

Advocacy Recommends OSHA Consider Impact of Proposed Changes to On-site Consultation Program on Small Business Participation

On November 2, 2010, the U.S. Small Business Administration's Office of Advocacy (Advocacy) submitted comments to the Occupational Safety and Health Administration (OSHA) on OSHA's *Proposed Consultation Agreements: Proposed Changes to Consultation Procedures ("On-Site Consultation") Rule* [75 Fed. Reg. 54064 (September 3, 2010)]. OSHA's proposed rule would change the criteria under which participants in OSHA's On-site Consultation program could be subject to enforcement inspections by OSHA inspectors. On-site Consultation is a voluntary, OSHA-funded program that offers free and confidential advice from safety consultants to small businesses to identify workplace hazards, provide advice on compliance with OSHA standards, and assist in establishing safety and health management systems. The consultant inspects the site and works with the employer to abate any safety hazards identified during the inspection in a timely manner.

Following publication of the proposed rule, a number of small business representatives contacted Advocacy and expressed concern about the proposed rule. Advocacy also discussed the proposed rule at its regular small business labor safety roundtable on September 24, 2010. Advocacy's comments are reflective of the issues raised during the roundtable and in subsequent conversations with these small business representatives.

A complete copy of Advocacy's letter to OSHA is available at www.sba.gov/advo/laws/comments/.

- Advocacy recommended that OSHA maintain the "wall of separation" between the On-site Consultation program and its enforcement program. Small business representatives have stated that many small businesses are reluctant to participate in the On-site Consultation program because they fear that they will be referred to OSHA's enforcement staff for any violations identified during the visit.
- Advocacy recommended that OSHA better explain why the proposed rule is needed. Small business representatives have expressed strong support for OSHA's On-site Consultation program and Advocacy is concerned that the proposed changes could discourage small businesses from participating in the future.
- Advocacy recommended that OSHA clarify the types of instances that would trigger inspections under the proposed rule. Advocacy is concerned that the proposed rule would vest unlimited discretion with OSHA and inhibit small business participation in the program.
- Advocacy stated that OSHA would have benefited from small business input on the proposed rule and recommended that OSHA consider small business comments and conduct additional outreach before proceeding.

For more information about OSHA's *Proposed "On-site Consultation" Rule*, please visit Advocacy's Web page at www.sba.gov/advo or contact Bruce Lundegren, Assistant Chief Counsel, at (202) 205-6144 or bruce.lundegren@sba.gov.