


MARCH 14, 2023 | OSHA RULEMAKINGS & STANDARDS

## OSHA Announces VPP Modernization Project

On February 16, 2023, OSHA announced that it is inviting the public and workplace safety stakeholders to share their comments to assist the agency as it [modernizes and enhances its Voluntary Protection Program \("VPP"\)](#). The deadline for comments is April 14, 2023.

Established in 1982, OSHA's VPP is a program that recognizes workplaces that demonstrate best practices in safety and health management and serve as industry models. VPP generally requires employers to implement "effective" safety and health management systems ("SHMS") programs as certified by OSHA, and maintain recorded injury and illness rates below the Bureau of Labor Statistics averages for their sectors. Once admitted to the program, an employer is exempt from "programmed" OSHA inspections, though VPP participants must be recertified every three to five years. 

Per OSHA, "VPP is effective at reducing injuries and illnesses at participant worksites." For example, the average VPP worksite had a Days Away Restricted or Transferred ("DART") case rate of 53% below the average for its industry for non-construction participants and 60% 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 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, per OSHA, 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."

Nonetheless, OSHA states that:

**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.**

OSHA's goals are to modernize, expand, and enhance the pathways to the VPP program.

Accordingly, OSHA is now seeking stakeholder input on issues such as:

- Aligning the program more closely with recent occupational safety and health management practices and system standards.
- How the program can contribute to expanding the use and effectiveness of safety and health management systems.
- Whether and how resources and tools such as "special government employees," consensus standards, third-party auditors and other methods could serve to expand the program's capacity without compromising effectiveness and oversight.
- Whether particular categories of hazards need special attention in the VPP certification process.

Specifically, OSHA is asking a [series of questions](#) in 10 sections to elicit useful responses to support the VPP modernization project's aims:

1.  **General observations**

- ***What is working well with VPP?***
- ***What could be improved?***
- ***What has not worked well with VPP?***

2. **Incentives to participate**

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

3. **Assessing SHMS effectiveness**

OSHA explains that, 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. Second, they are also used, along with other factors, to assess the effectiveness of a participant's SHMS and determine whether they are continually improving.

OSHA states that use of these rates as an indicator of performance has been criticized in the past since, for example, the rates: (1) can be impacted by a variety of factors such under-reporting of injuries and illnesses; (2) are lagging indicators of performance, making it unclear whether they are adequate predictors of future SHMS performance; and (3) in small workplaces, may fluctuate substantially without indicating true trends.

- ***What criteria should OSHA consider for eligibility in VPP?***

- ***What concerns exist with the use of injury rates for participation in VPP?***
- 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?
- ***What weight should DART and TCIR be given in an overall assessment of the effectiveness of a VPP participants' SHMS?***
- ***What leading indicators should OSHA consider using to assess the performance of VPP participants' SHMS?***
- Should any programs, policies, or practices that may affect injury reporting be excluded from VPP site SHMS?

#### **4. Use of consensus standards as a pathway to VPP**

OSHA explains that consensus standards defining the elements of effective SHMS have been published in the U.S. and internationally (e.g., ISO 45001). The number of U.S. organizations that have been certified to these is estimated at between 2,000 and 2,500. OSHA states that, while there are some differences, there is significant overlap between these standards and VPP.

- ***Should OSHA create a new and separate pathway for organizations that are already certified to SHMS consensus standards to join VPP?***
- What additional criteria, if any, should such organizations be required to meet to be eligible for VPP recognition?
- ***Are there any current VPP application requirements that should be waived for organizations already certified to SHMS consensus standards such as ISO 45001?***
- ***Should organizations that voluntarily follow any of these consensus standards, but that have not been certified by a third party, have an easier path to VPP?***
- 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?

#### **5. Role of accredited certification bodies in VPP reviews**

OSHA explains that it performs VPP application reviews and conducts onsite SHMS reviews of VPP applicants; however, processing these applications and conducting reviews is time-consuming and resource-intensive for OSHA. Indeed, in its FY2022 Congressional Budget Justification, OSHA stated that “[t]he 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.”

- ***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?***
- 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)?
- Are there aspects of the VPP review that would not be suitable for SHMS certification bodies to perform?

#### **6. Role of certified safety and health professionals in VPP reviews**

- 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?

- 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?
- 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?
- Are there other credentialed safety and health professionals who should be allowed to perform or assist in VPP application reviews?

## **7. Tiered VPP**

OSHA explains that, 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; however, 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.

- ***Should OSHA consider a tiered approach to VPP?***
- ***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?***
- ***What benefits could OSHA provide that would encourage organizations to improve their performance and move from a lower to a higher tier?***

## **8. Effective VPP administration**

- ***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?***
- ***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?***
- 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?
- ***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?***
- 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?

## **9. VPP worker and safety professional involvement**

OSHA explains that the Special Government Employee ("SGE") Program was established to allow industry employees to work alongside OSHA, particularly during VPP onsite evaluations. 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.

- OSHA utilizes SGEs to assist with the evaluation process. Should SGE use be expanded to provide additional capacity to the program?
- Should SGE training be standardized to ensure consistency?
- Are there items that should be included in SGE curricula that are not currently included?

#### 10. **VPP name**

OSHA explains that it, while VPP participants and many in the safety professions have become familiar with the name “VPP,” 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).

- Should OSHA consider “rebranding” VPP and giving it a new name?
- What considerations should OSHA factor in when considering any new program name?
- Should OSHA sponsor a naming contest for the program?

Whether your facility is already in VPP and wants to stay there, or has been trying to get into VPP, the importance of this opportunity to provide public comments cannot be overstated. For those who want to stay in VPP, it will be important to ensure that OSHA does not make staying in VPP any harder (or, put another way, does not make “getting kicked out” any easier). And for those who have effective SHMS and want to get into VPP, it will be equally important to ensure OSHA does not make the gateway into VPP any narrower.

To that end, if your organization is interested in participating in the VPP modernization project and providing feedback to OSHA and having a seat at the table, please contact the Chair of our National OSHA Practice, [Eric J. Conn](#). Again, the comment deadline is April 14, 2023.