

Innovation, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, (202) 502-8931, [Caroline.Daly@ferc.gov](mailto:Caroline.Daly@ferc.gov).  
Helen Dyson (Legal Information), Office of the General Counsel, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, (202) 502-8856, [helen.dyson@ferc.gov](mailto:helen.dyson@ferc.gov).

#### SUPPLEMENTARY INFORMATION:

#### Supplemental Notice of Technical Conference and Notice of Comment Date

- August 27, 2010

Take notice that on September 13, 2010, the Federal Energy Regulatory Commission will convene a staff-led technical conference regarding two issues pertaining to demand response compensation, as previously announced: (1) If the Commission were to adopt a net benefits test for determining when to compensate demand response providers, what, if any, requirements should apply to the methods for determining net benefits; and (2) what, if any, requirements should apply to how the costs of demand response are allocated.<sup>1</sup> Comments concerning matters addressed at the technical conference and other issues related to this proceeding are due on or before October 13, 2010. Details concerning the technical conference and comment procedures are set forth below.

#### I. Technical Conference

The technical conference will be held on September 13, 2010, starting at 9 a.m. (EST), in the Commission Meeting Room at the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. The conference will be open for the public to attend and advance registration is not required. Members of the Commission may attend the conference.

As indicated in the Supplemental NOPR, the panelists are invited to discuss their views on the possible adoption of a net benefits test, including the methodologies for determining net benefits, and a methodology for allocating the costs of demand response.

In addition to the above-referenced issues and other matters directly

<sup>1</sup> *Demand Response Compensation in Organized Wholesale Energy Markets, Notice of Proposed Rulemaking*, 75 FR 15,362, 130 FERC ¶ 61,213 (issued March 18, 2010), as supplemented by *Supplemental Notice of Proposed Rulemaking and Notice of Technical Conference (Supplemental Notice)*, 75 FR 47,499, 132 FERC ¶ 61,094 (issued August 2, 2010). As stated in the *Supplemental Notice*, comments are due within 30 days of the date of the technical conference. *Supplemental Notice* P 19.

relevant to this proceeding, discussions at the public technical conference may relate to matters pending in the following additional proceedings: Docket No. ER10-765-000, California Independent System Operator, Inc. (CAISO); and Docket Nos. ER09-1049-000, ER09-1049-002, and ER09-1049-003, Midwest Independent System Operator, Inc.

The agenda for this conference is attached. If any changes occur, the revised agenda will be posted on the Calendar of Events page on the Commission's Web site, <http://www.ferc.gov>, prior to the event. To ensure that all speakers have an opportunity to address the issues, and to have ample time for discussion, speakers are asked to limit their opening remarks to five minutes. Speakers are requested to file their opening remarks in this docket and to bring 30 copies to the conference.

Transcripts of the conference will be available immediately for a fee from Ace Reporting Company (202-347-3700 or 1-800-336-6646). They will be available for free on the Commission's eLibrary system and on the Calendar of Events approximately one week after the conference.

A free Webcast of the technical conference in this proceeding will be available. Anyone with Internet access interested in viewing this conference can do so by navigating to <http://www.ferc.gov>'s Calendar of Events and locating the appropriate event in the Calendar. The Calendar of Events will contain a link to the applicable Webcast option. The Capitol Connection provides technical support for the Webcasts and offers the option of listening to the conferences via phone-bridge for a fee. If you have any questions, visit <http://www.CapitolConnection.org> or call (703) 993-3100.

Commission conferences are accessible under section 508 of the Rehabilitation Act of 1973. For accessibility accommodations, please send an e-mail to [accessibility@ferc.gov](mailto:accessibility@ferc.gov) or call toll free 1-866-208-3372 (voice) or 202-208-1659 (TTY), or send a FAX to 202-208-2106 with the required accommodations.

For more information about the technical conference or comment procedures, please contact:

David Hunger (Technical Information), Office of Energy Policy and Innovation, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, (202) 502-8148, [David.Hunger@ferc.gov](mailto:David.Hunger@ferc.gov).  
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Kimberly D. Bose,  
Secretary.

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#### DEPARTMENT OF LABOR

#### Occupational Safety and Health Administration

#### 29 CFR Part 1908

[Docket No. OSHA-2010-0010]

RIN 1218-AC32

#### Consultation Agreements: Proposed Changes to Consultation Procedures

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

ACTION: Proposed rule.

**SUMMARY:** OSHA is proposing to revise its regulations for the federally-funded On-site Consultation Program to: Clarify the ability of the Assistant Secretary to define sites which would receive inspections regardless of Safety and Health Achievement and Recognition Program (SHARP) exemption status; allow Compliance Safety and Health Officers to proceed with enforcement visits resulting from referrals at sites undergoing Consultation visits and at sites that have been awarded SHARP status; and, limit the deletion period from OSHA's programmed inspection schedule for those employers participating in the SHARP program.

**DATES:** Written comments must be submitted on or before November 2, 2010.

**ADDRESSES:** *Written comments:* You may submit comments, identified by docket number OSHA-2010-0010, or regulatory information number (RIN) 1218-AC32, by any of the following methods:

*Electronically:* You may submit comments, and attachments electronically at <http://www.regulations.gov>, which is the Federal eRulemaking Portal. Follow the instructions on-line for making electronic submissions;

*Fax:* If your submission, including attachments, does not exceed 10 pages,

you may fax them to the OSHA Docket Office at (202) 693-1648; or

*Mail, hand delivery, express mail, messenger or courier service:* You must submit your comments, and attachments to the OSHA Docket Office, Docket Number OSHA-2010-0010, U.S. Department of Labor, Room N-2625, 200 Constitution Avenue, NW., Washington, DC 20210; telephone (202) 693-2350 (OSHA's TTY number is (877) 889-5627). Deliveries (hand, express mail, messenger and courier service) are accepted during the Department of Labor's and Docket Office's normal business hours, 8:15 a.m.-4:45 p.m., *e.t.*

*Instructions for submitting comments:* All submissions must include the docket number (Docket No. OSHA-2010-0010) or the RIN number (RIN 1218-AC32) for this rulemaking. Because of security-related procedures, submission by regular mail may result in significant delay. Please contact the OSHA Docket Office for information about security procedures for making submissions by hand delivery, express delivery and messenger or courier service.

All comments, including any personal information you provide, are placed in the public docket without change and may be made available online at <http://www.regulations.gov>. Therefore, OSHA cautions you about submitting personal information such as social security numbers and birthdates. For further information on submitting comments, plus additional information on the rulemaking process, see the "Public Participation" heading in the **SUPPLEMENTARY INFORMATION** section of this notice.

*Docket:* To read or download submissions in response to this **Federal Register** notice, go to docket number OSHA-2010-0010, at <http://www.regulations.gov>. All submissions are listed in the <http://www.regulations.gov> index, however some information (*e.g.*, copyrighted material) is not publicly available to read or download through that Web page. All submissions, including copyrighted material, are available for inspection and copying at the OSHA Docket Office.

Electronic copies of this **Federal Register** document are available at <http://www.regulations.gov>. This document as well as news releases and other relevant information, is available at OSHA's Web page at <http://www.osha.gov>.

**FOR FURTHER INFORMATION CONTACT:** For press inquiries: MaryAnn Garrahan, Acting Director, OSHA, Office of Communications, Room N-3647, U.S.

Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210; telephone (202) 693-1999. *For general and technical information:* Steven F. Witt, Director, OSHA Directorate of Cooperative and State Programs, Room N-3700, U.S. Department of Labor 200 Constitution Avenue, NW., Washington DC 20210; telephone: (202) 693-2200.

#### **SUPPLEMENTARY INFORMATION:**

##### **I. Background: The OSHA On-Site Consultation Program**

The Occupational Safety and Health Administration (OSHA), through cooperative agreements with agencies in 48 states, the District of Columbia and several U.S. territories, administers and provides Federal funding for the On-site Consultation Program. In the states of Kentucky and Washington, and in the Commonwealth of Puerto Rico, on-site consultation services are provided to employers in the private sector as part of an OSHA-approved state plan funded by Federal grants under section 23(g) of the Occupational Safety and Health (OSH) Act. The On-site Consultation Program provides well-trained professional safety and health personnel, at no cost and upon request of an employer, to conduct worksite visits to identify occupational hazards and provide advice on compliance with OSHA regulations and standards. Priority in providing on-site consultation visits is accorded to smaller employers in more hazardous industries.

The On-site Consultation Program was first authorized by Congressional appropriations action in 1974. On July 16, 1998, The On-site Consultation Program was codified as a new subsection of 21(d) of the Occupational Safety and Health Act with the enactment of the Occupational Safety and Health Administration Compliance Assistance Authorization Act (CAAA), Public Law 105-197. OSHA's On-site Consultation Program is administered in accordance with regulations at § 1908. These regulations provide, among other things, rules and procedures for State consultants performing worksite visits. Following the successful completion of an on-site consultation visit, employers may seek to participate in *OSHA Consultation's SHARP (Safety and Health Achievement Recognition Program)*. The program recognizes employers who have demonstrated exemplary achievements in workplace safety and health by receiving a comprehensive safety and health consultation visit, correcting all workplace safety and health hazards, adopting and implementing effective

safety and health management systems, and agreeing to request further consultative visits if major changes in working conditions or processes occur that may introduce new hazards. Part 1908 currently allows employers meeting these specific program requirements an exemption from programmed OSHA inspections for one year.

In this **Federal Register** notice, OSHA proposes revisions to these rules and procedures, as well as poses questions, and requests interested members of the public to submit any data, views, or arguments relevant to these proposed changes, during a 60-day public comment period.

##### **II. Proposed Changes to 29 CFR Part 1908**

###### *Revisions Delineating the Relationship With OSHA Enforcement*

###### 1. Other Critical Inspections

Under current § 1908.7(b)(4)(ii), although worksites granted Safety and Health Achievement Recognition Program (SHARP) status and those working towards achieving SHARP status (Pre-SHARP) are either deleted or deferred from the programmed inspection lists, they are still eligible for non-programmed inspections in the following categories:

- A. Imminent danger.
- B. Fatality/Catastrophe.
- C. Formal Complaints.

At times, however, special circumstances may make it necessary to conduct an inspection or investigation at an establishment ordinarily exempt because of the employer's participation in the OSHA On-site Consultation Program. One such situation might arise in connection with workplace accidents that generate widespread public concern about a particular hazard or substance. As part of a national response to these hazards, OSHA may need to conduct programmed inspections of all sites within a specific industry. An onsite OSHA investigation might also be appropriate in the rare circumstance where a subsequent accident or other event at a particular establishment makes it advisable for OSHA to revisit the site. For this reason OSHA is proposing the addition of a fourth category, "other critical inspections as determined by the Assistant Secretary," to the list of permissible inspections for worksites which have otherwise been deleted or deferred from programmed inspection lists as a result of SHARP or Pre-SHARP participation. Although Section 21(d) does not contain an explicit exception to allow for programmed inspections under these

circumstances, it does allow OSHA discretion related to programmed exceptions by stating that an employer "may" be exempt from an inspection if the employer meets the criteria for recognition and exemption delineated by the statute. This addition is also consistent with current requirements of part 1908, as this particular exception already exists in § 1908.7(b)(2)(iv), which provides the same criteria for termination of an "in progress" consultation visit. It is not possible to define or predict every circumstance where an investigation may be necessary at a site that is deferred or deleted from OSHA's programmed inspection lists as a result of consultation activity; accordingly, the exception is worded in very general terms. To ensure this exception is applied only in exceptional circumstances where an onsite investigation is clearly warranted, such investigations must be approved by the Assistant Secretary.

In addition, current § 1908.7(b)(2) is internally inconsistent with the provisions related to pre-SHARP and SHARP in its use of the term "Complaints" as opposed to "Formal Complaints" used in current § 1908.7(b)(4)(ii) when describing the categories in which an employer with an in-progress consultation visit may be subject to termination of the visit and a subsequent enforcement inspection. While such distinctions do exist between the terms "Formal Complaints" and "Complaints," OSHA general enforcement policy treats all types of complaints in a similar fashion. As a result, OSHA does not need to distinguish between Formal Complaints and Complaints when ascertaining the need to interrupt "in progress" or SHARP visits. Therefore, for consistency, OSHA is proposing to use the same language and descriptions for the interruptions to all consultation visits.

## 2. Referrals

OSHA proposes to add a new category which will allow for termination of an in-progress onsite consultative visit, as well as enforcement inspections at worksites that are otherwise in pre-SHARP or SHARP status. Under the current provisions of part 1908, enforcement activity may be initiated under the following categories:

- (i) Imminent danger investigations;
- (ii) Fatality/catastrophe investigations;
- (iii) Complaint investigations;
- (iv) Other critical inspections as determined by the Assistant Secretary.

Current OSHA enforcement policy allows inspections to be initiated following a referral and are considered a type of non-programmed inspection, similar to a complaint. In some instances, referrals may identify hazards or suspected hazards that will necessitate termination of consultation activity to allow for a non-programmed enforcement inspection of that particular worksite. With this change, referrals will now be a basis to initiate enforcement activity at worksites subject to deferrals or deletions from programmed inspections as a result of either an in progress consultation visit, or a worksite in pre-SHARP or SHARP status. As a result of the above changes, unprogrammed inspections will be treated consistently for "in progress" interruptions and interruptions of SHARP and Pre-SHARP status, and will occur at the discretion of the Regional Administrator (RA).

## 3. Removal From Programmed Inspection Schedules

OSHA is proposing to revise paragraph § 1908.7(b)(4), *Programmed Inspection Schedule*, to change the deletion period from OSHA's programmed inspections list. The regulation currently states that employers will have their names removed from OSHA's programmed inspection schedule for a period of "not less than one year." Today's proposed rule would amend the wording in part 1908 to more closely conform to the exemption period prescribed by section 21(d) of the Occupational Safety and Health Act, and would provide that an employer that meets the requirements set forth in section 21(d) will have the name of its establishment removed from the general schedule inspection list for a period of one year.

The proposed rule would also address the issue of inspection exemptions beyond one year. While 21(d) authorizes a one-year exemption for a consultation participant that successfully meets the listed criteria, OSHA retains wide discretion under other provisions of the OSH Act to set priorities and establish inspection schedules. Section 8(g) of the Act empowers OSHA to issue rules and regulations dealing with the inspection of work establishments. *Department of Labor v. Kast Metals Corp.* 744 F.2d 1145, 1151 (5th Cir. 1984). The agency will never have sufficient staff to inspect every establishment, and has authority under the OSH Act to schedule programmed inspections in a way that makes efficient use of its compliance resources where they can have the greatest impact on worker safety. *Industrial Steel Prod. Co. v.*

*OSHA*, 845 F.2d 1330, 1331 (5th Cir. 1988). Rearranging the priority of particular establishments within an inspection plan is reasonable and permissible "because it furthers OSHA's legitimate goal of efficient resource allocation." *Id.* Many specialized inspection plans developed by OSHA, such as National Emphasis Programs, require investigation of hazards that potentially exist at many thousands of establishments across the country. Having the resources to conduct only a finite number of programmed inspections, OSHA must direct its resources to those establishments most likely to present uncorrected hazards. Thus, for example, instead of inspecting a facility that has had a wall-to-wall visit by an On-site Consultation professional in the past two years, OSHA may reasonably decide to inspect an establishment that has had no OSHA intervention of any kind. Accordingly, existing policy allows for deletion periods extending beyond one year.

While acknowledging OSHA's lawful discretion to establish inspection programs that provide for deletions from the programmed inspection schedule beyond the basic one-year programmed inspection deletion under 21(d), the proposed rule would place a one-year limit on such additional deletions. An employer's fulfillment of the SHARP participation requirements involve completing all the steps described in 21(d), a process that can take three years or more. Small businesses, which are the focus of the consultation program, are extremely dynamic and changeable. Small enterprises can more quickly change their operations, equipment and safety procedures without the investment of time and materials that a larger business might require.

OSHA recognizes that employer participation in voluntary programs such as SHARP contributes greatly to the statutory goal of eliminating hazards, and enables the agency to better allocate its scarce compliance resources. However, it is also important that OSHA retain authority to conduct programmed inspections, and that establishments be aware they may be the subject of such an inspection. Such awareness may itself be an incentive for vigorous compliance efforts. *See Reich v. OSHRC*, 102 F.3d 1200, 1203 (11th Cir. 1997). On balance, OSHA believes that, after the expiration of the one-year inspection exemption provided under 21(d), the name of an establishment may be deleted from the programmed inspection schedule for no more than one additional year.

#### 4. Clarification of Terminology

Along with the changes proposed above, OSHA also wishes to clarify terminology used in Part 1908. Thus, the types of enforcement exemptions for which a worksite may be eligible after receiving a safety and health consultation visit should be defined and described in the same terminology used in the Site Specific Targeting (SST) and other OSHA enforcement guidance. OSHA is proposing, for consistency with terminology used in enforcement programs such as the SST, to use the terms “deferral” and “deletion” when describing exemptions from programmed inspections. Any deferrals and deletions are subject to the time periods specified in the proposal and not limited by inspection lists under the SST.

### III. Preliminary Economic Analysis

OSHA’s On-site Consultation Program is voluntary, both for employers who seek this no-cost service and for States that provide it. The goal of the proposed revisions to existing Consultation Agreement regulations is to: (a) Clarify the ability of the Assistant Secretary to define sites which would receive inspections regardless of Safety and Health Achievement and Recognition Program (SHARP) exemption status; (b) allow Compliance Safety and Health Officers to proceed with enforcement visits resulting from referrals at sites undergoing Consultation visits and at sites that have been awarded SHARP status; (c) limit the deletion period from OSHA’s programmed inspection schedule for those employers participating in the SHARP program. OSHA finds that the proposed revisions will not impose any new cost on affected employers.

The Agency has not quantified the potential cost reductions to employers or benefits to employees from the proposed revisions to the existing rule. The Agency has preliminarily concluded that no additional costs will be imposed on employers who choose to utilize State On-site Consultation project services and, therefore, no adverse economic impact on those employers is foreseen.

### IV. Executive Order 12866

In terms of economic impact, the rule being proposed does not constitute an economically significant regulation within the meaning of Executive Order 12866, because it does not have an annual effect on the economy of \$100 million or more; materially affect any single sector of the economy; interfere with the programs of other Agencies;

materially affect the budgetary impact of grant or entitlement programs; nor result in other adverse effects of the kind specified in the Executive Order.

### V. Regulatory Flexibility Act Certification

The On-site Consultation Program is designed to aid small employers, the same population identified for the protections of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*). Since the proposed revisions do not impose new costs on small employers, the Assistant Secretary certifies that the regulation will not have a significant economic impact on a substantial number of small entities. Participation in the On-site Consultation Program both by States and employers is voluntary. State agencies that have elected to furnish On-site Consultation services under cooperative agreements with OSHA are not covered entities under the RFA. Since the On-site Consultation Program is historically targeted to small, high-hazard workplaces, employers affected by the rule would tend to include a substantial number of small entities, but, as indicated in the foregoing discussion of regulatory impacts, the proposal should have no measurable economic impact on employers.

### VI. Environmental Impact

The proposed standard has been reviewed in accordance with the requirements of the National Environmental Policy Act (NEPA) of 1969 (42 U.S.C. 4321 *et seq.*), the regulations of the Council on Environmental Quality (CEQ) (40 CFR part 1500), and Department of Labor (DOL) NEPA Procedures (29 CFR part 11). The provisions of the rule focus on policies pertaining to exemptions from programmed OSHA inspections. Consequently, no major negative impact associated with the rule is foreseen on air, water or soil quality, plant or animal life, the use of land or other aspects of the environment.

### VII. Unfunded Mandates

For the purposes of the Unfunded Mandates Reform Act of 1995, as well as Executive Order 12875, this proposed rule does not include any Federal mandate that may result in increased expenditures by State, local, and/or tribal governments, or increased expenditures by the private sector of more than \$100 million in any year.

### VIII. Paperwork Reduction Act

After a thorough analysis of the proposed revisions to part 1908, OSHA believes that the proposal imposes no

new collection-of-information requirements (*i.e.*, paperwork). The current collections-of-information for On-site Consultation Agreements (part 1908) are approved under Office of Management and Budget Control Number 1218–0110.

The proposed rule clarifies the ability of the Assistant Secretary to define sites which would receive inspections, allows referrals to initiate inspections at sites that are currently undergoing a consultative visit, and asks the question as to how long a deletion period from the programmed OSHA inspection schedule for those employers working towards or participating in OSHA’s recognition and exemption program should last.

On-site Consultation Program visits generally impose no paperwork requirements on employers. Specifically, all that is asked of the employer is that the employer agrees to correct all serious hazards identified during the inspection and post a list of serious hazards identified during the visit. Alternatively (as noted in the On-site Consultation Agreements’ approved collection of information package 1218–0110), there is a paperwork burden on the State Consultation Projects. However, the paperwork burden on the States comes from the On-site Consultation visit process. The proposed changes to Part 1908 will not affect the consultation process, but rather only the benefits of the program to employers. As a result, since the consultation process remains exactly the same, no new or additional paperwork burden will be imposed on the States as a result of the proposed changes to the rule.

Interested parties who wish to comment on OSHA’s determination that this proposal contains no additional paperwork requirements must send their written comments to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for OSHA, Office of Management and Budget, Room 10235, 726 Jackson Place, NW., Washington, DC 20503. Parties are also encouraged to submit their comments on this paperwork determination to OSHA along with any other comments on the proposed rule.

### IX. Federalism

The proposed revisions to part 1908 have been reviewed under Executive Order 12612, Federalism (52 FR 41685; October 30, 1987), which sets forth fundamental federalism principles, federalism policymaking criteria, and provides for consultation by Federal agencies with state or local governments when policies are being formulated

which potentially affect them. Federal OSHA meets regularly with representatives of state-operated On-site Consultation Programs, both individually and at meetings of the National Association of Occupational Safety and Health Consultation Programs (OSHCON). OSHA also maintains extensive and frequent communications with its State Plan partner agencies, both individual States and through the Occupational Safety and Health State Plan Association (OSHSPA), the association of State Plan States. The issues covered by the proposed revisions to part 1908 have been discussed with the States. The States also have an opportunity to submit comments during the 60-day public comment period.

The revisions to part 1908 being proposed are generally consistent with the requirements and procedures under which OSHA and the States have administered the On-site Consultation Program for many years. OSHA has reviewed the proposed revisions and finds them to be consistent with the policymaking criteria outlined in Executive Order 12612. It should be noted that cooperative agreements pursuant to section 21(d) of the OSH Act, and State Plans submitted and approved under section 18 of the Act, are entirely voluntary Federal programs which do not involve imposition of an intergovernmental mandate [2 U.S.C. 1502, 658(5)]. Under § 1908.1(c) States and territories operating approved Plans under section 18 of the Act shall, in accordance with sections 18(b) and 18(c)(2), establish enforcement policies applicable to the safety and health issues covered by the State Plan, which are at least as effective as the enforcement policies established by this part, including: (1) A recognition and exemption program, (2) inspection deferral policies for employers working to achieve recognition and exemption status, and (3) policies for continuing inspections.

#### X. Public Participation

Interested persons including State Consultation agencies, employers and employees who have experience with or an interest in the On-site Consultation Program are invited to submit written data, views and arguments with respect to the proposed amendments part 1908 during a 60-day public comment period. OSHA is interested, among other things, in the experiences of State Consultation agencies and other affected parties regarding the following matters:

—How would allowing the Assistant Secretary to define sites which would

receive inspections regardless of SHARP status affect the willingness of employers to seek SHARP recognition?

—How would including referrals as a reason to interrupt Consultation visits affect employers' willingness to seek On-site Consultation Program services?

—How would limiting the deletion period from the programmed inspection list for employers achieving SHARP affect the On-site Consultation Program?

—What would be the implications of eliminating the awarding of deferrals for those working to achieve SHARP recognition status?

—Are there different resource implications dependent on the length of the deletion period?

Comments must be received on or before November 2, 2010, and two copies must be submitted to the OSHA Docket Office, Docket No. OSHA–2010–0010, U.S. Department of Labor, Room N–2625, 200 Constitution Ave., NW., Washington, DC 20210. Comments under 10 pages long may be sent via FAX to (202) 693–2527 but must be followed by an original in a mailed submission. Written submissions must clearly identify the issue addressed and the position taken with regard to each issue. All comments submitted to the docket during this proceeding will be open for public inspection and copying at the location specified above.

#### List of Subjects in 29 CFR Part 1908

Occupational safety and health, Programmed inspection schedule, Deletion program, Recognition and exemption, Inspections.

#### Authority and Signature

This document was prepared under the direction of David Michaels, PhD MPH, Assistant Secretary of Labor for Occupational Safety and Health. It is issued under sections 7(c), 8, 18, 21(d) and 23(g) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 656, 657, 667, 670 672) and Secretary of Labor's Order No. 6–96 (62 FR 111), January 2, 1997; No. 3–2000 (65 FR 50017), No. 5–2007 (72 FR 31159).

Signed at Washington, DC, this 27th day of August 2010.

#### David Michaels,

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

Part 1908 of Title 29 of the Code of Federal Regulations is hereby proposed to be amended as follows:

#### PART 1908—CONSULTATION AGREEMENTS—[AMENDED]

1. Revise the authority citation for part 1908 to read as follows:

**Authority:** Sections 7(c), 8, 18, 21(d) and 23(g) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 656, 657, 667, 670 672) and Secretary of Labor's Order No. 6–96 (62 FR 111); No. 3–2000 (65 FR 50017), No. 5–2007 (72 FR 31159).

2. In § 1908.1, revise paragraph (c) to read as follows:

#### § 1908.1 Purpose and scope.

\* \* \* \* \*

(c) States operating approved Plans under section 18 of the Act shall, in accord with section 18(b), establish enforcement policies applicable to the safety and health issues covered by the State Plan which are at least as effective as the enforcement policies established by this part, including:

(1) A recognition and exemption program (§ 1908.7(b)(4)(i)(B));

(2) Inspection deferral policies for employers working to achieve recognition and exemption status (§ 1908.7(b)(4)(i)(A)); and

(3) Policies for continuing inspections at worksites that have received exemption status (§ 1908.7(b)(4)(ii)).

3. In § 1908.7, revise paragraphs (b)(2), (b)(4)(i), and (b)(4)(ii) to read as follows:

#### § 1908.7 Relationship to enforcement.

\* \* \* \* \*

(b) \* \* \*

(2) The Consultant shall terminate an onsite consultative visit already in progress where one of the following kinds of OSHA compliance inspections is about to take place:

(i) Imminent danger inspections;

(ii) Fatality/catastrophe inspections;

(iii) Complaint inspections;

(iv) Referral inspections as determined necessary by the RA;

(iv) Other critical inspections as determined by the Assistant Secretary.

\* \* \* \* \*

(4) \* \* \*

(i) *Deletion, Deferral, Recognition and Exemption Programs—(A) Preparation for Recognition and Exemption Program.* When an employer requests participation in a recognition and exemption program, and undergoes a consultative visit covering all conditions and operations in the place of employment related to occupational safety and health; corrects all hazards that were identified during the course of the consultative visit within established time frames; has begun to implement all the elements of an effective safety and health program; and agrees to request a

consultative visit if major changes in working conditions or work processes occur which may introduce new hazards, OSHA's Programmed Inspections at that particular site may be deferred while the employer is working to achieve recognition and exemption status.

(B) Employers who meet all the requirements for recognition and exemption will have the names of their establishments removed from OSHA's Programmed Inspection Schedule for a period of one year. The exemption period will extend from the date of issuance by the Regional Office of the certificate of recognition. OSHA may in its discretion establish inspection programs that provide for an additional deletion period, but such additional deletion period shall not exceed one year.

(ii) *Inspections.* OSHA will continue to make inspections in the following categories at sites that achieved recognition status and have been granted deletions from OSHA's Programmed Inspection Schedule; and at sites granted inspection deferrals as provided for under paragraph (b)(4)(i)(A) of this section:

(A) Imminent danger inspections;

(B) Fatality/catastrophe inspections;

(C) Complaint inspections;

(D) Referral inspections as determined necessary by the RA;

(E) Other critical inspections as determined by the Assistant Secretary.

\* \* \* \* \*

[FR Doc. 2010-22058 Filed 9-2-10; 8:45 am]

BILLING CODE 4510-26-P

## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

#### 33 CFR Part 117

[Docket No. USCG-2010-0265]

RIN 1625-AA09

#### Drawbridge Operation Regulations; Curtis Creek, Baltimore, MD

**AGENCY:** Coast Guard, DHS.

**ACTION:** Notice of proposed rulemaking; withdrawal.

**SUMMARY:** The Coast Guard is withdrawing its notice of proposed rulemaking concerning the operation of the Pennington Avenue Bridge, at mile 0.9, across Curtis Creek at Baltimore, MD. The requested change would have allowed the bridge to operate from a remote location at the City of Baltimore Transportation Management Center. The

proposed rule is being withdrawn because of the many concerned comments sent from the primary waterway users that transit the bridge.

**DATES:** The notice of proposed rulemaking is withdrawn on September 3, 2010.

**ADDRESSES:** The docket for this withdrawn rulemaking is available for inspection or copying at the Docket Management Facility (M-30), U.S. Department of Transportation, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also find this docket on the Internet by going to <http://www.regulations.gov>, inserting USCG-2010-0265 in the "Keyword" box and then clicking "Search".

**FOR FURTHER INFORMATION CONTACT:** If you have questions about this notice, call or e-mail Lindsey Middleton, Fifth Coast Guard District; telephone (757) 398-6629, e-mail

[Lindsey.R.Middleton@uscg.mil](mailto:Lindsey.R.Middleton@uscg.mil). If you have questions on viewing material in the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202-366-9826.

#### SUPPLEMENTARY INFORMATION:

##### Background

On June 2, 2010, we published an NPRM entitled "Drawbridge Operation Regulation Curtis Creek, Baltimore, MD" in the **Federal Register** (75 FR 30747-30750). The rulemaking concerned eliminating the need for a bridge tender by allowing the bridge to be operated from a remote location at the City of Baltimore Transportation Management Center. This proposed change would have maintained the bridge's current operating schedule set forth in 33 CFR 117.5 that states: Drawbridges shall open promptly and fully for the passage of vessels when a request to open is given.

##### Withdrawal

The City of Baltimore, the owner of the Pennington Avenue Bridge, had requested a change in the operating procedures to allow the bridge to be opened from a remote location at the City of Baltimore Transportation Management Center.

The Coast Guard received several comments opposing the proposed rule change. We conducted a lengthy and thorough investigation that included a site visit of the bridge and the Baltimore City Transportation Management Center. We also conducted a meeting at the Coast Guard Yard in Baltimore, MD with the primary waterway users that

transit the bridge, staff from the City of Baltimore's Transportation division, and their contracted consulting company.

Our investigation along with the majority of the comments revealed that the rulemaking could impose critical service delays to the various industries that rely on a timely bridge opening. This withdrawal is based on the reason that this change would not improve the bridge usage for roadway and waterway users.

**Authority:** This action is taken under the authority of 33 U.S.C. 499; 33 CFR 1.05-1; Department of Homeland Security Delegation No. 0170.1.

Dated: August 15, 2010,

**William D. Lee,**

*Rear Admiral, U.S. Coast Guard, Commander, Fifth Coast Guard District.*

[FR Doc. 2010-22034 Filed 9-2-10; 8:45 am]

BILLING CODE 9110-04-P

## DEPARTMENT OF VETERANS AFFAIRS

### 38 CFR Part 76

RIN 2900-AN43

#### U.S. Paralympics Monthly Assistance Allowance

**AGENCY:** Department of Veterans Affairs.

**ACTION:** Proposed rule.

**SUMMARY:** This document proposes to establish regulations for the payment of a monthly assistance allowance to military veterans training to make the United States Paralympics team, as authorized by section 703 of the Veterans' Benefits Improvement Act of 2008. The proposed rule would facilitate the payment of a monthly assistance allowance to a veteran with a service-connected or nonservice-connected disability if the veteran is competing for a slot on or selected for the United States Paralympics team or is residing at a United States Paralympics training center. The proposed rule would require submission of an application to establish eligibility for the allowance and certification by the United States Paralympics.

**DATES:** Comments must be received on or before October 4, 2010.

**ADDRESSES:** Written comments may be submitted through <http://www.Regulations.gov>; by mail or hand-delivery to Director, Regulations Management (02REG), Department of Veterans Affairs, 810 Vermont Ave., NW., Room 1068, Washington, DC 20420; or by fax to (202) 273-9026.

Comments should indicate that they are submitted in response to "RIN 2900-