



## Office of Advocacy

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### **General Background**

## **Occupational Safety and Health Administration's (OSHA)**

## **Draft Proposed Safety & Health Program Rule**

#### **Basic Purpose:**

Reduce the number of job-related fatalities, illnesses, and injuries by requiring employers to establish a workplace safety and health program to ensure compliance with OSHA standards and the General Duty Clause of the OSH Act.

#### **Who is covered:**

All employers, except those engaged in construction and agriculture.

#### **Elements of the rule:**

Management leadership and employee participation; Hazard identification and assessment; Hazard prevention and control; Information and training; and Evaluation of program effectiveness. Current safety and health programs must demonstrate that they satisfy these core elements.

**SBREFA Panel** (Section 609(b) of the [Regulatory Flexibility Act](#) (RFA), as amended by the [Small Business Regulatory Enforcement Fairness Act](#) (SBREFA), requires the convening of a review panel prior to the publication of a proposed OSHA rule that will have a significant impact on small business):

On October 20, 1998, a Small Business Advocacy Review Panel consisting of representatives of OSHA, the Office of Advocacy, and the Office of Information and Regulatory Affairs (OIRA) of the Office of Management and Budget (OMB), was convened. The panel was completed within the required sixty (60) days.

#### **Small Entity Input:**

19 small entity representatives were consulted as a part of the Panel process and made a number of observations with respect to this draft rule. Some of those are:

1. Costs of compliance projected by OSHA were underestimated.
2. The rule's performance language was 'vague, full of weasel words, and open to many interpretations.'
3. Outside expertise would be necessary to achieve compliance with the rule.

#### **Panel Findings and Recommendations:**

1. OSHA has underestimated the costs of the proposed rule and should review its cost estimates. a) OSHA should clearly present, in the preamble to any proposed rule, information on the key assumptions and estimates underlying the estimated program-related costs, hazard control costs, and benefits associated with the rule. b) OSHA should add to its cost analysis, the cost of evaluating compliance by entities with existing health and safety programs and seek comment on the need for legal assistance and the cost of such assistance when conducting such an evaluation.
2. OSHA should analyze and give special attention and consideration to an alternative regulation which would regulate those industries with high risks based on reports of injuries, illnesses and deaths, leaving other industries to be regulated under existing OSHA standards and state requirements.
3. The issue of increased litigation risk, including employers' perception of such risk, deserves further review and OSHA should describe the issue in the preamble and solicit comment on it.
4. OSHA should more clearly identify the basis for its preliminary conclusion that state health and safety programs are effective in reducing job-related injuries and illnesses.

5. OSHA should clearly explain its draft enforcement policy in its regulatory document and solicit comment on the content of the enforcement policy and its possible inclusion in the regulatory document.

**Next Steps:**

An OMB 90 day review period will begin once OSHA provides OMB with the proposed rule, reflecting changes from the SBREFA Panel process.

OSHA will then publish the proposed rule in the Federal Register for public comment. A final rule is not expected for a couple of years.



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