

444 North Capitol Street, NW.,  
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\* \* \* \* \*

6. In § 645.209, paragraph (a) is amended by adding a new sentence between the existing third and fourth sentences to read as set forth below, and paragraph (b) is amended by removing the words "clear recovery" in the second sentence and "clear recovery area" in the third sentence and adding in their place the words "clear zone".

#### § 645.209 General requirements.

(a) *Safety.* \* \* \* The lack of sufficient right-of-way width to accommodate utilities outside the desirable clear zone, in and of itself, is not a valid reason to preclude utilities from occupying the highway right-of-way. \* \* \*

#### § 645.215 [Amended]

7. In § 645.215, paragraph (a), the fifth sentence, is amended by removing the words "of the Federal-aid highway system" and adding in their place the words "of Federal-aid highways".

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## DEPARTMENT OF LABOR

### Occupational Safety and Health Administration

#### 29 CFR Part 1960

#### Basic Program Elements for Federal Employee Occupational Safety and Health Programs

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

**ACTION:** Final rule.

**SUMMARY:** The Occupational Safety and Health Administration (OSHA) is amending 29 CFR part 1960 to permit implementation of its multi-employer worksite policy in the federal sector and to incorporate into the federal program the medical access provisions for the private sector set forth at 29 CFR 1910.20.

**EFFECTIVE DATE:** July 5, 1995.

**FOR FURTHER INFORMATION CONTACT:** Mr. John E. Plummer, Director, Office of Federal Agency Programs, Room N3112, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210 (202-219-9329).

#### SUPPLEMENTARY INFORMATION:

##### (A) Multi-employer Policy

Private sector employers in conventional, one-employer workplaces are accountable under the Occupational Safety and Health Act for providing safe

working conditions for their employees. In private sector worksites where the working environment is controlled by more than one employer, such as in construction or other activities involving subcontractors, OSHA's long-standing policy has been to hold multiple employers responsible for the correction of workplace hazards in appropriate cases. Thus, when safety or health hazards occur on multi-employer worksites in the private sector, OSHA will issue citations not only to the employer whose employees were exposed to the violation, but to other employers such as general contractors or host employers, who can reasonably be expected to have identified or corrected the hazard by virtue of their supervisory role over the worksite.

OSHA's current citation practice for multi-employer operations is described in the OSHA Field Inspection Reference Manual (FIRM), OSHA Instruction CPL 2.103 at III-28,29 (1994). OSHA's multi-employer policy, which has been upheld numerous times by the Occupational Safety and Health Review Commission and the federal courts, does not confer special or extraordinary burdens on superintending employers, but merely recognizes that employers with overall administrative responsibility for an ongoing project are responsible under the Occupational Safety and Health Act for taking reasonable steps to correct, or to require the correction of, hazards of which they could reasonably be expected to be aware. Moreover, a variety of OSHA safety and health standards specifically require certain categories of employer to take reasonable steps to assure the safety of all employees other than their own. Host employers in refineries and other operations where chemical process hazards are present are required, for example, to inform contract employers of hazards and take other administrative steps to assure safe contractor practices, see 29 CFR 1910.119(h). Similarly, employers engaged in hazardous waste operations are required, among other things, to implement programs to assure that contractor and subcontractor employees are informed of the nature, level, and degree of exposure likely on the site, see 29 CFR 1910.120(i).

In its role as the lead agency for implementing and reviewing compliance with Executive Order 12291, "Federal Agency Safety Programs and Responsibilities", and 29 CFR part 1960, *Basic Elements for Federal Employee Occupational Safety and Health Programs*, OSHA requires federal agencies to comply with all occupational safety and health standards, and, generally, to assume

responsibility for worker protection in a manner comparable to private employers, including multi-employer worksite responsibility in appropriate circumstances. However, most multi-employer workplaces in the federal sector involve a mixed workforce of civil service and private contractor employees. Under the current wording of 29 CFR part 1960, the safety responsibilities of a federal agency run only to federal workers, and employees of federal contractors are specifically excluded, see 29 CFR 1960.1(f). OSHA had no intention when it issued this regulation to inadvertently limit the compliance responsibilities of federal agencies in multi-employer worksites; instead, the language in 1960.1(f) was intended only to assure that contractors on federally-owned or administered jobsites remain subject to the full range of OSHA enforcement remedies available in the private sector.

For this reason, the provisions of 29 CFR 1960.1(f) are being clarified by deleting the language which suggests that federal agencies are accountable for the safety of federal employees exclusively, while retaining a provision which makes clear that private contractor remain subject to private sector enforcement remedies. This change is intended to ensure that the health and safety responsibilities of federal agencies on multi-employer worksites are comparable to those of private employers in comparable circumstances.

##### (B) Medical Records Access

Section 19 of the OSH Act, Executive Order 12196, and 29 CFR part 1960 require agency heads to implement occupational safety and health programs consistent with standards promulgated under section 6 of the OSH Act. Because 29 CFR 1910.20, which regulates employee access to exposure and medical records, was promulgated pursuant to section 8 of the OSH Act, under existing regulations it would not be a required element of an agency program. Therefore, OSHA is amending 29 CFR 1960.66 by adding a new paragraph (f) to make 29 CFR 1910.20 a required element of federal agency safety and health programs.

##### Administrative Procedure

The clarification of federal agency safety responsibilities on multi-employer jobsites has no regulatory effect on private parties, and applies only to federal agencies. It is, accordingly, a "rule of agency procedure or practice" within the meaning of the Administrative Procedure Act, 5 U.S.C. 553(b)(3). Similarly, the requirement