Modernizing OSHA's
Voluntary Protection Programs

INTRODUCTION

This notice announces OSHA's interest in *modernizing, improving,* and *expanding* the various pathways that employers can establish and improve their safety and health programs with the pinnacle being Voluntary Protection Programs (VPP). OSHA asks for stakeholder input on how it should make these changes. In 1982, OSHA recognized that it did not have sufficient resources to inspect all of the country's workplaces regularly or exhaustively (Voluntary Programs to Supplement Enforcement and to Provide Safe and Healthful Working Conditions; Request for Comment and Information, 47 FR 2796, January 19, 1982). As a result, OSHA began the development of programs intended to encourage employers to voluntarily comply with OSHA standards and improve their safety and health management systems to exceed them over time.

OSHA recognized even then that more than just enforcement activities is needed to leverage employers to meet, and exceed, occupational safety and health compliance standards. The use of a systems-based, performance oriented, and multifaceted approach, OSHA's Voluntary Protection Programs (VPP) has been an important tool to reach safety and health objectives at worksites that have effective safety and health management systems, while allowing OSHA to utilize its limited resources at worksites with greater hazards and risks. VPP has been an important initiative for OSHA, helping it achieve its mission of protecting America's workers from injury, illness, and death. For the past 40 years, employers who have implemented safety and health management systems (SHMS) under VPP have seen dramatic reductions in workplace injuries and illnesses, demonstrating the effectiveness of SHMS and creating models for others to follow. OSHA has studied and learned from VPP participants and used what it has learned to promote SHMS across all industries and among workplaces of every size.

VPP is effective at reducing injuries and illnesses at participant worksites. The average VPP worksite had a Days Away Restricted or Transferred (DART) case rate of 53 percent below the average for its industry for non-construction participants and 60 percent below the average for its industry for site-based construction and mobile workforce participation for 2020 (calculated annually by the Office of Partnership and Recognition and is based upon the injury and illness data submitted every year by the VPP participants). These lower than industry rates have been documented since 2001, showing that VPP has consistently reduced injury and illness rates in both construction and non-construction VPP worksites for two decades compared with the national average.

VPP is applicable to diverse industries, employers, and contractors. Both small and large employers, construction and non-construction sites, union and non-union sites, and site-based and mobile workforce sites are able to participate and excel in VPP. Performance measures also show better safety and health performance compared to industry peers. In 2009, in a Federal Register Notice (74 FR 933, January 9, 2009) announcing changes to the program, OSHA stated: "Other performance measures, plus anecdotal evidence and participant testimonials, reveal significant cost savings, including workers'

compensation cost reductions; reduced employee turnover; improvements in the quality of participants' products and services; and other benefits." VPP Participants also speak of a "cultural transformation" that can occur during the process of preparing for application to VPP.

A fundamental principle of VPP is continuous improvement. Sites are continuously creating new safety and health goals and objectives, as well as constantly improving their safety and health management systems. Participants are required to submit annual self-evaluation reports that hold the sites accountable to this essential principle and ensure that they are creating and meeting these goals. With this principle guiding them, the sites are creating ever more effective worker protections. This also helps sites continuously lower their injury and illness rates after they join VPP because they are constantly creating new health and safety goals annually. Continuous improvement ensures sites remain active participants in VPP after they are accepted, and enables worker participation and program buy-in.

Furthermore, as part of the Department of Labor's Good Jobs Initiative, OSHA is encouraging the implementation of safety and health management systems that will lead to employers providing good, quality jobs for its workers. Good Jobs Principles include job security and working conditions where workers have a safe, healthy, and accessible workplace, built on input from workers and their representatives. The implementation of a safety and health management system through a mechanism, such as VPP, supports this principle.

Expanding the possible pathways to VPP will help the agency achieve its vision of making safety and health a core value in American workplaces. The approximately 2,200 organizations recognized by VPP serve as shining examples, encouraging other organizations to improve their safety and health performance by implementing their own SHMS. The experience of VPP participants suggests greater use of SHMS can help reduce the impact of injuries and illness on workers and their families, and help organizations:

- Reduce the cost and financial impacts of workplace injuries and illnesses.
- Attract and retain the most talented and qualified workers.
- Earn a more favorable reputation among customers, the community, and investors.

Given the enormous success of VPP and its potential to save lives and prevent injury and illness, OSHA's goals are to modernize, expand, and enhance the pathways to the VPP program:

- Modernize VPP to align more closely with recent Occupational Safety and Health (OSH) management practices and management system standards,
- Expand the number of VPP participants to better demonstrate the effectiveness of safety and health management systems and how they support the agency's Safety as a Core Value initiative, and
- Expand ways to enlist the assistance of Special Government Employees (SGE), certified safety and health professionals, 3rd party auditors/certifications, and others to ensure the ongoing quality of VPP participants' OSH management systems.

To reach these goals, OSHA is asking the public to comment on a series of questions to gather input on key issues. OSHA requests commenters provide as much detail as needed to ensure the agency fully understands their suggestions and perspectives. Comments can be sent to OSHA by [insert transmittal methods].

How to submit written comments:

You may submit comments and attachments, identified by Docket No. OSHA-2022-0012, electronically at www.regulations.gov, which is the Federal e-Rulemaking Portal. Please submit all comments by April 14, 2023. Follow the online instructions for making electronic submissions.

Instructions: All submissions must include the agency's name and the docket number for this public comment process (Docket No. OSHA-2022-0012). All comments, including any personal information you provide, are placed in the public docket without change and may be made available online at www.regulations.gov. Therefore, OSHA cautions commenters about submitting information they do not want made available to the public or submitting materials that contain personal information (either about themselves or others), such as Social Security Numbers and birthdates.

Docket: To read or download comments or other material in the docket, go to Docket No. OSHA-2022-0012 at www.regulations.gov. All comments and submissions are listed in the www.regulations.gov index; however, some information (e.g., copyrighted material) is not publicly available to read or download through that website. All comments and submissions, including copyrighted material, are available for inspection through the OSHA Docket Office. Contact the OSHA Docket Office at 202–693–2350 (TTY number: 877–889–5627) for assistance in locating docket submissions.

QUESTIONS FOR THE PUBLIC

I. General observations

Issue: VPP is an important OSHA initiative that complements its enforcement mission by encouraging voluntary actions by employers and workers to reduce injuries, illnesses, and fatalities. It is important that OSHA obtain the views from stakeholders with varying experiences with VPP. We hope to receive input from all perspectives about the program.

OSHA's perspective is that VPP participants must implement and operate an effective SHMS that demonstrates the full commitment of management and participation of all workers. To apply, the facility must complete an application and submit to an onsite review of their operations. Annually, they must prepare and submit a self-evaluation report that details the state of their SHMS and provides an overview of continued improvements at the facility, and they are subject to re-evaluation every three to five years. OSHA, in turn, reviews and makes decisions with regards to each application and renewal. OSHA also tracks and reports on VPP participants' performance, and on the overall impact of VPP on workplace safety and health.

All government programs need to be reviewed periodically to ensure they achieve their goals and function optimally. OSHA is interested in stakeholders' overall assessment of the performance of VPP, and in identifying opportunities for improvement. OSHA is interested in obtaining input from stakeholders who have direct involvement with VPP facilities, stakeholders who do not currently have direct involvement with VPP, and stakeholders who have not had any involvement with a VPP site.

Questions:

1. What is working well with VPP?
2. What could be improved?
3. What has not worked well with VPP?

II. Incentives to participate

Issue: Organizations participate in VPP for a variety of reasons. Most importantly, participating reduces the risk of injuries and illnesses and increases the organization's confidence that its workers can go home safely to their families at the end of the day. VPP participation helps organizations develop an organizational culture of safety, which improves and increases communication and trust among workers as well as between workers and management, prevents injuries, illnesses, and fatalities, and reduces workers compensation costs. VPP participants are often considered among the best employers in an area, which helps them attract and retain well-qualified and motivated workers. OSHA recognizes VPP participants in a variety of ways including on its website, press releases, and authorized use of the VPP logo and flag. OSHA also recognizes that VPP participants practice robust safety and health management and provides them an exemption from programmed inspections.

OSHA is open to considering other incentives that could further expand VPP participation or encourage even higher levels of safety and health performance.

Questions:

1. To what extent does OSHA's recognition as a VPP participant motivate organizations to improve safety and health?
2. Is the existing exemption from programmed inspections an effective motivator, and are they sufficient?
3. Does the existing exemption from programmed inspections create any concerns about workplace safety and health at these facilities?
4. What other incentives could OSHA offer to encourage VPP participation?
5. Should all types of workplaces be included in the scope of VPP?
6. Should the manufacture or use of any specific hazardous materials preclude involvement or require special conditions?

III. Assessing SHMS effectiveness.

Issue: Historically, injury rates (DART and TCIR) have been used as a measure of an organization's safety and health performance. VPP uses injury rates for two purposes. First, rates are used as one of several eligibility criteria for acceptance into VPP. They are also used, along with other factors, to assess the effectiveness of a participant's SHMS and determine whether they are continually improving. Use of these rates as an indicator of performance has been criticized in the past:

- *They can be impacted by a variety of factors such under-reporting of injuries and illnesses.*
- *They are lagging indicators of performance and it is unclear whether they are adequate predictors of future SHMS performance.*
- *In small workplaces, these rates may fluctuate substantially without indicating true trends.*

Questions:

1. What criteria should OSHA consider for eligibility in VPP?
2. What concerns exist with the use of injury rates for participation in VPP?
3. Should OSHA consider the relative importance of various criteria (e.g., a weighting system) for eligibility and performance criteria, to reflect the performance of VPP applicants and participants more accurately?
4. What weight should DART and TCIR be given in an overall assessment of the effectiveness of a VPP participants' SHMS?
5. What leading indicators should OSHA consider using to assess the performance of VPP participants' SHMS?
6. Should any programs, policies, or practices that may affect injury reporting be excluded from VPP site SHMS?

IV. Use of consensus standards as a pathway to VPP

Issue: Consensus standards defining the elements of effective SHMS have been published in the U.S. (ANSI/AIHA Z10-2012; revised 2019) and internationally (ISO 45001:2018, and the prior OHSAS 18001). The number of U.S. organizations that have been certified to these is estimated at between 2,000 and 2,500. While there are some differences, there is significant overlap between these standards and VPP.[1,2]

Questions:

1. Should OSHA create a new and separate pathway for organizations that are already certified to SHMS consensus standards to join VPP?
2. What additional criteria, if any, should such organizations be required to meet to be eligible for VPP recognition?
3. Are there any current VPP application requirements that should be waived for organizations already certified to SHMS consensus standards such as ISO 45001?
4. Should organizations that *voluntarily* follow any of these consensus standards,[3] but that have not been certified by a third party, have an easier path to VPP?
5. What concerns exist for facilities that are voluntarily following or are certified to a consensus standard such as ISO 45001 that might reduce the effectiveness of their entry to the VPP program through an alternative entrance route?

V. Role of accredited certification bodies in VPP reviews

Issue: Currently, OSHA performs VPP application reviews and conducts onsite SHMS reviews of VPP applicants. Processing these applications and conducting reviews is time consuming and resource-intensive for OSHA.[4]

Questions:

1. Is there a role for certification bodies who are accredited to audit organizations for conformance to SHMS consensus standards to perform or assist in performing VPP application reviews?[5,6]
2. Should OSHA engage with certification bodies and those who accredit them to create a hybrid SHMS certification option for industry (e.g., ISO 45001-VPP)?
3. Are there aspects of the VPP review that would not be suitable for SHMS certification bodies to perform?

VI. Role of certified safety and health professionals in VPP reviews

Issue: The safety and health profession recognizes SHMS as an effective tool for finding and fixing workplace hazards and protecting workers from injuries and illnesses. Education and training programs for the safety and health profession have exposed many in the profession to SHMS concepts and best practices.

Questions:

1. Is there a role for certified safety and health professionals (e.g., CSP or CIH) or senior worker safety and health representatives (e.g., a long-term safety committee member) to perform (or assist in performing) VPP application reviews?
2. Should OSHA engage with organizations that credential safety and health professionals to create a designation or special training that helps such professionals demonstrate their competence to perform VPP reviews?
3. Are there any aspects of the review that would *not* be suitable for certified safety and health professionals or senior worker safety and health representatives to perform?
4. Are there other credentialed safety and health professionals who should be allowed to perform or assist in VPP application reviews?

VII. Tiered VPP

Issue: While VPP contains a Merit designation for participants whose SHMS do not completely meet eligibility requirements, currently the VPP includes only a single level of recognition in which all participants receive full OSHA recognition and benefits. OSHA understands that even among VPP organizations, there is a spectrum of performance. OSHA is open to considering a tiered system within VPP that allows the agency to recognize and encourage organizations that are at the beginning of the VPP journey. At the other end of the VPP spectrum are organizations with very robust, mature programs that find innovative ways to continue improving worker safety and health.

Questions:

1. Should OSHA consider a tiered approach to VPP?
2. What criteria could the VPP program use to distinguish between, for example, a new participants tier, a tier for organizations with fully functional SHMS programs, and VPP participants who are truly exceptional?
3. What benefits could OSHA provide that would encourage organizations to improve their performance and move from a lower to a higher tier?

VIII. Effective VPP administration

Issue: Administering VPP is challenging. The resources needed to document VPP participants' performance and observations made during onsite evaluations are significant and will only become more so as the VPP expands. At the same time, data collected through program administration can contribute to OSHA's understanding of the effectiveness of SHMS and their impact on the organizations and workers that implement them. Developing methods for reviewing, storing, and using data will be needed to manage an enhanced and expanded VPP.

Questions:

1. What data should be collected during the initial application process and periodic evaluations to ensure that VPP applicants are, and remain, eligible to participate in VPP?
2. Are there issues related to data integrity and confidentiality in the collection and storage of data from VPP initial applications and periodic evaluations? If so, how should these issues be addressed?
3. If OSHA were to engage or authorize third-party reviewers to conduct on-site evaluations, what review process should be used to ensure the quality of the data produced during such evaluations?
4. How can OSHA use technology and the internet to streamline and improve VPP? For example, should OSHA develop an online application and renewal system? Should OSHA create a VPP web page dedicated to sharing best practices?
5. What steps can OSHA take to ensure that any use of third-party certification does not result in facilities with less than exemplary SHMS being admitted to the program?

IX. VPP Worker and Safety Professional Involvement

Issue: The Special Government Employee (SGE) Program was established to allow industry employees to work alongside OSHA, particularly during Voluntary Protection Programs' (VPP) On-Site evaluations. Not only does this innovative program benefit OSHA by supplementing its on-site evaluation teams, but it gives industry and government an opportunity to work together and share views and ideas. Qualified volunteers from VPP sites are eligible to participate in the SGE program. These volunteers must be approved by OSHA and funded by their companies to participate. After submitting an application and completing the required training, these volunteers are sworn in as SGEs and are approved to assist OSHA. As VPP grows, the support of SGEs will continue to be a critical component of the programs.

Questions:

1. OSHA utilizes Special Governmental Employees (SGEs) to assist with the evaluation process. Should SGE use be expanded to provide additional capacity to the program?
2. Should SGE training be standardized to ensure consistency?
3. Are there items that should be included in SGE curricula that are not currently included?

X. VPP name

Issue: VPP is an acronym that stands for Voluntary Protection Programs. The acronym and name have been used since VPP was created in the 1980s. While VPP participants and many in the safety profession have become familiar with the name, it may not be as recognized outside the VPP and OSHA network. The term "protection program," for example, provides no reference to workplace safety and health, and the use of the term "program" is considered outdated to some (with "management system" being the more common term used).

Questions:

1. Should OSHA consider "rebranding" VPP and giving it a new name?
2. What considerations should OSHA factor in when considering any new program name?
3. Should OSHA sponsor a naming contest for the program?

[1] See: https://www.osha.gov/sites/default/files/Crosswalk_to_Voluntary_OSHA_Standards_7-3-18.pdf

[2] Both the OHSAS 18001 and ANSI Z10 standards have been "replaced" by the ISO 45001 standard. Existing certifications to these standards have either been transitioned to ISO 45001 or have expired. No new certifications for either standard will be issued.

[3] Including OSHA's Recommended Practices.

[4] In its FY 2022 Congressional Budget Justification, OSHA stated that: "The backlog of [VPP] reapprovals from FY 2020 and early FY 2021 will likely exceed the current capacity to provide on-site evaluations in a timely manner for existing VPP sites and for new sites seeking VPP entrance." See:
https://www.dol.gov/sites/dolgov/files/general/budget/2022/CBJ-2022-V2-12.pdf.

[5] Currently, the ANSI-National Accreditation Board (ANAB) website identifies 22 certification bodies it has accredited to conduct ISO 45001 conformance reviews in the U.S. See: https://anabdirectory.remoteauditor.com.

[6] "Accreditation" is the process through which a certification body demonstrates it has the competence and capacity to undertake assessments and determine conformance to a particular standard. "Certification" of an organization's management system is granted following an assessment by a certification body and their determination that the system conforms to the standard against which it is being assessed.