

VOSH PROGRAM DIRECTIVE: 01-019

ISSUED: 15 June 2018**SUBJECT:** State Emphasis Programs: Development, Approval, Adoption, and Evaluation**Purpose**

This Program Directive provides policy, procedure, and other internal guidance to VOSH compliance and consultation staff regarding development, approval, adoption, use, and evaluation of State Emphasis Programs (SEPs) for inspection scheduling of VOSH activities.

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 Directive applies to VOSH compliance and consultation.

Reference

OSHA Instruction CPL 04-00-001 (CPL 2-0.102A) (10 November 1999).

Cancellation

VOSH Program Directive 01-010 (15 February 2014)

Action

Directors, managers, and staff shall understand and comply with the procedures included in this Directive when developing, implementing, and evaluating programmed inspections under an SEP.

Effective Date

15 June 2018

Expiration Date

Not Applicable – remains in effect until cancelled or superseded.

C. Ray Davenport
Commissioner

Distribution: Commissioner of Labor and Industry
Assistant Commissioner
VOSH Directors and Managers
VOSH Legal Support & OIS Staffs

Consultation Program Director
VOSH Compliance & Cooperative Programs Staffs
OSHA Region III & OSHA Norfolk Area Offices

Background and Purpose

Previously known as Local Emphasis Programs (LEPs), State Emphasis Programs (SEPs) are a type of focused inspection scheduling program, in which one or more VOSH regions participate. They are special enforcement strategies developed and implemented to affect a reduction in atypical higher risk employee exposure to certain unique hazards and/or specific industries. SEPs are generally based either on similar programs adopted nationally or regionally by federal OSHA or based on VOSH knowledge of specific local industry hazards, or unique local industry injury/illness experience in areas of the Commonwealth.

SEP programs are part of VOSH's ongoing operational plan, and VOSH remains committed to the value of such planned inspection activities. SEPs may originate at either the Headquarters or regional office level and, upon adoption, may be effective either VOSH-wide or at the single or multiple regional office level. Whenever one or more regions conduct SEP inspections regarding specific industries, hazards, or other workplace characteristics, a 14-series VOSH Program Directive shall first be developed by VOSH Policy and Planning (P&P), subsequently approved by VOSH administration, and finally signed by the Commissioner.

Aspects

Program Coverage

As noted above, SEPs may be used by VOSH to aid in the reduction of certain excessive employee exposures as part of, or in conjunction with, a local initiative, or problem-solving project, or related activity. As is the case for national or regional emphasis programs used by federal OSHA, VOSH SEPs may include planned inspections of employers with ten (10) or fewer employees, as long as there is no conflict with restrictions under the federal Congressional Appropriations Act riders as described in VOSH Program Directive 02-003R and its latest Appendix, or successor guidance which specifies the restrictions on the use of the federal 23g OSHA Grant state funding for inspection activities.

Any exception to the annual Congressional Appropriations Act restrictions where the use of federal 23g OSHA Grant funding for inspection activities has been prohibited will be made on a case-by-case basis and be specifically approved in advance by the Assistant Commissioner-Programs who must specifically authorize any use of 100% state funding.

Outreach Efforts

In order to optimize VOSH program effectiveness and promote the best use of its resources, VOSH may choose to schedule both inspection activities and the marketing of consultation program services. SEPs may also include outreach efforts intended to make employers in the designated area(s) aware of the implementation of the SEP and the particular hazards that it is designed to reduce or eliminate. Such outreach may be in a variety of forms, such as informational mailings, training at conferences or local tradeshow, or speeches at meetings of industry groups or labor organizations.

Need for a State Emphasis Program

To effectively manage the use of VOSH's limited resources and to meet the SEP goal of reducing a unique employee hazard and exposure, any proposed SEP program directive shall be initially developed in conjunction with the applicable VOSH Program Director. VOSH SEP efforts are generally based on one or more of the following:

- Programs adopted by federal OSHA nationwide or by OSHA Region III addressing the particular issue;
- Knowledge of local or statewide or regional LWDI rate(s), frequency, or probability of an event occurrence that VOSH seeks to take specific immediate action to reduce;
- VOSH familiarity with the local industry and/or unique existing hazard; or
- An otherwise defined inspection issue specified in VOSH's strategic plan, or annual operational goals or objectives.

Concurrence with Other Programmed Inspection Programs

Some establishments may be selected for inspection under the SEP being developed as well as other existing initiatives, such as an OSHA national emphasis program or other VOSH SEP. Any emphasis programs based on specific hazards, e.g., such as silica, amputations, lead, etc., or specific industries, such as primary metal industries, can be run concurrently with the new SEP initiative unless otherwise stipulated.

Inspection Scheduling

Inspection scheduling will normally occur in one of two ways, either through observation or from a prepared list of worksites.

1. Observation. Scheduled inspections based on observation normally occur with those safety or health hazard based SEPs that involve outdoor work operations, such as construction based SEPs. In such cases, the SEP will outline procedures for conducting inspections on the basis of the identified hazard when observed by a Compliance Safety and Health Officer (CSHO) in plain view, or by some other reasonably reliable source, e.g., a referral from an employee with another state agency that personally observed the existence of the hazard at the worksite.

An overall inspection scheduling strategy allows for a percentage of statewide or regional planned activities to be developed and conducted as part of an SEP. Each region's planned activities may include one or more SEPs developed and implemented to address specific issues that are prevalent in the particular region.

2. Prepared list. Worksite lists under the SEP shall include a list of establishments within the area to be covered or, in the alternative, a method of generating such a list of worksites from available sources, e.g., federal, state, and/or local agencies, business or other directories, or applicable NAICS/SIC codes. A documented inspection selection process of administratively neutral criteria, i.e., randomization, shall normally be used to identify and order establishments in a cycle for an inspection queue. *Refer to a methodology for inspection selection in Section C.*

Where an SEP under development includes scheduling employers with ten (10) or fewer employees, and/or there is a potential for conflict with restrictions under Congressional Appropriations Act riders, the Directive must contain an explanatory statement as to why authorization for scheduling smaller employers is appropriate for the SEP. *Please refer to VOSH Program Directive 02-003S, or its successor, for additional guidance.*

Scheduling From a Prepared Worksite List

The complete master list of establishments eligible for inspection under the SEP shall be placed in alphabetical order and assigned a sequential number. Inspection scheduling and related inspection cycle operation not detailed herein shall be in accordance with the procedures specified in the FOM. Cycle size for a region shall be defined as the projected number of worksites from the master list authorized to be inspected under the SEP during the next calendar month.

Worksites to be inspected in each cycle shall be randomly selected and that method of randomization shall be documented within the applicable program directive. One method to achieve this is by using the most current version of the Random Sample Function, i.e., "RANDBETWEEN" in Microsoft Excel. To prevent generation of duplicate random numbers for multiple records each time the file is opened, the entire worksheet is highlighted, copied, and pasted into a blank worksheet as "Values (V)". The new worksheet will have each random number saved as a value not a formula, which allows worksheet opening without the possibility of changing the already assigned random numbers.

Each inspection cycle must be completed before another cycle is generated from the master list. An inspection may be carried over to another cycle. Please refer to the FOM for additional details. Subsequent cycles shall be generated in the same manner as indicated above.

SEP Requisites

Percentage of Compliance Resources to Be Committed To SEPs

The utilization of SEPs is part of VOSH's ongoing operational plan, and VOSH remains committed to the value of such scheduled SEP activities. VOSH's intent is that a percentage of planned activities include one or more State emphasis programs developed and implemented to address specific and unique issues that are resident VOSH-wide or in a particular region or regions.

The percentage of discretionary inspection resources, i.e., "planned" inspections, dedicated to one or multiple SEPs shall be specified by the Assistant Commissioner-Programs, or his designee. This percentage does not include SEPs that operate with the existing scheduling protocols, e.g., an emphasis *within* a high-hazard industry such as agriculture or construction.

Development of a Program

All SEPs shall include the following content:

- A. A statement of documented purpose, rationale, strategy, and goals that includes:
 - VOSH's awareness, familiarity, and understanding of atypical hazards or unique industry conditions which result in excessive regional or statewide LWDI rate(s), frequency, or the probability of an event occurrence that VOSH seeks to minimize or eliminate;
 - Where the proposed SEP parallels a similar emphasis program adopted by federal OSHA either nationally or by OSHA Region III;
 - That the issue is otherwise defined or noted as important in the VOSH's strategic plan, or annual operational goals or objectives.

- B. A detailed plan of the emphasis program that includes:
 - Complete criteria for selection of employers, e.g., NAICS, injury/illness rate, CSHO Observation, etc.;
 - Expected impact on unprogrammed inspections of the same employer;
 - In what manner and how often the master list of employers/worksites will be updated;
 - How flexible the region's use of the list will be, i.e., opportunity for supervisory exclusions based on recency of list, number of employee, etc.; and
 - Specifics for entering action into OIS;
- C. Provision of opportunities for local partnership with other enforcement entities, local businesses, and/or labor organizations;

SEP Approval Process

The basis for the SEP may be initially suggested at the regional or field office level, as well as the Headquarters level, but in all cases must be approved or approved with modifications as specified herein and adopted as a VOSH Program Directive prior to any implementation. For SEP proposals initiated at the regional level, a draft following the outlines and requirements established by Program Directives 01-001 and 01-019 shall be developed. The proposal for the SEP shall then be submitted to the Safety and Health VOSH Program Directors, the Director of the Division of Legal Support (DLS) and the Assistant Commissioner-Programs for initial review of concept, modification, and agreement to move forward.

For new SEPs, specific approval and/or any modifications must be obtained from VOSH DLS with regard to the legal sufficiency of the proposed scheduling system and procedures, e.g., whether neutrality requirements for inspection scheduling are met. DLS may address additional issues reflecting local experience in obtaining and enforcing compulsory process. In the case of SEPs proposed for renewal, they shall also be re-submitted to the DLS for approval, unless it is identical to its predecessor.

Upon agreement by all of the above parties to proceed with the SEP, the draft shall be forwarded to the Office of Policy and Planning (P&P) for final formatting, review, and continuity. P&P shall then submit the finalized version, incorporating any changes, back to the VOSH Program Directors, Director of DLS, and the Assistant Commissioner Programs for final approval. Upon final approval, the SEP shall be submitted by P&P to the Commissioner for review, approval, and signature prior to any implementation.

Safety and Health Program Director Responsibilities:

- A. Keep copies of all SEPs and maintain copies of SEP documentation.
- B. Maintain and assess the reviews and evaluations from all regions for further action.

- C. Provide technical assistance and advice to field offices in preparing SEP evaluation criteria and/or reports.
- D. Provide data and information on regional SEPs and SEP evaluation reports to Regional Directors from other regions for their review regarding possible applications within their region if not already in force.
- E. Provide overall direction and guidance in establishing VOSH procedures for SEPs.

Recording SEP Activity in OIS

Upon arrival at a worksite scheduled for an SEP inspection, if it is determined by the CSHO that the establishment should have been deleted from the list, e.g., establishment is out of business, no longer at this address, etc., an entry of "No Inspection" shall be recorded in OIS. *Refer to Program Directive 02-050 for additional assistance.*

Current instructions for completing the appropriate inspection classification boxes on the OSHA Inspection form, as found in the OIS manual shall be applied when recording inspections conducted under an SEP. All enforcement activities conducted under this SEP, i.e., inspections, complaints, referrals, as well as compliance assistance visits shall be coded as either "Health" or "Safety" with the specific SEP code designated for the activity.

Similarly, placement of the applicable SEP code is necessary in the State Emphasis Program field for all consultation activities as well, i.e., requests, visits, and compliance assistance, conducted at establishments in the NAICS codes included the SEP being developed. Whenever a Consultation visit is made in response to a SEP, Consultation Request and/or Visit form(s) are to be completed with the specific SEP code for the specific possible exposure.

If, during a non-SEP safety-related activity, for example, a health exposure(s) are observed for which a health SEP exists, that health SEP code should be recorded into OIS and vice versa. All programmed inspections conducted under the SEP being developed shall be marked "Planned" and "State Emphasis Program" and the specific SEP code entered (*usually eight (8) characters*).