntary Program Division, the consultation information system has not met OSHA's information needs and will probably be discontinued. He cited several problems with the system, such as:

- The nature and severity of the violations were not clearly shown.
- Reports were not timely.
- Data reported on size and type employer were based on information obtained before the consultation. Corrections were not made if the consultant learned that the data were incorrect.

He added that OSHA is developing a new monitoring and reporting system. OSHA headquarters monitoring personnel will draw from State data provided to regional offices.

OSHA regional and State officials said that summary data are needed to help monitor and evaluate the program. Lacking such data, one regional official obtained a duplicate copy of each consultative visit data sheet from the States in his region and tabulated the data manually. Two other regions created regional forms to be used by the contract States starting in January 1978 to obtain data not currently a part of OSHA's national data collection process. A regional official said that these data are necessary to know where the consultants are going and what they are finding.

OSHA EFFORTS TO MONITOR AND EVALUATE THE PROGRAM

OSHA has not given its regional offices guidance on how to monitor the program or what resources should be devoted to monitoring. Also, OSHA regional and area officials have only done limited case file reviews and on-the-job evaluations of consultants' work. Two studies made under OSHA contracts by ICF Incorporated and Orkand Corporation disclosed weaknesses in program monitoring.

Independent study results

An October 1976 report by ICF Incorporated pointed out that OSHA's monitoring and evaluation of the program was inadequate. The report said evidence was unclear on the usefulness of consultation. The report further stated that:

"The lack of experience, knowledge, and analytical evidence about the usefulness of consultation in abating hazards--particularly health hazards--is a serious deficiency, and the recommendations of this report must be considered in that context. ICF obviously believes, based on our work, that the proposed allocation of OSHA resources for consultative activities is warranted. However, we strongly recommend careful evaluations of the OSHA-funded consultation programs with a view toward limiting the growth of the program or severely cutting back if OSHA finds the program to be failing in its mission."

The report attributed monitoring and evaluation problems to (1) the lack of OSHA regional and area office staff to monitor programs because of an emphasis on enforcement, (2) the lack of a Federal onsite consultation program to compare the State program with, (3) OSHA's inability to observe State contract consultants onsite because OSHA would have to issue citations for any observed violations, and (4) inadequate management information resulting from inconsistent interpretation of data requirements and data processing failures.

Orkand Corporation was to develop a system concept for evaluating consultative services and to apply the concept in evaluating State consultative programs. Orkand's December 30, 1976, report pointed out that OSHA lacked the information base needed to evaluate either plan or contract States. Orkand attributed the lack of clearly defined monitoring policies and procedures for consultation in regional offices to OSHA's emphasis on enforcement. The report added that monitoring is done primarily through superficial data analysis that is not likely to result in a thorough understanding of the quality of the State programs. A model for regional office monitoring activities was said to be needed.

OSHA regional monitoring and evaluation

Regional officials are to closely monitor State plan programs in a manner similar to enforcement efforts. Areas to be monitored include the

- number of consultants,
- number of consultations,
- balance between consultation and enforcement,

- handling and incidence of serious violations,
- handling and incidence of imminent danger,
- quality of recommendations offered, and
- demand for service.

OSHA has not given the regional offices guidance on the extent of resources to be devoted to monitoring and evaluation. The regional offices have given consultation a low priority.

In August 1977 OSHA assigned responsibility for monitoring and evaluating contract State arrangements to its regional offices. As of June 30, 1978, OSHA had not complete developing a system for the regional offices to use in monitoring the States. Two OSHA officials said their regional offices implemented local monitoring systems since they could not wait for national office guidance.

None of the five regional offices we visited had made overall evaluations of State consultative services programs. Program monitoring varied. As previously mentioned, three offices obtained summary data on consultative visits to help monitor the activities. Other monitoring generally involved reviewing a small number of case files during infrequent trips to the States and even less frequent on-the-job evaluations.

The value of the case file reviews is limited. In one region OSHA officials only reviewed the report to the employer, which generally did not identify the classification of observed hazards. Regional personnel had reviewed 1,100 reports and found few violations classified as serious. By comparison, our review of 73 complete safety case files, which included individual summary data sheets, disclosed over 250 serious violations. The difference may have existed because the original contract regulations did not require States to identify the seriousness of observed violations in reports to employers and the regional review did not include the summary data sheets which classified the violations. In another region, after reviewing some case files, OSHA officials found them inadequate for determining what actually was accomplished during the visit. An OSHA regional official said he is establishing minimum requirements for contract State file documentation. The file is to contain enough information for the consultant's supervisor to assess the position being taken in the technical report to the employer.

Regional offices had not made any on-the-job evaluations in contract States and had made only a few in plan States. An OSHA official said OSHA is legally precluded from doing such evaluations in non-plan States but is considering contracting for evaluations or requiring special State monitors. Regional officials have placed low priority on monitoring consultative services.

On-the-job evaluations in plan States were minimal. OSHA officials said their agency had made eight such evaluations in North Carolina. These evaluations were all in the public sector, and only one involved a health consultation. In late 1977 the first on-the-job evaluations for safety and health consultations were performed in Michigan. An OSHA regional official said only two on-the-job evaluations had been made in California.

STATE EFFORTS TO EVALUATE EFFECTIVENESS

None of the six States visited had made an overall evaluation of the effectiveness of their consultation programs. Michigan had compiled injury data on certain industries to which it had devoted sufficient resources to educate and train employees and consult with employers. The study identified a 38-percent reduction in injury incidence rates based on annual audits of those industries. A State official said the results indicate the program's possible effectiveness.

Officials in most of the States said they have made on-the-job evaluations of their consultants. However, we could not review them because there was little or no documentation. Wisconsin officials said they had not made on-the-job evaluations. Orkand reported that only one of eight States in its study made such evaluations regularly. Three made them occasionally, and four never made them.

The nature and frequency of State officials' review of consultants' reports varied and in some States reports were reviewed only occasionally. In California's health consultative program no monitoring was done.

In August 1977 OSHA required that contract States establish and maintain their own performance monitoring systems. However, OSHA has not given States guidance on what the monitoring should entail. OSHA has not established a similar requirement for plan States. Officials said the agency has no authority to require plan States to develop such a system.

CHAPTER 5

CONCLUSIONS AND RECOMMENDATIONS

CONCLUSIONS

OSHA has not adequately planned, directed, or evaluated the consultative services program. As a result, although most employers who received services were satisfied, there is little assurance that the program (1) is directed toward the employers that need it most, (2) offers adequate services, and (3) results in serious workplace hazards being corrected.

OSHA has done little to monitor or evaluate the program. Necessary information has not been sought. Available information has been neither analyzed nor provided to State and OSHA regional officials who need it for program management. Regional monitoring, especially for contract States, has been quite limited. The 1976 reports of two consulting firms concluded that OSHA's program monitoring and evaluation were inadequate. As of June 1978, OSHA had provided little guidance for program monitoring and had not evaluated program performance.

The availability of services varied significantly among the States. Some States offered little health coverage. In the States we visited, services varied from West Virginia's extremely limited health coverage and safety coverage in only part of the State to Michigan's comprehensive safety program involving numerous return visits over a long period. Although OSHA's regional administrators are to determine the safety-to-health ratio of each contract State's consultant staff, they were not acting to assure adequate staff balance. Some States encouraged complete workplace inspections, whereas others limited their work to the area of concern to employers.

OSHA needs to determine what level of service it will support and do more to help expand health capability through cross-training of safety consultants.

Policies and practices for classifying hazards as violations and assuring that serious violations are corrected differed among and within the States we visited. Some States did not identify the specific standards violated or classify violations as to seriousness. In several States serious violations were rarely reported. Some serious hazards were not identified as such.

When serious violations were found and were not corrected during the visit, consultants often did not obtain assurance that the violations were corrected. Followup visits were usually not made. Sometimes consultants relied on promises that serious violations would be corrected or letters from employers stating that they had been corrected.

Referrals of uncorrected hazards to enforcement officials were rare. An OSHA official said that only 3 of 20,000 contract State consultations resulted in referrals. It may be that serious violations rarely go uncorrected. However, we believe that, if OSHA's policies for classifying hazards and verifying abatement of serious violations were followed, referrals would be more frequent.

State officials were reluctant to follow up on serious violations or to refer uncorrected serious violations to enforcement personnel. They believed that followup and referral requirements would inhibit requests for consultation. OSHA, although recognizing that these requirements may deter requests, has repeatedly stated its policy that consultants must assure that serious violations are abated.

However, OSHA has not acted to assure that States comply with its policy. We believe that this lack of action is due to a reluctance to resolve an important, but controversial, issue.

The consultation program has been greatly expanded since 1975 to meet a large perceived demand, especially from small businesses. This demand has not materialized. Also, larger businesses apparently received a disproportionate share of consultations.

The program has been publicized. OSHA has distributed 2 million pamphlets about it. All the States visited had publicized it to some extent. Some States used extensive publicity or direct contact to keep their consultants busy; others limited publicity to avoid or reduce a large backlog of requests.

In our opinion, OSHA would satisfy its congressional mandate if the program were available in every State and its existence were generally publicized. OSHA needs to decide whether the consultation program is to respond to a demand or stimulate one. Information on program effectiveness, now lacking, is needed to make this decision. If OSHA decides

that States should aggressively solicit requests, it should also assure that solicitation is directed towards those that need it most--the small and high-risk businesses.

RECOMMENDATIONS

We recommend that, for both plan and contract States, the Secretary of Labor direct OSHA to:

- Clearly define the priorities for providing consultations, the scope of services to be provided, and the extent that demand for consultations should be stimulated to meet program goals.
- Assure that both safety and health services are available in each State. If States are unwilling to provide adequate services, OSHA should consider alternative sources, as it is doing in States that are unwilling to provide any services.
- Require States to comply with OSHA's policies (or their own, in plan States) for classifying hazards and assuring that serious violations are abated.
- Establish an effective system for monitoring State consultative programs. Such a system should include on-the-job evaluations of consultants.
- Evaluate the program to determine whether it is effective in both helping employers and protecting workers.

Also, plan States should be required to provide reports to employers similar to those required of contract States.

Where applicable, the above recommendations should also be considered for OSHA's planned contracts with private organizations for consultations in States that will not provide the service.

AGENCY COMMENTS AND OUR EVALUATION

In an October 23, 1978, letter commenting on this report (see app. II) the Department of Labor said that OSHA concurred with many of our conclusions. Labor said that OSHA had initiated corrective actions which it hoped would resolve the problems identified in the report.

According to Labor, OSHA has (1) increased its staffing in the national and regional offices, (2) instituted interim monitoring procedures pending implementation of a monitoring plan early in fiscal year 1979, and (3) completed training all consultants in proper classification of violations. Labor also said that it would develop and present consultant training programs in abatement technology and would train safety consultants regarding health hazards.

Other action promised by OSHA includes requiring plan States and private contractor consultants to follow key State contract program requirements regarding publicity, provision of health services, assurance that serious hazards are abated, provision of written reports to employers, and comparability in reporting definitions.

Labor said that OSHA believes it has set a foundation for quality consultation in all States by initiating the above changes. It said OSHA also believes the demand for consultative services among smaller businesses is significant and that its program is well on its way to meeting the demand.

OSHA's planned actions should improve the consultation program if they are properly implemented and program requirements are enforced. Much of OSHA's hope for improvement lies in its plan to require plan States and private contractors to follow requirements placed on contract States in late 1977. Although contract States were required to follow similar requirements prior to August 1977, we found that many of the deficiencies in contract States occurred because the requirements were misunderstood or not followed by the States and were not monitored or enforced by OSHA. OSHA's monitoring and enforcement of the requirements are essential to achieving program improvement.

OSHA provided other comments on the matters discussed in the report. The more significant of these are summarized below.

Setting priorities

OSHA said its regulations and directives to contract States call for priority to be given to smaller businesses, especially those in higher hazard industries. Plan States will be required to adhere to this requirement. OSHA said priority must be set by each consultant manager in relationship to other requests received. OSHA said it would monitor States' priority determinations by reviewing whether

scheduling was based on relative size, industry hazard ranking, and seriousness and specificity of the workplace problem described by the employer.

Publicity

OSHA said it expects States, through their promotional programs, to attempt to encourage small and hazardous businesses to request consultations. It said it would prepare written guidelines reminding contract States to do this and would monitor plan States' publicity. OSHA said it would be responsible for promotion efforts for States serviced by private contract firms.

OSHA said States may stimulate demand as long as it does not create a backlog of requests which might create pressure for additional funding.

Scope of consultations

OSHA said it believes consultants should encourage employers, especially small businesses, to request a comprehensive review of operations.

Safety and health capability

OSHA said it will require plan States to have a "reasonable" ratio of health-to-safety consultants and will assure that contract States' targeted ratios are met. In private contract States, OSHA will determine the mix. OSHA also said contract State consultants would receive retraining and both safety and health consultants would receive cross-training to recognize hazards requiring the expertise of the other discipline.

Written reports to employers

OSHA said it would require plan States to provide written reports to employers as is required by contract States.

Classifying hazards

OSHA said that, at the time of our work, not all plan States had adopted OSHA's violation classification criteria or other acceptable criteria. OSHA said most States have now done so or have indicated they will. OSHA said plan States will be required to base their classification of hazards on the same criteria they use in their enforcement inspections.

OSHA added that contract State consultants had completed training on classifying hazards and that OSHA monitors will check on the adequacy of consultant classification practices.

Assuring hazards are corrected

OSHA said its monitoring system now includes a thorough review of case files to assure that hazards are eliminated. OSHA said the training it provided to contract State consultants stressed the need to insure that serious violations are eliminated in a timely manner.

As stated on page 18, States did not always follow up to insure hazards were corrected and rarely referred uncorrected hazards to enforcement officials. OSHA needs to remind States of (1) its requirements for insuring that hazards are corrected and (2) the actions States should take to implement the requirements.

Monitoring and on-the-job evaluations

OSHA said it is developing a new monitoring system. Under OSHA's new system, consultant's performance will be periodically evaluated, regional offices will monitor State performance, and reporting data will become part of a uniform system. OSHA said that for non-plan States, onsite performance of individual consultants will be monitored twice yearly either by specially trained State personnel or by private contractors. Their findings will be reported to the OSHA regional office. Regional office staff will periodically visit consultants and analyze case file data and State systems and procedures. For plan States, OSHA said its monitoring would be intensified and States would be required to report performance data compatible with that reported by contract States and private contractors. OSHA did not say whether plan State consultants' onsite performance would be evaluated.

Evaluating the program

OSHA said it is designing an evaluation model to measure the impact of its consultation program and that a large-scale evaluation could be implemented by 1980. It said it would continue to use employer satisfaction as one measure of the effectiveness of the program.

STATES' COMMENTS AND OUR EVALUATION

Each of the States we visited commented on our draft report. Generally, the States said that many of the problems we identified had been corrected. Their comments are summarized below.

California

California expressed concern that the report's findings related to the State's operations prior to its becoming a contract State in October 1977 and did not reflect its current program.

California said that subsequent to our work, which was conducted while they were changing from plan State status to a contract agreement, it established policies and procedures that addressed actions recommended in the report. California said it had

- combined its safety and health effort into one unit, intended to place equal emphasis on safety and health, committed itself to achieving an equal number of safety and health consultants, and hired a health professional to direct the program and

- made special efforts to reach small businesses and high-risk industries through use of target mailing and an agreement with an association of small businessmen.

California also said OSHA's regional office had increased its guidance and monitoring. It said OSHA had appointed a person to periodically accompany and evaluate consultants' performance onsite and review case files and other operations data. It also said it has a unit which monitors and evaluates consultants' performance and measures program effectiveness.

Massachusetts

Massachusetts said it had initiated a followup program for hazards it identified as serious, and that most of the serious violations discussed in our report had received followup action. It said that it had classified many serious hazards as posing an imminent danger and that they were corrected immediately and did not require followup. However, as shown on page 15, only 9 of the 275 serious hazards identified in the State's safety consultations we reviewed were classified as imminent danger, whereas 266 were classified as serious violations.

Massachusetts said that OSHA should publish a clear definition of what constitutes a serious hazard, a serious danger, and a serious violation. Massachusetts said it has created its own definition.

OSHA has published a clear definition for classifying the severity of hazards which are violations of standards and includes this definition in its Field Operations Manual. It has reminded States of this definition through formal correspondence and informal discussions. It has provided special training for consultants and enforcement officials in classifying hazards. Despite this, Massachusetts maintains OSHA's definition is not clear and says it will use its own. OSHA needs to insure that Massachusetts and all States not only understand, but properly implement, all program requirements.

Massachusetts reiterated its belief that State consultants should not be required to report to OSHA serious hazards not corrected by the employer. Massachusetts said the possibility of citations for serious violations "impeaches the program" and "has dramatically reduced the number of consultations that would otherwise be requested." Massachusetts said it is more important to get employers to correct conditions voluntarily. Massachusetts maintains that, before it could refer uncorrected violations to OSHA for enforcement, it would have to issue a regulation to establish a "due process" mechanism for employers. Massachusetts is reluctant to do this. According to Massachusetts, OSHA is aware of this situation and has accepted it. Massachusetts predicted that, unless OSHA changes its policy requiring States to refer uncorrected hazards to enforcement officials, the small businessman would not use the program.

Massachusetts also said that it

- had agreed with OSHA to increase the number of health consultants to about one-third of its total consultant work force;

- believed it should stimulate a demand for consultations and has arranged with OSHA to do so, emphasizing small employers and hazardous businesses and occupations;

- encouraged employers to have a broad, rather than limited inspection;

- implemented a procedure so that safety consultants will follow up on most health hazards and began cross-training safety consultants;
- had initiated a data collection and management information system to provide necessary data; and
- did not agree that on-the-job evaluations of consultants' performance are required.

We believe that periodic on-the-job evaluations of consultants' performance are essential to insure the quality of service provided. Such evaluations need not be performed by OSHA, but can be done by specially designated and trained State personnel or under contract.

Michigan

Michigan's Department of Public Health and Department of Labor each commented on our draft report.

Michigan's Department of Labor said the report accurately described its safety consultation program. The Department said it was exploring some changes to its safety consultation approach. It also said that

- although it does not specify to the employers the standards they are violating, the consultants are expected to discuss standards the employers should be aware of and they do encourage employers to take notes and
- it does monitor employers' progress in abating hazards although the activity is not formalized and is implemented according to the consultants' judgment.

The Department said it did not agree that plan States should be required to provide written reports to employers. It said that written reports tended to promote an "inspection" image and that listing in a written report violations not considered serious was superfluous.

We believe that written reports are a useful way of communicating the results of a consultation to the employer, and are no less so in plan States than in contract States. The distinction between serious and other than serious violations is often a matter of circumstance rather than the type

of hazard. Also, as shown in chapter 3, consultants do not always classify hazards that can cause serious harm as serious violations. Including hazards classified as other than serious violations in the written report should encourage their correction and may help eliminate a serious hazard or prevent a condition from becoming a serious hazard.

Michigan's Department of Public Health agreed with most of our recommendations and said it was important that OSHA obtain States' views before directing any program changes. The Department said it agreed that States should provide both safety and health consultations; serious hazards should be followed up and should be corrected or referred for enforcement action; the effectiveness of the consultation program should be evaluated; and written reports should be provided to employers. The Department also said that

- promotion is needed to stimulate requests to get consultants into workplaces and that it would not favor limiting promotional efforts;
- rather than request permission, the consultant should inform the employer before the visit that it might be necessary to talk to employees during the visit; and
- its policy is to follow up on all serious hazards identified and that it had conducted 30 such followups between October 1, 1977, and July 1, 1978.

The Department did not agree that effective monitoring of a State consultative program required on-the-job evaluation of consultants. It said that complete case files, comprehensive reports to employers, and interview of the consultant by a competent industrial hygienist monitor would permit systematic audit and evaluation, save time and effort, and avoid possible unfavorable employer reaction to the OSHA enforcement threat.

Our recommendation recognizes the need for systematic monitoring which could include the methods mentioned by Michigan. Such a system, properly implemented, would improve many of the conditions noted in the report. However, we believe that on-the-job evaluations are necessary to validate the results of systematic monitoring. Employers' fear of enforcement action should not prevent implementing measures to evaluate the quality of services already provided by consultants. As stated on page 37, such evaluations need not be made by OSHA but could be made by specially designated State personnel or by private consultants under contract.

North Carolina

North Carolina agreed with our recommendations and said it believed that its program conformed with them. It said that

- although it normally services the oldest requests first, it gives priority to those involving serious hazards or an imminent danger;
- to serve industries with the highest accident incidence rates it must stimulate requests for consultations;
- it provides employers written reports of the consultants' findings;
- it uses North Carolina OSHA's guidelines for classifying violations as serious, follows up to insure they are corrected, and refers to enforcement any that are not corrected;
- supervisors periodically accompany consultants and monitor their performance and review their written reports; and
- the drop in the State's accident incidence rate from 10.1 in 1972 to 7.4 in 1976 is a good indication of the effectiveness of the program.

North Carolina also said that although only 2 of its 13 consultants are industrial hygienists, services are also provided by five industrial hygienists from the Department of Human Resources and that it considers its health consultation program adequate.

Using the industrial hygienist resources of the State's Department of Human Resources can help the State meet the demand for health consultations. However, as stated on page 14, North Carolina's Department of Labor program officials took no action on the results of the referred consultations and generally were not aware of the severity of any hazards detected. If the North Carolina consultation program administered by the State's Department of Labor is to insure that workplace hazards are identified and corrected, it must assure that the same requirements which it follows to insure quality services are also adhered to by those consultants to which it refers health consultations.

West Virginia

West Virginia said that many changes and improvements had occurred in the West Virginia program since our field work. It said that because of these changes

- most of its safety consultants had received training in identifying health hazards,
- a monitoring system was developed, and
- health hazards referred to the Department of Health would be followed up to insure hazards were corrected.

West Virginia also said that it does follow up to insure serious hazards are corrected and that, since we and OSHA had called attention to the need for proper classification of hazards, more hazards are being classified as serious violations.

Wisconsin

Wisconsin believes that OSHA's change in regulations in August 1977 enables it to better deal with many of the matters discussed in the report. Wisconsin said it believed that many of our comments regarding publicity, scope of service, defining and following up on serious violations, and referring uncorrected serious violations to OSHA, which are now being implemented, were neither feasible nor permissible prior to August 1977.

Our review of the pre-August 1977 regulations, however, shows that the States did have authority to follow up on serious violations and to refer serious violations to the OSHA regional office. It appears that Wisconsin misinterpreted the regulations and OSHA did not adequately clarify or require enforcement of them. Similarly, while Wisconsin believed OSHA's definition of a serious violation was different prior to August 1977, it was not. OSHA needs to insure that States understand and follow program requirements.

Wisconsin also said that it evaluates consultants' performance and reports but could use advice on how to evaluate whether the program is helping employers. It said that it does not permit OSHA to review its consultation files because it considers the reports confidential.

Although such reports may be kept confidential, monitors must have access to such files to adequately monitor the State's program. OSHA should specify how its new monitoring system, which is to include case file reviews, will be implemented in Wisconsin.

FUNDING OF STATE CONSULTATIVE SERVICES

<u>State or jurisdiction</u>	<u>Budgeted Federal funding for 1978</u>	
	<u>Contract</u>	<u>Plan</u>
Alabama	\$ 616,624	
Alaska	233,086	
Arizona		\$ 36,235
Arkansas	616,556	
California	1,712,559	
Colorado	167,500	
Connecticut	398,458	
Delaware	98,470	
District of Columbia	185,213	
Hawaii		39,645
Illinois	905,212	
Indiana		77,746
Iowa		8,755
Kansas	155,565	
Kentucky		171,961
Maryland	172,304	
Massachusetts	668,820	
Michigan		925,412
Minnesota		51,787
Nebraska	193,529	
Nevada		42,017
New Jersey	884,894	
New Mexico		22,081
New York	1,611,349	
North Carolina		261,408
Ohio	816,052	
Oklahoma	268,053	
Oregon	354,353	
Puerto Rico		48,498
South Carolina	338,757	
Tennessee		54,298
Texas	831,954	
Vermont		10,319
Virginia	227,630	
Virgin Islands		7,298
Washington		108,058
West Virginia	446,938	
Wisconsin	a/1,180,166	
Wyoming		<u>14,526</u>
Total	b/ <u>\$13,084,042</u>	<u>\$1,880,044</u>

a/The budgeted figure does not include \$362,296 for the 100-percent Federal funding for the Wisconsin laboratory.

b/OSHA projects that actual expenditures will be within the \$9 million congressional spending limitation.

U.S. DEPARTMENT OF LABOR
OFFICE OF THE SECRETARY
OFFICE OF SPECIAL INVESTIGATIONS
WASHINGTON, D.C. 20210



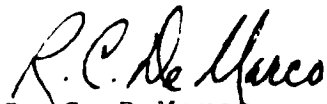
OCT 23 1978

Mr. Gregory J. Ahart
Director
Human Resources Division
U. S. General Accounting Office
Washington, D. C. 20548

Dear Mr. Ahart:

Enclosed, as requested, is the Department of Labor's
response to the draft GAO report, "Workplace Consultation
Program Needs Better Management."

Sincerely,



R. C. DeMarco
Director

Enclosure

The Occupational Safety and Health Administration's Response to the Draft GAO Report, "Workplace Consultation Program Needs Better Management"

The Agency has reviewed the draft report to the Congress on the status of the OSHA program to fund consultation service projects in the fifty States and six other jurisdictions.

Many corrective actions have been initiated by OSHA during and since the period covered by the survey which OSHA hopes will substantially resolve the problems identified in the report. The Agency concurs with many of GAO's conclusions as they reflect the operation of the consultation projects during the time period surveyed.

On-site consultation was initially conducted by many States with approved plans under section 18 of the Occupational Safety and Health Act of 1970. The on-site consultation program in non-Plan States was initiated through Congressional action in fiscal year 1975. These programs have undergone several changes in both regulatory framework and underlying policy direction.

The regulatory revision in August 1977 represents an attempt to alleviate any deficiencies and provide a basic framework for on-site consultation which can be applied to Plan States as well as non-Plan States and private contractors.

OSHA has increased the staff assigned to the consultation program, both nationally and in the regional offices. Interim monitoring procedures have been instituted in the field as a supplement to direct State contacts for program operating information. OSHA believes the non-Plan States are now providing program detail and data sufficient for control monitoring purposes. All non-Plan States now have qualified personnel in the self-monitoring systems required in these States, and they are initiating this activity. In addition, OSHA has embarked on a training (and retraining/upgrading) program for State managers and consultant personnel, and related OSHA personnel, using federally-reimbursed State facilities and resources. Initial training for all consultation personnel in the classification of violations and related policy and procedural issues, as well as communications skills needed for relating to employers with smaller businesses, has already been completed. Training

in abatement technologies, as well as crossover training in health hazards for safety consultants, will be developed and presented during fiscal year 1979.

OSHA has made significant progress towards improving the quality of consultation projects in critical areas, and has planned further action to continue this pattern of improvement. While some diversity among projects may be appropriate, consistency in essential areas among all OSHA-funded consultation projects is being established.

Many of these problems are complex and do not lend themselves to easy solutions. OSHA recognizes that there are additional actions that are necessary to insure the effective operation of the program. For example, early in FY 1979, OSHA will have its improved monitoring plan for the 7(c)(1) consultation program ready for implementation.

OSHA also intends to formally require that the States which are now providing on-site consultation as part of their State Plan programs must include within their operations several of the key program requirements included in 29 CFR 1908. Implementation of these key requirements--regarding promotion, provision of health services, assurance that serious hazards are abated, provision of written reports to employers, and comparability in reporting definitions--combined with an intensification of OSHA monitoring consistent with 29 CFR 1908 will result in significant improvement in State Plan consultation.

OSHA will require private contractor consultation projects to operate a program which parallels the provisions of 29 CFR 1908. This will contribute further to the consistency of OSHA's nationwide consultation effort. OSHA believes a foundation for quality consultation in all States has been provided through the revision of 29 CFR 1908, the development of implementing guidelines, the training of all 7(c)(1) project directors, supervisors and consultants, and the establishment of a means for delivering consultative services.

In summary, the Agency believes that there is a demand for consultative services among smaller businesses, and that OSHA-funded projects and their consultant personnel are well on their way to meeting this demand in a competent and professional manner.

OSHA appreciates the opportunity to comment on this draft report. Attached are additional comments to clarify specific points in the text and/or conclusions of the report.

Supplementary Information Related to the OSHA Response
to the Draft GAO Report on On-Site Consultation

The following discussions pertain to various salient points mentioned by GAO in the text of the report or in the conclusions:

1. Status of Coverage

Since June 30, 1978, arrangements have been made for consultation service in all but two States (Florida and South Dakota). Invitations to private contractors to bid on each of these States will be announced later in 1978. The attached summary, "Anticipated January 1, 1979 Status of On-Site Consultation Projects," indicates the mechanism through which the projects will be funded in each one of the 56 States and jurisdictions. For Guam, American Samoa, and the Trust Territories, a periodic service will be arranged with a private contractor during 1979.

2. Delivery System

The OSHA consultation delivery system consists of a set of state-wide projects, each operated under one of three possible mechanisms: contract, reimbursement agreement, or grant.

The State government usually provides consultation services to employers in each State, under the OSHA system. However, if a State government chooses not to participate in the program, federal OSHA establishes a private contractor-operated project using 100% federal funding.

If a State government chooses to participate, but does not have an approved State Plan under section 18 of the Act, OSHA funds 90 percent of the cost of the project under an agreement with the State pursuant to section 7(c)(1) of the Act and 29 CFR 1908.

In a State with a Plan approved under section 18 of the Act, where performance of a consultation activity had been optional heretofore, the State now may either operate under a 7(c)(1) consultation agreement with 90 percent reimbursement or provide consultation as part of its approved State Plan with up to a 50 percent grant under Section 23(g) of the Act.

During the period of this study, all contracts and 7(c)(1) reimbursement agreements were operated according to the earlier regulatory design in 29 CFR 1908 (May 1975). All Plan States were ineligible for 7(c)(1) funding and agreements, and thus were not required to follow the 1908 regulation. Consultation in these Plan States was designed and performed in accordance with State Plan program policy, and funded through the annual State Plan grant. Therefore, different requirements were applied to Plan and non-Plan States during the period before Fall of 1977. Some Plan States have entered into agreements under 29 CFR 1908. Activities are underway to mandate conformance with the essential requirements of 29 CFR 1908 in those States which still operate consultation projects under their Plans.

3. Generating and Handling Employer Requests

Regulations at 29 CFR 1908 (revised August 1977) and OSHA Program Directives 72-27 and 76-3 establish a framework to be followed by all consultation projects (contractor, State agreement, or State Plan) in determining the priority in which businesses should receive on-site consultation visits. This framework gives priority to smaller businesses, especially those in higher hazard industries.

OSHA is reluctant to require that the consultation project managers construe this framework narrowly, for several reasons.

Funding of these services grew out of Congressional response to the demands of small businesses for assistance in fulfilling their obligations under the Occupational Safety and Health Act. To set arbitrary limits on either the employer establishment size permitted or the degree of hazardousness expected in establishments in order that they may receive consultative assistance would preclude an adequate response to the very demand which generated the consultation program itself.

Congress clearly indicated in the FY 1978 continuing resolution for the Department that OSHA must fund consultation for small businesses. It is clear that no small business can be excluded automatically from consultative assistance because it is not in a high-hazard industry.

In addition, OSHA does not believe that it is required or directed to define what "small business" the Congress intended, or to set an employment size limit which would exclude requests from "large" employers, many of whom meet the definitions of "small business" established by the Small Business Administration. Clearly, any attempt by OSHA to set a numerical cut-off, or even to consider doing so, would generate countless challenges from all sides, a resource-consuming and counterproductive program strategy.

OSHA believes that any employer requesting on-site consultation must be considered as eligible to receive it; it is the priority system which will make the practical determination as to when and how the request can best be serviced.

Since federal OSHA does not receive these employer requests, the manager(s) in each consultation project must be relied upon to properly determine the priority which should be allotted to each request for assistance. Within the number of actual requests received, each request can be prioritized only in relation to every other request already in receipt by that project.

The priority determination will be monitored by OSHA in terms of the relative size and hazardousness of each requesting business, the latter consideration including both an informal industry hazardousness ranking (derived from statistical survey data) and the seriousness and specificity of the workplace problem described in the request by the employer involved.

It is clear, therefore, that the number and characteristics of the establishments requesting service determine the general size and hazardousness of the establishments receiving service. There appears to be no other result possible in an "on-request" demand service.

OSHA does, however, expect the States to attempt to influence the size and hazardousness of the businesses which request their services through their promotional programs. OSHA believes that its provisions related to the stimulation of employer requests are quite clear. States may stimulate

demand to the extent that unsolicited requests do not provide for efficient utilization of personnel resources currently assigned to the project. A State should not generate a backlog of requests which would pressure the Agency or the Congress to add unanticipated and unbudgeted funds to the project or to the program as a whole.

OSHA agrees that all publicity and outreach activities, when undertaken, must attempt to reach employers whose requests would receive higher priority, i.e., smaller businesses in high-hazard situations. The 7(c)(1) project managers are aware, and OSHA will inform them again in written guidelines now being prepared, that the promotional efforts now authorized are to be directed primarily toward small establishments, especially those in high-hazard industries. Since experience to date has demonstrated the need to use promotional methods carefully, emphasis will also be placed, as OSHA has been doing, on improved project efficiency, and on consultant thoroughness in completing each on-site visit undertaken.

Since OSHA will be responsible for promotion in States serviced by the private contract firms, this pattern should be assured in those States, to the extent that this can be accomplished through promotional efforts.

In States providing consultation as part of their State Plans, OSHA's monitoring of this activity will be consistent with the requirements for the federal program described in 29 CFR 1908.

4. Scope of On-Site Consultation Visits

Consultation regulations (29 CFR 1908.4 and .5) clearly require that the on-site visit focus primarily on those conditions, hazards or situations described by the employer when making the request. However, the smaller the business is, the less specific the employer must be in detailing his request. It is common practice, endorsed by OSHA, for consultants to encourage employers, especially those with small businesses, to request a comprehensive review of their operations.

OSHA will monitor project operations and records to assure that the level of assistance provided by each consultant adequately reflects the scope of the employer's request.

However, OSHA continues to believe that the employer should be allowed to make the decision regarding scope based on a clear understanding of his rights and responsibilities under the applicable federal or State legislation and the program design and regulations.

5. Level of Service in Safety and Health

As indicated in the study, OSHA is committed to increasing the health and industrial hygiene capability in all of the projects.

This effort is conditioned by limits to resources and by the limited pool of available qualified personnel. In State consultation projects, State personnel ceilings and other resource limitations can be complicating factors. In most of these projects, OSHA is successfully moving towards a reasonable level of safety and health services, and is continuing to take action to assure an adequate safety and health ratio in each project.

In States serviced by private contractors, the level of safety and health services has been predetermined by federal OSHA and is required in the contracts.

In 7(c)(1) projects, where the full range of industrial hygiene practice (performed in consonance with federal OSHA inspection techniques and procedures) was authorized only in August of 1977, OSHA annually reviews the targeted ratios of safety and health personnel effort established by the OSHA Regional Administrators to assure their appropriateness. Once satisfied that appropriate targets have been established, OSHA has been taking feasible actions available to it to assist and assure that the targets are met.

In FY 1979, "cross-training" in basic health and industrial hygiene principles and practices will be provided specifically for 7(c)(1) safety consultants. Similar training in the basics of safety will be provided for industrial hygiene consultants. While such training will not enable safety or health consultants to substitute for one another, it will increase their ability to recognize those hazards which require the expertise of the other discipline.

In addition, 7(c)(1) project consultants will begin a program of retraining and upgrading of qualifications and practical workplace technology and applications within their specific professional skill area.

Because section 18(b) of the Act does not require consultative services as part of a State Plan, OSHA has not enforced a fixed service level in the consultation projects operated under these Plans. In view of the Congressional mandate to provide for consultation in every State, OSHA will require that a reasonable ratio of health to safety services be established in all consultation activities operated as part of a State Plan and receiving federal OSHA funding.

6. Written Reports to Employers

States providing consultation as part of their State Plans will be required to provide a written report of the results of the on-site visit to the employer, including all consultant findings--similar to the report required of projects operating under 29 CFR 1908.5(g).

7. Assuring Serious Hazard Elimination

All 7(c)(1) project managers, supervisors and consultants have just completed training in the requirements of 29 CFR 1908 (revised August 1977) and in the application of draft guidelines for implementation of this regulation. This training has specifically addressed both the need to properly classify the hazards discovered in the course of a consultative visit and each consultant's responsibility to assure that any hazardous situation which would be classified as a serious violation is eliminated (or controlled) in a timely manner. Consultant performance in this vital area should improve significantly.

In fairness to the States and their consultants, however, it should be stated here that the revised federal OSHA enforcement system for classifying violations (Program Directive #200-54) was signed on December 17, 1976, with field compliance training completed in January 1977. Consultants were not trained in the revision because the 1908 regulation contained differing definitions, the subject was a matter of contention between the States and federal OSHA, and the 1908 regulation was in the process of being revised.

The 7(c)(1) projects operated under a slightly different set of definitions than did the OSHA enforcement staff during the period surveyed by the GAO. Under the August 1977 revision to the regulation, these definitions now conform,

and the OSHA monitoring system now includes a thorough review of case files to assure proper hazard classification and consultant follow-through to assure hazard elimination or control.

In addition, at the time of the GAO study, not all Plan States had adopted OSHA's violation classification criteria or other acceptable criteria. The State Plan regulations allow and require a certain time period for these States to review and accept, or institute another acceptable procedure for, any federal OSHA program change. All Plan States except one have now done so, or have indicated their intention to do so. OSHA is working with the remaining State to secure its adoption of an acceptable procedure. OSHA will require the States providing consultation as part of their State Plans to base their classification of hazards on the same criteria they use in their enforcement inspections.

As indicated below, monitoring of consultation provided as part of State Plans will be intensified. OSHA monitors will check on the adequacy of hazard classification practices and follow-through actions to assure proper hazard elimination or control.

Private firm contractors are already required to follow the procedures set forth in 29 CFR 1908. This area will be closely monitored to assure conformance in actual operations.

8. Project and Consultant Monitoring

Interim 7(c)(1) monitoring procedures have been instituted in the field by the new staff assigned consultation-related responsibilities in the OSHA regional offices. This activity will supplement the direct State contacts used in the past for developing program operating information. The non-Plan States are now providing program detail and data sufficient for control monitoring purposes, above and beyond that which has been customarily required by OSHA as part of the regular review of State vouchers for reimbursement.

Early in FY 1979, OSHA will implement a more comprehensive monitoring system covering the operations of all 7(c)(1) and private contractor consultation projects. This will include thorough training of national, regional and project staffs in October and November. The new system will rely heavily on three activities: federally-sponsored skill training for

consultants, a large monitoring workload at the OSHA regional office level, and the integration of all reporting and data producing activities of projects into a single, routinized monitoring operation.

Central to the new system is the attempt to answer the problem presented by the practical inability of federal OSHA staff to accompany consultants in non-Plan States during the on-site visits. The on-site performance of individual consultants will generally be monitored by the State twice yearly using project personnel specifically selected and trained for this purpose. All non-Plan States have hired or placed expert personnel into the self-monitoring components required in these States, and are beginning to initiate this essential activity in advance of the forthcoming OSHA instruction. The projects will report to OSHA regional offices on the findings these special monitors make during their observation of the actual conduct of workplace visits.

In those few projects which may have too few consultants to justify the employment of a monitor, OSHA may utilize a private contractor to do this on-site performance monitoring of project consultants. This firm will be monitoring the performance of the private contractor consultants in States where the State does not participate in the program, and will be assisting in other one-time monitoring activities in other projects.

Regional OSHA staff will complement these efforts through continuous contacts with project managers and through periodic visits to each project. They will review the adequacy of project (or State) systems and procedures and consultant case files. They will also analyze program performance data routinely submitted to the regional offices by the projects. Immediate corrective action will be required for any inadequacies identified through monitoring.

OSHA believes that this combination of approaches, when operational and seen in the context of the entire monitoring system, will offer an adequate basis for judging and guiding the performance of the project consultants.

In States providing consultation as part of their State Plans, current OSHA monitoring will be intensified to assure the adequacy of project and consultant performance in conformance with the essential provisions of 29 CFR 1908. In addition, the Plan States will be required to organize and present their program performance data for on-site consultation services in a manner which is compatible with the definitions and reporting required in projects operating under 29 CFR 1908.

9. Evaluation of Program Impact

OSHA is pleased that GAO representatives found employers generally satisfied with the consultative services being provided by the State projects at the time of the study. This finding indicates that these services are meeting a major program objective, i.e., to adequately respond to the plea of smaller businesses for assistance in understanding and meeting their responsibilities under the Occupational Safety and Health Act. For this reason, OSHA plans to continue using employer satisfaction as one measure of the effectiveness of these projects.

A broad and substantial evaluation of the impact of all OSHA-funded consultation projects is to be designed by OSHA's Office of Policy Analysis, Integration and Evaluation in fiscal year 1979. OSHA believes that by FY 1980 a large-scale evaluation could be implemented to assess the impact of the consultative services that became operational nationwide in October 1978.

This evaluation of the on-site consultation projects will be based on the two main objectives in the consultation program operation: effectively helping employers to comply with the OSHA standards voluntarily, and effectively increasing the protection levels for all workers involved.

10. Summary

OSHA leadership believes that the demand for consultative services among smaller businesses is significant, that the OSHA program service design concepts are valid, and that OSHA-funded projects and their consultant personnel are well on their way to meeting this demand in a competent and professional manner.

OSHA has provided a solid foundation for quality consultation in all States through the revision of 29 CFR 1908, the development of implementing guidelines, the training of all 7(c)(1) project directors, supervisors and consultants, and the establishment of a means for delivering consultative services in every State.

OSHA believes the plans discussed above for building upon this foundation in 7(c)(1) projects--in relation to program promotion, expansion of health-related services, and establishment of monitoring procedures and routines--will substantially strengthen the 7(c)(1) projects.

The upcoming extension of several key program requirements in 29 CFR 1908 to States providing consultation as part of their State Plans--regarding promotion, provision of health services, assurance that serious hazards are abated, provision of written reports to employers, and comparability in reporting definitions--together with the intensification of OSHA monitoring in these States in relation to the program design in 29 CFR 1908, will encourage significant improvement in these projects as well.

The performance of private contractor consultation services according to the requirements of 29 CFR 1908 will contribute further to the strength and consistency of OSHA's national consultation effort.

The Agency appreciates having had the opportunity to review this draft report and to submit information related to it.

ANTICIPATED JANUARY 1, 1979 STATUS OF OSHA-FUNDED ON-SITE CONSULTATION PROJECTS

<u>DIRECT CONTRACTS WITH PRIVATE FIRMS</u>	<u>7(c)(1) AGREEMENTS WITH NON-PLAN STATES</u>	<u>18(b) PLAN STATES</u>	<u>23(g) GRANTS TO 18(b) PLAN STATES</u>
American Samoa *	Alabama	Alaska	Arizona
Florida **	Arkansas	California	Hawaii
Guam *	Colorado	Iowa	Indiana
Idaho	Connecticut	Oregon	Kentucky
Louisiana	Delaware	South Carolina	Maryland
Missouri	Dist. of Columbia	Utah	Michigan
New Hampshire	Georgia	Virginia	Minnesota
Pennsylvania	Illinois		New Mexico
South Dakota **	Kansas		Nevada
Trust Territory *	Maine		North Carolina
	Massachusetts		Puerto Rico
	Mississippi		Tennessee
	Montana		Vermont
	Nebraska		Virgin Islands
	New Jersey		Washington
	New York		Wyoming
	North Dakota		
	Ohio		
	Oklahoma		
	Rhode Island		
	Texas		
	West Virginia		
	Wisconsin		
<hr/>	<hr/>	<hr/>	<hr/>
TOTAL = 10	TOTAL = 23	TOTAL = 7	TOTAL = 16
<hr/>	<hr/>	<hr/>	<hr/>

* Will be announced for bids in Second Quarter FY 1979
 ** Will have been announced in First Quarter FY 1979

(OSHA/9-26-78)

GAO REPORTS TO THE CONGRESSON RELATED SUBJECTS

1. "States' Protection of Workers Needs Improvement" (HRD-76-161, Sept. 9, 1976).
2. "Sporadic Workplace Inspections For Lethal and Other Serious Health Hazards" (HRD-77-143, Apr. 5, 1978).
3. "Health Hazard Evaluation Program Needs Improvement" (HRD-78-13, May 18, 1978).
4. "Workplace Inspection Program Weak In Detecting and Correcting Serious Hazards" (HRD-78-34, May 19, 1978).

(20669)

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