

VOSH PROGRAM DIRECTIVE: 02-050A

ISSUED: 15 December 2013

SUBJECT: **General Schedule Inspection Errors: Guidance for Inspection of Establishments**

Purpose: This Directive provides policy and procedures for dealing with errors relating to establishment names, successor establishments, site addresses, or NAICS coding when attempting inspections assigned from the General Inspection schedules.

This Program Directive is an internal guideline, not a statutory or regulatory rule, and is intended to provide instructions to VOSH personnel regarding internal operation of the Virginia Occupational Safety and Health Program and is solely for the benefit of the program. This document is not subject to the Virginia Register Act or the Administrative Process Act; it does not have general application and is not being enforced as having the force of law.

Scope: This Program Directive applies to all VOSH Compliance personnel who conduct occupational safety and health inspections under the General Inspection Schedules.

Reference: DOLI Memorandum from Robert B. Feild, Staff Attorney, to Thomas Pope, OSHA Norfolk Area Director, 05 April 2002.

Cancellation: VOSH Program Directive 02-050 (01 August 2012)

Effective Date: 15 December 2013

Expiration Date: Not Applicable.

Action: Directors and Managers shall ensure that field personnel understand and comply with the requirements of this Directive.

Background: There are a number of source data issues beyond the control of VOSH which have the ability to adversely affect the quality of the General Inspection Schedules.

This may result in a variety of errors which negatively impact the *Hit Rate** for planned programmed inspections where the normal deletion criteria does not necessarily apply. These issues include, but are not limited to, data freshness, changes in business and economic activity, degree of difficulty in merging multiple dissimilar database sources, as well as unknown pre-existing data record errors.

* Hit Rate = Number of inspections actually performed as a percentage of the number of establishments assigned from the General Schedule.

Summary: This Program Directive provides policy and direction to compliance officers in the field when confronted with such General Schedule errors.

William P. Burge
Acting Commissioner

Attachment: None.

Distribution:

Commissioner of Labor and Industry
Assistant Commissioner - Programs
VOSH Directors and Managers
VOSH Legal Support & IT Staff

Cooperative Programs Director & Manager
VOSH Compliance & Cooperative Programs Staff
OSHA Region III & OSHA Norfolk Area Offices

General Schedule Inspection Errors: Guidance for Inspection of Establishments

The primary factor in whether or not to proceed with an inspection is the determination of who is the actual employer. However, in certain circumstances, a number of other indicators may enter into consideration in order to decide whether or not to proceed with an inspection of an establishment from the General Schedule list. These things to check include:

- ✓ Is the employer name correct?
- ✓ Is the establishment site address correct?
- ✓ Has the establishment been sold to a successor employer?
- ✓ Are there multiple establishments with the same employer name?
- ✓ Is a secondary establishment of the same employer neighboring or remote from the listed site and within the same VOSH region?
- ✓ Is the listed high hazard NAICS code correct for the actual business being conducted?
- ✓ How much of the employer's activity at the establishment site is under the listed High Hazard NAICS code?

From these indicia, a variety of scenarios may occur which may or may not result in proceeding with an inspection, including, but not limited to, those listed below:

I. Name change.

- Wrong name, correct address.
- Schedule lists: Doodle's Plumbing.
- Research reveals listed company is still the same employer at same address.
- Company is now doing business as (d.b.a.) Drain Surgery, Inc.
- Correct NAICS code.

Action: Conduct the inspection at the address.

II. Company is in bankruptcy or is going out of business.

- Correct name, correct address.
- Research reveals listed company is going out of business or is in bankruptcy.
- Correct NAICS code.

Action: Conduct the inspection at the address.

III. Establishment is outside of regional jurisdiction.

- Correct name, correct address.
- Address found to be outside of the VOSH region boundary.
- Correct NAICS code.

Action: Do not conduct an inspection.

IV. Establishment is not under VOSH jurisdiction.

- Correct name, correct address.
 - Company is under the jurisdiction of another state (*e.g., VDOT, DEQ, VDOH*) or federal (*e.g., OSHA, MSHA, DOE*) regulatory agency;
- OR**
- Company has entered into an agreement with VOSH Consultation Services for this establishment location.
- Correct NAICS code.

Action: Do not conduct an inspection.

V. Wrong address - but only one employer establishment in the region.

- Correct name, wrong address, and one employer with that name in region.
- Schedule lists: JustLikeB4 Collision & Body Shop at 3822 Mineral Road.
- JustLikeB4 Collision & Body Shop is actually located at 3800 Mineral Springs Road.
- Correct NAICS code.

Action: Conduct the inspection at the correct address.

Reason: While there may be a possibility that the address is correct and the name is in error, having the exact name of the only one employer AND the proper NAICS are sufficient indicators of the name being the proper establishment to proceed with the inspection.

VI. Wrong address but several establishments with that name in the region.

- Correct name, wrong address, and several establishments with that name in region.
- Schedule lists: Quick-O Lube at 881 Red Jacket Parkway.
- Acme Speedlube is actually at the address listed.
- There are three other Quick-O Lube service centers at other addresses in the region.
- Research reveals no connection between listed name and the employer at the address.
- Correct NAICS code.

Action: Do not conduct an inspection.

Reason: It is uncertain as to which establishment was the one that was intended among those in the area.

VII. Wrong name, wrong address, and no employer with that name.

- Wrong name, wrong address, no employer with that name in the region.
- Schedule lists: Steele, Finagle, & Robb Sheetmetal, Inc. at 3409 Chestnut Ridge Rd.
- Forthright & Virtuous Sheetmetal Stamping, Inc. is actually at the address.
- Steele, Finagle, & Robb Sheetmetal Inc. was never at that address.
- Research reveals no connection between the listed name and employer at the address.
- Correct NAICS code for both listed and actual employers.

Action: Do not conduct an inspection.

Reason: It is uncertain as to which establishment was the one that was intended among those in the area. Although Forthright is the same NAICS, reliance should be primarily on the name on the schedule as the correct indicator of who is to be inspected.

VIII. Wrong name, new owner of the business.

- Wrong name, correct address, business sold to new owner.
- Schedule says: Amigone Funeral Home at 3257 Sowardego Rd.
- Digg & Burnham Funeral Home is actually at the address.
- Research reveals Amigone was at that address and sold the facility to Digg & Burnham.
- Digg & Burnham is a successor to Amigone.
- Correct NAICS.

Action: Conduct the inspection at the address.

Reason: The decision to inspect is based on the sale of the firm to the successor corporation operating as the employer at the same address.

IX. Multiple employer locations, listed NAICS code only at remote location.

- Correct name, correct address, and one employer with multiple locations in the region.
- Schedule says: Luftwaffles Frozen Foods at 127 Hanford Air Park Road, NAICS 311412.
- Luftwaffles is actually operating under NAICS 481219 at this location.
- Luftwaffles is also operating in another county 25 miles away but still within the Region under the listed NAICS 311412.
- Wrong NAICS at the schedule address.

Action: Do not conduct an inspection.

Reason: The employer name on the schedule is correct but the employer is working under a different NAICS at the address on the General Schedule. The correct high hazard NAICS activity is at another facility of the employer remote from the listed site in another county in the Region. The remote facility should not be inspected unless your research, discussion and questioning reveals that it formerly had a connection to the address listed in the general schedule, e.g., the 311412 activity was shifted to the remote location from the Air Park location last year.

X. Multiple employer locations, listed NAICS code only at adjacent or nearby location.

- Correct name, correct address, and one employer with multiple locations in the region.
- Schedule says: Luftwaffles Frozen Foods at 127 Hanford Air Park Road, NAICS 311412.
- Luftwaffles is actually operating under NAICS 481219 at this location.
- Luftwaffles operates under the correct NAICS 311412 across the street at 124 Hanford Air Park Road.
- Wrong NAICS at the schedule address.

Action: Conduct an inspection of the neighboring facility of the company with the correct NAICS across the street.

Reason: The Employer name and address on the schedule is correct, but the employer is working under a different NAICS at that listed address. The correct NAICS is at an adjacent, nearby or neighboring facility under the same employer as the listed site. It is reasonable to assume that the two facilities are linked. No inspection should take place at the facility at the original listed address with the incorrect NAICS.

XI. At the time of the inspection, there are other NAICS code groups being performed at the establishment besides the listed high hazard NAICS. The high hazard NAICS constitutes more than 50% of the current activity at the establishment and the NAICS for other ongoing activities are not on the high hazard list.

- Correct name, correct address, NAICS is for the majority function.
- Schedule says: Ditchit, Quick, & Hyde, Inc., NAICS – 562211 Hazardous Waste Treatment and Disposal.
- Ditchit, Quick & Hyde, Inc. is operating at the time of inspection with a majority of its work (*slightly over 50%*) in the high hazard NAICS code and the remaining activities are not on the high hazard list.

Action: Conduct the inspection.

Reason: The Employer name and address on the schedule are correct and the employer is still doing a significant amount of work under the NAICS code from the schedule. Compliance Officers must use their professional judgment in making this determination in each instance and may choose to consult with their regional director.

XII. At the time of the inspection, the high hazard NAICS from the inspection list constitutes between 10% and 50% of the activity at the establishment which is still significant. Also, there are one or more other NAICS code groups being performed at the establishment which together constitute more than 50% of the current activity at the establishment and these NAICS other ongoing activities are not on the high hazard list.

- Correct name, correct address, high hazard NAICS is not for the majority function.
- Schedule says: Able Baker Charlie Printing, Inc., NAICS 323110 – Commercial Lithographic Printing.
- Able Baker Charlie Printing, Inc. is operating with a majority of its work (*over 50%*) under another NAICS Code, 323115, which is digital printing, and not on the high hazard list. The remainder of its work is 323110.

Action: Conduct the inspection, but if the decision is made that the activity is not a significant amount of the company's activity but is still an ongoing activity, a partial inspection as in XIII shall be conducted.

Reason: The Employer name and address on the schedule are correct and the employer is still doing a significant amount of work under the NAICS code from the schedule. There is no hard-and-fast rule as to what constitutes a "significant amount". Compliance Officers must use their professional judgment in making this determination in each instance and may choose to consult with their regional director.

XIII. At the time of the inspection, the listed high hazard NAICS is a limited but ongoing activity at the establishment. The high hazard NAICS constitutes no more than 10% of the current activity at the establishment and the NAICS for other ongoing activities are not on the high hazard list.

- Correct name, correct address, NAICS is for a significantly minor function.
- Schedule says: Always Printing, NAICS 323110 – Commercial Lithographic Printing.
- X-Sectional Printing, Inc. is operating a majority of its work (90%) under another NAICS Code – 323115, which is digital printing.
- The remaining work (10%) is for the correct NAICS.

Action: Conduct a partial inspection for the area of the facility where the high hazard NAICS activity is ongoing.

Reason: It is reasonable to perform an inspection of 10% of a facility where a high hazard list activity is being performed as if a complaint had been made about that activity. Other areas of the facility can be inspected if violations are in plain view just as any other partial inspection.

XIV. At the time of the inspection, the listed high hazard NAICS is not an ongoing activity at the establishment. While management confirms that the high hazard NAICS activity is still performed on a limited basis from time to time when needed, it is not currently underway. The NAICS for other ongoing daily activities are not on the high hazard list.

- Correct name, correct address, NAICS is for a significantly minor function.
- Schedule says: EyeCarumba, Inc., NAICS 333249 – Optical Lens Making Machining and Grinding Machinery
- EyeCarumba, Inc. is operating 100% of its work at the present time under one or more NAICS codes which are not on the high hazard list.
- The high hazard NAICS operations are done “as needed” and are not currently underway.

Action: Do not conduct an inspection.

Reason: The rationale for doing an inspection of a facility because of high hazard list activity which is not underway is questionable. In addition, should a refusal of entry situation develop from it, the likelihood to prevail in an attempt to secure a warrant would be problematic.