Introduction to OSHA

Module Purpose

The purpose of this module is to introduce participants to safety and health regulatory issues and compliance. Emphasis is placed on the OSH Act and its major provisions, OSHA standards and enforcement procedures, as well as basic compliance guidelines that relate to the construction industry are highlighted.

Time

60 minutes (8:35 - 9:35 am)
(A 10-minute break follows this module)

Objectives

Show slides 1.1 — 1.2

Upon completion of this module, participants will be able to:

- Recognize the major provisions of the OSH Act including coverage, employer and employee duties and rights, workplace inspections, violations/citations/penalties policies, and focused inspections.
- Identify the key phases of an OSHA inspection: the opening conference, job site inspection, and closing conference.
- Locate any given OSHA standard using references by topic name or code number.
- Recognize employer accountabilities at multi-employer worksites.
- Obtain a general understanding of various subparts of the 1926 standards, particularly focusing on the responsibilities of "Competent Persons" and "Qualified Persons."
- Respond appropriately to an OSHA inspection

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Materials and Resources	PowerPoint Slides: Module 1 Activities: Appendices 1A and 1B

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Module 1: Introduction to OSHA
Instructional Strategy and Course Content

Facilitator Notes

Lecture

1. What is OSHA? *Show Slide 1.3*

2. What does OSHA do? *Show Slide 1.4*

3. Who is accountable to OSHA? *Show Slide 1.5*

Lesson

1. What is OSHA?
The Occupational Safety & Health Administration (OSHA) was created in 1970 through the "Occupational Safety and Health Act," also known as the Williams-Steiger Act. It was developed to consolidate several other safety laws (including the Construction Safety Act) into one agency, and to correct what was perceived as a failure of existing programs to adequately protect workers. OSHA is part of the U.S. Department of Labor.

As stated in the OSH Act, its purpose is "...to assure ... every working man and woman in the Nation safe and healthful working conditions and to preserve our human resources."

2. What does OSHA do?
There are five primary activities for OSHA:
- Develop standards
- Inspect employers
- Investigate injuries and fatalities
- Issue citations and impose penalties (financial or criminal)
- Assist in occupational safety and health training

3. Who is accountable to OSHA?
OSHA was designed to make EMPLOYERS responsible for the safety and health of their EMPLOYEES. Under the OSH Act, both employers and employees have safety responsibilities, but OSHA only enforces the law against employers.

An EMPLOYER is defined as a person engaged in a business affecting commerce who has employees; it does not include the United States or other government entity.

An EMPLOYEE is defined as a person employed by an employer who affects commerce.

Employer—Two provisions generally cover employers' duties:
- Section 5(a)(1), General Duty Clause – "Each employer shall furnish employment free from recognized hazards..." This is the "catch all" clause. Even if OSHA does not have a specific standard to cover a hazard to which an employee is exposed, OSHA may still issue a citation if it can show that the hazard is "recognized." OSHA may use consensus standards, such as those issued by the American National Standards Institute (ANSI) to show recognizable hazards.
- Section 5(a)(2), Each employer shall comply with OSHA standards.

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Facilitator Notes	Lesson
	Employee—Employees' duties are covered in section 5(b). This section states that employees must comply with applicable rules and regulations. As noted previously, OSHA does not enforce this section against employees. Rather, employee misconduct can be a *defense* for the employer against a citation if the employer can demonstrate that it has provided a safe and healthful environment, and has consistently enforced its safety and health program, including disciplining non-compliant employees.
4. How does OSHA create standards? *Show slide 1.6.*	**4. How does OSHA create standards?** There are four different types of OSHA standards: • When OSHA was first created, it had authority to issue standards by adopting existing industry consensus standards, such as those developed by ANSI, ASTM, or NFPA, or by adopting regulations issued by other federal agencies. • OSHA may develop its own standards through rulemaking procedures. • In emergency situations, OSHA may issue Emergency Temporary Standards. • In unique situations, OSHA may issue variances to its standards. OSHA will communicate with the public about its standard setting plans through notices in the *Federal Register* and on OSHA's website, followed by opportunities for public hearings and comments. In the construction industry, OSHA also receives input through its Advisory Committee on Construction Safety and Health, comprised of volunteers from the industry representing contractors, labor, and related public organizations.
5. Are other agencies and governments involved? Show slides 1.7 — 1.10	**5. Are other agencies and governments involved?** There are several other federal agencies, as well as state governments, that have activities related to OSHA. ***Sister Agencies***— In addition to OSHA, the OSH Act created two other agencies. The National Institute for Occupational Safety and Health (NIOSH) was established to conduct studies and research on worker safety and health. It is part of the Department of Health and Human Services. The OSH Review Commission is a judicial organization that was created to hear legal appeals on cases between OSHA and employers. It is an independent agency. ***Preemption***—In situations where another federal agency exercises authority in the area of safety or health, OSHA is "preempted" from developing regulations or conducting enforcement. This is often referred to as "4(b)(1) preemption." The number refers to the section to the act that prohibits OSHA from operating where another agency has authority.

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Facilitator Notes	Lesson

A familiar example of preemption is the newly created Federal Motor Carrier Safety Administration (FMCSA), part of the Department of Transportation. The FMCSA has jurisdiction over safety regulations related to operation of large commercial vehicles. One set of these regulations are the "hours of service" rules which govern how long truck drivers can operate their vehicles before needing rest. While hours of operation are related to a driver's health and safety, OSHA cannot cite an employer covered by the FMCSA for making its drivers work long hours because FMCSA has authority, and thus preempts OSHA.

Preemption can be confusing, however, because it only blocks OSHA's enforcement if the other agency's rules are *related to worker safety and health*. For example, another Department of Transportation Agency, the Federal Highway Administration (FHWA), publishes the *Manual on Uniform Traffic Control Devices* (MUTCD). For FHWA's purposes, the MUTCD (among other things) provides *recommended practices* for flaggers and traffic control. FHWA views the MUTCD as a tool to help state departments of transportation and contractors provide efficient and consistent traffic control past construction work zones. For FHWA, few parts of the MUTCD are mandatory regulations related *to worker safety*. The MUTCD does contain a "standard of care" for the industry, however, and particular attention should be paid to words such as "shall" (mandatory), "should" (advisory), and "may" (permissive).

OSHA, however, has the authority to *adopt* another agency's regulations and apply them to worker safety and health. In 1971, OSHA adopted the then current version of the MUTCD as an occupational safety and health standard. Since FHWA does not enforce the MUTCD, OSHA is NOT PREEMPTED from adopting the standard and enforcing it through citations and penalties. As a result, an OSHA inspector can cite a contractor if the traffic control devices are improperly deployed and create hazards for WORKERS. (OSHA only has authority to protect *workers*, therefore OSHA cannot cite for *traffic* and *motorist* hazards created by poor traffic control.)

State Plans—Another provision of the OSH Act allows states to assume responsibility for enforcing occupational safety and health regulations in lieu of federal OSHA. If a state chooses to do this, it must issue and enforce standards that are substantially equal to the federal standards. Approximately 26 states have taken this option and enforce their own regulations, with assistance from federal funds.

This state plan option creates several interesting problems. Because of constitutional and federal legal limitations, the U.S. government cannot enforce OSHA regulations against employees of state governments. Therefore, in states that operate under federal OSHA, OSHA cannot issue citations against the state if its employees are not working in safe and healthful conditions. For example, if an OSHA compliance officer arrived at a road construction site and noticed a state DOT inspector

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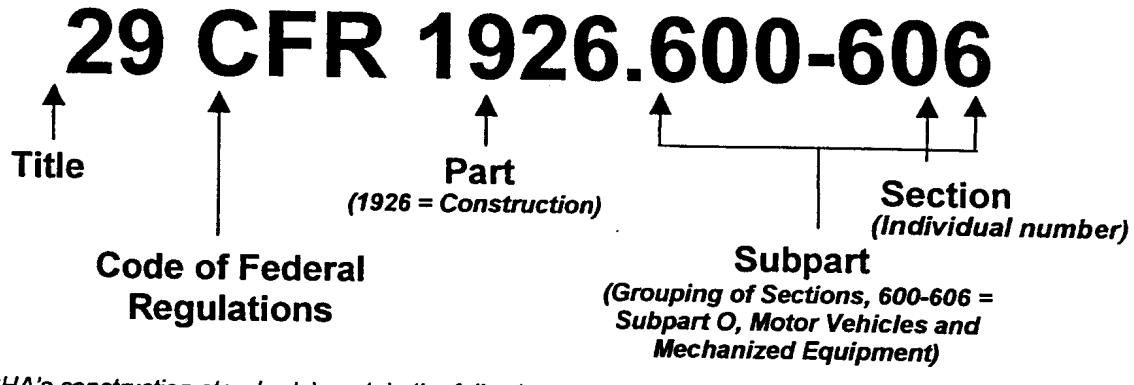
Facilitator Notes	Lesson
	walking on a bridge without necessary fall protection, OSHA cannot cite the state DOT. If, however, worker safety and health regulations are enforced under a "state plan," it is entirely possible that the state-employed inspector could cite another state agency for failure to protect its employees. While the federal government cannot cite state employees, the opposite is also true—a state government cannot cite federal employees. As a result, federal OSHA has offices and inspectors in "state plan" states solely for the purpose of inspecting and enforcing the federal standards for employees of federal institutions.
6. Where do I find the OSHA Standards? *Show slides 1.11 — 1.12.*	**6. Where do I find the OSHA standards?** The OSHA standards are published in the U.S. Code of Federal Regulations (CFR). They are primarily found in title 29, parts 1910 and 1926. "1910" standards apply to general/all industries; "1926" standards apply only to construction. The specific standards are sectioned and numbered after the "part" number. A series of related rules is grouped into a "subpart" and given a letter. For example, the OSHA construction standards on *Motor Vehicles and Mechanized Equipment* are found in 29 CFR 1926.600-606. Each series of numbers applies to a certain type of equipment. For example, 600=Equipment, 601=Motor Vehicles, 602 Material Handling Equipment, 603=Pile Driving Equipment, 604=Site Clearing, 605=Marine Operations, and 606=Definitions. Sections 600-606 are referred to as "Subpart O."



Part 1926 (OSHA's construction standards) contain the following subparts:

- Subpart C – Safety Program and Training
- Subpart D – Hazard Communication, Occupational Health
- Subpart E – Personal Protective Equipment
- Subpart F – Fire Protection
- Subpart G – Signs, Signals and Barricades
- Subpart H – Material Handling
- Subpart I – Tools, Hand and Power
- Subpart J – Welding and Cutting
- Subpart K – Electrical
- Subpart L – Scaffolding
- Subpart M – Fall Protection
- Subpart N – Cranes, Derricks, Hoists, Elevators and Conveyors
- Subpart O – Motor Vehicles, Mechanized Equipment and Marine Operations
- Subpart P – Excavations
- Subpart Q – Concrete and Masonry
- Subpart R – Steel Erection
- Subpart S – Tunneling, Caissons, Cofferdams and Compressed Air
- Subpart T – Demolition
- Subpart U – Blasting
- Subpart V – Power Transmission
- Subpart X – Ladders and Stairs

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Instructor Notes	Lesson
Group Activity Find the OSHA Standard: *Slide 1.13; See Appendix 1A*	**7. Group Activity—Find the OSHA Standard** Participants will spend ten (10) minutes locating specific standards information within 29 CFR Part 1926.
Lecture 8. What authority does OSHA have? *Show slides 1.14 —1.16.*	**8. What authority does OSHA have at a work site?** Under the OSH Act, and later revisions and court decisions, OSHA has the power to: ***Inspect—*** ▪ Enter a work area without delay, at reasonable times ▪ Inspect during regular work hours and at reasonable times, and to privately question employers and employees ▪ (More recent court decisions require OSHA compliance officers to have a warrant to enter a business if the employer denies them entry. This is not true if the work area is a public area, such as a ROAD or INTERSTATE HIGHWAY.) ▪ Power to subpoena company records ▪ Require record keeping and posting of information ▪ Maintain an employees right to complain without retribution ***Issue Citations—*** ▪ Cite for violations of OSHA standards or general duty clause (5(a)(1)) ▪ When issuing a citation, OSHA must ensure that: – The citation is in writing – It describes the particular violation and applicable standard or authority – The citation is posted – A reasonable abatement period is attached to the citation
9. What rights to employers and employees have? *Show slide 1.17.*	**9. What rights do employers and employees have?** ▪ Employers have the right to contest all aspects of a citation. ▪ Employees only have a right to contest the time period fixed for abating the hazard.
10. What penalties can OSHA give? *Show slides 1.18 — 1.19.*	**10. What penalties can OSHA give?** OSHA may issue penalties as follows: ▪ For willful or repeated violations, up to $70,000 per violation with a minimum of $5,000 for a willful violation ▪ For serious and "other than serious" violations, to a maximum of $7,000 ▪ For failure to abate a hazard, a maximum of $7,000 per day for each day the violation continues ▪ For giving advance notice of an inspection without authority, a maximum of $1,000 or imprisonment for not more than 6 months ▪ For false statements, representation or certification on documents maintained as required by the OSH Act, a maximum of $10,000 or imprisonment for not more than 6 months

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Instructor Notes	Lesson

A serious violation is defined as a situation having a substantial probability that death or serious physical harm could result. . . unless the employer did not, and could not with the exercise of reasonable diligence, know of the presence of the violation.

11. What does OSHA look for during an inspection? *Show slides 1.20 — 1.28.*

11. What does OSHA look for during an inspection?
There are three stages to the OSHA inspection: 1) Opening conference, 2) Walk around, and 3) Closing conference. During the opening conference the compliance officer will determine if management and paperwork requirements are being met. During the walk around, the officer will observe conditions and interview employees concerning the employer's compliance with OSHA standards and control of recognized hazards. During the closing conference, the officer will share his or her initial findings.

Under current policy, when OSHA arrives at a construction work site the compliance officer is going to look at several fundamental issues:

Does the employer have a safety and health program in place?
Current OSHA regulations do NOT require a formal, written safety and health program. The regulations do require, nevertheless, that a program be implemented. Upon entering a site, the inspector will evaluate key factors such as:

- The degree of knowledge possessed by employees related to site-specific safety and health hazards
- Evidence of employee training for their specific work environment and job related hazards
- Safety management evidenced by enforcement of safety and health rules, assignment of responsibility, and employee awareness and participation in the safety program
- Evidence of violation of requirements for employee instruction, first aid, recordkeeping, and identification and control of hazards

Does the employer maintain required employee records?
In general, OSHA requires that employee safety and health records be maintained at their work site. In construction, however, OSHA makes allowances for non-stationary work sites where employees are engaged in physically dispersed activities. In these situations:

- Records must be maintained either at the field office or at the mobile base of operations
- Records may be maintained at an established central location if the address and telephone number of the records site is kept and available at the work site, and
- There must be personnel available at the central location during normal business hours to provide the information

What specific and recognized standards are violated?
After the compliance officer checks the paperwork and reviews

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evidence of the safety and health program, he/she will conduct an inspection of the site. The inspection may consist of walking around the work area observing hazards, interviewing employees and supervisors, and taking photographs or video.

Are there other employers present?
OSHA enforces a "MULTI-EMPLOYER" policy on work sites where more than one employer is present. This policy is particularly relevant in the construction industry. There are many issues related to the multi-employer policy. Citations will be issued to:

- The employer who has employees that are exposed to a hazard (even if the employer did not create the hazard)
- The employer who creates hazards either for its own employees OR the employees of another employer (even if no employees of the "creating" employer are exposed)
- The employer who is responsible, by contract or actual practice, for the safety and health conditions on a work site (even if no employees of the "responsible" employer are exposed)
- The employer who has the responsibility for actually correcting the hazard (even if no employees of the "correcting" employer are exposed)

Before an employer whose employees are exposed to a hazard is cited, OSHA will consider the following issues that may reduce that employer's liability:

- Did the employer create the hazard?
- Did the employer have the responsibility or authority to correct the hazard?
- Did the employer have the ability to correct or remove the hazard?
- Did the employer notify the other responsible employers about the hazard to which its employees were exposed?
- Did the employer instruct its employees to recognize the hazard and 1) take steps to remove its employees from exposure, or 2) in extreme cases, remove its employees from the job?

If an "exposing" employer has met ALL of the above requirements, the company will not be cited.

For those employers cited by OSHA under the Multi-Employer Policy, penalties will be calculated and multiplied based upon the TOTAL number of exposed employees from ALL affected employers.

Are there "competent" and "qualified" persons, as required?
There are nearly 70 specific construction standards that require involvement of a competent person, qualified person, or licensed engineer. It any of these operations are underway at the site, the compliance officer will check to ensure that the employer has someone on site that meets the requirements.

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Instructor Notes	Lesson

Aid to Understanding Key OSHA Terms

OSHA uses a number of terms to define key jobsite responsibilities:

- Competent Person
- Qualified Person
- Designated Person
- Authorized Person

Competent Person: OSHA definition - 1926.32(f) - means one who is capable of identifying existing and predictable hazards in the surroundings or working conditions which are unsanitary, hazardous, or dangerous to employees, and who has authorization to take prompt corrective measures to eliminate them.

The key word that distinguishes this definition from the others is ***"authorization"*** or the authority to take corrective action to eliminate a recognized unsafe act or unsafe condition in the workplace. Not all workers on a jobsite are designated by the employer as a competent person and given this authority.

Who is typically considered the Competent Person on a jobsite?
The superintendent, general foreman, or foreman are usually the persons given the authority by the employer to take prompt corrective measures to eliminate unsafe acts or conditions. However, these "Competent Persons" must be trained to recognize unsafe acts and conditions in the workplace.

Can more than one person be considered a "Competent Person"?
Yes. A contractor could have one crew erecting guardrails, and another involved in trenching or excavation operations. Both processes would likely require the contractor to ensure these activities were performed under the supervision of a "Competent Person."

Authorized Person: OSHA definition - 1926.32 (d) - means a person approved or assigned by the employer to perform a specific type of duty or duties or be at a specific location or locations at the jobsite.

For example, 1926.556(b)(2) requires that "only authorized persons shall operate aerial lift equipment." An "Authorized Person" in this case does not have to be "certified" to operate the aerial lift equipment nor is this individual authorized by the employer to correct hazards at the jobsite. However, the employer must ensure that this employee has received training in accordance with 1926.21(b)(2) and the applicable manufacturers' safety instructions.

(OSHA has provided a specific letter of interpretation regarding an "Authorized Person" as it applies to aerial lift equipment operators.)

Designated Person: OSHA definition - 1926.32(i) - means "authorized person" as defined in 1926.32(d) above.

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Instructor Notes	Lesson
	Qualified Person: OSHA definition - 1926.32(m) - means one who, by possession of a recognized degree, certificate, or professional standing, or who by extensive knowledge, training, and experience, has successfully demonstrated his/her ability to solve or resolve problems relating to the subject matter, work, or the project. The definitions of a Qualified and Competent Person are often confused – they are **NOT** the same! For example, a Qualified Person may be one who has received specific training on a particular task or procedure. However, that same person may not be a Competent Person who **must have the employer's authority** to take prompt corrective measures to eliminate hazards. ***Can one person on the job be considered a "Qualified" and "Competent Person"?*** Yes. An employee can be trained and qualified to perform a specific task and can also be given the authority to take prompt corrective measures to eliminate hazards. ***Can training courses provided by a contractor or union be used to qualify my employees on specific topics?*** Yes. For example, if specific training is provided by a local training school on such topics as asbestos abatement or flagger certification, employers can take advantage of these training programs for their employees. However, the employer should be able to document the context of the training provided.
12. Can I do anything to reduce my liability? *Show slides 1.29 — 1.30.* 	**12. Can I do anything to reduce my liability if OSHA inspects my site?** While OSHA does not require a written, formal safety and health program, it has developed an incentive program for employers that do. In the construction industry, OSHA compliance officers may conduct a "focused inspection"—narrowing the range of their inspection to a few critical areas—if the contractor successfully implements a formal program. Because of the contractual arrangements in typical road construction jobsites, the current OSHA Focused Inspection program is not applicable. OSHA is developing a focused inspection program for roadway construction, however. In the current program, OSHA requires the following elements in a safety and health program to qualify for a focused inspection: • Management Commitment and Leadership • Assignment of Responsibility • Identification and Control of Hazards • Training and Education

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Instructor Notes	Lesson
	▪ Recordkeeping and Hazard Analysis ▪ First Aid and Medical Assistance Within each of these six broad categories, there are several more specific requirements. In the roadway construction industry, OSHA will likely only look at the following elements if a sound safety program qualifies a contractor for a focused inspection: ▪ Trenching and Excavations ▪ Electrocution ▪ Caught Between/Struck By Equipment and Trucks ▪ Falls ▪ Lead & Silica Exposures
Group Activity	**13. Group Activity—Mock OSHA Inspection** During this activity, the instructor will act as an OSHA inspector. The instructor should seek volunteers from the audience to serve as a foreman, laborer, and the company safety officer. Following the mock inspection, the class will discuss the inspection and offer their observations.
13. Mock OSHA Inspection: *Slide 1.31; see Appendix 1-B*	
14. Elicit additional questions and summarize.	**14. Question and summary period.**
15. Transition to prepare participants for Module 2. *Slide 1.32*	**15. Transition to Module 2.**

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Module 1
Appendix 1-A
Activity

Locate the OSHA Standard

Objective: This activity is designed to familiarize participants with the content and numbering system used in the OSHA standards. Upon completion of the activity, students should be able to find any given OSHA standard using references by *topic name* or by *code number*.

Materials:

- Each student should be supplied with a copy of 29 CFR 1926, OSHA Standards for the Construction Industry.
- Instructor may want to have "prizes" available, such as candy bars, highlighters, stickers, etc. to give to the winners of each race.

Time: 7 minutes. Instructor may shorten or lengthen this activity, as needed, by increasing or reducing the number of citations to be searched.

Activity: Before class begins, instructor should identify several standards that are relevant to the road construction industry (e.g. lead, excavations, etc.) and annotate them in his/her copy of the standards.

To begin the activity, ask students to have their copy of the standards on their tabletop. The instructor will then give a citation. It may be the name of a particular section of the standards, or it may be a reference number. The instructor then says, "GO!" The first student to correctly locate the standard is given recognition or a prize. Repeat activity several times, citing the standards in different ways to ensure that students understand how to properly locate the appropriate location.

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Mock OSHA Inspection

Objective: This activity is designed to prepare participants to respond appropriately to an OSHA inspection. Unfamiliarity with the OSHA inspection process may result in employees making mistakes or miscommunications that may not be in the best interest of the employer or OSHA. This activity will assist participants to understand the need to treat OSHA inspectors respectfully, while fulfilling obligations of loyalty to their employer.

Materials:

- Ideally, this activity should take place in a parking lot, set up to resemble a roadway construction site. If such a site is not available or unsafe, the instructor may set up a mock site in a parking lot or in the classroom. If an actual or mock site is not available, the instructor may use a slide, overhead, or simply explain the circumstances at the work site to be inspected.

- The instructor will need to prepare at least three participants from the class, in addition to his- or herself, to fill the following roles:
  — OSHA Inspector
  — Foreman
  — Company Safety Officer
  — Workers

  This activity is an ideal time to invite a local OSHA compliance officer to meet the class and talk about OSHA. The compliance officer then may fill the roll of the inspector at the site.

Time: 15 minutes

Activity: Before class begins, ask for several volunteers from class to assist in acting out this role-play. Try to select students who have undergone an OSHA inspection, or are familiar with the process. It may be useful to have the participants read through the materials following this page if they are not familiar with OSHA inspections.

The instructor should adjust this role-play to a situation with which he/she is familiar. We recommend using the following format:

- Compliance Officer (CO) arrives at site and asks to speak to foreman.

- Forman requests warrant to inspect. (Because most roadways are public accommodations, no warrant is needed.)

- Forman asks CO to wait while he contacts the Company Safety Officer

- CO agrees, only if Safety Officer is immediately available

- CO, Safety Officer and Foreman conduct opening conference

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- The three discuss contractor's qualifications for a *Focused Inspection*
- CO and Safety Officer walk around site; CO points out hazards; Safety Officer must decide whether to immediately abate, dispute, or agree to correct hazards
- CO talks to employees about company safety program and practices
- CO and Safety Officer hold a closing conference

Once the mock inspection role-play is completed, class should be given time—and encouraged— to ask questions and share observations about the mock inspection. Class should discuss:

- Appropriateness of response by "role players"
- Ability of a road contractor to obtain a focused inspection
- Responsibilities/ assurance of the company safety officer during inspection (taking notes and photos alongside CO)
- How to respond to a notice of citation
- Opportunities to reduce penalties, especially for small contractors

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Mock OSHA Inspection Supplementary Materials:

What Every Construction Employee Needs To Know About OSHA

(Reprinted from ARTBA's *Transportation Builder* Magazine, June 1999)

"This Citation and Notification of Penalty describes the violations of the Occupational Safety and Health Act of 1970."

So begins the letter that no employer wants to receive: a notice from the Occupational Safety and Health Administration (OSHA), informing you that you have 15 days to respond to a citation.

If you think safety and health are issues only for the "safety guy," then you are likely to receive a citation. To avoid being slapped with a costly fine, employers need to know some basic information about OSHA.

OSHA Inspections

In 1998, OSHA conducted 18,271 inspections in the construction industry. OSHA State Plans conducted another 23,813, totaling 42,084 inspections. Of all the inspections conducted by state and federal OSHA, the construction industry received 47% of them. While not unusual, this number illustrates that construction employers are much more likely to be inspected than employers in other U.S. industries.

Why? Because according to OSHA, although construction employed only 6% of the work force in 1997, it was responsible for 18% of the fatalities—the highest of all industries.

During that same time period, federal OSHA issued more than $79 million in penalties while state plans issued over $53 million. That amounts to a whopping $132 million in penalties for all industries.

Transportation construction is one of the most dangerous industries, contractors are at least three times more likely to be inspected than other employers, and OSHA penalties could consume all last year's profits. Even though this should not be news, it is useful to give ourselves a reality check to make sure that we are doing all we can—not just to avoid OSHA, but to protect our most valuable resources, our workers.

Safety and Health Programs

Although there is a lot of debate about the need for an OSHA standard on safety and health programs, there should be no debate about your company's need to develop a comprehensive program. If you haven't developed one by now, DO IT! OSHA concerns aside, a good safety and health program is just smart business. The benefits you will reap in productivity and reduced workers compensation premiums more make the effort worthwhile.

If you need help developing a program, here are a few recommendations. ARTBA's Construction Safety Management Manual, developed by ARTBA's Safety and Insurance Committee, is an excellent source of information. Industry and government acclaim this manual as a model for transportation construction safety and health programs.

No matter which safety and health program model you follow, it should contain the following basic elements if you want it to be effective:

- An overall company program that defines your approach to safety and health from a corporate perspective and your process for developing site plans at each work location;
- Regular involvement and commitment from top management;
- At least one person in the company who is responsible and accountable for safety, and has access to training and resources. Most importantly, he/she must possess the authority to correct safety and health hazards;
- Employee involvement. Employees must understand the importance of safety and health, and their responsibility to understand and obey company rules;
- Specific plans for each location where your company is conducting work, with each site-specific plan having a regular, ongoing procedure for recognizing, analyzing and abating hazards;
- A competent person at each site who is capable of recognizing hazards and has authority to abate them or move employees out of danger;
- In multi-employer settings, a mechanism for coordinating with other employers. Remember, each employer is responsible for the welfare of his employees, even if he does not create the hazard.

While this list is not exhaustive, it illustrates the basic components of a good program. Properly implemented, a program with these elements will substantially protect the health and lives of your employees and protect you from stiff OSHA fines.

If you are struggling to develop your program, you may consider OSHA's Consultation Program, a free service where employers can find out potential hazards at their worksites, improve occupational safety and health management systems, and (in

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limited cases) qualify for a one-year exemption from routine OSHA inspections.

State governments deliver the service using staff and consultants. Most consultations take place on-site, though some services are available in other locations. The Consultation Program is primarily targeted to small employers. Consultation requests will not generate an enforcement inspection unless an imminent danger exists and the employer refuses to correct it. On-site consultants cannot issue citations. (For more information, check your local phone directory under the state listing for "Department of Labor and Industry" or similar terms. You may also check the OSHA website at www.osha.gov under Outreach, Consultation.)

Be Prepared for OSHA Inspections

What do you do when OSHA shows up at your site? Most importantly, be prepared. If you have a good safety and health program in place, your inspection should go smoothly.

To stack the odds in your favor, be courteous. Escort the inspector to the company trailer or site office to wait for your safety officer or other designated official.

When the company safety officer arrives, inform the inspector that you would like a "Focused Inspection." If you have a program containing the elements listed earlier, you will qualify for one. Under OSHA's Focused Inspection initiative, the compliance officer will conduct a "paper review" of your safety and health program. (Yes, the program must be on-site.) If your program contains the proper elements, the inspector will make an abbreviated walk around your site focusing on the four primary hazards that injure construction workers: falls, electrocutions, trenches, and being caught or struck by equipment or vehicles. The inspector will interview workers at the site to discover the effectiveness of your program and plan. Remember, the OSHA inspector is compelled by the OSH Act, a federal law, to issue citations for other violations in plain view.

In many instances, an inspector will not cite for non-serious hazards that can be abated on the spot. In any case, an inspector who is treated with respect and sees a serious effort under way to promote safety and health will be less likely to issue citations and will record the good faith effort of each employer.

Penalties

The chart in the next column demonstrates possible penalties for each category of OSHA violation. (Each inspection may result in multiple violations.)

If issued a citation, a good faith effort to abate the violation(s) and work with the area office can pay substantial dividends in penalty reductions.

"Small Employer" reductions are available if the hazard(s) is not a serious threat to the worker, if probability of injury or illness is low, if the worker is not exposed to the hazard(s) very often, and/or if the severity of the hazard is minimal. Reductions based upon these factors are determined by the size of the employer.

A further penalty adjustment can be made for "good faith" efforts to develop and implement safety and health programs. Good faith reductions can reach 25%.

An employer with no history of OSHA violations can receive another 10% reduction. Thus, a small employer who makes a good faith effort to employ a safety and health program and has no history of OSHA violations can receive up to a 95% reduction in fines. In any situation, employers who demonstrate good faith in working with OSHA after a citation is issued (by implementing a program, abating hazards, etc.) can request a meeting with the OSHA Area Director. The Area Director has authority to reduce penalties outside (and in addition to) those listed above. In most situations, it pays to work with OSHA.

Category	Maximum Penalty
Willful	Up to $70,000
Serious	Up to $7,000
Other than Serious	Up to $7,000 (though often $0)
Repeat	10x the original fine
Failure to Abate	Daily fines up to 30 days

Conclusion

While this is only a brief review, it is useful for employers review their commitment to safety and health. It is too important to leave this matter solely to safety and health personnel.

The ever-changing, complex and high-risk tasks in construction often make compliance with OSHA standards difficult. A programmed, systematic approach to safety and health will pay dividends to prudent employers in many ways. A small investment in time for development of plans and programs, and training and orienting your construction workers will result in large savings when injuries and occupational illnesses are eliminated.

Brad Sant is ARTBA's staff attorney and director of safety and regulatory affairs.

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HANDLING AN OSHA INSPECTION

Procedure

Sometimes, when an OSHA Compliance Safety and Health Officer (CSHO) visits a jobsite, project managers and foreman feel defensive, uncomfortable, or intimidated. In order to avoid this, the following sample guidelines may be used to assist participants in developing a company policy and plan of action for managers to follow when handling an OSHA inspection.

It is important to remember that in order to properly defend against alleged violations at an OSHA hearing or in a court of law, accurate documentation is necessary so the facts are not forgotten. The following procedures may be used during an OSHA inspection.

- ***Record the name and badge number of the OSHA compliance officer.***
- Complete an OSHA INSPECTION REPORT (*see attached sample*) at the time of the inspection.
- Ask the OSHA compliance officer to wait while you contact the Safety Department at the main office.
- Request that the CSHO wait until someone from the Safety Department arrives to accompany the CSHO on the inspection.
- If he/she will not wait, discuss with the Safety Department which option below to choose:
  - Present the CSHO with the "ACCESS TO COMPANY PROPERTY BY GOVERNMENT AGENCY REPRESENTATIVES" (*sample letter attached*) and ask him/her politely to follow the instructions given.
  - Accompany the CSHO on the inspection.
    - take notes on whatever he/she says or does
    - take pictures or draw a diagram of the same things of which he/she takes a picture
    - take soil samples from wherever he/she takes soil samples

DO NOT VOLUNTEER ANY INFORMATION

The OSHA compliance officer:

- Cannot require you to demonstrate anything.
- Does not have the authority to take any written material from your jobsite.
- Does not have control of employees or jobsite. The CSHO is a guest on your jobsite. He/she should be treated with respect, not fear.

REMEMBER - DO NOT VOLUNTEER ANY INFORMATION
DO NOT ADMIT GUILT TO ANY VIOLATION

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SAMPLE OSHA INSPECTION CHECKLIST

1. When OSHA Arrives

☐ **Call Home Office**
Ask OSHA to wait until company representative arrives.

General Information

☐ Date_____Time_____
☐ Job location
☐ Supervisor in charge
☐ Person completing this checklist

First Steps
☐ Request OSHA credentials
Name
Badge
Get a business card

☐ Why is OSHA on the jobsite?
General schedule inspection
Imminent danger
Emphasis inspection
Fatality
Employee complaint
Follow-up

☐ Did OSHA say this is a focused inspection?
Yes No

2. Records and Documents

☐ Did OSHA review Company Safety Records?
Yes No
Safety Program
OSHA 200 Log
HazCom Program
Others

☐ Do not provide copies of any Company Safety Records without authorization.

☐ Do not give OSHA your internal safety inspection records (e.g., Housekeeping reports, etc.)

3. Prior to Jobsite Inspection
☐ What type of equipment will OSHA use?
Camera Video Other_____

☐ Ask OSHA to turn off video cameras while speaking. (Remember the video camera records audio.)

☐ Items you are taking on Jobsite Inspection:
Camera
Video Camera
Tape Recorder
Note Pad/Pen
Tape Measure

☐ Does everyone have appropriate safety equipment (hard hat, safety glasses, work boots)?

4. Jobsite Inspection

Walking the Jobsite
☐ Who accompanied OSHA on the Jobsite Inspection? **(STAY WITH OSHA INSPECTOR AT ALL TIMES)**

Name_____Title_____
Name_____Title_____

☐ Identify subcontractors and their representative.
☐ Did you document the following?
Questions OSHA asks
Employee interviews
Alleged violations

Were employees working in the areas?
Yes No

If yes, who?_____

5. Measurements/pictures/video and other physical evidence

Areas of the jobsite visited
Inspection of subcontractors

☐ Take identical measurements/pictures/videos as OSHA.
☐ Correct obvious violations immediately.
☐ Do not volunteer information, admit guilt, or conduct demonstrations.

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6. Employee Interviews

- ☐ Do not allow employee interviews without a company representative.
- ☐ Did you document the following?

Who was interviewed?_____
What was discussed?_____

- ☐ Do not stop or interrupt work for interviews.

7. Answering OSHA's Questions

- ☐ Be courteous, professional and cooperative- but do not get too friendly.
- ☐ Answer truthfully and accurately ONLY questions you have the expertise and authority to answer.
- ☐ Do not answer questions that you do not understand or do not have the necessary facts to answer.
- ☐ Direct OSHA to the designated company representative when unsure how to properly respond.

8. Before OSHA Leaves

- ☐ Was a closing conference held?
  Yes No
- ☐ Request a list of alleged violations.
- ☐ Do not make admissions, argue your case, or agree to any corrective measures.
- ☐ Request a copy of all OSHA's physical evidence (e.g., pictures, video, measurements, etc.)
- ☐ Will OSHA conduct a follow-up visit?
  Yes No
- ☐ Time of departure:_____
- ☐ Call Home Office immediately after OSHA's departure.
- ☐ Fax/send a copy of this completed checklist immediately to Home Office.
- ☐ Person completing checklist

Name_____
Title_____

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SAFETY AND HEALTH PROGRAM

Sample Company Policy Letter

ACCESS TO COMPANY PROPERTY BY GOVERNMENT AGENCY REPRESENTATIVES

STATEMENT OF POLICY

It is the policy of __(Company Name)___ to cooperate with any government agency seeking to enforce applicable federal, state or local laws. __(Company Name)___ also seeks to contemporaneously preserve the Constitutional rights of itself and its employees, and to maintain control of access to its projects for safety and not permitting any governmental agency representative to enter onto its project sites for the purpose of conducting a safety related inspection or for any other purpose without the prior consent of __(company's)__ Director of Safety, or an officer of __(Company Name)___. In the event that permission is not obtained, for whatever reason, it is the policy of __(Company Name)___ not to permit any governmental agency representation to enter onto and inspect its project sites without a valid inspection warrant.

In any proceeding involving a warrant application, it is the policy of __(Company Name)__ to request that it be given notice and an opportunity to be heard prior to the issuance of any warrant. Further, if any attempt is made to enter onto any of __(Company Name's)_____ project sites without a warrant; this Statement of Policy is to be provided to the official seeking entry.

__(Company Name's)____ Director of Safety or its counsel is to represent __(Company Name)__ in any discussions with the agency representatives wishing to conduct an inspection and shall participate on behalf of __(Company Name)__ in any pre-inspection conference, walk-around, or post-inspection conference. If the Director of Safety consents to such inspection, or if a warrant has been obtained, but the Director of Safety is not available for the on-site inspection, __(Company Name)__ requests that the agency representative report on his or her closing conference to the Director of Safety or as soon as possible thereafter.

Name, address and phone of company representative

(Acknowledgement: This document is based, in part, upon policies developed by ARTBA's Safety and Insurance Committee and *American Infrastructure*.)

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