



# Consultation Agreements -- OSHA Standard 1908<sup>1</sup>

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## The Impact of Safety on Florida Agriculture

Florida agriculture, including forestry and fishing, made an annual economic impact of \$53 billion in 1998. More than 81,000 people work on the 40,000 farms in the state, and more than 50,000 are employed in other activities related to agriculture. The state's agricultural enterprises range from large citrus, vegetable and cattle operations to small family-operated farms.

From 1989 to 1998, there were approximately 240 deaths related to agriculture in Florida, according to data compiled by the Deep South Center for Agricultural Health and Safety. In addition, agriculture has one of the highest injury and death rates among U.S. industries.

Safety in Florida agriculture is challenging because:

- the state's agricultural enterprises are diverse,
- safety knowledge among workers varies,
- manual labor is used extensively,

- the climate creates year-round heat stress.

Therefore, it is vital to assist the public in learning about OSHA documents related to agriculture. More related information is available at the following Web sites:

Florida AgSafe: <<http://www.flagsafe.ufl.edu>>

OSHA Regulations: <<http://www.osha.gov/comp-links.html>>

## Overview

This document, a condensation of Section 1908 of the Occupational Safety and Health Act, is not intended to be totally inclusive but rather to highlight the information and requirements in the complete OSHA standard that owners and managers of agricultural businesses should understand.

## Contents of OSHA Standard 1908

- Section 1908.1 -- Purpose and Scope
- Section 1908.2 -- Definitions
- Section 1908.3 -- Eligibility and Funding

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- Section 1908.4 -- Offsite Consultation
- Section 1908.5 -- Requests and Scheduling for Onsite Consultation
- Section 1908.6 -- Conduct of a Visit
- Section 1908.7 -- Relationship to Enforcement
- Section 1908.8 -- Consultant Specifications
- Section 1908.9 -- Monitoring and Evaluation
- Section 1908.10 -- Cooperative Agreements
- Section 1908.11 -- Exclusions

NOTE: Some sections of OSHA standards are labeled "Reserved." This label implies either that information has been deleted from the previous version of the standard or that additions to the standard are anticipated. Because standards often reference other standards, it is important that paragraph numbers remain consistent.

### **Section 1908.1 -- Purpose and Scope**

**1908.1(a)** -- This part contains requirements for Cooperative Agreements between States and the Federal Occupational Safety and Health Administration under sections 7(c)(1) and 21(c) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 651 et seq.) under which OSHA will utilize State personnel to provide consultative services to employers. The service will be made available at no cost to employers to assist them in establishing effective occupational safety and health programs for providing employment and places of employment which are safe and healthful. The overall goal is to prevent the occurrence of injuries and illnesses which may result from exposure to hazardous workplace conditions and from hazardous work practices. The principal assistance will be provided at the employer's worksite, but offsite assistance may also be provided by telephone and correspondence, and at locations other than the employer's worksite, such as the consultation project offices. At the worksite, the consultant will, within the scope of the employer's request, evaluate the employer's program for providing employment and a place of employment

which is safe and healthful, as well as identify specific hazards in the workplace, and will provide appropriate advice and assistance in establishing or improving the employer's safety and health program and in correcting any hazardous conditions identified.

**1908.1(b)** -- Assistance may include education and training of the employer, the employer's supervisors, and the employer's other employees as needed to make the employer self-sufficient in ensuring safe and healthful work and working conditions. Although onsite consultation will be conducted independent of any OSHA enforcement activity, and the discovery of hazards will not mandate citation or penalties, the employer remains under a statutory obligation to protect employees, and in certain instances will be required to take necessary protective action. Employer correction of hazards identified by the consultant during a comprehensive workplace survey, and implementation of certain core elements of an effective safety and health program and commitment to the completion of others may serve as the basis for employer exemption from certain OSHA enforcement activities. States entering into Agreements under this part will receive ninety percent Federal reimbursement for allowable costs, and will provide consultation to employers requesting the service, subject to scheduling priorities, available resources, and any other limitations established by the Assistant Secretary as part of the Cooperative Agreement.

**1908.1(c)** -- In States operating approved Plans under section 18 of the Act, the provisions of this act which establish policies governing enforcement activities do not apply to safety and health issues covered by the State Plan. States operating such Plans shall, in accord with section 18(b), establish policies which are at least as effective as Federal policies.

### **Section 1908.2 -- Definitions**

As used in this part:

**Act** -- The Federal Occupational Safety and Health Act of 1970.

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

**Compliance Officer** -- A Federal compliance safety and health officer.

**Consultant** -- An employee under a Cooperative Agreement pursuant to this part who provides consultation.

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

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

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

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

**Employee** -- An employee of an employer who is employed in a business of that employer which affects commerce.

**Employer** -- A person engaged in a business who has employees, but does not include the United States, or any State or political subdivision of a State.

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

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

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

the consultation project offices. It may, under limited conditions specified by the Assistant Secretary, include training and education.

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

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

**Other-than-serious hazard** -- Any condition or practice which would be classified as an other-than-serious violation of applicable Federal or State statutes, regulations or standards, based on criteria contained in the current OSHA Field Operations Manual or an approved State Plan counterpart.

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

**Serious hazard** -- Any condition or practice which would be classified as a serious violation of applicable Federal or State statutes, regulations or standards, based on criteria contained in the current OSHA Field Operations Manual or an approved State Plan counterpart, except that the element of employer knowledge shall not be considered.

**State** -- Any state of the United States, the District of Columbia, Puerto Rico, the Virgin Islands, American Samoa, Guam, and the Trust Territory of the Pacific Islands.

**Training** -- The planned and organized activity of a consultant to impart skills, techniques and methodologies to employers and their employees to assist them in establishing and maintaining employment and a place of employment which is safe and healthful.

## Section 1908.3 -- Eligibility and Funding

**1908.3(a) -- State eligibility.** Any State may enter into an Agreement with the Assistant Secretary to perform consultation for private sector employers; except that a State having a Plan approved under section 18 of the Act is eligible to participate in the program only if that Plan does not include provisions for federally funded consultation to private sector employers.

### 1908.3(b) -- Reimbursement

**1908.3(b)(1) --** The Assistant Secretary will reimburse 90 percent of the costs incurred under a Cooperative Agreement entered into pursuant to this part. Approved training of State staff operating under a Cooperative Agreement and specified out-of-State travel by such staff will be fully reimbursed.

**1908.3(b)(2) --** Reimbursement to States under this part is limited to costs incurred in providing consultation to private sector employers only.

- In all States with Plans approved under section 18 of the Act, consultation provided to State and local governments, as well as the remaining range of voluntary compliance activities referred to in 29 CFR 1902.4(c)(2)(xiii), will not be affected by the provisions of this part. Federal reimbursement for these activities will be made in accordance with the provisions of section 23(g) of the Act.
- In States without Plans approved under section 18, no Federal reimbursement for consultation provided to State and local governments will be allowed, although this activity may be conducted independently by a State with 100 percent State funding.

## Section 1908.4 -- Offsite Consultation

The State may provide consultative services to employers on occupational safety and health issues by telephone and correspondence, and at locations other than the employer's worksite, such as the consultation project offices. It may, under limited

conditions specified by the Assistant Secretary, include training and education.

## Section 1908.5 -- Requests and Scheduling for Onsite Consultation

### 1908.5(a) -- Encouraging requests

**1908.5(a)(1) -- State responsibility.** The State shall be responsible for encouraging employers to request consultative assistance and shall publicize the availability of its consultative service and the scope of the service which will be provided. The Assistant Secretary will also engage in activities to publicize and promote the program.

**1908.5(a)(2) -- Promotional methods.** To inform employers of the availability of its consultative service and to encourage requests, the State may use methods such as the following:

- Paid newspaper advertisements;
- Newspaper, magazine, and trade publication articles;
- Special direct mailings or telephone solicitations to establishments based on workers' compensation data or other appropriate listings;
- In-person visits to workplaces to explain the availability of the service, and participation at employer conferences and seminars;
- Solicitation of support from State business and labor organizations and leaders, and public officials;
- Solicitation of publicizing by employers and employees who have received consultative services;
- Preparation and dissemination of publications, descriptive materials, and other appropriate items on consultative services;
- Free public service announcements on radio and television.

**1908.5(a)(3) -- Scope of service.** In its publicity for the program, in response to any inquiry, and before an employer's request for a consultative visit

may be accepted, the State shall clearly explain that the service is provided at no cost to an employer through Federal and State funds for the purpose of assisting the employer in establishing and maintaining effective programs for providing safe and healthful places of employment for employees, in accord with the requirements of the applicable State or Federal laws and regulations. The State shall explain that while utilizing this service, an employer remains under a statutory obligation to provide safe and healthful work and working conditions for employees. In addition, while the identification of hazards by a consultant will not mandate the issuance of citations or penalties, the employer is required to take necessary action to eliminate employee exposure to a hazard which in the judgment of the consultant represents an imminent danger to employees, and to take action to correct within a reasonable time a hazard which would be classified as a serious hazard. The State shall emphasize, however, that the discovery of such a hazard will not initiate any enforcement activity, and that referral will not take place, unless the employer fails to eliminate the identified hazard within the established time frame. The State shall also explain that when an employer requests and receives a consultative visit covering all conditions and operations in the place of employment related to occupational safety and health and meets the other conditions set forth in 1908.7(b)(4), the employer may, upon request, be exempt from a general schedule OSHA enforcement inspection for a period of one year from the end of the closing conference of the consultative visit.

#### **1908.5(b) -- Employer requests**

**1908.5(b)(1)** -- An onsite consultative visit will be provided only at the request of the employer, and shall not result from the enforcement of any right of entry under State law.

**1908.5(b)(2)** -- When making a request, an employer in a small, high hazard establishment shall generally be encouraged to include within the scope of such request all working conditions at the worksite and the employer's entire safety and health program. However, a more limited scope may be encouraged in larger and less hazardous establishments. Moreover, any employer may specify a more limited scope for

the visit by indicating working conditions, hazards, or situations on which onsite consultation will be focused. When such limited requests are at issue, the consultant will limit review and provide assistance only with respect to those working conditions, hazards, or situations specified; except that if the consultant observes, in the course of the insight visit, hazards which are outside the scope of the request, the consultant must treat such hazards as though they were within the scope of the request.

**1908.5(b)(3)** -- Employers may request onsite consultation to assist in the abatement of hazards cited during an OSHA enforcement inspection. However, an onsite consultative visit may not take place after an inspection until the conditions set forth in 1908.7(b)(3) have been met.

**1908.5(c) -- Scheduling priority.** Priority shall be assigned to requests from businesses with the most hazardous operations, with primary attention to smaller businesses. Preference shall be given to the smaller businesses which are in higher hazard industries or which have the most hazardous conditions at issue in the request.

## **Section 1908.6 -- Conduct of a Visit**

### **1908.6(a) -- Preparation**

**1908.6(a)(1)** -- An onsite consultative visit shall be made only after appropriate preparation by the consultant. Prior to the visit, the consultant shall become familiar with as many factors concerning the establishment's operation as possible. The consultant shall review all applicable codes and standards. In addition, the consultant shall assure that all necessary technical and personal protective equipment is available and functioning properly.

**1908.6(a)(2)** -- At the time of any promotional visit conducted by a consultant to encourage the use of the onsite consultative services, a consultation may be performed without delay if the employer so requests and the consultant is otherwise prepared to conduct such consultation.

**1908.6(b) -- Structured format.** An initial onsite consultative visit will consist of an opening conference, an examination of those aspects of the

employer's safety and health program which relate to the scope of the visit, a walk through the workplace, and a closing conference. An initial visit may include training and education for employers and employees, if the need for such training and education is revealed by the walk through the workplace and the examination of the employer's safety and health program and if the employer so requests. The visit shall be followed by a written report to the employer. Additional visits may be conducted as the employer requests to provide needed education and training, assistance with the employer's safety and health program, or technical assistance in the correction of hazards, or as necessary to verify the correction of serious hazards identified during previous visits. A compliance inspection may, in some cases, be the basis for a visit limited to education and training, assistance with the employer's safety and health program, or technical assistance in the correction of hazards.

#### **1908.6(c) -- Employee participation**

**1908.6(c)(1)** -- The consultant shall retain the right to confer with individual employees during the course of the visit in order to identify and judge the nature and extent of particular hazards within the scope of the employer's request, and to evaluate the employer's safety and health program. The consultant shall explain the necessity for this contact to the employer during the opening conference, and an employer must agree to permit such contact before a visit can proceed.

**1908.6(c)(2)** -- In addition, employees, their representatives, and members of a workplace joint safety and health committee may participate in the onsite consultative visit to the extent desired by the employer. In the opening conference, the consultant shall encourage the employer to allow employee participation to the fullest extent practicable.

**1908.6(d)** -- Opening conference. In addition to the requirements of 1908.6(c), the consultant shall, in the opening conference, explain to the employer the relationship between onsite consultation and OSHA enforcement activity and shall explain the obligation to protect employees in the event that certain hazardous conditions are identified.

#### **1908.6(e) -- Onsite activity**

**1908.6(e)(1)** -- Activity during the onsite consultative visit will focus primarily on those areas, conditions, or hazards regarding which the employer has requested assistance. An employer may expand or reduce the scope of the request at any time during the onsite visit. The consultant shall, if prepared and if scheduling priorities permit, expand the scope of the visit at the time of the request. If the employer's request for expansion necessitates further preparation by the consultant or the expertise of another consultant, or if other employer requests may merit higher priority, the consultant shall refer the request to the consultation manager for scheduling. In all cases in which the scope of the visit is reduced, the consultant remains obligated to work with the employer to ensure correction of those serious hazards which are identified during the visit.

**1908.6(e)(2)** -- The consultant shall advise the employer as to the employer's obligations and responsibilities under applicable Federal or State law and implementing regulations.

**1908.6(e)(3)** -- Within the scope of the employer's request, consultants shall review the employer's safety and health program and provide advice on modifications or additions to make such programs more effective.

**1908.6(e)(4)** -- Consultants shall identify and provide advice on correction of those hazards included in the employer's request and any other safety or health hazards observed in the workplace during the course of the onsite consultative visit. This advice shall include basic information indicating the possibility of a solution and describing the general form of the solution. The consultant shall conduct sampling and testing, with subsequent analyses, as may be necessary to confirm the existence of safety and health hazards.

**1908.6(e)(5)** -- Advice and technical assistance on the correction of identified safety and health hazards may be provided to employers during and after the onsite consultative visit. Descriptive materials may be provided on approaches, means, techniques, and other appropriate items commonly utilized for the elimination or control of such hazards.

The consultants shall also advise the employers of additional sources of assistance, if known.

**1908.6(e)(6)** -- When a hazard is identified in the workplace, the consultant shall indicate to the employer the consultant's best judgment as to whether the situation would be classified as a "serious" or "other-than-serious" hazard.

**1908.6(e)(7)** -- At the time the consultant determines that an identified serious hazard exists, the consultant shall assist the employer to develop a specific plan to correct the hazard, affording the employer a reasonable period of time to complete the necessary action. The State shall provide, upon request from the employer within 15 working days of receipt of the consultant's report, an opportunity for an expeditious informal discussion with the consultation manager regarding the period of time established for the correction of a hazard or any other substantive finding of the consultant.

**1908.6(e)(8)** -- The employer shall be encouraged to advise affected employees of the hazards when they are identified, and to notify them of their correction.

#### **1908.6(f) -- Employer obligations**

**1908.6(f)(1)** -- An employer must take immediate action to eliminate employee exposure to a hazard which, in the judgment of the consultant, presents an imminent danger to employees. If the employer fails to take the necessary action, the consultant must immediately notify the affected employees and the appropriate OSHA enforcement authority and provide the relevant information.

**1908.6(f)(2)** -- An employer must also take the necessary action in accordance with the plan developed under 1908.6(e)(7) to eliminate or control employee exposure to any identified serious hazard. In order to demonstrate that the necessary action is being taken, an employer may be required to submit periodic reports, permit a follow up visit, or take similar action.

**1908.6(f)(3)** -- An employer may request, and the consultation manager may grant, an extension of the time frame established for correction of a serious

hazard when the employer demonstrates having made a good faith effort to correct the hazard within the established time frame; shows evidence that correction has not been completed because of factors beyond the employer's reasonable control; and shows evidence that the employer is taking all available interim steps to safeguard the employees against the hazard during the correction period.

**1908.6(f)(4)** -- If the employer fails to take the action necessary to correct a serious hazard within the established time frame or any extensions thereof, the consultation manager shall immediately notify the appropriate OSHA enforcement authority and provide the relevant information. The OSHA enforcement authority will make a determination, based on a review of the facts, whether enforcement activity is warranted.

**1908.6(f)(5)** -- After correction of all serious hazards, the employer shall notify the consultation manager by written confirmation of the correction of the hazards, unless correction of the serious hazards is verified by direct observation by the consultant.

**1908.6(g) -- Written report.** A written report shall be prepared for each visit which results in substantive findings or recommendations, and shall be sent to the employer. The timing and format of the report shall be approved by the Assistant Secretary. The report shall restate the employer's request and describe the working conditions examined by the consultant; shall, within the scope of the request, evaluate the employer's program for ensuring safe and healthful employment and provide recommendations for making such programs effective; shall identify specific hazards and describe their nature, including reference to applicable standards or codes; shall identify the seriousness of the hazards; and, to the extent possible, shall include suggested means or approaches to their correction. Additional sources of assistance shall also be indicated, if known, including the possible need to procure specific engineering consultation, medical advice and assistance, and other appropriate items. The report shall also include reference to the completion dates for the situations described in 1908.6(f) (1) and (2).

**1908.6(h) -- Confidentiality.** The consultant shall preserve the confidentiality of information obtained as the result of a consultative visit which contains or might reveal a trade secret of the employer. (Approved by the Office of Management and Budget under control number 1218-0110)

## **Section 1908.7 -- Relationship to Enforcement**

### **1908.7(a) -- Independence**

**1908.7(a)(1) --** Consultative activity by a State shall be conducted independently of any OSHA enforcement activity.

**1908.7(a)(2) --** The consultative activity shall have its own identifiable managerial staff. In States with Plans approved under section 18 of the Act, this staff will be separate from the managing of compliance inspections and scheduling.

**1908.7(a)(3) --** The identity of employers requesting onsite consultation, as well as the file of the consultant's visit, shall not be forwarded or provided to OSHA for use in any compliance inspection or scheduling activity, except as provided for in 1908.6(f) (1) and (4) and 1908.7(b)(4).

### **1908.7(b) -- Effect upon scheduling**

**1908.7(b)(1) --** An onsite consultative visit already in progress will have priority over OSHA compliance inspections except as provided in 1908.7(b)(2). The consultant and the employer shall notify the compliance officer of the visit in progress and request delay of the inspection until after the visit is completed. An onsite consultative visit shall be considered in progress in relation to the working conditions, hazards, or situations covered by the request from the beginning of the opening conference through the end of the closing conference; except that for periods which exceed 30 days from the initiation of the opening conference, the RA may determine that the inspection will proceed. For working conditions, hazards, or situations not covered by the request, the onsite consultative visit shall be considered in progress only while the consultant is at the place of employment.

**1908.7(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:

- Imminent danger investigations;
- Fatality/catastrophe investigations;
- Complaint investigations;
- Other critical inspections as determined by the Assistant Secretary.

**1908.7(b)(3) --** An onsite consultation visit may not take place while an OSHA enforcement inspection is in progress at the establishment. An enforcement inspection shall be deemed "in progress" from the time a compliance officer initially seeks entry to the workplace to the end of the closing conference. An enforcement inspection will also be considered "in progress" in cases where entry is refused, until such times as: the inspection is conducted; the RA determines that a warrant to require entry to the workplace will not be sought; or the RA determines that allowing a consultative visit to proceed is in the best interest of employee safety and health. An onsite consultative visit shall not take place subsequent to an OSHA enforcement inspection until a determination has been made that no citation will be issued, or if a citation is issued, onsite consultation shall only take place with regard to those citation items which have become final orders.

**1908.7(b)(4) --** When an employer requests and undergoes a consultative visit at an establishment covering all conditions and operations in the place of employment related to occupational safety and health; corrects all hazards that have been identified during the course of the consultative visit within established time frames, and posts notice of their correction when such is completed; demonstrates to the consultant that certain core elements of an effective safety and health program are in effect, and that the remaining elements of an effective safety and health program will be implemented within a reasonable, established time frame; and agrees to request a consultative visit if major changes in working conditions or work processes occur which may introduce new hazards, the employer may, upon request, be exempt from a

general schedule OSHA enforcement inspection for a period of one year from the end of the closing conference of the consultative visit. Between the time of election to participate in the process required to qualify for the exemption and the completion of the process, the employer must post a notice of such participation.

**1908.7(b)(5)** -- When an employer requests consideration for an inspection exemption under 1908.7(b)(4), the provisions of 1908.6 (e)(7), (f)(3) and (f)(5) shall apply to other-than-serious hazards as well as serious hazards.

#### **1908.7(c) -- Effect upon enforcement**

**1908.7(c)(1)** -- The advice of the consultant and the consultant's written report will not be binding on a compliance officer in a subsequent enforcement inspection. In a subsequent inspection, a compliance officer is not precluded from finding hazardous conditions, or violations of standards, rules or regulations, for which citations would be issued and penalties proposed.

**1908.7(c)(2)** -- The hazard identification and correction assistance given by a State consultant, or the failure of a consultant to point out a specific hazard, or other possible errors or omissions by the consultant, shall not be binding upon a compliance officer and need not affect the regular conduct of a compliance inspection or preclude the finding of alleged violations and the issuance of citations, or constitute a defense to any enforcement action.

**1908.7(c)(3)** -- In the event of a subsequent inspection, the employer is not required to inform the compliance officer of the prior visit. The employer is not required to provide a copy of the State consultant's written report to the compliance officer, except to the extent that disclosure of information contained in such a written report is required by 29 CFR 1910.20.

**1908.7(c)(4)** -- If, however, the employer chooses to provide a copy of the consultant's report to a compliance officer, it may be used as a factor in determining the extent to which an inspection is required and as a factor in determining proposed penalties. When, during the course of a compliance

inspection, an OSHA compliance officer identifies the existence of serious hazards previously identified as a result of a consultative visit, the Area Director shall have authority to assess minimum penalties if the employer is in good faith complying with the recommendations of a consultant after such consultative visit. (Approved by the Office of Management and Budget under control number 1218-0110)

## **Section 1908.8 -- Consultant Specifications**

### **1908.8(a) -- Number**

**1908.8(a)(1)** -- The number of consultant positions which will be funded under a Cooperative Agreement pursuant to this part for the purpose of providing consultation to private sector employers will be determined by the Assistant Secretary on the basis of program performance, demand for services, industrial mix, resources available, and the recommendation of the RA, and may be adjusted periodically.

**1908.8(a)(2)** -- States shall make efforts to utilize consultants with the safety and health expertise necessary to properly meet the demand for consultation by the various industries within a State. The RA will determine and negotiate a reasonable balance with the State on an annual basis.

### **1908.8(b) -- Qualifications**

**1908.8(b)(1)** -- All consultants utilized under Cooperative Agreements pursuant to this part shall be employees of the State, qualified under State requirements for employment in occupational safety and health. They must demonstrate adequate education and experience to satisfy the RA before assignment to work under an Agreement, and annually thereafter, that they meet the requirements set out in 1908.8(b)(2), and that they have the ability to perform satisfactorily pursuant to the Cooperative Agreement. Persons who have the potential but do not yet demonstrate adequate education and experience to satisfy the RA that they have the ability to perform consultant duties independently may, with RA approval, be trained under a Cooperative Agreement to perform consultant duties. Such persons may not,

however, perform consultant duties independently until it has been determined by the RA that they meet the requirements and have the ability indicated. All consultants shall be selected in accordance with the provisions of Executive Order 11246 of September 24, 1965, as amended, entitled "Equal Employment Opportunity."

**1908.8(b)(2)** -- Minimum requirements of consultants shall include the following:

1. The ability to identify hazards; the ability to assess employee exposure and risk; knowledge of OSHA standards; knowledge of hazard correction techniques and practices; knowledge of workplace safety and health program requirements; and the ability to effectively communicate, both orally and in writing.
2. Consultants shall meet any additional degree and/or experience requirements as may be established by the Assistant Secretary.

**1908.8(c) -- Training.** As necessary, the Assistant Secretary will specify immediate and continuing training requirements for consultants. Expenses for training which is required by the Assistant Secretary or approved by the RA will be reimbursed in full.

## **Section 1908.9 -- Monitoring and Evaluation**

**1908.9(a) -- Assistant Secretary responsibility.** A State's performance under a Cooperative Agreement will be regularly monitored and evaluated by the Assistant Secretary as part of a systematic Federal plan for this activity. The Assistant Secretary may require changes as a result of these evaluations to foster conformance with consultation policy. If the State policies or practices which require change are such that the State's assurance of correction of serious hazards and of the effectiveness of employers' safety and health programs is in doubt, the Assistant Secretary may, pending the completion of the changes, suspend recognition of a State's consultative visits as a basis for exemption from compliance inspection as permitted under 1908.7(b)(4).

### **1908.9(b) -- Consultant performance**

**1908.9(b)(1) -- State activity.** The State shall establish and maintain an organized consultant performance monitoring system under the Cooperative Agreement:

**(i)** -- Operation of the system shall conform to all requirements established by the Assistant Secretary. The system shall be approved by the Assistant Secretary before it is placed in operation.

**(ii)** -- A performance evaluation of each State consultant performing consultation services for employers shall be prepared annually. All aspects of a consultant's performance shall be reviewed at that time. Recommendation for remedial action shall be made and acted upon. The annual evaluation report shall be a confidential State personnel record and may be timed to coincide with regular personnel evaluations.

**(iii)** -- Performance of individual consultants shall be measured in terms of their ability to identify hazards in the workplaces which they have visited; their ability to determine employee exposure and risk, and in particular their performance under 1908.6 (e) and (f); their knowledge and application of applicable Federal or State statutes, regulations or standards; their knowledge and application of appropriate hazard correction techniques and approaches; their knowledge and application of the requirements of an effective workplace safety and health program; and their ability to communicate effectively their findings and recommendations and the reasons for them to employers, and relevant information, skills and techniques to employers and employees.

**(iv)** -- Accompanied visits to observe consultants during onsite consultative visits shall be conducted periodically in accord with a plan established in each annual Cooperative Agreement. The State may also conduct unaccompanied visits to workplaces which received onsite consultation, for the purpose of evaluating consultants. A written report of each visit shall be provided to the consultant.

These visits shall be conducted only with the expressed permission of the employer who requests the onsite consultative visit.

(v) -- The State will report quarterly to the RA on system operations, including copies of accompanied visit reports completed that quarter.

**1908.9(b)(2) -- Federal activity.** State consultant performance monitoring as set out in 1908.9(b)(1) shall not preclude Federal monitoring activity by methods determined to be appropriate by the Assistant Secretary.

**1908.9(c) -- State reporting.** For Federal monitoring and evaluation purposes, the State shall compile and submit such factual and statistical data in the format and at the frequency required by the Assistant Secretary. The State shall prepare and submit to the RA any narrative reports, including copies of written reports to employers as may be required by the Assistant Secretary. (Approved by the Office of Management and Budget under control number 1218-0110)

## Section 1908.10 -- Cooperative Agreements

**1908.10(a) -- Who may make agreements.** The Assistant Secretary may make a Cooperative Agreement under this part with the Governor of a State or with any State agency designated for that purpose by the Governor.

### 1908.10(b) -- Negotiations

**1908.10(b)(1) --** Procedures for negotiations may be obtained through the RA who will negotiate for the Assistant Secretary and make final recommendations on each Agreement to the Assistant Secretary.

**1908.10(b)(2) --** States with Plans approved under section 18 of the Act may initiate negotiations in anticipation of the withdrawal from the Plan of Federally funded onsite consultation services to private sector employers.

**1908.10(b)(3) --** Renegotiation of existing Agreements funded under this part shall be initiated within 30 days of the effective date of these revisions.

### 1908.10(c) -- Contents of Cooperative Agreement

**1908.10(c)(1) --** Any Agreement and subsequent modifications shall be in writing and signed by both parties.

**1908.10(c)(2) --** Each Agreement shall provide that the State will conform its operations under the Agreement to:

(i) -- The requirements contained in this part 1908;

(ii) -- All related formal directives subsequently issued by the Assistant Secretary implementing this regulation.

**1908.10(c)(3) --** Each Agreement shall contain such other explicit written commitments in conformance with the provisions of this part as may be required by the Assistant Secretary. Each Agreement shall also include a budget of the State's anticipated expenditures under the Agreement, in the detail and format required by the Assistant Secretary.

**1908.10(d) -- Location of sample Cooperative Agreement.** A sample Agreement is available for inspection at all Regional Offices of the Occupational Safety and Health Administration of the U.S. Department of Labor.

**1908.10(e) -- Action upon requests.** The State will be notified within a reasonable period of time of any decision concerning its request for a Cooperative Agreement. If a request is denied, the State will be informed in writing of the reasons supporting the decision. If a Cooperative Agreement is negotiated, the initial finding will specify the period for the Agreement. Additional funds may be added at a later time provided the activity is satisfactorily carried out and appropriations are available. The State may also be required to amend the Agreement for continued support.

**1908.10(f) -- Termination.** Either party may terminate a Cooperative Agreement under this part upon 30 days' written notice to the other party. (Approved by the Office of Management and Budget under control number 1218-0110)

## **Section 1908.11 -- Exclusions**

A Cooperative Agreement under this part will not restrict in any manner the authority and responsibility of the Assistant Secretary under sections 8, 9, 10, 13, and 17 of the Act, or any corresponding State authority.