



# OSHA DIRECTION

U.S. DEPARTMENT OF LABOR

Occupational Safety and Health Administration

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**DIRECTIVE NUMBER:** DIR 01-01 (TED 3.5C)

**EFFECTIVE DATE:** March 7, 2001

**SUBJECT:** Interim Guidance for Consultation Programs

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## ABSTRACT

- Purpose:** To provide guidance to 21(d) Consultation Projects on implementing programmatic and regulatory changes to the Consultation Program.
- Scope:** This Direction applies OSHA-wide. It applies to all States or institutions operating a Cooperative Agreement under Section 21(d) of the OSH Act.
- Expiration Date:** This Direction expires on June 30, 2001.
- Action Offices:** Regional Offices (see Paragraph V. A. 1.) and States operating Cooperative Agreements under Section 21(d) of the OSH Act (see Paragraph V. B. 2.).
- Federal Program Change:** This direction does not require a Federal Program Change for State Plans. Federal Program Changes related to matters covered in this Direction will be specified in Revised Consultation Policies and Procedures Manual (TED 3.5C) to be issued in FY 2001.
- Originating Office:** Directorate of Federal State Operations.
- Contact:** E. Tyna Coles at 202-693-2212  
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By and Under the Authority of  
R. Davis Layne  
Acting Assistant Secretary

- I. Purpose. To provide guidance to 21(d) Consultation Projects on implementing programmatic and regulatory changes to the Consultation Program.
- II. Scope. This Direction applies OSHA-wide. It applies to all States or institutions operating a Cooperative Agreement under a Section 21(d) of the OSH Act.
- III. Effective Date. The requirements of this Direction are effective upon the date of its publication.
- IV. Expiration Date. This Direction expires on June 30, 2001.
- V. Action Information
  - A. Responsible Office. Directorate of Federal State Operations, Office of Cooperative Programs.
  - B. Action Offices
    1. Regional Offices. Regional Offices are required to provide technical assistance to the Consultation Projects and are responsible for monitoring the effectiveness and implementation of the policies set forth in this Direction.
    2. States. States or institutions operating Cooperative Agreements under Section 21(d) of the OSH Act are required to implement the changes required by this Direction.
- VI. Federal Program Change. This Direction does not require a Federal Program Change for State Plans. Federal Program Changes related to matters covered in this Direction will be specified in Revised Consultation Policies and Procedures Manual (TED 3.5C) that is planned for publication in FY 2001.
- VII. Major Changes
  - A. Posting the List of Hazards. The employer must agree to post the List of Hazards, as it was received from the Consultation Project, for either three working days or until the serious hazards are corrected, whichever is later. Agreed-upon modifications or extensions of correction due dates must also be posted. Posting must be in a prominent place where it is readily observable by all affected employees. The employer may post the List of Hazards by electronic means if each employee is equipped with an electronic communication device and electronic transmission is the employer's normal means of providing notices to employees. Failure to post the List of Hazards will result in the termination of the Consultation "Visit in Progress" status.

- B. Confidentiality of the Report to the Employer. The employer’s name and the results of the onsite visit will remain confidential from State or Federal enforcement, except in situations where imminent dangers or serious hazards are not corrected as agreed upon, or where the employer participates in a State’s inspection deferral or recognition and exemption program. If an enforcement inspection occurs, the employer is not required to inform the CSHO of the consultation onsite visit or furnish a copy of the results, except to the extent that disclosure of information contained in the Report to the Employer is required by 29 CFR 1910.1020, or other standards.
  
- C. Consultation Visit in Progress. A consultation visit is in progress from the beginning of the opening conference to the end of the correction due dates (including extensions). A consultation Visit in Progress takes precedence over a Programmed OSHA Inspection. The Directorate of Compliance Programs is drafting more detailed procedures to implement this provision.
  
- D. Employee Participation in Onsite Consultation Visits. Employee participation is required in all site visits. Requirements vary according to whether the site is unionized, as explained in the following table.

<i>If:</i>	<i>then:</i>
the site is unionized,	an employee representative(s) of affected employees must be afforded an opportunity to participate in the opening and closing conferences and to accompany the consultant and the employer’s representative during the physical inspection of the workplace. The consultant should encourage joint opening and closing conferences. If there is an objection to a joint conference, the consultant must conduct separate conferences with the employer and the employee representatives. The consultant may increase the number of employee participants in the physical inspection if he or she determines that additional participants will improve the quality of the visit. The consultant may confer privately with the employee representative(s).
the site is non-unionized,	the consultant must confer with individual employees during the course of the visit in order to identify and judge the extent of particular hazards within the scope of the employer’s request and to evaluate the employer’s safety and health management system. The employer must agree to permit such contact in order for the visit to proceed.

- E. Safety and Health Achievement Recognition Program (SHARP). Each state operating a Consultation Program under Section 21(d) of the OSH Act must operate a recognition and exemption program. The Federal Program is known as

the Safety and Health Achievement Recognition Program (SHARP). Program operating in States with approved State Plans may be known by other names. The following changes have been made in the criteria and requirements for SHARP participation:

1. Employers participating in SHARP must have fewer than 250 employees at the site and fewer than 500 employees corporation-wide.
2. Illness data are calculated in the data collected, so that the Lost Workday Injury and Illness (LWDII) rate and Total Recordable Case Rate (TRCR) replace the Lost Workday Injury rate and the Injury and Illness rate in the criteria for SHARP participation.
3. A qualifying employer must have reduced the Lost Workday Injury and Illness Incidence (LWDII) rate and Total Recordable Case Rate to *below* the industry average.
4. After one year of participation, SHARP participants may be eligible to be exempted from Programmed Inspections for a period of two years. The employer must submit OSHA 200 Log data and a self-evaluation report during the interim year.
5. In calculating the LWDII rate and TRCR of an applicant who is renewing SHARP status, a multi-year calculation method must be used. See [Appendix A](#) and [Appendix B](#) for the calculation methods and examples.
6. SHARP participants planning to relocate their facilities must notify the Consultation Project Manager sixty days in advance of the move, and a consultant must visit the new site within thirty days after the new site becomes operational to ensure that the safety and health management system is operating effectively.
7. Employers participating in SHARP must have implemented a safety and health management system addressing, at a minimum, the elements of the 1989 Safety and Health Program Management Guidelines:
  - Management leadership and employee involvement
  - Worksite analysis
  - Hazard prevention
  - Safety and health training
8. In the case of a fatality or catastrophe at a SHARP site, the employer must notify the OSHA Area Office within eight hours of the incident. The Area Director must notify the Consultation Project Manager as soon as possible after notification of the incident. Until all enforcement considerations are resolved, Consultation personnel must not discuss with the employer any issues related to the fatality or catastrophe. After all enforcement

considerations are resolved, the Consultation Project Manager must evaluate the SHARP status of the worksite using the following criteria:

- If an inspection is conducted and no citation is issued, an onsite visit must be conducted to ensure that all elements of the safety and health management system are still operating effectively.
- If an inspection is conducted and a serious or repeat violation is issued, an onsite visit must be conducted to ensure that the safety and health management system is still operating effectively. If the consultant believes there is a connection between a serious citation and reduced effectiveness in the safety and health management system, the Consultation Project Manager must recommend that the SHARP employer withdraw from the program. If there is no connection, the employer must be counseled on how to prevent a recurrence.
- If an inspection is conducted and a willful citation is issued, the SHARP employer must be asked to withdraw from the program. The employer may reapply 12 months after withdrawing from the program. The Consultation Project Manager must notify the employer of termination in writing and also inform the Area Office of the termination.
- If the enforcement action uncovered evidence that the site's application or annual self-evaluations were falsified, participation in SHARP must be terminated.

F. Pre-SHARP Inspection Deferral. If a Consultation Project Manager determines that an employer has agreed to participate in SHARP, has corrected all serious hazards identified, and has begun to implement the action plan agreed upon with the consultant, then the Consultation Project Manager may recommend to the Regional Administrator or State Designee that the employer be deferred from General Schedule inspections while working toward SHARP status. The deferral period recommended by the Consultation Project Manager must not exceed 18 months from the final correction due date(s). All of the following criteria must be met in order for deferral to be granted:

1. Employer's Obligations and Employees' Rights. The employer must:
  - a) Post the list of hazards identified by the consultant.
  - b) Provide information on all hazards identified by the consultant to employees and inform employees when hazards are corrected.
  - c) Correct all serious hazards identified by consultants.

- d) Show evidence of having the foundation of a safety and health management system that includes the required elements of the 1989 Safety and Health Program Management Guidelines.
- e) Implement an Action Plan that includes the required elements of the 1989 Safety and Health Program Management Guidelines and is approved by the Consultation Project Manager.
- f) Post a notice of intention to participate in SHARP. At unionized sites, the employer must notify the employee representative(s) of the employer's intention to participate in SHARP and involve the union in the process.
- g) Implement the Action Plan, provide progress reports to the Consultation Project Manager and meet other state or project-specific requirements.
- h) Agree to full service comprehensive visit by consultants at the end of the deferral period.
- i) Agree to notify the Consultation Project Manager prior to making any changes in working conditions or work processes that might introduce new hazards into the workplace
- j) Involve employees in the safety and health management system, including the implementation of the action plan.
- k) Be capable of reducing the site's Lost Workday Injury and Illness (LWDII) Rate and Total Recordable Case Rate (TRCR) to below the industry national average within the deferral period.

2. Consultation Project Manager's Responsibilities. The Consultation Project Manager must:

- a) Conduct an onsite follow-up visit to verify correction of all hazards (serious and other-than-serious) and compliance with requirements to post the list of hazards and other employee information requirements.
- b) Approve the Action Plan developed by the consultant and to be implemented by the employer.
- c) Determine if the employer is capable of meeting all SHARP requirements within the deferral period, including the LWDII and TRCR requirements.
- d) Provide a signed notice of intent to participate in SHARP, to be posted by the employer. If, at a unionized site, the union representative(s) objects to the site's involvement in SHARP, the Consultation Project Manager

must advise the employer that the application cannot go forward until labor and management agree on the issue.

e) Recommend a deferral period (not to exceed 18 months from the end of the correction due dates) to the Regional Administrator or State Designee.

3. Regional Administrator's or State Designee's Responsibilities. The Regional Administrator or State Designee may grant an Inspection Deferral for the period recommended by the Consultation Project Manager and notify the appropriate Area Office of the deferral. Prior to granting a deferral, the Regional Administrator or State Designee must ensure that:

a) The LWDII and TRCR requirements have been met or are likely to be met.

b) The Action Plan adequately addresses the required elements of a safety and health management system as outlined in the 1989 Safety and Health Program Management Guidelines and that there is reasonable expectation that the employer will qualify for SHARP status by the end of the deferral period.

## VIII. Interim Guidance

A. List of Hazards. Projects should be aware that regulatory hazards will only be included on the list if they have been coded as serious. Software for the NCR was released in December, 2000 and is in development for the Stand Alone Application. The consultant is required to provide a description of the hazard, including its location, in a data block associated with each Standard Element Paragraph (STEP) located in the NCR "notebook." Whatever is entered into this data block will be written to the List of Hazards. The List of Hazards will be created when the report to the employer is assembled. If the STEPs have been moved to a local directory, the Project Manager will need to contact the Office of Management Data Systems (OMDS) Help Desk for assistance in creating the List of Hazards.

Projects that do not use the NCR or the Stand Alone application to assemble the report to the employer must create the List of Hazards. These projects are responsible for creating their own method of generating the List. The List of Hazards produced independently by any Project must contain exactly the same information as the List of Hazards produced on the NCR. See [Appendix C](#) for a sample List of Hazards in the preferred format.

Below are two paragraphs that must be included in the transmittal letter accompanying the Report to the Employer.

*Accompanying this report is a List of Hazards which includes a description of the serious hazard(s) and the date by which we mutually*

*determined that the hazard(s) would be corrected. This List of Hazards must be posted, unedited, in a prominent location where it is readily observable by all employees for three working days or until the hazard(s) have been corrected, whichever is later. If we approve an extension to the correction due dates, a new List of Hazards will be sent to you showing the revised date(s).*

*During the time that you are working on correcting these hazard(s), OSHA may not conduct a scheduled inspection at your work site, provided that: a) you are within the correction due dates, b) interim protection is in place and c) the List of Hazards is posted. Should these conditions not be met, an OSHA compliance inspection may be conducted.*

Where employers need an extension of the correction due date(s), they should be advised by consultation personnel to request the extension **before** the expiration of the correction due date in order to maintain “Visit in Progress” status.

The recently released software for the List of Hazards includes a routine for granting extensions. However, it recompiles the List including those hazards which have been corrected and are closed. Project Managers may write the word, “closed” on the area of the correction due date prior to sending the revised list to the employer, if information has been received verifying the correction of the hazard.

Employers must be told that in addition to posting the List of Hazards, employees also have the right to review the other-than-serious hazards and the proposed corrective action (which are included in the report to the employer). The employer must make these available in a separate file.

When visiting a union site, the name and address of the union representative must be obtained for the purpose of mailing a copy of the List of Hazards to the representative.

- B. Recognition and Exemption Programs. Promotional material developed by Consultation Project Managers in Federal States must include information about SHARP.

## Appendix A

### Lost Workday Injury and Illness Rate (LWDII)

The annual LWDII rate is calculated according to the following formula:

$$\text{LWDII Rate} = \frac{\# \text{ lost workday injuries and illnesses} \times 200,000}{\# \text{ employee hours worked}}$$

Where:

# Lost workday injury and illnesses = sum of Column 2 and Column 9 from the OSHA Log in the reference year.

# employee hours worked = sum of employee hours worked (including all employees whose injuries/illnesses are recorded on the log, minus exempt and temporary workers' hours) in the reference year.

200,000 = base for 100 full-time workers working 40 hours per week, 50 weeks per year

#### Sample One-Year LWDII Rate Calculation:

In calculating the LWDII rate of an establishment scheduled for inspection in October 1999, injury and illness cases and employment data for the preceding calendar year is used.

$$\# \text{ LWDIIs in 1998} = 5$$

$$\# \text{ workers employed in 1998} = 54$$

$$\# \text{ employee hours worked in 1998} = 54 \text{ workers} \times 40 \text{ hours} \times 50 \text{ weeks} = 108,000$$

$$\text{LWDII Rate} = \frac{5 \times 200,000}{108,000}$$

$$= \frac{1,000,000}{108,000}$$

$$= 9.26 \text{ (rounded to 9.3)}$$

#### Sample Two-Year LWDII Rate Calculation:

An establishment scheduled for inspection in October 2000 employed an average of 50 workers in 1999 and 54 workers in 1998. The injury and illness cases and employment data for the two preceding calendar years will be used.

# LWDIIs in 1998 = 5

# LWDIIs in 1999 = 6

# employee hours worked in 1998 = 108,000

# employee hours worked in 1999 = 100,000

Two-Year LWDII Rate =

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$$\frac{5 \text{ [Year 1 \# LWDII]} + 6 \text{ [Year 2 \#LWDII]} \times 200,000}{108,000 \text{ [Year 1 \# employee hours worked]} + 100,000 \text{ [Year 2 \# employee hours worked]}}$$
$$= \frac{(5 + 6) \times 200,000}{108,000 + 100,000}$$
$$= \frac{2,200,000}{208,000}$$
$$= 10.58 \text{ (rounded to 10.6)}$$

**Three-Year LWDII Rate Calculation:**

When determining the rate for an employer who has been in SHARP for two or more years, calculate the LWDII Rate as in the two-year sample above, but include the third year's data.

## Appendix B

### Total Recordable Case Rate (TRCR)

The Total Recordable Case Rate (TRCR) is the rate of total non-fatal injuries and illnesses for the calendar year reviewed. The TRCR is compared to the rate in the column of Total Cases that most precisely corresponds to the Standard Industrial Classification (SIC) code of the site under review. The column of Total Cases is found in the table of Incidence Rates as reported in the annual BLS Data on Occupational Injuries and Illnesses.

The annual TRCR is calculated according to the following formula:

$$\text{TRCR} = \frac{(\# \text{ recordable injuries} + \# \text{ recordable illnesses}) \times 200,000}{\# \text{ employee hours worked}}$$

Where:

# recordable injuries = sum of Column 2 and Column 6 from the OSHA Log in the reference year.

# recordable illnesses = sum of Column 9 and Column 13 from the OSHA Log in the reference year.

# employee hours worked = sum of employee hours worked (including all employees whose injuries/illnesses are recorded on the log, minus exempt and temporary workers' hours) in the reference year.

200,000 = base for 100 full-time workers working 40 hours per week, 50 weeks per year

#### Sample One-Year TRCR Calculation:

An establishment scheduled for inspection in October 1999 employed an average of 54 workers in 1998. Therefore, injury and illness cases and employment data for the preceding calendar year will be used.

# recordable injuries = 9

# recordable illnesses = 4

# employee hours worked in 1998 = 54 workers x 40 hours x 50 weeks = 108,000

$$\text{TRCR} = \frac{(9 + 4) \times 200,000}{108,000}$$

$$= \frac{2,600,000}{108,000}$$

$$= 24.07 \text{ (rounded to 24.1)}$$

**Sample Two-Year TRCR Calculation:**

An establishment scheduled for inspection in October 2000 employed an average of 50 workers in 1999 and 54 workers in 1998. The injury and illness cases and employment data for the two preceding calendar years will be used.

In calendar year 1998:

- # recordable injuries = 9
- # recordable illnesses = 4
- # employee hours worked = 108,000

In calendar year 1999:

- # recordable injuries = 14
- # recordable illnesses = 7
- # employee hours worked = 100,000

Two-Year TRCR =

$$\frac{9 + 4 \text{ [Year 1 recordable data]} + 14 + 7 \text{ [Year 2 recordable data]} \times 200,000}{108,000 \text{ [Year 1 \# employee hours worked]} + 100,000 \text{ [Year 2 \# employee hours worked]}}$$

$$= \frac{(9 + 4 + 14 + 7) \times 200,000}{108,000 + 100,000}$$

$$= \frac{6,800,000}{208,000}$$

$$= 32.69 \text{ (rounded to 32.7)}$$

**Three-Year TRCR Calculation:**

When determining the rate for an employer who has been in SHARP for two or more years, calculate the TRCR as in the two-year sample above, but include the third year's data.

## Appendix C

### Sample List of Hazards in the Preferred Format

#### LIST OF HAZARDS<sup>1</sup>

**This List of Hazards must be posted, unedited, in a prominent place where it is readily observable by all affected employees for three (3) days, or until the hazards are corrected, whichever is later.**

**VISIT NUMBER: 515196904**

**VISIT DATE(S): 01/17/01**

Wilson Eye Center  
435 Pine Street  
Dallas, TX 75003

This is a notification of serious hazards identified during the consultation visit. This notification is **not** a citation. The Wilson Eye Center is a voluntary participant in the consultation program and has agreed to correct the hazards on this list within the correction due date(s) specified. The Wilson Eye Center has also agreed to make information on other-than-serious hazards as well as corrective action proposed by the consultant available to you upon request.

<b>ITEM</b>	0001	<b>STANDARD</b>	1910.0132(d)(01)
<b>INSTANCE</b>	A	<b>CORRECTION DUE DATE:</b>	02/23/01
<b>DESCRIPTION:</b> A list of job titles, any potential hazards associated with the job and what personal protective equipment, if any, would be needed to protect the employee from the hazard or hazards.			

<b>ITEM</b>	0002	<b>STANDARD</b>	1910.0151(c)
<b>INSTANCE</b>	A	<b>CORRECTION DUE DATE:</b>	02/23/01

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<sup>1</sup> The first page of the List of Hazards should be printed on the Consultation Project's letterhead.

**DESCRIPTION:** The eyewash station is placed correctly; however, only hot water can be accessed which would cause further injury to the eye(s). An eliminator valve plumbed into the system would eliminate this problem.

<b>ITEM</b>	0003	<b>STANDARD</b>	1910.1030(d)(02)(i)
<b>INSTANCE</b>	A	<b>CORRECTION DUE DATE:</b>	02/23/01

**DESCRIPTION:** New types of engineering controls are on the market that can help eliminate sharps (needle) injuries. The facility needs to be evaluating these and moving toward the use of any system that would be feasible for their type of practice.

<b>ITEM</b>	0004	<b>STANDARD</b>	1910.1200(e)(01)(i)
<b>INSTANCE</b>	A	<b>CORRECTION DUE DATE:</b>	02/23/01

**DESCRIPTION:** A list of hazardous chemicals that are onsite needs to be added to the written HAZARD COMMUNICATION PROGRAM.

If you have any questions regarding this list of hazards which cannot be answered by our employer, please contact the state consultation program at (555) 693-2231 or (555) 693-1671.