

HIOSH DIRECTIVE

DIRECTIVE NUMBER: CPL 02-00-149	EFFECTIVE DATE: July 1, 2016
SUBJECT: Severe Violator Enforcement Program (SVEP)	

ABSTRACT

Purpose: This Instruction establishes enforcement policies and procedures for HIOSH's Severe Violator Enforcement Program (SVEP), which concentrates resources on inspecting employers who have demonstrated indifference to their Hawaii Safety and Health Law obligations by willful, repeated, or failure-to-abate violations. This Instruction replaces HIOSH's August 14, 2009 adoption of OSHA's Enhanced Enforcement Program (EEP)

Scope: HIOSH-wide.

References: OSHA Instruction CPL 02-00-069, Special Emphasis: Trenching and Excavation, September 19, 1985; OSHA Instruction CPL 02-00-080, Handling of Cases To Be Proposed for Violation-By-Violation Penalties, October 21, 1990; OSHA Instruction CPL 02-00-136, National Emphasis Program (NEP) on Shipbreaking, March 16, 2005; OSHA Instruction CPL 02-00-148, Field Operations Manual (FOM), November 9, 2009; OSHA Instruction CPL 03-00-003, National Emphasis Program on Amputations, October 27, 2006; OSHA Instruction CPL 03-00-010, Petroleum Refinery Process Safety Management National Emphasis Program, August 18, 2009; OSHA Instruction CPL 03-00-007, National Emphasis Program - Crystalline Silica, January 24, 2008; OSHA Instruction CPL 03-00-008 - Combustible Dust National Emphasis Program (Reissued), March 11, 2008; and OSHA Notice 09-06 (CPL 02) PSM Covered Chemical Facilities National Emphasis Program, July 27, 2009.

Cancellations: OSHA Instruction CPL 02-00-145, Enhanced Enforcement Program (EEP), January 1, 2008, adopted by HIOSH on August 14, 2009.

Action Offices: HIOSH Offices Statewide.

By and Under the Authority of

[Whoever It Is]

HIOSH Administrator

Executive Summary

This Instruction establishes enforcement policies and procedures for HIOSH's Severe Violator Enforcement Program (SVEP), which concentrates resources on inspecting employers who have demonstrated indifference to their Hawaii Occupational Safety and Health Law obligations by committing willful, repeated, or failure-to-abate violations. Enforcement actions for severe violator cases include mandatory follow-up inspections, increased company/corporate awareness of OSHA enforcement, corporate-wide agreements, where appropriate, enhanced settlement provisions, and state court enforcement under Section 4(d)(7) of the HIOSH Law. In addition, this Instruction provides for nationwide referral procedures, which includes OSHA's State Plan States. This Instruction replaces OSHA's Enhanced Enforcement Program (EEP).

Significant Changes from the Enhanced Enforcement Program (EEP)

- High-Emphasis Hazards are targeted, which include fall hazards and specific hazards identified from selected National Emphasis Programs.
 - The Assistant Secretary has determined that Nationwide Inspections of Related Workplaces/ Worksites are critical inspections for the purpose of 29 CFR §1908.7(b)(2)(iv).
 - Creates a nationwide referral procedure for Regions and State Plan States.
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I. **Purpose.** This Instruction establishes enforcement policies and procedures for HIOSH's Severe Violator Enforcement Program (SVEP), which concentrates resources on inspecting employers who have demonstrated indifference to their HIOSH Law obligations by committing willful, repeated, or failure-to-abate violations. This Instruction replaces OSHA's Enhanced Enforcement Program (EEP).

II. **Scope.**

This Instruction applies OSHA-wide.

III. **References.**

- A. OSHA Instruction [CPL 02-00-069 - CPL 2.69 - Special Emphasis: Trenching and Excavation](#), September 19, 1985.
- B. OSHA Instruction [CPL 03-00-020](#), National Emphasis Program (NEP) on Shipbreaking, March 7, 2016, adopted by HIOSH on March 29, 2016.
- C. OSHA Instruction [CPL 02-00-159 - Field Operations Manual \(FOM\)](#), October 1, 2015, adopted by HIOSH on April 15, 2016.
- D. OSHA Instruction [CPL 03-00-003 - National Emphasis Program on Amputations](#), October 27, 2006, adopted by HIOSH on August 23, 2007.
- E. OSHA Instruction [CPL 03-00-010 - Petroleum Refinery Process Safety Management National Emphasis Program](#), August 18, 2009, adopted by HIOSH on October 1, 2009.
- F. OSHA Instruction [CPL 03-00-007 - National Emphasis Program — Crystalline Silica](#), January 24, 2008, adopted by HIOSH on September 8, 2008.
- G. OSHA Instruction [CPL 03-00-008 - Combustible Dust National Emphasis Program \(Reissued\)](#), March 11, 2008, adopted by HIOSH on April 4, 2008.
- H. OSHA Instruction [CPL 03-00-009 - OSHA Instruction; National Emphasis Program-Lead](#), August 14, 2008, adopted by HIOSH on November 21, 2008.
- I. OSHA Instruction [03-00-016 - PSM Covered Chemical Facilities National Emphasis Program](#), November 29, 2011, adopted by HIOSH on December 8, 2011.
- J. OSHA Instruction [CSP 01-00-002](#), State Plan Policies and Procedures Manual, March 21, 2001.
- K. OSHA Instruction [CPL 02-00-080 Handling of Cases To Be Proposed for Violation-By-Violation Penalties](#), October 21, 1990, adopted by HIOSH on October 5, 1994 and revised on March 1, 1996.

IV. **Cancellations.**

OSHA Instruction CPL 02-00-145, Enhanced Enforcement Program (EEP), January 1, 2008, adopted by HIOSH on August 14, 2009.

V. **Action Information.**

A. **Action Offices.**

HIOSH and OSHA

B. **Information Offices.**

OSHA Training Institute, Consultation Project Managers, VPP Managers and Coordinators, OSHA Strategic Partnership Coordinators, Compliance Assistance Coordinators, and Compliance Assistance Specialists.

VI. **State Impact.**

Notice of Intent, Adoption and Submission of a Plan Change Supplement Required. This Instruction is a Federal program change which cancels OSHA's Enhanced Enforcement Program and establishes the Severe Violator Enforcement Program (SVEP). The purpose of the SVEP is to focus increased enforcement attention on significant hazards and violations by concentrating on employers who have demonstrated indifference to their occupational safety and health obligations through willful, repeated, or failure-to-abate violations in (1) a fatality or catastrophe situation; (2) in industry operations or processes that expose employees to the most severe occupational hazards and those identified as "High-Emphasis Hazards," as defined in Section XII. of this Instruction (p. 5); (3) exposing employees to hazards related to the potential release of a highly hazardous chemical; or (4) all egregious enforcement actions. Because the significant nature of this program requires nationwide applicability, States are required to either adopt this program or establish their own equivalent program which must include enforcement procedures for identifying and taking action with regard to these recalcitrant and indifferent employers and for making referrals to, and responding to referrals from, Federal OSHA. As set out in paragraph XV.B.3. (p.12), Federal OSHA will accept referrals from State plans and conduct appropriate inspections.

Each State must provide notice of its intent to adopt either policies or procedures identical to those set out in this instruction, or alternative policies and procedures that are at least as effective. State policies and procedures must be adopted within six months of issuance of this instruction. If the State adopts policies and procedures that differ from the Federal program, the State must submit its different policies and procedures as a plan change supplement with identification of the differences, within 60 days of adoption, and either post its different policies on its State plan website and provide the link to OSHA or provide OSHA with information on how the public may obtain a copy. If the State adopts identical policies and procedures, it must provide the date of adoption to OSHA and information on any State-specific procedures. OSHA will provide summary information on the State responses to this instruction on its website.

VII. **Background.**

The SVEP is intended to focus enforcement efforts on significant hazards and violations by concentrating inspection resources on employers who have demonstrated recalcitrance or indifference to their HIOSH Law or OSH Act obligations by committing willful, repeated, or failure-to-abate violations in one or more of the following circumstances: (1) a fatality or catastrophe situation; (2) in industry operations or processes that expose employees to the most severe occupational hazards and those

identified as "High-Emphasis Hazards," as defined in Section XII. of this Instruction (p.5); (3) exposing employees to hazards related to the potential release of a highly hazardous chemical; or (4) all egregious enforcement actions.

Cases meeting the severe violator enforcement criteria are those in which the employer is found to be recalcitrant or indifferent to its obligations under the HIOSH Law and OSH Act, thereby endangering employees. The SVEP procedures in Section XV. (p.10) are intended to increase attention on the correction of hazards found in these workplaces and, where appropriate, in other worksites of the same employer where similar hazards and deficiencies may be present. This program applies to all employers regardless of size.

VIII. Transition between the EEP and the SVEP.

On the effective date of this Instruction the EEP will terminate (including any follow-up inspections that have not yet been performed). However, Branch Managers have the discretion to conduct any follow-up inspections related to the EEP in accordance with the policies and procedures in the FOM (CPL 02-00-159, Chapter 2, *Program Planning*).

IX. Significant Changes.

- A. High-Emphasis Hazards are targeted and include fall hazards and hazards identified from the following National Emphasis Programs (NEPs): amputations, combustible dust, crystalline silica, excavation/trenching, lead, and shipbreaking. See section XII. (p.5).
- B. The Assistant Secretary by this Instruction determines that the specific inspections under the Nationwide Inspections of Related Workplaces/Worksites process are critical inspections for the purpose of 29 CFR §1908.7(b)(2)(iv) and delegates to the State program (HIOSH) the authority to determine site selections of those related workplaces/worksites. See paragraph XV.B.7.b. (p.14).
- C. A nationwide referral procedure is being initiated in which OSHA may inspect related worksites/workplaces of a SVEP employer. See section XV.B. (p.10).

X. Handling Severe Violator Enforcement Cases.

- A. Compliance Officers (CSHOs) must become familiar with Appendix B to effectively evaluate employers during all inspections likely to result in a severe violator enforcement case. If the company has more than one worksite nationwide, Appendix B is to be completed to the extent possible.
- B. The Branch Manager will identify severe violator enforcement cases no later than at the time the citations are issued, in accordance with criteria set forth in this Instruction.

- C. State and county cases that meet the SVEP case criteria will also be classified as severe violator enforcement cases, and where the term "employer-wide" or "company-wide" is used, it will apply agency-wide or department-wide, as appropriate. Appropriate SVEP actions for such cases will be determined by the Branch Manager in consultation with the Administrator.
- D. When a case meets the severe violator enforcement case criteria, the Occupational Safety or Occupational Health Branch Manager will notify the ATS Manager who will in turn notify the OSHA Area Director
- E. Notification to the OSHA Area Director is to be by e-mail using the information template in Appendix A. Information should be reported initially when the Branch Manager has determined that the case meets the SVEP criteria, and updated as additional actions are taken. A copy of Appendix B should also be forwarded to the OSHA Area Director.

XI. **Criteria for a Severe Violator Enforcement Case.**

Any inspection that meets one or more of criteria A. through D., at the time that the citations are issued, will be considered a severe violator enforcement case.

Willful and **repeated** citations and **failure-to-abate** notices must be based on serious violations, except for recordkeeping, which must be egregious (e.g., per-instance citations). See *FOM*, CPL 02-00-159, Chapter 6, paragraphs V.A.1. and VI.A.1.

A. **Fatality/Catastrophe Criterion.**

A fatality/catastrophe inspection in which HIOSH finds **one** or more **willful** or **repeated** violations or **failure-to-abate** notices based on a serious violation related to a death of an employee or three or more hospitalizations.

NOTE: The violations under this criterion **do not have to be High-Emphasis Hazards** as defined in Section XII. (p.5).

B. **Non-Fatality/Catastrophe Criterion Related to High-Emphasis Hazards.**

An inspection in which HIOSH finds **two** or more **willful** or **repeated** violations or **failure-to-abate** notices (or any combination of these violations/notices), based on **high gravity serious** violations related to a **High-Emphasis Hazard** as defined in Section XII. (p. 5).

C. **Non-Fatality/Catastrophe Criterion for Hazards Due to the Potential Release of a Highly Hazardous Chemical (Process Safety Management).**

An inspection in which HIOSH finds **three** or more **willful** or **repeated** violations or **failure-to-abate** notices (or any combination of these violations/notices),

based on **high gravity serious** violations related to hazards due to the potential release of a highly hazardous chemical, as defined in the PSM standard.

D. Egregious Criterion.

All **egregious** (e.g., per-instance citations) enforcement actions will be considered SVEP cases.

XII. Definition of High-Emphasis Hazards.

High-Emphasis Hazards as used in this Instruction means only **high gravity serious** violations of the following specific standards covered under falls or the National Emphasis Programs (NEPs) listed in paragraphs F. through K. below, **regardless of the type of inspection** being conducted (e.g., complaint, programmed, Local Emphasis Programs, National Emphasis Programs). Low and moderate gravity violations **will not** be considered for a SVEP case. See Chapter 4, section II, *Serious Violations*, and Chapter 6, section III.A *Gravity of Violation* of the FOM (CPL 02-00-148) for determining what constitutes a **high gravity serious** violation.

Example 1: A CSHO conducts an **ISS Programmed inspection** and cites the employer for one high gravity willful violation of 29 CFR §1910.23 and one low gravity willful violation of 29 CFR §1910.28. The inspection has not met the Non-Fatality/Catastrophe Criterion Related to High-Emphasis Hazards and is not subject to the SVEP.

Example 2: A CSHO conducts a **Local Emphasis Program** inspection for Residential Construction. While on-site, the CSHO observes employees working in an unsupported trench and cites the employer for two high gravity willful violations of 29 CFR §1926.651. The inspection has met the Non-Fatality/Catastrophe Criterion Related to High-Emphasis Hazards and the case is subject to the SVEP.

Example 3: A CSHO conducts a **National Emphasis Program** inspection for Shipbreaking. While on-site, the CSHO observes a piece of scrap metal from the dismantled vessel being lifted with a crane over top of an employee with a kinked wire rope. The employer is cited for one high gravity repeat violation of 29 CFR §1915.112 and one high gravity willful violation of 29 CFR §1915.116. The inspection has met the Non-Fatality/Catastrophe Criterion Related to High-Emphasis Hazards and the case is subject to the SVEP.

A. Fall hazards covered under the following general industry standards:

1. 29 CFR §1910.23 - Guarding floor and wall openings and holes [Walking-Working Surfaces]
2. 29 CFR §1910.28 - Safety requirements for scaffolding [Walking-Working Surfaces]

3. 29 CFR §1910.29 - Manually propelled mobile ladder stands and scaffolds (towers) [Walking-Working Surfaces]
4. 29 CFR §1910.66 - Powered platforms for building maintenance [Powered Platforms, Manlifts, and Vehicle-Mounted Work Platforms]
5. 29 CFR §1910.67 - Vehicle-mounted elevating and rotating work platforms [Powered Platforms, Manlifts, and Vehicle-Mounted Work Platforms]
6. 29 CFR §1910.68 - Manlifts [Powered Platforms, Manlifts, and Vehicle-Mounted Work Platforms]

B. Fall hazards covered under the following construction industry standards:

1. 29 CFR §1926.451 - General requirements [Scaffolds]
2. 29 CFR §1926.452 - Additional requirements applicable to specific types of scaffolds
3. 29 CFR §1926.453 - Aerial lifts [Scaffolds]
4. 29 CFR §1926.501 - Duty to have fall protection
5. 29 CFR §1926.502 - Fall protection systems criteria and practices
6. 29 CFR §1926.760 - Fall protection [Steel Erection]
7. 29 CFR §1926.1052 - Stairways [Ladders]

C. Fall hazards covered under the following shipyard standards:

1. 29 CFR §1915.71 - Scaffolds or staging [Scaffolds, ladders and Other Working Surfaces]
2. 29 CFR §1915.73 - Guarding of deck openings and edges [Scaffolds, ladders and Other Working Surfaces]
3. 29 CFR §1915.74 - Access to vessels [Scaffolds, ladders and Other Working Surfaces]
4. 29 CFR §1915.75 - Access to and guarding of dry docks and marine railways [Scaffolds, ladders and Other Working Surfaces]
5. 29 CFR §1915.159 - Personal fall arrest systems (PFAS) [Personal Protective Equipment (PPE)]

D. Fall hazards covered under the following marine terminal standards:

1. 29 CFR §1917.45 - Cranes and derricks [Cargo Handling Gear and Equipment]
2. 29 CFR §1917.49 - Spouts, chutes, hoppers, bins, and associated equipment [Cargo Handling Gear and Equipment]

3. 29 CFR §1917.112 - Guarding of edges [Terminal Facilities]
- E. **Fall hazards covered under the following longshoring standards:**
1. 29 CFR §1918.22 - Gangways [Gangways and Other Means of Access]
 2. 29 CFR §1918.85 - Containerized cargo operations [Handling Cargo]
- F. **Amputation hazards** specified below that are covered under the National Emphasis Program on Amputations. (See CPL03-00-003):
1. 29 CFR §1910.147 - The control of hazardous energy (lockout/tagout)
 2. 29 CFR §1910.212 - General requirements for all machines
 3. 29 CFR §1910.213 - Woodworking machinery requirements
 4. 29 CFR §1910.217 - Mechanical power presses
 5. 29 CFR §1910.219 - Mechanical power-transmission apparatus
- G. **Combustible dust hazards** specified below that are covered by the Combustible Dust National Emphasis Program (Reissued), including the General Duty Standard (§12-60-2(a)(3) or §12-110-2(a)(3), HAR). (See CPL 03-00-008):
1. 29 CFR §1910.22 - General requirements [Walking-Working Surfaces]
 2. 29 CFR §1910.307 - Hazardous (classified) locations [Electrical]
 3. §12-60-2(a)(3) or §12-110-2(a)(3), HAR.
Any General Duty Clause violation concerning hazards related to dust collectors inside buildings, deflagration isolation systems, and duct-work issues.
- H. **Crystalline silica hazards** specified below that are covered by the National Emphasis Program — Crystalline Silica (See CPL 03-00-007):
1. **Overexposure.**
 - a. 29 CFR Part §1910.1000 and 29 CFR Part §1915.1000 - Air Contaminants
 - b. 29 CFR §1926.55 - Gases, vapors, fumes, dusts, and mists
 2. **Failure to Implement Engineering Controls.**
 - a. 29 CFR §1910.1000(e) - Air Contaminants
 - b. 29 CFR §1926.55(b) - Gases, vapors, fumes, dusts, and mists
 3. **When Overexposure Occurs.**

29 CFR §1910.134; 29 CFR §1926.103; and 29 CFR §1915.154 - Respiratory protection

NOTE: The Silica NEP requires a mandatory follow-up inspection when overexposures to crystalline silica are found. If a follow-up inspection finds the same violations as previously cited, the follow-up inspection will most likely qualify as a SVEP case. See paragraph XV.A.4. (p.11).

- I. **Lead hazards** specified below that are covered by the National Emphasis Program — Lead (only violations based on sampling). See CPL 03-00-009.
 - 1. 29 CFR §1910.1025 - Lead
 - 2. 29 CFR §1926.62 - Lead
 - 3. 29 CFR §1915.1025 - Lead and 29 CFR §1915 Subpart D Welding, Cutting, and Heating
- J. **Excavation/trenching hazards** specified below that are covered by the Special Emphasis Program - Trenching and Excavation (See CPL 02-00-069)
 - 1. 29 CFR §1926.651 - Specific excavation requirements
 - 2. 29 CFR §1926.652 - Requirements for protective systems [Excavations]
- K. **Shipbreaking hazards** specified below that are covered by the National Emphasis Program — Shipbreaking. See CPL 02-00-136.
 - 1. 29 CFR §1915.12 - Precautions and the order of testing before entering confined and enclosed spaces and other dangerous atmospheres [Confined and Enclosed Spaces and Other Dangerous Atmospheres in Shipyard Employment]
 - 2. 29 CFR §1915.112 - Ropes, chains, and slings [Gear and Equipment for Rigging and Materials Handling]
 - 3. 29 CFR §1915.116 - Use of Gear [Gear and Equipment for Rigging and Materials Handling]
 - 4. 29 CFR §1915.159 - Personal fall arrest systems (PFAS) [Personal Protective Equipment (PPE)]
 - 5. 29 CFR §1915.503 - Precautions for hot work [Fire Protection in Shipyard Employment]

XIII. **Hazards Due to the Potential Release of a Highly Hazardous Chemical (Process Safety Management).**

Petroleum refinery hazards are those hazards that are covered by the Petroleum Refinery Process Safety Management National Emphasis Program (See CPL 03-00-004) and hazards due to the potential release of a highly hazardous chemical as covered by the PSM Covered Chemical Facilities National Emphasis Program. See CPL 03-00-014/

29 CFR §1910.119 - Process safety management of highly hazardous chemicals

XIV. **Enforcement Considerations — Two or More Inspections of the Same Employer.**

For classification under the SVEP, each individual inspection must be evaluated separately to determine if it meets one of the criteria in XI.A., B., C., or D. (p. 4). If any of the inspections meet one of the severe violator criteria, it will be considered a SVEP case and coded according to paragraph XVIII.A. (p. 20).

XV. **Procedures of the Severe Violator Enforcement Program (SVEP).**

When the Branch Manager determines that a case meets one of the SVEP criteria, it will be treated in accordance with paragraphs XV.A. through E below. Only those SVEP actions that are appropriate for the particular employer should be taken.

A. **Enhanced Follow-up Inspections.**

1. **General.**

For any SVEP inspection issued on or after the effective date of this Instruction, a follow-up inspection must be conducted after the citations become final orders even if abatement verification of the cited violations has been received. The purpose of the follow-up inspection is to assess **not only** whether the cited violation(s) were abated, **but also** whether the employer is committing similar violations.

2. **Compelling Reason Not to Conduct.**

If there is a compelling reason not to conduct a follow-up inspection, the reason must be documented in the file. **The Branch Manager shall also report these cases to the Administrator**, via memo along with the reason a follow-up was not initiated.

Examples of compelling reasons not to conduct a follow-up inspection may include: (1) worksite/workplace closed, (2) employer is out of business, (3) operation cited has been discontinued at the worksite/workplace, or (4) case no longer meets any of the SVEP criteria because citation has been withdrawn/vacated.

NOTE: A Corrected During Inspection (CDI) situation does not take the place of a needed follow-up inspection.

If the Branch Manager learns that a cited operation has been moved from the cited location to a different location, the new location shall be inspected. If the new location is outside the state jurisdiction, a referral shall be made.

3. Construction Worksites.

When the Branch Manager has reason to believe that a construction worksite is no longer active (or is nearing completion), thus making a follow-up inspection of the same worksite impossible or impractical, the provisions in paragraph XV.B.5. (p. 15) shall apply.

4. Silica Overexposure Follow-ups.

The Silica NEP (CPL 03-00-007) in paragraph XI.E.1. requires a mandatory follow-up inspection when citations are issued for overexposure to crystalline silica to determine whether the employer is eliminating silica exposures or reducing exposures below the PEL. If a follow-up inspection finds the same or similar violations as previously cited, the follow-up inspection will most likely qualify as a severe violator enforcement case under the criteria in section XI. (p. 4).

B. Nationwide and Statewide Inspections of Related Workplaces/Worksites.

1. General.

OSHA has found that employer indifference to compliance responsibilities under the Act may be indicative of broader patterns of non-compliance at related employer worksites. When there are reasonable grounds to believe that compliance problems identified in the initial inspection may be indicative of a broader pattern of non-compliance, HIOSH will inspect related worksites of the same employer. Appendix B of this Instruction provides guidance in evaluating whether compliance problems found during the initial SVEP inspection are localized or likely to exist at related facilities. This information should be gathered, to the extent possible, during the initial SVEP inspection. Such information may also be sought by letter, telephone, or if necessary, by subpoena.

The Branch Manager shall be responsible for assuring that relevant information is gathered and for determining whether the information provides reasonable grounds to believe that a broader pattern of non-compliance may exist within the state. The Administrator shall consult with the DAG as appropriate. When sufficient evidence is found, all related establishments of the employer that are in the same 3-digit NAICS code (or 2-digit SIC code) as the initial SVEP case will be identified; establishments will be selected for inspection in accordance with subsection 3 below. Establishments that are not in the same 3-digit NAICS code (or 2-digit SIC code) also may be inspected if there are reasonable grounds to believe hazards and violations may be present at

the related sites.

2. **State Plan State Referrals.**

OSHA will accept referrals, which include all relevant facts, from State Plan States regarding any inspections conducted pursuant to the State's SVEP. State Plan referrals to Federal OSHA are to be sent to the Regional Administrator in accordance with current Region IX procedures. The Regional Administrator will then forward any referrals not in its Region to the appropriate OSHA Regional Administrator.

3. **General Industry Workplaces.**

a. **Employer Has Three (3) or Fewer Similar Related Workplaces.**

When the Branch Manager determines that additional workplaces within the state should be inspected, and the employer has three or fewer similar related workplaces, **all such workplaces will be inspected** to determine whether those sites have hazardous conditions or violations similar to those in the severe violator enforcement case. The Branch Manager shall have overall responsibility for coordinating the inspections and planning investigative strategy. The Branch Manager shall consult with the DAG as appropriate.

b. **Employer has Four (4) or More Similar Related Workplaces.**

When the Branch Manager determines that additional workplaces should be inspected, and the employer has **four or more similar related establishments within the state**, or the number of workplaces/worksites cannot be determined, the Branch Manager will send the recommendation for inspection, including all relevant facts, to the Administrator.

(1) When the Administrator determines that there are reasonable grounds for inspecting similar related establishments, he/she will request the assistance of the Research & Statistics Office in identifying such worksites. Normally, when the number of similar related establishments statewide is 5 or less, all will be selected for inspection. When there are more than 5, the Research & Statistics Office will assign random numbers to the complete list of similar related establishments, sort those establishments in random number order, and select the first 5 for inspection.

All establishments on the inspection list will be inspected to determine whether hazardous conditions or violations similar to those found in the initial SVEP inspection are present.

Based on the results of these inspections, the Administrator may determine whether inspections of additional establishments should be conducted. Any inspection conducted under a SVEP statewide inspection list is to be coded as an unprogrammed-referral, and is to be considered a referral from the HIOSH Office. An OSHA-90 is to be generated when a site is discovered where a SVEP statewide referral employer is working.

(2) In addition to or in lieu of (1) above, when the Administrator has reasonable grounds to believe that hazards may exist at particular other related establishments, he/she may select those establishments for inspection.

c. SVEP Nationwide Related Inspections that involve process safety management (PSM) hazards.

A SVEP referral inspection will be limited to investigations of the PSM standard for which the willful or repeated citations or failure-to-abate notices were issued, and will not include units that were inspected in the previous two years.

4. Construction Worksites.

a. Occupational Safety Branch.

Whenever an employer in the construction industry has a SVEP case, the OS Branch Manager must further investigate the employer's HIOSH Law compliance. If the initially inspected worksite is closed before a follow-up inspection can be conducted, at least one other worksite of the cited employer must be inspected to determine whether the employer is committing violations similar to those found in the initial severe violator enforcement inspection. Because the worksites of construction employers are often difficult to locate, the following means may be used to identify other worksites of the cited employer.

- If the severe violator enforcement case is resolved through a settlement, the agreement should require the employer to notify the Branch Manager of its other jobsites prior to when work starts at new construction sites during the following one-year period.

- An administrative subpoena may be issued to an employer prior to the issuance of the citation to identify the location of worksites where employees of that employer are presently working or are expected to be working within the next 12 months. See *FOM*, Chapter 15, section I, (*Administrative Subpoenas*).
- A subpoena may be issued at any time during an inspection if it appears that the inspection is likely to result in a SVEP case and the Branch Manager determines (after consultation with the Administrator) that the hazards disclosed by the inspection and the inadequacy of the employer's response to those hazards indicate that a broader response by HIOSH is appropriate.
- Whenever a subpoena is to be issued pursuant to the SVEP, the Administrator shall coordinate with the DAG.

b. National Office.

- When the Director of DEP deems it necessary to notify Regional Administrators and State Designees regarding activity of a particular construction employer with worksites in more than one Region and/or State Plan States, the Director will issue a SVEP Nationwide referral. The procedures outlined under XV.B.4.b. (p. 13) will be followed.
- Any inspection conducted under a SVEP Nationwide referral is to be coded as an unprogrammed-referral, and is to be considered a referral from the National Office. An OSHA-90 is to be generated when a site is discovered where a SVEP Nationwide Referral employer is operating.

5. Scope of Related Inspections.

The scope of inspection of a related establishment will depend upon the evidence gathered in the original SVEP inspection, and will mainly focus on the same or similar hazards to those found in the original case.

6. Priority of the Inspection.

- a. In accordance with inspection priorities of the FOM (CPL 02-00-148), in Chapter 2, in section IV.B., (*Inspection Priority Criteria*), the SVEP nationwide referral inspections will come after imminent danger, fatality, and complaints, but before other programmed inspections. But see section XVII. (*Relationship to Other Programs*) of this Instruction (p.19), regarding when other inspections may be conducted concurrently.

- b. The Assistant Secretary by this Instruction determines that the specific inspections under the Nationwide Inspections of Related Workplaces/ Worksites process are critical inspections for the purpose of 29 CFR §1908.7(b)(2)(iv) and delegates to the Director of the Directorate of Enforcement Programs the authority to determine site selections of those related workplaces/worksites.

C. Increased Company Awareness of HIOSH Enforcement.

1. Sending Citations and Notifications of Penalty to Headquarters.

- a. For all employers that are the subject of a SVEP case, the Branch Manager shall mail a copy of the Citations and Notifications of Penalty to the employer's national headquarters if the employer has more than one fixed establishment. See sample cover letter in Appendix C.
- b. Employee representatives (e.g., unions) shall receive a copy of the Citations and Notifications of Penalty that is mailed to the employer's national headquarters.

2. Issuing News Releases.

a. HIOSH News Releases

HIOSH may issue a News Release for all SVEP cases upon issuance of the citations. The Administrator has the discretion to determine which SVEP cases will receive a News Release.

b. Nationwide Referral Inspection News Releases.

In SVEP cases that were a result of a Nationwide Referral, the Regional Office is to issue a News Release at the time the citations are issued. In certain SVEP cases, the National Office may issue a News Release in coordination with the Regional Office.

3. Sending Letters to Corporate Officers or Coordinating Meetings with the Regional or National Office.

In cases where HIOSH determines that an establishment's safety and health problems should be addressed at the corporate level, the following actions should be considered:

- a. A letter sent from the Administrator to the company President expressing OSHA's concern with the company's violations. A copy of the citations shall be sent with the letter if the citations and cover letter have not been sent to the company President previously.

- b. Where company corporate offices are within the state, a meeting may be held between HIOSH, company officials, employees and unions representing affected employees to discuss how the company intends to address safety and health compliance.
- c. Employee representatives shall be notified by letter when HIOSH determines that the establishment's safety and health problems need to be addressed at the corporate level.

D. Enhanced Settlement Provisions.

The following settlement provisions shall be considered to ensure future compliance both at the cited facility and at other related facilities of the employer:

- 1. Employers shall hire a qualified safety and health consultant to develop and implement an effective and comprehensive safety and health program or, where appropriate, a program to ensure full compliance with the subpart under which the employer was cited under the SVEP;

NOTE: Employers cannot be required in a settlement agreement to use OSHA's state consultation services; such services are strictly voluntary.

- 2. Requiring interim abatement controls if HIOSH is convinced that final abatement cannot be accomplished in a short period of time;
- 3. In construction (and, where appropriate, in general industry), using settlement agreements to obtain from the employer a list of its current jobsites, or future jobsites within a specified time period. The employer should be required to indicate to HIOSH the specific protective measure to be used for each current or future jobsite;
- 4. Requiring the employer for a specified time period to submit to HIOSH its Log of Work-related Injuries and Illnesses on a quarterly basis, and to consent to HIOSH conducting an inspection based on the information;
- 5. Requiring the employer for a specified time period to notify the HIOSH Office of any serious injury or illness requiring medical attention and to consent to an inspection; and
- 6. Obtaining employer consent to entry of a court enforcement order under Section 396-4(d)(7) of the Law.

E. State Court Enforcement under Section 4(d)(7) of the HIOSH Law

SVEP cases should be strongly considered for section 4(d)(7) orders when it appears that such orders may be needed to assure compliance. An employer's obligation to abate a cited violation arises when there is a final order of the

Hawaii Labor Relations Board affirming the citation. For guidance on drafting citations and settlement agreements that can maximize the deterrent effect of a Section 4(d)(7) order, see *FOM* (CPL 02-00-159) Chapter 15, section XIV.

XVI. Relationship to Other Programs.

A. Unprogrammed Inspections.

If an unprogrammed inspection arises with respect to an establishment that is to receive an SVEP-related inspection, the two inspections may be conducted either separately or concurrently. This Instruction does not affect in any way HIOSH's ability to conduct unprogrammed inspections.

B. Programmed Inspections.

Some establishments selected for inspection under the SVEP may also fall under one or more other HIOSH initiatives such as ISS Programmed Inspections or Local Emphasis Programs (LEP). Inspections under these programs may be conducted either separately or concurrently with inspections under this Instruction.

XVII. Recording and Tracking Inspections.

A. SVEP Code.

This applies to all severe violator enforcement cases issued on or after the effective date of this Instruction. Once a case is identified as a severe violator enforcement case, enter the NEP code "SVEP" from the drop-down list in field 25d, for the inspection.

NOTE: **Only inspections** that meet one of the four criteria for a severe violator enforcement case will be coded with the SVEP NEP code.

B. NEP Codes for High-Emphasis Hazards.

If the SVEP criterion used is that described in paragraph XII.B., the appropriate NEP codes must be entered in field 25d.

C. Significant Enforcement Actions and Enhanced Settlement Codes.

If any inspection in a significant enforcement action qualifies as a severe violator case, it is to be coded "SIGCASE" in item 42, for that inspection.

EXAMPLE: N 08 SIGCASE

If a severe violator case receives an enhanced settlement agreement, it is to be coded "ENHSA" in item 42.

EXAMPLE: N 08 ENHSA

D. Other Program Codes.

Remember to enter all applicable SST, REP, NEP, and LEP program codes in Item 25c and 25d when an inspection is conducted and the inspection also meets the protocol for other program(s). Also, enter all applicable Strategic Management Plan hazard/industry codes in Item 25f.

Appendix A

Information Needed on Each SVEP Inspection for Report to the OSHA Area Office

State of Hawaii SVEP Report

Employer Name:				
Worksite Address				
Inspection Number:		SIC/NAICS Code		
Opening Date		# of Employees Controlled		
Inspection	SVEP <input type="checkbox"/>	SVEP Follow-Up (FU) <input type="checkbox"/>	Construction-Related (C-R) <input type="checkbox"/>	GI Related (GI-R) <input type="checkbox"/>
	Note: If inspection is done based on a SVEP Nationwide Expansion Memo the inspection will be either a Construction-Related (C-R) or GI Related (GI-R).			
If other than SVEP, give the name and inspection number of the SVEP case to which it is a follow-up or is related to. Remember: Any FU, C-R, or GI-R inspections can also be a SVEP.				
Employer Name				
Inspection Number				
Current SVEP Case	Construction <input type="checkbox"/>		General Industry <input type="checkbox"/>	
SVEP Criteria (check all that apply):				

1) Fatality/Catastrophe – One or more W/R/FTA based on a serious violation of any gravity related to death or three or more hospitalized.	<input type="checkbox"/>
2) Non-Fatality/Catastrophe – Two or more W/R/FTA based on high gravity serious violations related to a High-Emphasis Hazard (excluding Process Safety Management)	<input type="checkbox"/>
3) Non-Fatality/Catastrophe for PSM hazards – Three or more W/R/FTA based on high gravity serious violations.	<input type="checkbox"/>
4) Egregious Case	<input type="checkbox"/>

What SVEP actions have been taken (do not report any planned activities):

- 1) Follow-up inspection conducted; or compelling reason not to conduct
- 2) Additional construction worksite inspected
- 3) Additional general industry worksite inspected
- 4) News Releases issued by HIOSH
- 5) Letter and citation sent to company headquarters
- 6) Meeting with company officials (separate from informal conference)
- 7) Enhanced settlement provisions used in informal/formal settlements
- 8) Court enforcement under Sec. 4(d)(7)
 - Case submitted to DAG
 - Petition filed with court [State which court & date]
 - Petition granted by court [State which court & date]
 - Other actions [Describe & give date]

Appendix B

CSHO Guidance: Considerations in Determining Company Structure and Safety and Health Organization

When determining whether to inspect other worksites of a company that has been designated a severe violator enforcement case, it must first be determined whether compliance problems and issues found during the initial SVEP inspection are localized or are likely to exist at other, similar facilities owned and operated by that employer. If violations at a local workplace appear to be symptomatic of a broader company neglect for employee safety and health, either generally or with respect to conditions cited under the SVEP inspection, the company structure must be investigated to help identify other establishments and conditions similar to those found in the initial inspection.

Extent of Compliance Problems. Are violative conditions a result of a company decision or interpretation concerning a standard or hazardous condition? Have corporate safety personnel addressed the standard or condition? Ask the following types of questions of the plant manager, safety and health personnel and line employees.

- Who made the decision concerning the violative operation, local management or company headquarters? Was the decision meant to apply to other facilities of the employer as well? If the decision was from company headquarters, what is their explanation?
- Is there a written company-wide safety program? If so, does it address this issue? If so, how is the issue addressed?
- Is there a company-wide safety department? If so, who are they and where are they located? How does company headquarters communicate with facilities/worksites? Are establishment/worksites management and safety and health personnel trained by the company?
- Do personnel from company headquarters visit facilities/worksites? Are visits on a regular or irregular basis? What subjects are covered during visits? Are there audits of safety and health conditions? Were the types of violative conditions being cited discussed during corporate visits?
- Are there insurance company or contractor safety and health audit reports that have been ignored? Are headquarters safety and health personnel aware of the reports and the inaction?
- Does the company have facilities or worksites other than the one being inspected that do similar or substantially similar work, use similar processes or equipment, or produce like products? If so, where are they?
- What is the overall company attitude concerning safety and health? Does the establishment or worksite receive good support from company headquarters on safety and health matters?

- Does the company provide appropriate safety and health training to its employees?
- Ask whether the establishment's/worksites overall condition is better or worse at present compared to past years? If it is worse, ask why? Has new management or ownership stressed production over safety and health? Is the equipment outdated or in very poor condition? Does management allege that stressed financial conditions keep it from addressing safety and health issues?
- Is there an active and adequately funded maintenance department? Have they identified these problems and tried to fix them?
- Has the management person being interviewed worked at or visited other similar facilities or worksites owned by the company? How was this issue being treated there?

Identifying Company Structure. Inquire where other facilities or worksites are located and how they may be linked to the one being inspected? Sometimes establishment/worksites management will not have a clear understanding of the company structure, just an awareness of facts concerning control and influence from the corporate office.

- Is the establishment/worksites, or the company that owns the establishment or uses the worksites, owned by another legal entity (parent company)? If so, what is the name and location? Try to find out whether the inspected establishment/worksites is a "division" or a "subsidiary" of the parent company. (NOTE: A "division" is a wholly-owned part of the same company that may be differently named, e.g., Chevrolet is a division of GM. A "subsidiary" is a company controlled or owned by another company which owns all or a majority of its shares. Try to determine if the parent company has divisions or subsidiaries other than the one that owns or uses the establishment or worksites being inspected. If so, try to get the names and the type of business they are involved in. Sometimes this type of information can be found on a website or in Dun and Bradstreet. Another good source of information is the office of the Secretary of State within the state government.
- Are there other facilities or worksites controlled by these entities that do the same type of work and might have the same kinds of safety and health concerns?
- Are the company entities publicly held (have publicly traded shares) or are they closely held (owned by one or more individuals)?
- What are the names, positions and business addresses of relevant company personnel of whom interviewees are aware? For which entities do the company safety and health personnel work?
- On what kind of safety and health-related issues or subjects do personnel from company headquarters give instructions?
- Are there other companies owned by the same or related persons that do similar work (especially in construction).

Appendix C

Sample Letter to Company Headquarters

HIOSH header

Date

Name of Employer's National Headquarters

Address of Headquarters

Dear _____:

Enclosed you will find a copy of a Citation and Notification of Penalties for violations of the Hawaii Occupational Safety and Health Law, which were issued to [establishment name, located in city, state]. This case has been identified as a severe violator enforcement case under the Occupational Safety and Health Administration's (OSHA) Severe Violator Enforcement Program (SVEP).

The violations referred to in this Citation must be abated by the dates listed and the penalties paid, unless they are contested. This Citation and Notification of Penalties is being provided to you for informational purposes so that you are aware of the violations; the original was mailed to [establishment name] on [date]. We encourage you to work with all of your sites to ensure that these violations are corrected.

HIOSH/OSHA is dedicated to saving lives, preventing injuries and illnesses and protecting America's workers. For more information about OSHA programs, please visit our website at www.osha.gov.

Sincerely,

Administrator