

PERFORMS, that allow for an exchange of information between the Federal and State partners to enhance the ability of the program to reflect the joint commitment to continuous improvement and client centered services.

Ira L. Mills,

Departmental Clearance Officer.

[FR Doc. 99-25884 Filed 10-5-99; 8:45 am]

BILLING CODE 4510-30-M

## DEPARTMENT OF LABOR

### Bureau of Labor Statistics

#### Business Research Advisory Council; Notice of Meetings and Agenda

The regular Fall meetings of the Business Research Advisory Council and its committees will be held on October 27 and 28, 1999. All of the meetings will be held in the Conference Center of the Postal Square Building, 2 Massachusetts Avenue, NE., Washington, DC.

The Business Research Advisory Council and its committees advise the Bureau of Labor Statistics with respect to technical matters associated with the Bureau's programs. Membership consists of technical officials from American business and industry.

The schedule and agenda for the meetings are as follows:

#### Wednesday, October 27, 1999—Meeting Rooms 9 and 10

##### 10:00-11:30 a.m.—Committee on Employment Projections

1. Status report on 1998-2008 Projections
2. Major program plans for FY 2000
3. A new approach to evaluating the Office of Employment Projections
4. Discussion of agenda items for the Spring 2000 meeting

##### 1:00-2:30 p.m.—Committee on Compensation and Working Conditions

1. Update on Stock Options Phase 1 test results and Phase 2 plans
2. Discussion of Stock Options
3. Planning for the Spring 2000 meeting: Was today's meeting format successful? Should we do this again?

##### 3:00-4:30 p.m.—Committee on Employment and Unemployment Statistics

1. Consumer Expenditures Survey (CES):
  - a. Impact of North American Industry Classification System (NAICS) implementation on CES
  - b. Discussion of time series breaks
2. Current Population Survey (CPS):
  - a. Impact of new race/ethnic, industry and occupation classifications on CPS
  - b. Discussion of time series breaks
3. Job Openings and Labor Turnover Survey (JOLTS):

- a. Discussion of definitions of job openings, hires, and separations, and availability of these data
  - b. Discussion of upcoming Response Analysis Survey
4. Discussion of agenda items for the Spring 2000 meeting

#### Thursday, October 28, 1999—Meeting Rooms 9 and 10

##### 8:30-10:00 a.m.—Committee on Productivity and Foreign Labor Statistics

1. Activities of the Division of International Technical Cooperation
2. Report on the new set of measures of unit labor costs
3. Report on comparisons of international labor force measures
4. Discussion of agenda items for the Spring 2000 meeting

##### 10:30 a.m.—Council Meeting

1. Chairperson's opening remarks
2. Commissioner's address and discussion
3. BLS data collection issues

##### 1:30-3:00 p.m.—Committee on Price Indexes

1. Consumer Price Index
  - a. Quality adjustment and new goods
  - b. Report on CPI research series
2. International Prices: proposed program improvements
3. Producer Price Index
  - a. Effects of the PPI of deregulation in the utilities industries
  - b. Efforts to minimize new product bias in the PPI
4. Discussion of agenda items for the Spring 2000 meeting

##### 1:30-3:00 p.m.—Committee on Occupational Safety and Health Statistics (Concurrent Session, Meeting Room 8)

1. Review of the worker demographic and circumstances data from the 1997 Survey of Occupational Injuries and Illness
2. Review of the 1998 Census of Fatal Occupational Injuries results
3. Presentation of data on fatal injuries and non-fatal injuries and illnesses to workers aged 17 and under
4. Discussion of the impact of OSHA recordkeeping changes on the BLS Survey of Occupational Injuries and Illnesses
5. Status of Fiscal Year 2000 Budget for the BLS Occupational Safety and Health Statistics program
6. Discussion of agenda items for the Spring 2000 meeting

The meeting are open to the public. Persons with disabilities wishing to attend these meetings as observers should contact Tracy A. Jack, Liaison, Business Research Advisory Council, at (202) 606-5869, for appropriate accommodations.

Signed at Washington, D.C. the 29th day of September 1999.

**Katherine G. Abraham,**  
Commissioner.

[FR Doc. 99-26038 Filed 10-5-99; 8:45 am]

BILLING CODE 4510-25-M

## DEPARTMENT OF LABOR

### Occupational Safety and Health Administration

[Docket No. W-100]

#### Proposed Policy Statement Concerning the Occupational Safety and Health Administration's Use of Voluntary Employer Safety and Health Self-Audits

**Authority:** Sec. 8(a) and 8(b), Pub. L. 91-596, 84 Stat. 1599 (29 U.S.C. 657).

**AGENCY:** Occupational Safety and Health Administration, USDOL.

**ACTION:** Notice of proposed policy statement; request for comment.

**SUMMARY:** The Occupational Safety and Health Administration (OSHA) is issuing a proposed policy statement describing the agency's treatment of voluntary employer self-audits that assess workplace safety and health conditions, including compliance with the Occupational Safety and Health Act. The proposed policy statement provides that the agency will not routinely request self-audit reports at the initiation of an inspection. Where a voluntary self-audit identifies a hazardous condition and the employer promptly takes self-audit reports at the initiation of an inspection. Where a voluntary self-audit identifies a hazardous condition and the employer promptly takes appropriate corrective measures, OSHA will treat the audit report as evidence of good faith, and not as evidence of a willful violation. OSHA requests public comment regarding its proposed policy statement.

**DATES:** Written comments must be submitted on or before December 6, 1999.

**ADDRESSES:** Send two copies of your comments to: OSHA Docket Office, Docket W-100, Room N-2625, Occupational Safety and Health Administration, U.S. Department of Labor, 200 Constitution Avenue NW, Washington, D.C. 20210, Telephone: 202-693-2350. Comments limited to 10 pages or fewer may be faxed to the Docket Office at the following FAX number: 202-693-1648. However, the original and one copy must be mailed to the Docket Office within two days. Electronic comments may also be submitted electronically through the OSHA Internet site at URL, <http://www.osha-slc.gov/e-comments/e-comments-self-audit.html>. Please be aware that information such as studies, journal articles, and so forth cannot be attached to the electronic response and must be submitted in quadruplicate to

the above address. Such attachments must clearly identify the respondent's electronic submission by name, date, and subject, so that they can be attached to the correct response.

**FOR FURTHER INFORMATION CONTACT:**

Richard E. Fairfax, Occupational Safety and Health Administration, Directorate of Compliance Programs, Room N-3468, U.S. Department of Labor, 200 Constitution Avenue, NW, Washington, D.C. 20210, Telephone: 202-693-2100. For electronic copies, contact OSHA's web page on the Internet at <http://www.osha.gov>.

**SUPPLEMENTARY INFORMATION:**

**I. Explanation of the Proposed Policy**

The purpose of the Occupational Safety and Health Act is to assure, so far as possible, safe and healthful working conditions for every working man and woman in the Nation. In order to achieve that goal, the Act requires employers to furnish their employees with employment which is free from recognized hazards that are likely to cause death or serious physical harm, and to comply with occupational safety and health standards issued by the Secretary of Labor. Some courts have inferred from these requirements that employers have an implicit duty to scrutinize their workplaces to identify and correct hazardous conditions. See *Dunlop v. Rockwell International*, 540 F.2d 1283, 1291-92 (6th Cir. 1976); *Automatic Sprinkler Corp. of America*, 7 BNA OSHC 1957, 1959 (OSH Review Commission 1979). OSHA also has included an explicit requirement in many standards that employers self-inspect to determine compliance. See, e.g., 29 CFR 1926.20(b) (requiring "frequent and regular" inspections of construction sites); 29 CFR 1910.119 (mandating compliance audits and other inspections and investigations for operations with hazardous chemicals); 29 CFR 1910.120 (requiring audits and other reviews for operations with hazardous waste products); and 29 CFR 1910.1025(d), (e) (mandating monitoring and planning to evaluate and to reduce employee exposure to lead).

In addition to required self-audits, many conscientious employers undertake voluntary self-audits in order to foster safe and healthful work environments and to assure compliance with the Occupational Safety and Health Act. For a number of years, OSHA, employers, employee representatives, and other interested parties have considered the role that these voluntary employer self-audits play in meeting the goals of the Act. The purpose of this proposed policy is to

provide general guidance regarding the circumstances in which OSHA intends to exercise its authority to obtain voluntary self-audit reports during the course of an inspection, and the manner in which the agency will use voluntary self-audits when it classifies violations of the Occupational Safety and Health Act and when it proposes penalties for such violations. The agency intends that the policy will recognize the value of voluntary self-audit programs under which employers or their agents identify and promptly correct hazardous conditions and will acknowledge that, in limited situations, records relating to voluntary self-audits play an important role in the agency, ability to effectively carry out its inspection and enforcement duties under the Occupational Safety and Health Act.

OSHA recognizes the vital part that voluntary safety and health audits can play in workplace safety and health when employers use them to identify workplace hazards and take the corrective actions needed to control such hazards. OSHA also notes that safety and health audits—when they lead to appropriate corrective action—can provide significant economic benefits for employers by reducing the myriad direct and indirect costs that are associated with occupational injuries and illnesses. These costs include workers' compensation, indemnification and medical payments, sick leave, and lost productivity. Further, voluntary safety and health audits produce tangible benefits for employers who seek to avoid OSHA enforcement actions by identifying conditions that constitute violations of the Occupational Safety and Health Act and by providing employers with the opportunity to rectify those conditions prior to the time that OSHA inspects the work site. A good self-audit program should be especially effective in detecting and preventing the "high gravity" and "repeated" violations that carry the highest penalties.

It is also the case the documentation derived from employers may be of critical importance during an OSHA inspection, as the agency attempts to ascertain whether an employer is in compliance with the Occupational Safety and Health Act and the standards promulgated under that Act. In addition, the legal burden to establish an employer's actual or constructive knowledge of a violative condition rests with the Secretary of Labor under current Occupational Safety and Health Review Commission precedent and the Secretary is required consider the classification of each violation and to consider the employer's good faith in

setting an appropriate monetary penalty. Therefore, OSHA relies, in part, on evidence concerning the employer's safety and health efforts and the employer's state of mind to discharge its duty to enforce the Occupational Safety and Health Act fairly and effectively.

OSHA has broad legal authority to request the production of documentation concerning an employer's voluntarily conducted safety and health audits. See 29 U.S.C. 657(b); *Reich v. Hercules, Inc.*, 857 F. Supp. 367 (D.N.J. 1994); *Martin v. Hammermill Paper Division of Int'l. Paper Co.*, 796 F. Supp. 1474 (S.D. Ala. 1992). Employers generally recognizes that OSHA has legal authority to obtain self-audit reports, but some have urged the agency to issue a policy statement clarifying that it does not intend to exercise that authority routinely.

While many employers conduct voluntary safety and health audits, some employers have expressed concern that OSHA's enforcement powers, and the absence of an explicit policy statement recognizing the value of voluntary self-audits, could deter employers from undertaking voluntary self-auditing activities. Specifically, employers have raised concerns that, if OSHA routinely seeks to obtain employers' voluntary safety and health audit reports for enforcement purposes, some employers might choose not to conduct such audits. This policy statement is designed to convey clearly OSHA's policy and practices concerning voluntary self-audits.

**II. Description of Proposed Policy**

The draft policy applies to audits (1) that are systematic, documented, and objective reviews conducted by, or for, employers to review their operations and practices to ascertain compliance with the Act, and (2) that are not mandated by the Act, rules or orders issued pursuant to the Act, or settlement agreements. A systematic audit is planned, and it is designed to be appropriate to the scope of the hazards that it addresses and to provide a basis for corrective action. Ad hoc observations made by an employer or a supervisor and ad hoc communications concerning a hazardous condition made during the ordinary course of business are not included within the definition of a "self-audit" or "voluntary self-audit report." The findings resulting from the systematic self-audit must be documented contemporaneously (at the time the condition is discovered or immediately after completion of the audit) so as to assure that they receive prompt attention. The self-audit also must be conducted by or supervised by

a competent professional, who is capable of identifying the relevant workplace hazards. However, a self-audit need not be comprehensive in order to qualify for inclusion under the policy; for example, a voluntary self-audit designed to identify hazards associated with a particular process or hazard will qualify for consideration under the policy.

The policy provides that OSHA will not routinely request voluntary self-audit reports when initiating an inspection, and that the agency will not use self-audit reports as a means of identifying hazards upon which to focus during an inspection. Rather, OSHA intends to seek access to such reports only in limited situations in which the agency has an independent basis to believe that a specific safety or health hazard warrants investigation, and has determined that such records may be relevant to identify or determine the circumstances of the hazardous condition.

An example of such a situation is when a fatal or catastrophic accident has occurred, and OSHA is investigating the circumstances of the accident to assess compliance and to assure that hazardous conditions are abated. Another example is when the agency has reason to believe a hazardous non-complying condition exists and the agency is seeking to evaluate the extent of the hazard.

OSHA emphasizes that it is not seeking through this policy statement to expand the situations in which it requests production of self-audit reports beyond its present practice. In addition, OSHA intends to seek access only to those audit reports, or portions of those reports, that are relevant to the particular matters that it is investigating.

OSHA has defined "voluntary self-audit report" to include information obtained in the audit, as well as analyses and recommendations. The effect is to include audit information in the documents that OSHA will not routinely request at the initiation of the inspection. OSHA has defined the term this way because the agency believes that the definition responds to the concerns raised by employers about the effect of routine OSHA requests for voluntary self-audit findings. OSHA notes that the U.S. Environmental Protection Agency's self-audit policy statement applies to analyses, conclusions, and recommendations resulting from a self-audit, but excludes data obtained in the audit from the definition of an "environmental audit report." 60 FR 66706, 66711. OSHA requests comment on its proposed definitions.

The proposed policy also contains provisions designed to assure that employers who respond with prompt corrective actions will receive corresponding benefits in an OSHA inspection. These provisions would come into play when OSHA obtains a voluntary self-audit report, whether because the employer has voluntarily provided it to OSHA, as commonly occurs, or because OSHA has required production of the report.

The proposed policy statement explains that OSHA will treat the self-audit report as evidence of good faith, not as evidence of a willful violation, provided that the employer has responded promptly with appropriate corrective action to the violative conditions identified in the audit. Accordingly, if the employer is responding in good faith and in a timely manner to correct a violative condition discovered in a voluntary self-audit, and OSHA detects the condition in an inspection, OSHA will not use the report as evidence of willfulness. A timely good faith response includes promptly taking diligent steps to correct the violative condition, while providing effective interim employee protection, as necessary.

In addition, OSHA will treat a voluntary self-audit that results in prompt corrective action of the nature described above and appropriate steps to prevent similar violations, as strong evidence of the employer's good faith with respect to the matters addressed. Good faith is one of the statutory factors that OSHA is directed to take into account in assessing penalties. 29 U.S.C. 666(j). Where OSHA finds good faith, OSHA's Field Inspection Reference Manual (the "FIRM") authorizes up to a 25 percent reduction in the penalty that otherwise would be assessed. The FIRM treats the presence of a comprehensive safety and health program as a primary indicator of good faith. A comprehensive safety and health program includes voluntary self-audits, but is broader in concept, covering additional elements. OSHA has concluded preliminarily that a voluntary self-audit/correction program of the type described in this statement should be considered evidence of good faith. If the agency does not request an employer's voluntary self-audit reports during the course of an inspection, the employer subsequently may provide such reports to the agency as evidence of its good faith. OSHA requests comment on this issue.

OSHA believes that the policy proposed here would provide appropriate positive recognition of the value of voluntary self-audits while

simultaneously enabling the agency to enforce the provision of the Occupational Safety and Health Act effectively. In order to assure that the policy meets these dual goals most effectively, the agency seeks comments from employers, employee representatives, and other interested parties concerning, *inter alia*, the effect that the proposed policy would have upon employers' willingness to conduct voluntary self-audits, the effect that the policy would have upon the agency's ability to enforce the Occupational Safety and Health Act, and the manner in which the policy might be modified to meet these goals better. OSHA invites individuals and organizations to submit comments regarding the propriety of the self-audit policy in general, or regarding any specific issues concerning voluntary employer self-audits that are relevant to the effective and fair enforcement of the Occupational Safety and Health Act.

### III. Statement of Proposed Policy on Voluntary Self-Audits

#### A. Purpose

1. This policy statement describes how OSHA will treat voluntary self-audits in carrying out agency civil enforcement activities. Voluntary self-audits, properly conducted, may discover conditions that violate the Occupational Safety and Health Act so that those conditions can be corrected promptly and similar violations prevented from occurring in the future. This policy statement is intended to provide appropriate, positive treatment that is in accord with the value voluntary self-audits have for employers' safety and health compliance efforts, while also recognizing that access to relevant information is important to the Secretary's inspection and enforcement duties under the Occupational Safety and Health Act.

2. This policy statement sets forth factors that guide OSHA in exercising its informed discretion to request and use the information contained in employers' voluntary self-audit reports. The policy statement is not final agency action. It is intended only as general, internal OSHA guidance, and is to be applied flexibly, in light of all appropriate circumstances. It does not create any legal rights, duties, obligations, or defenses, implied or otherwise, in any party, or bind the agency.

3. This policy statement has three main components:

(a.) It explains that OSHA will refrain from routinely requesting reports of

voluntary self-audits at the initiation of an enforcement inspection;

(b.) It contains a safe-harbor provision under which, if an employer is responding in good faith to a violative condition identified in a voluntary self-audits report, and OSHA discovers the violation during an enforcement inspection, OSHA will not treat that portion of the report as evidence of willfulness;

(c.) It describes how an employer's response to a voluntary self-audits may be considered evidence of good faith, qualifying the employer for a substantial civil penalty reduction, when OSHA determines a proposed penalty. See 29 U.S.C. 666(j). Under this section of the Act, a proposed penalty for an alleged violation is calculated giving due consideration to the good faith of the employer.

#### B. Definitions

1. "Self-Audit" means a systematic, documented, and objective review by an employer of its operations and practices related to meeting the requirements of the Occupational Safety and Health Act.

(a.) "Systematic" means that the self-audit is part of a planned effort to prevent, identify, and correct workplace safety and health hazards. A systematic self-audit is designed by the employer to be appropriate to the scope of hazards it is aimed at discovering, and to provide an adequate basis for corrective action;

(b.) "Documented" means that the findings of the self-audit are contemporaneously recorded and maintained by the employer;

(c.) "Objective" means that the self-audit is conducted by or under the direction of a safety and health professional who is competent to identify workplace safety and health hazards, given the scope and complexity of the processes under review.

2. "Voluntary" means that the self-audit is not required by statute, rule, order, or settlement agreement. Voluntary self-audits may assess compliance with substantive legal requirements (e.g., an audit to assess overall compliance with the general machine guarding requirement in 29 CFR 1910.212).

3. "Voluntary self-audit report" means the written information, analyses, conclusions, and recommendations resulting from a voluntary self-audit, but does not include matters required to be disclosed to OSHA by the records access rule, 29 CFR 1910.1020, or other rules.

4. "Good faith" response means an objectively reasonably, timely, and diligent effort to comply with the

requirements of the Act and OSHA standards.

#### C. OSHA Use of Voluntary Self-Audit Reports

##### 1. No Routine Initial Request for Voluntary Self-Audit Reports

(a.) OSHA will not routinely request voluntary self-audit reports at the initiation of an inspection. OSHA will not use such reports as a means of identifying hazards upon which to focus inspection activity.

(b.) However, if the agency has an independent basis to believe that a specific safety or health hazard warranting investigation exists, OSHA may exercise its authority to obtain the relevant portions of voluntary self-audit reports relating to a hazard.

##### 2. Safe Harbor—No Use of Voluntary Self-Audit Reports as Evidence of Willfulness

A violation is considered willful if the employer has intentionally violated a requirement of the Act, shown reckless disregard for whether it was in violation of the Act, or demonstrated plain indifference to employee safety and health. Consistent with the prevailing law on willfulness, if an employer is responding in good faith to a violative condition discovered through a voluntary self-audit and OSHA detects the condition during an inspection, OSHA will not use the voluntary self-audit report as evidence that the violation is willful.

This policy is intended to apply when, through a voluntary self-audit, the employer learns that violative conditions exist and promptly takes diligent steps to correct the violative conditions and bring itself into compliance, while providing effective interim employee protection, as necessary.

##### 3. Good Faith Penalty Reduction

Under the OSH Act, an employer's good faith normally reduces the amount of penalty that otherwise would be assessed for a violation. 29 U.S.C. 666(j). OSHA's FIRM provides up to a 25% penalty reduction for employers who have implemented a safety and health program, including voluntary self-audits. OSHA will treat a voluntary self-audit that results in prompt action to correct violations found, in accordance with paragraph C.2. above, and appropriate steps to prevent similar violations, as strong evidence of an employer's good faith with respect to the matters covered by the voluntary self-audit. This policy does not apply to repeat violations.

#### D. Federal Program Change

This policy statement describes a Federal OSHA Program change for which State adoption is not required; however, in the interest of national consistency, States are encouraged to adopt a similar policy regarding voluntary self-audits.

This document was prepared under the direction of Charles N. Jeffress, Assistant Secretary for Occupational Safety and Health, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210.

Signed at Washington, DC, this 30th day of September 1999.

**Charles N. Jeffress,**  
Assistant Secretary of Labor.

[FR Doc. 99-25956 Filed 10-5-99; 8:45 am]

BILLING CODE 4510-26-M

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#### LIBRARY OF CONGRESS

##### Copyright Office

[Docket No. RM 98-9A]

##### Privacy Act of 1974: Current Systems of Records

**AGENCY:** Copyright Office, Library of Congress.

**ACTION:** Amendments.

**SUMMARY:** This document makes corrections to the Copyright Office's Notice of Current Systems of Records published in the **Federal Register** on Monday, September 28, 1998, as well as adding four new systems of records maintained by the Copyright Office related to appeals of Office decisions and notices filed with the Office. The entire current list of systems of records is available on the Copyright Office's website.

**DATES:** Comments are due on or before November 5, 1999. The changes made are effective November 22, 1999, unless the Copyright Office publishes notice to the contrary.

**FOR FURTHER INFORMATION CONTACT:** Marilyn J. Kretsinger, Assistant General Counsel, or Patricia L. Sinn, Senior Attorney. Telephone: (202) 707-8380. Fax: (202) 707-8366.

**ADDRESSES:** Interested persons should submit ten (10) copies of their written comments, if BY MAIL, to: Marilyn J. Kretsinger, Assistant General Counsel, Copyright GC/I&R, PO Box 70400, Southwest Station, Washington, DC 20024. If delivered BY HAND, ten (10) copies should be brought to: Office of the General Counsel, James Madison Memorial Building, Room LM-403, 101 Independence Avenue, SE, Washington, DC 20540.