



VOSH PROGRAM DIRECTIVE: 13-002

ISSUED: August 15, 2008

SUBJECT: Areas of Direct Federal Enforcement by OSHA in Virginia

A. Purpose.

This directive details the areas of continued direct federal enforcement in the Commonwealth by federal OSHA under the State Plan agreement (the “Agreement”) between Virginia and U.S. Department of Labor.

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.

B. Scope.

This directive applies to all VOSH personnel.

C. Reference.

29 CFR 1952.375 (as amended.)

D. Cancellation.

Not Applicable.

E. Action.

Directors and Managers shall ensure that compliance officers are aware of the scope of direct federal OSHA enforcement in Virginia and the jurisdiction of the VOSH Program.

F. Effective Date.

August 15, 2008.

G. Summary.

Under the Agreement, federal OSHA has relinquished direct enforcement authority to VOSH only in regard to those occupational safety and health issues specifically covered by the Virginia State plan. This includes most private and all public sector areas of agriculture, general industry and construction. VOSH authority would also extend to any public sector maritime industry if and when it may exist. Federal OSHA retains full authority for enforcement for all other situations not specifically delegated to the Commonwealth.

H. Direct Federal Jurisdiction.

Direct OSHA jurisdiction includes enforcement and administration of all statutory laws, rules and regulatory standards required by the federal Occupational Safety and Health Act for the protection of all employees in such places of employment in Virginia. It also includes any other situation where VOSH does not have an enforceable statute, regulation or order or it does not have territorial jurisdiction over the employment or place of employment. As set out at 29 CFR 1952.375, OSHA retains full authority over places of employment in the Commonwealth over certain industries, circumstances and situations including:

1. Places of Direct Federal or Federal Entity Related Employment.

Federal government employers, employees, and other related federal entities, e.g., the U.S. Postal Service (USPS) which includes USPS employees, contract employees and contractor-operated facilities engaged in USPS mail operations.

2. Military Facilities.

Employment at worksites located within federal military facilities is the responsibility of federal OSHA.

3. Other Federal Enclaves.

There also exist within Virginia numerous federal enclaves or places of federal or joint federal/state activities where civil jurisdiction may or may not have been wholly or partially ceded by the Commonwealth to the federal government. This may result in “Exclusive”, “Proprietary”, “Partial”, or “Concurrent” federal jurisdictional status vis-a-vis the State, or in some cases, a combination thereof. This may impact the determination of jurisdiction between OSHA and VOSH.

In any such situation, the VOSH Office of Legal Support (OLS) should be contacted prior to any enforcement activity. OLS shall consult with the Office of the Attorney General (OAG) and federal OSHA to determine the precise jurisdictional authority for a particular location or portion thereof.

4. Private Sector Maritime Industry.

Federal OSHA retains its authority relative to safety and health in private sector maritime activities and will continue to enforce all provisions of the Act, rules or orders, and all Federal standards, current or future, specifically directed to such maritime employment. This includes:

- * 29 CFR Part 1910, general industry (applicable to maritime in the private sector);
- * 29 CFR Part 1915, shipyard employment (private sector);
- * 29 CFR Part 1917, marine terminals (private sector);
- * 29 CFR Part 1918, longshoring (private sector);
- * 29 CFR Part 1919, gear certification (private sector); and,
- * 29 CFR Part 1926, construction (applicable to maritime in the private sector)

5. Federal OSHA also retains direct jurisdiction for:

- * Employment at the U.S. Department of Energy's Southeastern Power Administration Kerr-Philpott System (*Reference: 71 FR 36988, June 29, 2006*)

I. VOSH Referrals of Complaints and Accidents outside of Its Jurisdiction.

1. VOSH shall refer the following to Federal OSHA:

- a. Employee(s) of the United States Government;
- b. Employers working at a worksite clearly controlled by an agency or department of the United States government, e.g., military installations, national parks and federal buildings, where the federal entity:
 - (1) claims exclusive federal jurisdiction over the area in which contractor's employees are working; or
 - (2) refuses entry to VOSH enforcement personnel.

NOTE: Until any possible jurisdictional issues are resolved between a federal agency or department and federal OSHA, VOSH compliance personnel shall not attempt to conduct an inspection or investigation.

- c. Discrimination under Section 11(c) of the Federal Occupational Safety and Health Act by employees under the jurisdiction of federal OSHA;

NOTE: Under VOSH's jurisdiction, any complaint of employee discrimination related to VOSH Program activities shall be referred to VOSH Discrimination Investigation (See VOSH Program Directive 04-001A or its successor).

- d. Transporting hazardous substances under regulations implementing Section 405 of the Surface Transportation Act, Section 7 of the International Safe Container Act and Section 211 of the Asbestos Hazard Emergency Response Act (AHERA);

- e. Employers who manufacture explosives under contract to the United States Department of Defense (DOD) and are under contract with federal government agencies which require compliance with:
 - (1) DOD Contractor's Safety Manual(s);
 - (2) Explosive Safety Requirements and Surveillance; and,
 - (3) where the Department of the Army or DOD conducts site inspections to ensure compliance.

- f. Maritime activities on “navigable waters”, i.e., waters deep and wide enough to afford ship passage to the Atlantic Ocean (*also see VOSH PD 02-101 and CPL 02-01-020 for the OSHA/Coast Guard definition of “navigable waters”*), including but not limited to:
 - (1) Longshoring operations on all vessels from the shore side of the means of access to the said ships;
 - (2) Marine vessel construction operations from the means of access on the shore;
 - (3) All afloat marine shipbuilding and repair from the foot of the gangway;
 - (4) All shipbuilding and repair in graving docks or dry docks;
 - (5) All ship repairing done on marine railways or similar conveyances used to haul vessels out of the water;
 - (6) All floating fuel operations;
 - (7) All diving from vessels afloat on the navigable waters;
 - (8) All afloat dredging, pile driving and similar operations outside the three (3) mile continental limit; or
 - (9) All offshore drilling, drilling rigs operating outside the three (3) mile continental limit.

2. **VOSH compliance personnel shall refer all complaints and accidents involving the following to the appropriate federal agency or department:**

- a. U.S. or Virginia Army National Guard; or U.S. or Virginia Air National Guard;

NOTE: Complaints and accidents at state-owned Virginia Army National Guard and Virginia Air National Guard facilities may fall under VOSH's jurisdiction providing the unit has not been federalized or does not require federal recognition. Compliance staff and/or the Compliance Manager shall contact the Office of Legal Support (OLS) prior to initiating or referring the complaint/accident.

- b. Railroad operations;

EXCEPTION: VOSH has jurisdiction over the safety and health of railroad employees in offices and shops devoted to the construction, maintenance or repair of rolling stock and other railroad equipment. VOSH also has occupational health jurisdiction over all other railroad employees and has safety jurisdiction over all other railroad employees as long as no other federal or state agency is actively exercising safety jurisdiction. Compliance personnel shall contact OLS before asserting jurisdiction over railroad employees who do not work in offices or repair or maintenance shops.

- c. In flight airline operations (Federal Aviation Administration, Department of Transportation); and
- d. Any U.S. National Parks and U.S. National Monuments (U.S. Department of the Interior) within the Commonwealth of Virginia.

C. Ray Davenport
Commissioner

Attachment: none

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