

875—8.5(88) Relationship to enforcement.

8.5(1) *Separation of functions.* Consultation shall be conducted independently of Iowa OSHA enforcement. Except as noted in subrule 8.5(3), neither the identity of an employer requesting on-site consultation nor the file or report from the consultation activity will be provided to Iowa OSHA enforcement unless the employer fails to take the necessary action to protect employees from a serious hazard or imminent danger.

8.5(2) *Effect upon scheduling.*

a. An on-site consultation already in progress will have priority over compliance inspections by Iowa OSHA enforcement except as provided in paragraph 8.5(2) “*b.*” The consultant and the employer will notify the compliance officer that an on-site consultation is in progress and will request delay of the inspection until after the on-site consultation is completed.

b. The consultant will terminate an on-site consultation if one of the following compliance inspections by Iowa OSHA enforcement is about to take place:

- (1) Imminent danger investigation.
- (2) Fatality/catastrophe investigation.
- (3) Complaint or referral investigation.
- (4) Other critical inspection as determined by the labor commissioner.

c. An on-site consultation shall not take place while an enforcement inspection is in progress at the establishment. An enforcement inspection will be deemed “in progress” from the time a compliance officer initially seeks entry to the workplace to the end of the closing conference. If the employer denied the compliance officer entry to the work site, an enforcement inspection is “in progress” until the inspection is concluded, the commissioner determines that a warrant to enter will not be sought, or the commissioner determines that allowing a consultative visit to proceed is in the best interest of employee safety and health. An on-site consultation shall not take place subsequent to an enforcement inspection until the employer has been notified that no citations will be issued, or if a citation is issued, on-site consultation will take place only with regard to those citation items that have become final orders.

d. The recognition and exemption program operated by the bureau of consultation and education provides incentives and support to high-hazard employers to work with employees to develop, implement, and continuously improve the effectiveness of a safety and health management system.

(1) Programmed enforcement inspections at a work site may be deferred while the employer is working to achieve recognition status if the following conditions are met:

1. An employer requested participation in a recognition and exemption program;
2. A consultant has conducted an on-site consultation covering all conditions and operations related to occupational safety and health;
3. An employer corrected all hazards identified during the consultation visit within established time frames;
4. An employer has begun to implement all of the elements of an effective safety and health management system; and
5. An employer agrees to request an on-site consultation if major changes in working conditions or work processes occur that may introduce new hazards.

(2) Employers that meet all the requirements for recognition and exemption will be removed from the Iowa OSHA enforcement programmed inspection schedules for at least one year from the date of the certificate of recognition.

(3) Iowa OSHA enforcement shall continue to make the inspections listed below at sites that achieved recognition and exemption status and at sites that have received deferrals:

1. Imminent danger;
2. Fatality/catastrophe; and
3. Formal complaint.

8.5(3) *Effect upon enforcement.*

a. The advice of the consultant and the consultant’s written report will not be binding upon a compliance officer in a subsequent enforcement inspection. In a subsequent enforcement inspection, a

compliance officer is not precluded from issuing citations and proposing penalties for hazardous conditions or violations.

b. The hazard identification and correction assistance given by the consultant, the failure of the consultant to point out a specific hazard, and errors or omissions by the consultant shall not:

- (1) Be binding upon a compliance officer;
- (2) Affect the regular conduct of a compliance inspection;
- (3) Preclude the finding of alleged violations and the issuance of citations; or
- (4) Act as a defense to any enforcement action.

c. In the event of a subsequent enforcement inspection, the employer is not required to inform the compliance officer of the prior consultation visit. The employer is not required to provide a copy of the consultant's written report to the compliance officer, except to the extent that disclosure of information contained in the report is required by 29 CFR 1910.1020. During a subsequent enforcement action, if Iowa OSHA enforcement independently determines there is reason to believe that the employer failed to correct serious hazards identified during the consultation visit, created the same hazards again, or made false statements to the bureau of consultation and education in connection with the consultation program, Iowa OSHA enforcement may exercise its authority to obtain the consultation report.

d. If the employer chooses to provide a copy of the consultant's report to the compliance officer, the report may be used to determine the extent to which an inspection is required and as a factor in determining proposed penalties. Iowa OSHA enforcement may impose minimal penalties if a consultant previously identified a hazard and the employer is complying with the consultant's recommendations in good faith.

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