

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

Draft Revisions to the Voluntary Protection Programs To Provide Safe and Healthful Working Conditions

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Notice, request for comments.

SUMMARY: The Occupational Safety and Health Administration would like to obtain stakeholder and public comments on proposed revisions to its Voluntary Protection Programs (VPP), published in Draft below. The revisions include several new criteria intended to make the VPP more challenging and to raise the level of safety and health achievement expected of participants. New eligibility categories allow previously ineligible worksites to apply. The criteria also have been rewritten to make them more easily understood and to bring the VPP's basic program elements into conformity with OSHA's Safety and Health Program Management Guidelines. OSHA will consider submitted comments when it develops the final version of these revisions.

DATES: Written comments must be submitted on or before November 26, 1999.

ADDRESSES: Send two copies of your comments to: Docket Office, Docket No. C-06, Room N-2625, Occupational Safety and Health Administration, U.S. Department of Labor, 200 Constitution Ave., NW, Washington, DC 20210. Comments limited to 10 pages or less may also be transmitted by FAX to 202-693-1648, provided that the original and one copy of the comment are sent to the Docket Office immediately thereafter.

Comments may also be submitted electronically through OSHA's Web site at the following address: <http://www.osha-slc.gov/e-comments/e-comments-vpp.html>. Information such as studies and journal articles cannot be attached to electronic submissions and must be submitted in duplicate to the Docket Office. Such attachments must clearly identify the respondent's electronic submission by name, date, and subject, so that they can be attached to the correct submission.

The entire record for the proposed revisions to the Voluntary Protection Programs is available for inspection and copying in the Docket Office, Docket No. C-06, telephone 202-693-2350.

FOR FURTHER INFORMATION CONTACT: Bonnie Friedman, Director, Office of Public Affairs, Occupational Safety and

Health Administration, Room N3647, 200 Constitution Ave., NW, Washington, DC 20210, (202) 693-1999.
SUPPLEMENTARY INFORMATION:

I. Introduction

A. Background

The Voluntary Protection Programs (VPP), adopted by OSHA in **Federal Register** Notice 47 FR 29025, July 2, 1982, have established the efficacy of cooperative action among government, industry, and labor to address worker safety and health issues and expand worker protection. VPP participation requirements center on comprehensive management systems with active employee involvement to prevent or control the safety and health hazards at the site. Employers who qualify generally view OSHA standards as a minimum level of safety and health performance and set their own more stringent standards where necessary for effective employee protection.

OSHA's experience with VPP and other programs led it to publish its voluntary "Safety and Health Program Management Guidelines" (the Guidelines) in the **Federal Register** on January 26, 1989, 54 FR 3904. The Guidelines present effective criteria for organizing a managed safety and health program. To maintain consistency in OSHA's approach to safety and health program management, the Agency has decided to reorganize the VPP criteria to conform more closely to the Guidelines.

This reorganization has been accomplished by merging the six elements of the VPP into the four elements of the Guidelines. Specifically, Management Commitment and Planning has become Management Leadership and Employee Involvement; Hazard Assessment has become Worksites Analysis; Hazard Correction and Control has become Hazard Prevention and Control; Safety and Health Program Evaluation has become part of Management Leadership and Employee Involvement; and Safety and Health Training continues as one of four basic program elements.

The VPP criteria also have been rewritten to make them more easily understood. This has involved changes in both language and organization. However, except for a variety of minor clarifications, the substance of the criteria has changed little. The two most notable changes are an expansion of eligibility to certain classes of worksites previously not covered by the program, and a new illness rates reporting requirement. The latter means OSHA will consider a worksite's illness performance as well as its injury

performance when assessing the site's level of achievement.

B. Statutory Framework

The Occupational Safety and Health Act of 1970, 29 U.S.C. 651 *et seq.* (the Act and the OSH Act), was enacted "to assure so far as possible every working man and woman in the Nation safe and healthful working conditions and to preserve our human resources. * * *"

Section 2(b) specifies the measures by which the Congress would have OSHA carry out these purposes. They include the following provisions which establish the legislative mandate for the Voluntary Protection Programs:

"* * * (1) by encouraging employers and employees in their efforts to reduce the number of occupational safety and health hazards at their places of employment, and to stimulate employers and employees to institute new and to perfect existing programs for providing safer and healthful working conditions;"

"* * * (4) by building upon advances already made through employer and employee initiative for providing safe and healthful working conditions;"

"* * * (5) * * * by developing innovative methods, techniques, and approaches for dealing with occupational safety and health problems;"

"* * * (13) by encouraging joint labor-management efforts to reduce injuries and disease arising out of employment."

II. Program Changes and Rationale

A. Language and Organization

With this Notice OSHA proposes extensive editorial changes in the language and organization of The Voluntary Protection Programs, published as Draft below. The intent is to make the VPP criteria more understandable.

B. Changes in Eligibility

1. Draft Section D.1., General, provides that Federal agency worksites subject to 29 CFR part 1960 are now eligible to apply. OSHA wants to extend recognition for safety and health program excellence to federal sector worksites. As a result of a successful Demonstration Program, this section now also provides that resident contractors at participating VPP sites may make application to the VPP for their operations at those sites. The Demonstration Program established that at existing VPP sites, resident contractors can provide effective safety and health protection to their employees even though they do not control the worksite.

2. Draft Section D.2, Unionized Sites, is changed to clarify the degree of union involvement that triggers the requirement for union concurrence in

VPP participation. The old language, "a significant portion of its employees organized by one or more collective bargaining units," was open to wide interpretation. The new language makes clear that the concurrence of all unions is expected at any worksite where one or more collective bargaining agents represent employees.

C. Changes in Assurances

1. Draft Section E.1. requires VPP applicants to submit assurance that they will correct all hazards addressed by OSHA's safety and health standards and regulations and the OSH Act's "general duty clause," Section 5(a)(1). Full compliance with OSHA's requirements has always been a requirement of the VPP but is now made an explicit part of the Assurances.

2. Draft Section E.2. requires the applicant to provide assurance that site employees support the VPP application. At unionized sites, this is accomplished by the authorized collective bargaining representative(s) either signing the VPP application or submitting a signed statement of support. OSHA also needs assurance that employees at non-unionized sites support VPP participation.

3. Draft Section E.5. expands on previous language and now requires that applicants certify to OSHA that hazards discovered through any means will be corrected in a timely manner, with interim protection provided as necessary. This section further provides that site deficiencies related to compliance with OSHA requirements and identified during the OSHA preapproval onsite review will be corrected within 90 days. This expansion is needed to make clear to applicants that elimination or control is expected of all identified hazards, and not just hazards identified by the means listed in the Notice.

4. Draft Section E.10. expands the information that participating sites must submit to OSHA each year by February 15.

a. Requiring sites to report injury and illness rates, rather than just injury rates, will help ensure that VPP continues to set the standard for excellence by recognizing worksites that effectively address the full range of workplace safety and health problems.

b. OSHA needs to have participants report the injury/illness and lost work day case numbers as well as the rates to ensure that the rates have been calculated correctly.

c. OSHA needs to examine the participant's annual evaluation of its safety and health program in order to determine if the site's program is

continually improving and also to spot potential program deficiencies.

d. Because examination of contractors' rates is now part of the VPP requirements, the injury/illness and lost workday case numbers and rates of prominent (500 hours or more onsite in a calendar quarter) contractors' site employees need to be submitted annually to OSHA, just as the rates for regular site employees must be submitted annually.

e. To better understand a worksite's safety and health efforts, to help spread the lessons learned in VPP to other worksites, and to communicate the value of VPP, OSHA needs information on success stories and VPP outreach efforts at each participating worksite.

D. Changes in The Star Program

1. The Purpose of the Star Program, Draft Section F.1., is expanded to indicate that OSHA expects Star participants to share their safety and health expertise and to encourage others to work toward comparable success.

2. Injury/Illness Performance, Draft Section F.4., includes the following changes:

a. Star performance criteria have changed by adding:

(1) The use of injury/illness rates to determine VPP eligibility;

(2) A requirement that rates be below rather than at or below the industry average; and

(3) An alternative method of calculating injury/illness incidence rates for qualifying small worksites.

The addition of illnesses and the change in minimum rates requirements will make these requirements more reflective of the health aspects of a safety and health program and generally more stringent. These changes will help ensure that VPP continues to serve as a model of excellence for the larger work community. The alternative calculation method will help small sites to qualify for Star even when they have experienced 1 year of abnormally high rates.

b. Calculating, collecting, and submitting contractor rates are new VPP requirements that will enable OSHA to better determine the quality of safety and health protection afforded to all employees on a worksite. The requirements for contract employee coverage appear at Draft Section F.4.a.(2).

3. Safety and Health Program Qualifications for the Star Program, Draft Section F.5., is revised as follows:

a. OSHA has condensed from six elements to four elements the Safety and Health Program Qualifications for the Star Program. This is done so that the

VPP requirements will conform with OSHA's Voluntary Safety and Health Program Management Guidelines. Similarly, the names of the activities required under each element have been changed, as appropriate. The changes are:

(1) In Draft Section F.5.a., the name of the first element has changed from Management Commitment and Planning to Management Leadership and Employee Involvement. The activity Employee Participation has changed to Employee Involvement. This activity and the activity Safety and Health Program Evaluation are now made part of this element.

(2) In Draft Section F.5.b., the name of the second element has changed from Hazard Assessment to Worksite Analysis.

(3) In Draft Section F.5.c., the name of the third element has changed from Hazard Correction and Control to Hazard Prevention and Control.

b. The following revisions are made in Draft Section F.5.a., Management Leadership and Employee Involvement:

(1) Commitment to Safety and Health Protection now includes the requirement for an established and communicated goal for the safety and health program and results-oriented objectives for meeting that goal, an activity that is included in the Guidelines.

(2) Written Safety and Health Program has changed slightly to reflect the merging of the original six basic elements into four.

(3) Management Involvement is now Management Leadership. OSHA has added two new required activities to Management Leadership so that the list of actions will reflect the Guidelines. These additional activities are:

(a) Creating employee access to top management, and

(b) Ensuring that all workers at the site, including contract workers, are provided equally high-quality safety and health protection.

(4) New language on defining responsibility, assigning authority, and affording adequate resources is intended to emphasize the need for these management actions.

(5) Holding managers, supervisors, and employees accountable (line accountability) is tied more clearly to meeting responsibilities. OSHA no longer differentiates between managing accountability at general industry and construction worksites, because in the Agency's experience effective management does not differ significantly at different types of worksites.

(6) Employee Involvement includes an additional requirement that worksites must establish at least three different active and meaningful ways for employee involvement. This requirement is intended to ensure that employee involvement is an integral part of the safety and health program. Also, worksites that choose to meet this requirement by establishing safety and health committees are cautioned to ensure such committees are established in a manner consistent with applicable law.

(7) OSHA has substantially rewritten the section Contract Worker Coverage and expanded the requirements for contract workers to include:

(a) Documentation that contractors maintain effective safety and health programs, and

(b) Documentation that participants maintain effective oversight of their onsite contractors.

(c) Documentation of the participant's plan for working with a contractor whose rates are above its industry average, in order to reduce those rates to below average within 2 years.

This brings contractor requirements in line with current VPP practice.

(8) OSHA has rewritten Safety and Health Program Evaluation in order to make the requirements more understandable and participants' evaluations more effective. The section now clearly states that all elements of the program must be evaluated. Third parties who may be employed to conduct the evaluation must have appropriate training and/or experience. Also, this section provides that construction companies must submit a final evaluation immediately prior to completion of construction. Construction companies that fail to submit this evaluation will not be allowed to submit VPP applications for other sites. To emphasize the importance OSHA places on outreach activities, OSHA now requires participants to report outreach efforts when they submit their annual evaluation report.

c. In addition to revisions that create a more logical flow, Draft Section F.5.b., Worksite Analysis, contains the following changes:

(1) The requirement for comprehensive safety and health surveys is expanded to clarify and strengthen industrial hygiene requirements.

(2) OSHA has added a new requirement to analyze injury and illness trends, intended to ensure that complete worksite analysis is being performed.

(3) The Medical Program is renamed the Occupational Health Care Program to better reflect its nature, and requirements are expanded and moved to Draft Section F.5.c., Hazard Prevention and Control, to better reflect the function of an occupational health care program.

d. OSHA has made the following revisions in Draft Section F.5.c., Hazard Prevention and Control:

(1) In order to complete the list of means for eliminating or controlling hazards, OSHA has added administrative controls. The four control methods are listed in their preferred order.

(2) Work Practice controls, Draft Section F.5.c.(1)(c), is expanded to incorporate the requirement that the rules must be understood and followed; must be incorporated in training, positive reinforcement, and correction programs; and must be equitably enforced through disciplinary rules.

(3) Monitoring and Maintenance, Draft Section F.5.c.(3), includes the additional requirement to document this system.

(4) The Occupational Health Care Program (formerly the Medical Program), Draft Section F.5.c.(4), is expanded to include the concept of using occupational health care professionals in hazard analysis and prevention. The expansion addresses the need to involve occupational health professionals in a site's program.

(5) Emergency Procedures, Draft Section F.5.c.(5), now requires that the written procedures must include provision for emergency training drills for all shifts. With this change, a participant's written procedures will reflect a requirement to conduct annual practice drills that has been in effect for some time. Requiring drills for all shifts will help ensure protection for all employees.

e. Safety and Health Training, Draft Section F.5.d., now specifies that training must ensure that managers understand and are able to carry out their safety and health responsibilities.

E. Changes in The Demonstration Program

Draft Section G.3. now provides for Demonstration Program evaluations every 12 to 18 months instead of every 12 months.

F. Changes in The Merit Program

1. Qualifications for Merit, Draft Section H.2., contains the following changes:

a. The addition of illnesses to the rates requirements. Previously, only injury rates were considered.

b. A restriction on participation by sites with above average rates. Such sites must have a plan to achieve Star rates requirements within 2 years, it must be statistically possible to achieve this goal, and the site's safety and health program must be at Star quality within 3 years.

c. The addition of a requirement to report contractor rates.

d. In the Merit Program for the construction industry, OSHA must approve the designated geographical area from which company injury/illness and lost workday incidence data are obtained.

These changes are designed to ensure that VPP participants are of the highest caliber and that sites approved to Merit can realistically achieve Star in a reasonable time period.

2. Term of Participation, Draft Section H.3., establishes a 3-year time limit for a term in the Merit Program. It also explains the circumstances that may lead OSHA to approve a second term of participation.

3. Multi-Site Eligibility, Draft Section H.4., is a new section that announces OSHA's expectation that companies with large numbers of applicants may be responsible for bringing their worksites up to Star quality before making application.

G. Changes in Application for VPP

1. Submission, Draft Section I.3., now requires applicants to submit to the appropriate OSHA office the requested number of application copies. This procedure is intended to expedite processing.

2. Acceptance of Application, Draft Section I.4., now permits OSHA to return as unacceptable an incomplete application if 90 days have passed since OSHA requested additional information and the applicant has not responded. This provision eases both OSHA's and the applicant's burden by establishing clear time frames for accepting complete applications.

H. Changes in Pre-Approval Onsite Review

1. Purpose, Draft Section J.1., clarifies the VPP onsite review team's non-enforcement nature.

2. Preparation, Draft Section J.2., is changed to emphasize the importance of the VPP review team's having a back-up team leader whenever possible.

3. Duration, Draft Section J.3., now reflects the reality that, on average, 4 days onsite are needed for a review.

4. Scope, Draft Section J.4., is expanded because the onsite review must reflect the added VPP criteria

proposed in this **Federal Register** Notice.

a. Document review must include the site contractor employees' OSHA Form 200 log, baseline safety and industrial hygiene surveys, annual safety and health program evaluations and audits, preventive maintenance program documentation, accountability documentation, and contractor safety and health programs.

b. Employee interviews must include interviews with contract workers.

I. Changes in Recommendation for Program Denial

Draft Section L.1. is expanded to define a reasonable time for the applicant to withdraw its application as "not to exceed 30 calendar days."

J. Changes in Inspection Provisions

1. Programmed Inspections, Draft Section M.1., now explains OSHA's rationale for removing a VPP participant from programmed inspection lists. It also provides that a VPP applicant will be removed from OSHA's programmed inspection lists no more than 75 calendar days prior to the commencement of the scheduled pre-approval onsite review. The need for this time limit stems from occasional delays in application processing, *i.e.*, the time from application submission to scheduled onsite review. These delays, in turn, are due to the growth of interest in VPP and increasing numbers of applications. The section also provides that VPP worksites may choose to remain on the programmed inspection lists.

2. Workplace complaints, fatalities and catastrophes, and other significant events have been grouped together in Draft Section M.2., because all of these events mandate normal OSHA enforcement procedures.

3. The intent of Draft Section M.3. is to ensure that participants understand they are subject to investigation by VPP personnel when other significant accidents and events occur at their worksites, whether or not normal enforcement procedures apply to the situation and whether or not injuries occur. OSHA may decide that investigation is necessary to determine if a serious deficiency exists in the safety and health program.

K. Changes in Post-Approval Contact/ Assistance

Draft Section N. is changed to clarify the continuing participation steps a Star Program participant must take if the participant's 3-year rate(s) move above the industry average.

L. Changes in Periodic Onsite Evaluation of Approved Worksites

1. Frequency of Star Program evaluation, Draft Section O.1.b, is changed to reflect Star evaluation periods of 30 to 60 months.

2. Scope of Star Program evaluation, Draft Section O.1.c., is expanded to include evaluation of the newly required contractor rates. To ensure fairness, the section also includes a timetable for phasing in the new data reporting requirements.

3. Measures of Effectiveness, Draft Section O.1.d., adds continuous improvement in the safety and health program to the measures of effectiveness. This section now more accurately reflects what has always been expected of participants.

4. Evaluation Decisions and Recommendations, Draft Sections O.1.e. and O.3.e, authorize the Regional Administrator to make the decision to continue a participant in the Star or Merit program. The sections also clarify the recommendations that a team may make after conducting an evaluation.

5. Frequency of Demonstration Program evaluation, Draft Section O.2.b., now gives the Agency greater scheduling flexibility by requiring evaluations every 12 to 18 months instead of every 12 months.

6. Frequency of Merit Program evaluation, Draft Section O.3.b., changes the scheduling of Merit evaluations. OSHA and the participant will agree on a schedule, with the first evaluation occurring within 24 months (and preferably 18 months) after approval. This scheduling will give OSHA greater flexibility in using its resources when conducting Merit evaluations.

M. Changes in Termination or Withdrawal

1. Reasons for Termination, Draft Section P.1.i., allows OSHA to terminate a VPP worksite where evidence is presented that the trust and cooperation among labor, management, and OSHA, upon which approval was based, no longer exist. Recent experience has demonstrated a need for this flexibility.

2. Termination Notification and Appeal or Withdrawal, Draft Section P.2., establishes the site's right to submit a written appeal of OSHA's decision to terminate.

3. Reapplication Following Termination, Draft Section P.4., requires a terminated site to wait 3 years before reapplying to the VPP. This requirement clarifies that reapplication will be considered only after the worksite has had sufficient time to reestablish an effective safety and health program.

Draft: The Voluntary Protection Programs

A. Purpose of the Voluntary Protection Programs

OSHA has long recognized that a multifaceted approach is the best way to accomplish all the goals of the Act. Compliance with occupational safety and health standards, OSHA regulations, and the general duty clause—all the requirements of the Act—is essential. Rulemaking and enforcement alone, however, cannot replace the understanding of work processes, materials, and hazards that comes with employers' and employees' daily on-the-job experience and commitment to workplace safety and health. This knowledge, combined with an ability to evaluate and address hazards rapidly, enables employers and employees to take responsibility for their own safety and health in ways not available to OSHA. Further, OSHA's substantial experience with site-based safety and health programs has shown the value of a comprehensive, systematic approach to worker protection. It is OSHA's policy, therefore, to promote safety and health programs tailored to the needs of particular worksites.

The purpose of the Voluntary Protection Programs (VPP) is to emphasize the importance of, encourage the improvement of, and recognize excellence in employer-provided, employee-participative, and generally site-specific occupational safety and health programs. These programs are comprised of management systems for preventing or controlling occupational hazards. Sites employing these systems not only are working to remain compliant with OSHA's rules, but also are striving to excel by using flexible and creative strategies that go beyond the requirements to provide the best feasible protection for their workers. In the process, these worksites serve as models for effective safety and health programs in their industries while reducing employee injuries and illnesses well below industry averages. Moreover, the demonstrated workers' compensation cost reductions, reduced employee turnover, quality improvements, and other benefits to which VPP worksites testify are helping to convince skeptics that productivity, quality, profitability, and safety are complementary goals.

VPP participants enter into a new relationship with OSHA. In this innovative public/private partnership, cooperation and trust nourish improvements in safety and health, not just at VPP sites, but also beyond the

worksite boundaries. VPP companies have frequent opportunity to provide the Agency with input on safety and health matters. At the same time, the recognition and status gained by their participation in VPP, and their commitment to improving their industries and communities, enable them to accomplish a broad range of safety and health objectives. VPP participants mentor other worksites interested in improving their safety and health programs; conduct safety and health training and outreach seminars; and hold safety and health conferences that focus on leading-edge safety and health issues. VPP participants also participate with OSHA on VPP onsite reviews. This unique program gives private and public sector safety and health professionals the opportunity to exchange ideas, gain new perspectives, and grow professionally.

Worksites in the VPP are removed from programmed inspection lists for the duration of their participation, unless they choose to remain on the lists. This helps OSHA to focus its inspection resources on establishments that are less likely to meet the requirements of the OSH Act. However, OSHA continues to investigate valid employee safety and health complaints, fatalities and catastrophes, and other significant events at VPP sites according to established Agency procedures.

Participation in any of the programs does not diminish existing employer and employee responsibilities and rights under the Act. In particular, OSHA does not intend to increase the liability of any party at an approved VPP site. Employees or any representatives of employees taking part in an OSHA-approved VPP safety and health program do not assume the employer's statutory or common law responsibilities for providing safe and healthful workplaces; nor are employees or their representatives expected to guarantee a safe and healthful work environment.

The programs included in the VPP are voluntary in the sense that no employer is required to participate. Compliance with OSHA's requirements and applicable laws remains mandatory. Initial achievement and then continuing maintenance of the VPP requirements are conditions of participation.

The Assistant Secretary for Occupational Safety and Health determines approval for initial participation in the VPP, advancement to the Star Program, all participation in Demonstration Programs, and termination from the VPP. The OSHA Regional Administrator who has jurisdiction over a participant

determines approval for continuation in the Star (including 1-year Conditional Star participation) and Merit Programs.

B. Purpose of This Notice

This notice describes the criteria for admission to the Voluntary Protection Programs (VPP); the conditions of participation, termination, or withdrawal; and the means of reinstatement.

C. Program Description

1. General

The VPP emphasize the importance of comprehensive worksite safety and health programs—safety and health management systems—in meeting the goal of the Act “to assure so far as possible every working man and woman in the Nation safe and healthful working conditions and to preserve our human resources. * * *” This emphasis is demonstrated through assistance to employers in their efforts to reach the VPP level of excellence; through cooperation among government, labor, and management to resolve safety and health problems; and through official recognition of excellent safety and health programs. VPP sites are expected to effectively protect their workers from the hazards of the workplace through their safety and health programs. They do this by meeting established, rigorous safety and health program management criteria.

The VPP consist of three programs: Star, Demonstration, and Merit. The Star Program recognizes worksites that are self-sufficient in their ability to control hazards at the worksite. The Demonstration Program recognizes worksites that have Star quality safety and health programs but require demonstration and/or testing of experimental approaches that differ from current Star requirements. The Merit Program recognizes worksites that have good safety and health programs but must take additional steps to reach Star quality.

2. Recognition

When OSHA approves an applicant for participation in the VPP, the Agency recognizes that the applicant is providing, at a minimum, the basic elements of ongoing, systematic protection of workers at the site in accordance with rigorous VPP criteria. This protection makes general schedule inspections unnecessary. Therefore, the site is removed from OSHA's programmed inspection lists (unless the participant chooses not to be removed). The VPP symbols of recognition are certificates and plaques of approval and

flags identifying the program in which the site participates. The participant also may choose to use program logos on such items as letterhead, shirts, and mugs.

3. Cooperative Relationship

VPP participants work cooperatively with the Agency, both in the resolution of safety and health problems and in the promotion of effective safety and health programs. This cooperation takes such forms as presentations before meetings of labor, industry, and government groups; input in OSHA rulemaking; and participation in activities including OSHA Volunteers, mentoring, outreach, and training. OSHA designates a contact person, usually the Regional VPP Manager, who coordinates each approved site's contact with the Agency.

D. Eligibility

1. General

The VPP accepts applications from private sector general industry, maritime, and construction worksites, and from federal agency worksites subject to 29 CFR part 1960, that have implemented a safety and health program. VPP accepts applications from owners and site managers (such as a construction site's general contractor or construction manager) who control site operations and have ultimate responsibility for assuring safe and healthful working conditions at the site. VPP also accepts applications from resident contractors at participating VPP sites for the contractors' operations at those VPP sites. Site management submits the application, but it must reflect the support of site employees and, where applicable, their collective bargaining representatives.

2. Unionized Sites

At sites with employees organized into one or more collective bargaining units, the authorized representative for each collective bargaining unit must either sign the application or submit a signed statement indicating that the collective bargaining agent(s) support VPP participation. Without such concurrence from all such authorized agents, OSHA will not accept the application.

3. OSHA History

If an applicant has been inspected by OSHA within the 36-month period preceding application, the inspection, abatement, and/or any other history of interaction with OSHA must indicate good faith attempts to improve safety and health. An applicant's history must include no open investigations and no pending or open contested citations at

the time of application, and no affirmed willful violations during those prior 36 months.

E. Assurances

Applications for the Star, Demonstration, and Merit Programs must be accompanied by certain assurances describing what the applicant agrees to do if the application is approved. The applicant must assure that:

1. The applicant will correct in a timely manner all hazards addressed by OSHA's safety and health standards and regulations and by Section 5(a)(1) of the Act.

2. Site employees support the VPP application.

3. VPP elements are in place, and the requirements of the elements will be met and maintained.

4. Employees, including newly hired employees and contract employees when they reach the site, will have the VPP explained to them, including employee rights under the program and under the Act.

5. Hazards discovered through employee notification, self-inspections, an OSHA onsite review, accident investigations, process hazard reviews, annual evaluations, or any other means of report, investigation, or analysis will be corrected in a timely manner, with effective interim protection provided as necessary. Site deficiencies related to compliance with OSHA requirements and identified during the OSHA preapproval onsite review will be corrected within 90 days.

6. Employees given safety and health duties as part of the applicant's safety and health program will be protected from discriminatory actions resulting from their carrying out such duties, just as section 11(c) of the Act protects employees who exercise their rights under the Act.

7. Employees will have access to the results of self-inspections, accident investigations, and other safety and health program data upon request. At unionized construction sites, this requirement may be met through employee representative access to these results.

8. The information listed below will be maintained and available for OSHA review to determine initial and continued approval to the VPP:

- a. Written safety and health program;
- b. All documentation enumerated under Section J.4. of this notice; and
- c. Any agreements between management and the collective bargaining agent(s) concerning safety and health.

9. Any data necessary to evaluate the achievement of individual Merit or One-Year Conditional goals not listed above will be made available to OSHA for evaluation purposes.

10. Each year by February 15, each participating site will send to its designated OSHA VPP Manager (described in Section N.1.) the site's injury/illness incidence and lost/restricted workday case numbers and rates, hours worked, and estimated average employment for the past full calendar year; a copy of the most recent annual evaluation of the site's safety and health program; a description of worksite outreach activities; and any success stories, e.g., reductions in workers' compensation rates, increases in employee involvement in the program, etc.

In addition, each participating general industry or maritime site will send to the designated OSHA VPP Manager the site's injury/illness incidence and lost/restricted workday case numbers and rates, hours worked, and estimated average employment for the past full calendar year for each applicable contractor's employees who worked 500 or more hours in any calendar quarter at the site and who are covered under Section F.4.a.(2).

11. Whenever significant organizational or ownership changes occur, the site shall provide OSHA a new Statement of Commitment signed by both management and any authorized collective bargaining agents.

12. Whenever a change occurs in the authorized collective bargaining agent, a new signed statement shall be provided indicating that the new representative supports VPP participation.

F. The Star Program

1. Purpose

The Star Program recognizes leaders in occupational safety and health who are successfully protecting workers from death, injury, and illness by implementing comprehensive and effective safety and health programs. Star participants willingly share their experience and expertise, and they encourage others to work toward comparable success.

2. Term of Participation

The term for participation in an approved Star Program is open-ended so long as the participating site:

- a. Continues to maintain its excellent safety and health program as evidenced by favorable evaluation by OSHA every 30 to 60 months; and
- b. Submits the annual information required, e.g., annual rates data and program evaluation (see Section E.8.).

Note: In the construction industry, participation ends with the completion of construction work at the site.

3. Experience

All safety and health program elements needed for program success, as delineated in F.5. below, must be operating for a period of not less than 12 months before Star approval.

4. Injury/Illness Performance

a. The general industry or maritime applicant at the time of approval must meet the following criteria:

(1) For site employees—Both the 3-year injury and illness incidence rates and the lost/restricted workday injury and illness case rates for the most recent 3 calendar years must be below the most recent specific industry (at the three-or four-digit level) national averages published by BLS.

Some applicants, usually smaller worksites with limited numbers of employees and/or hours worked, may use an alternative method for calculating incidence rates. The alternative method allows the employer to use the best 3 out of the most recent 4 years' injury and illness experience.

(a) To determine whether the employer qualifies for the alternative calculation method, do the following:

- Using the most recent employment statistics (hours worked in the most recent calendar year), calculate a hypothetical rate for the employer assuming that the employer had two cases during the year;
- Compare that hypothetical rate to the most recently published BLS rate for the industry; and
- If the hypothetical rate (based on two cases) gives the firm a rate equal to or higher than the national average for its industry, the following alternative calculation method can be used. (If not, it cannot be used.)

(b) If the employer qualifies for the alternative calculation method, the best 3 of the last 4 calendar years shall be used to calculate the 3-year rates for the employer.

(2) For contract employees—The injury and illness and lost/restricted workday injury and illness case rates (called the site contractor's employee rates) for the most recent calendar year for each applicable contractor's employees assigned to site also should be below the most recent specific industry national averages published by BLS.

(a) Applicable contractors are those employers who have contracted with the site to perform certain jobs and whose employees worked a total of 500 or more hours in at least 1 calendar quarter at the worksite.

(b) The industry averages used shall be determined by the Standard Industrial Classification (SIC) Code at the three-or four-digit level for each type of work performed.

(c) At worksites where an applicable contractor's site rates may be above the national average for the work being performed, the site must describe the steps it is taking to ensure the contractor's site employees are provided effective protection. The site also must describe how it is working with the contractor to develop a plan to reduce those rates within 2 years to below the industry average for the work being performed.

b. The construction applicant, at the time of approval, must meet the following criteria:

(1) The site for which VPP application is being made must have been in operation for at least 12 months.

(2) The applicant's combined injury and illness incidence rate and lost/restricted workday injury and illness case rate from site inception until time of application must include all workers of all subcontractors and must be below the national average for the type of construction at the site according to the most precise SIC code. The site's SIC code is determined by the type of construction project, not individual trades.

c. Federal agency applicants shall follow the same requirements as general industry and maritime (see a. above), except that 3-year rates may be calculated by fiscal year instead of calendar year.

5. Safety and Health Program Qualifications for the Star Program

a. Management Leadership and Employee Involvement. Each applicant must be able to demonstrate top-level management leadership in the site's safety and health program. Management systems for comprehensive planning must address protection of worker safety and health. Employees must be meaningfully involved in the safety and health program.

(1) Commitment to Safety and Health Protection. Authority and responsibility for employee safety and health must be integrated with the overall management system of the organization and must involve employees. This commitment includes:

(a) Policy. Clearly established policies for worker safety and health protection that have been communicated to and understood by employees; and

(b) Goal and Objectives. Established and communicated goal(s) for the safety and health program and results-oriented objectives for meeting that goal, so that all members of the organization

understand the results desired and the measures planned for achieving them, especially those factors that are applicable directly to them.

(2) Commitment to VPP Participation. Management must also clearly demonstrate commitment to meeting and maintaining the requirements of the VPP.

(3) Planning. Planning for safety and health must be a part of the overall management planning process. In construction, this includes pre-job planning and preparation for different phases of construction as the project progresses.

(4) Written Safety and Health Program. All critical elements of a basic systems management safety and health program must be part of the written program. These critical elements are management leadership and employee involvement, worksite analysis, hazard prevention and control, and safety and health training. All aspects of the safety and health program must be appropriate to the size of the worksite and the type of industry. Some formal requirements, such as certain written procedures or documentation, may be waived for small businesses where the effectiveness of the systems has been evaluated and verified. Waivers will be decided on a case-by-case basis.

(5) Management Leadership. Managers must provide visible leadership in implementing the program. This must include:

(a) Establishing clear lines of communication with employees;

(b) Setting an example of safe and healthful behavior;

(c) Creating an environment that allows for reasonable employee access to top site management;

(d) Ensuring that all workers at the site, including contract workers, are provided equally high quality safety and health protection;

(e) Clearly defining responsibility in writing, with no unassigned areas. Each employee, at any level, must be able to describe his/her responsibility for safety and health;

(f) Assigning commensurate authority to those who have responsibility;

(g) Affording adequate resources to those who have responsibility and authority. This includes such resources as time, training, personnel, equipment, budget, and access to expert information, including appropriate use of certified industrial hygienists (CIH) and certified safety professionals (CSP) as needed, based on the risks at the site; and

(h) Holding managers, supervisors, and non-supervisory employees accountable for meeting their

responsibilities, so that essential tasks will be performed. In addition to clearly defining and implementing authority and responsibility for safety and health protection, management leadership entails evaluating managers and supervisors annually, and operating a documented system for reinforcing good and correcting deficient performance.

(6) Employee Involvement. The site culture must enable and encourage employee involvement in the planning and operation of the safety and health program and in decisions that affect employees' safety and health. The requirement for employee participation may be met in a variety of ways, as long as employees have at least three active and meaningful ways to participate in safety and health problem identification and resolution. This involvement must be in addition to the individual right to notify appropriate managers of hazardous conditions and practices and to have issues addressed. Examples of acceptable employee involvement include but are not limited to the following:

(a) Participating in ad hoc safety and health problem-solving groups,

(b) Participating in audits and/or worksite inspections,

(c) Participating in accident and incident investigations,

(d) Developing and/or participating in employee improvement suggestion programs,

(e) Training other employees in safety and health,

(f) Analyzing job/process hazards,

(g) Acting as safety observers,

(h) Serving on safety and health committees constituted in conformance to the National Labor Relations Act.

(7) Contract Worker Coverage. All contractors and subcontractors, whether in general industry, construction, or maritime, are required to follow worksite safety and health rules and procedures applicable to their activities while at the site.

(a) Essentially, participants are expected to require of their contractor(s) what OSHA requires of them, an effective safety and health program management system in place with injury and illness rates for site contractor employees below the averages for their industries.

(b) Participants must demonstrate that they have considered the safety and health programs and/or performance history of all contractors during the evaluation and selection of these contractors.

(c) Participants must document that all contractors and subcontractors operating routinely at the site maintain effective safety and health programs and

comply with applicable safety and health rules and regulations.

- Such documentation must describe the authority for the oversight, coordination, and enforcement of those programs by the applicant, and there must be documentary evidence of the exercise of this authority at the site.

- Such documentation must describe the means for prompt elimination or control of hazards, however detected, by the applicant in the event that contractors or individuals fail to correct or control such hazards.

- Such documentation must describe how the contractor submits the injury/illness incidence and lost/restricted workday data as described in F.4.a.(2) and how, if the applicable contractor's employee rates are above the BLS averages for their industries, the participant will work with the contractor to ensure that these rates will be reduced to below average within 2 years.

- Such documentation must describe the penalties, including contractor correction and/or dismissal from the worksite, for willful or repeated non-compliance by contractors, subcontractors, or individuals.

(8) Safety and Health Program Evaluation. The applicant must have a system for annually evaluating the operation of the safety and health program. This system will judge success in meeting the program's goal and objectives, and will assist those responsible to determine and implement changes for continually improving worker safety and health protection.

(a) The system must provide for an annual written narrative report with recommendations for timely improvements, assignment of responsibility for those improvements, and documentation of timely follow-up action or the reason no action was taken.

(b) The evaluation must assess the effectiveness of all elements described in F.5. and any other elements of the site's safety and health program.

(c) When a participant submits its annual evaluation report to OSHA, the site must also provide a report describing its outreach activities, including efforts such as mentoring other worksites, making presentations at meetings and conferences, providing input into OSHA's rulemaking, and generally helping OSHA to carry out its mission.

(d) The evaluation may be conducted by competent corporate or site personnel or by competent private sector third parties who are trained and/or experienced in performing such evaluations. The evaluation should

follow any format recommended by OSHA.

(e) In construction, the evaluation must be conducted annually and immediately prior to completion of construction. The final evaluation is to determine what has been learned about safety and health activities that can be used to improve the contractor's safety and health program at other sites. If a construction company does not provide this final evaluation, OSHA will not consider subsequent VPP applications for other sites operated by that company.

b. Worksite Analysis. Management of safety and health programs must begin with a thorough understanding of all hazardous situations to which employees may be exposed and the ability to recognize and correct all hazards as they arise. This requires:

(1) Procedures to ensure analysis of all newly acquired or altered facilities, processes, materials, equipment, and/or phases before use begins, to identify hazards and the means for their prevention or control.

(2) Comprehensive safety and health surveys, at intervals appropriate for the nature of workplace operations, which include:

(a) Identification of safety hazards accomplished by an initial comprehensive baseline survey and then subsequent surveys as needed;

(b) Identification of health hazards and employee exposure levels accomplished through an industrial hygiene sampling rationale and strategy. Sampling rationale should be based on data including reviews of work processes, material safety data sheets, employee complaints, exposure incidents, medical records, and previous monitoring results. The sampling strategy should include baseline and subsequent surveys that assess employees' exposure through screening and full shift sampling when necessary; and

(c) The use of nationally recognized procedures for all sampling, testing, and analysis with written records of results.

(3) Routine examination and analysis of safety and health hazards associated with individual jobs, processes, or phases and inclusion of the results in training and hazard control programs. This may include job hazard analysis and/or process hazard review. In construction, the emphasis must be on special safety and health hazards of each craft and each phase of work.

(4) A system for conducting, as appropriate, routine self-inspections that follows written procedures or guidance and that results in written reports of findings and tracking of

hazard elimination or control to completion.

(a) In general industry and maritime, these inspections must occur no less frequently than monthly and must cover the whole worksite at least quarterly;

(b) In construction, these inspections must cover the entire worksite at least weekly.

(5) A reliable system for employees, without fear of reprisal, to notify appropriate management personnel in writing about conditions that appear hazardous and to receive timely and appropriate responses. The system must include tracking of responses and tracking of hazard elimination or control to completion.

(6) An accident/incident investigation system that includes written procedures or guidance, with written reports of findings and hazard elimination or control tracking to completion. Investigations are expected to seek out root causes of the accident or event and to cover "near miss" incidents.

(7) A system to analyze trends through a review of injury/illness experience and hazards identified through inspections, employee reports, accident investigations, and/or other means, so that patterns with common causes can be identified and the causes eliminated or controlled.

c. Hazard Prevention and Control. Based on the results of worksite analysis, identified hazards must be eliminated or controlled by developing and implementing the systems enumerated beginning at (2) below.

(1) The following hierarchy shall govern actions to eliminate or control hazards, with (a) being the most desirable:

(a) Engineering controls are the most reliable and effective type of controls. These are design changes that directly eliminate (ideally) or limit the severity and/or likelihood of the hazard, e.g. reduction in pressure/amount of hazardous material, substitution of less hazardous material, reduction of noise produced, fail-safe design, leak before burst, fault tolerance/redundancy, ergonomics, etc. Although not as reliable as true engineering controls, this category also includes protective safety devices such as guards, barriers, interlocks, grounding and bonding systems, pressure relief valves to keep pressure within a safe limit, etc. These items typically seek to reduce indirectly the likelihood of the hazard. These controls are often linked with caution and warning devices like detectors and alarms that are either automatic (do not require a human response) or manual (require a human response);

(b) Administrative controls that significantly limit daily exposure to hazard by control or manipulation of the work schedule or manner in which work is performed, e.g., job rotation;

(c) Work Practice controls, a type of administrative control that includes workplace rules, safe and healthful work practices, and procedures for specific operations. Work Practice controls modify the manner in which an employee performs assigned work. This modification may result in a reduction of exposure through such methods as changing work habits, improving sanitation and hygiene practices, or making other changes in the way the employee performs the job. These controls must be:

- Understood and followed by all affected parties;
- Appropriate to the hazards of the site;
- Equitably enforced through a clearly communicated written disciplinary system that includes procedures for disciplinary action or reorientation of managers, supervisors, and non-supervisory employees who break or disregard safety rules, safe work practices, proper materials handling, or emergency procedures;
- Written, implemented, and updated by management as needed, and must be used by employees; and
- Incorporated in training, positive reinforcement, and correction programs; and

(d) Personal protective equipment.

(2) A system for initiating and tracking hazard elimination or control in a timely manner;

(3) A written system for, and ongoing documentation of, the monitoring and maintenance of workplace equipment such as preventive and predictive maintenance, to prevent equipment from becoming hazardous;

(4) An occupational health care program that uses licensed health care professionals to assess employee health status for prevention of and early recognition and treatment of illness and injury; and that provides, at a minimum, certified first aid and cardiopulmonary resuscitation (CPR) providers onsite for all shifts, and physician and emergency medical care available within a reasonable time and distance.

Occupational health care professionals should be used as appropriate to accomplish these functions; and

(5) Procedures for response to emergencies on all shifts. These procedures must be written and communicated to all employees, must list requirements for personal protective equipment, first aid, medical care, and emergency egress, and must include

provisions for emergency telephone numbers, exit routes, and training drills including, at a minimum, annual evacuation drills.

d. **Safety and Health Training.** Training is necessary to reinforce and complement management's commitment to prevent exposure to hazards. All employees must understand the hazards to which they may be exposed and how to prevent harm to themselves and others from such hazard exposure. Effective training enables employees to accept and follow established safety and health procedures. Training for safety and health must ensure that:

(1) Managers and supervisors understand their safety and health responsibilities (see F.5.a.) and are able to carry them out effectively;

(2) Managers, supervisors, and non-supervisory employees (including contract employees) are made aware of hazards, and are taught how to recognize hazardous conditions and the signs and symptoms of workplace-related illnesses;

(3) Managers, supervisors, and non-supervisory employees (including contract employees) learn the safe work procedures to follow in order to protect themselves from hazards, through training provided at the same time they are taught to do a job and through reinforcement;

(4) Managers, supervisors, non-supervisory employees (including contractor employees), and visitors on the site understand what to do in emergency situations; and

(5) Where personal protective equipment is required, employees understand that it is required, why it is required, its limitations, how to use it, and how to maintain it; and employees use it properly.

6. Compliance with OSHA Requirements

All Star sites are expected to comply with OSHA requirements. Any site deficiencies related to compliance that are uncovered through an OSHA onsite review, an internal inspection, an employee report, or other means shall be corrected promptly.

G. Demonstration Programs

1. Program Purpose and Approval

a. Demonstration Programs provide the opportunity for companies and/or worksites to demonstrate the effectiveness of alternative methods of achieving safety and health program excellence that could be substituted for current Star requirements. OSHA may approve a Demonstration Program for such purposes as:

(1) Exploring the application of VPP in industries where OSHA lacks substantial experience;

(2) Testing alternative application and approval protocols that may enable sites currently ineligible for VPP to qualify for participation; and

(3) Demonstrating the feasibility of joint federal agency oversight, including joint audits, in the area of workplace safety and health.

b. A Demonstration Program also may be used to demonstrate the potential for a new VPP program.

c. The basic parameters of a Demonstration Program shall be developed at the National Office or Regional level and shall include a clear outline of specific requirements.

d. The decision to implement a Demonstration Program shall be approved by the Assistant Secretary before any worksite is considered for participation.

2. Qualifications for Demonstration Programs

a. **Safety and Health Program Requirements.** Demonstration Program applicants must have a site safety and health program that, at a minimum, addresses the basic elements (management leadership and employee involvement, worksite analysis, hazard prevention and control, and safety and health training) described for Star in Section F.5. above. How the applicant implements these elements may be the subject of demonstration so long as Star quality protection is afforded to all employees and contractors. Further, where an alternative is being tested, the applicant may not be required to meet each of the specific elements that comprise each basic element.

b. **Injury and Illness Rates.** These are identical to Star Program rates requirements. See F.4.

c. Applicants must demonstrate to the Assistant Secretary's satisfaction that the alternative approach shows reasonable promise of being successful and of leading to changes in the Star Program requirements.

3. Term of Participation

Worksites may be approved to a Demonstration Program for the period of time agreed upon in advance of approval, but not to exceed 5 years and subject to regular evaluation every 12 to 18 months.

4. Approval of Demonstration Program Worksite to Star

a. Approval to Star is contingent upon:

(1) Successful demonstration of the alternative aspects of the safety and health program; and

(2) A decision by the Assistant Secretary that changing the requirements of the Star Program to allow inclusion of these alternative provisions is desirable and will result in a continuing high level of worker protection.

b. Once a decision has been made by the Assistant Secretary to change Star requirements, those changes will be effective on the date they are announced to the public.

c. When the change has become effective, the Demonstration site(s) may be approved to Star without submitting a new application or undergoing further onsite review, provided that the approval occurs no later than 1 year following the last evaluation under the Demonstration Program. If more than 1 year has elapsed, an evaluation shall be conducted prior to recommending the worksite for approval to the Star Program.

5. Demonstration Termination

a. OSHA will terminate a Demonstration Program for the following reasons:

(1) The Demonstration is likely to endanger workers at the approved site(s).

(2) It is unlikely that the Demonstration will result in participating sites' approval to the Star Program or creation of a new Program.

(3) The Demonstration period has expired.

b. When a Demonstration Program ends, any participating sites not approved to Star will be terminated from the VPP.

H. The Merit Program

1. Purpose

The Merit Program is aimed at employers in any industry who do not yet meet the qualifications for the Star Program but who have implemented a safety and health program and who want to work toward Star Program participation. If OSHA determines that an employer has demonstrated the commitment and possesses the resources to achieve Star requirements within 3 years, Merit is used to set goals that, when achieved, will qualify the site for Star participation.

2. Qualifications for Merit

a. **Safety and Health Program Requirements.** An eligible applicant to the Merit Program must have a written safety and health program that covers the essential elements described in Section F.5. for Star.

(1) The basic elements (management leadership and employee involvement,

worksite analysis, hazard prevention and control, and safety and health training) must all be operational or, at a minimum, in place and ready for implementation by the date of approval. For the construction industry, each site must have in place an active program that provides for safety and health inspections involving trained employees before approval.

(2) The eligible applicant may not have met each of the specific Star requirements comprising each basic element. Participation in Merit is an opportunity for employers and their employees to work with OSHA to improve the quality of their safety and health programs and, if necessary, reduce their injury and illness rates to meet the requirements for Star. The site's safety and health program must be at Star quality within 3 years.

b. Injury and Illness Rates.

(1) For general industry and maritime, if the applicant's 3-year injury and illness incidence and/or lost/restricted workday case rate for the last 3 calendar years prior to approval does not meet the Star rates requirement (F.4.a.), the applicant must have a plan to achieve Star rates requirements within 2 years. It must be statistically possible to achieve this goal.

For each applicable contractor working at the site (for definition see F.4.a.(2)(a)), if one or both rates are above the national average, the site must demonstrate what action will be taken to reduce the rate(s) so that within 2 years they are below the applicable contractor industry average(s) for the work being performed at the site.

(2) For construction, if the injury and illness rates for the applicant site are not below the industry averages as required for Star, the applicant company must demonstrate that the company's 3-year injury and illness rates are below the most recently published BLS national average for the industry (at the three-digit level). The injury and illness incidence rate and the lost/restricted workday case rate must each be calculated over the last 3 complete calendar years. The rate must include all the applicant's employees who are actually employed at construction sites in that SIC. The applicant may use nationwide employment or may designate, with OSHA approval, an appropriate geographical area that includes the site for which application is made.

c. **Goals/Annual Evaluation.** In consultation with the applicant, OSHA will set goals to bring Merit sites up to Star level. Site deficiencies related to compliance with OSHA rules will be listed as 90-day items and not included

in longer-term Merit goals. How a site is working toward or has achieved its Merit goals must be discussed in the site's annual evaluation of its safety and health program (Section F.5.a.(12)).

3. Term of Participation

Worksites will be approved to the Merit Program for a period of time agreed upon in advance of approval but not to exceed 3 years. The term will depend upon how long it is expected to take the applicant to accomplish the goals for Star participation. Participation is canceled at the end of the term unless approval for a second term is recommended and is approved by the Assistant Secretary. Approval for a second term will be recommended only when unanticipated unique circumstances slow the participant's progress toward accomplishing the goals.

4. Multi-Site Eligibility

OSHA expects that companies having many sites applying to the VPP will be able to learn from the experience of their first few approved sites and, therefore, will be able to bring their remaining sites to Star quality before submitting VPP applications. If OSHA determines that any such company has the resources to develop Star quality worksites, OSHA, at its discretion, may limit the number of Merit sites approved in the VPP from that company. In situations where this limit has been imposed and reached, and where a VPP team determines that an additional site is not at Star quality, the team shall give the site a list of goals to be met and documented and a minimum time frame of at least 1 year before a team will return to the site for further review.

I. Application for VPP

1. Instructions

OSHA will prepare, keep current, and make available to all interested parties application guidelines that explain the information to be submitted for OSHA review.

2. Content

a. Eligible applicants are required to provide all information described in the most current version of the relevant application instructions.

b. Amendments to submitted applications shall be requested when the application information is insufficient to determine eligibility for onsite review.

c. Materials needed to document the safety and health program that may involve trade secrets or employee privacy interests must not be included in the application. Instead, such

materials must be described in the application and provided only for viewing at the site during an application assistance visit and/or during the Pre-Approval Onsite Review.

3. Submission

The number of application copies requested by OSHA shall be submitted to the appropriate OSHA Regional Office or, in the case of some Demonstration Program applications, to OSHA's Directorate of Federal-State Operations in Washington, DC. Normally, at least two copies will be required, but the number requested may vary depending upon circumstances particular to the program and/or the applicant.

4. Acceptance of Application

a. OSHA conducts an initial review of each application to determine whether it meets VPP criteria that can be substantiated by the site's written safety and health program and supporting documentation. The applicant shall be given the opportunity to improve its application by submitting amended or additional materials.

b. If the application is incomplete, and if after notification the applicant has not responded within 90 days to OSHA's request for more information, the Agency will consider the application unacceptable and will return it to the site. The site may resubmit the application when it is complete.

5. Withdrawal of Application

a. Any applicant may withdraw a submitted application at any time. When the applicant notifies OSHA of its desire to withdraw, the original application(s) will be returned to the applicant.

b. OSHA may keep the assigned VPP Manager's marked working copy of the application for a year before discarding it, in order to respond knowledgeably should the applicant raise questions concerning the handling of the application. Once an application has been withdrawn, a new submission of an application is required to be considered for VPP approval.

6. Public Access

The following documents shall be maintained by OSHA for public access beginning on the day the site attains VPP approval and continuing for so long as the site remains in VPP:

a. In the National Office—Site information and the general description of the site's safety and health program from the application; pre-approval report and subsequent evaluation

reports prepared by OSHA; the Regional Administrator's letter of recommendation; transmittal memoranda to Assistant Secretary; and the Assistant Secretary's and Regional Administrator's approval letters.

b. In the Regional Office—Complete VPP application and amendments; pre-approval report and subsequent evaluation reports; the Regional Administrator's letter of recommendation; Regional Administrator transmittal memoranda to Assistant Secretary via the Director of Federal-State Operations; the Assistant Secretary's approval letters; the memorandum to the appropriate Area Director removing the approved site from the general inspection list; and related correspondence.

J. Pre-Approval Onsite Review

1. Purpose. The pre-approval review, which OSHA conducts in a non-enforcement capacity, is a review of the site's safety and health program. It is conducted to:

a. Verify the information supplied in the application concerning qualification for the VPP;

b. Identify the strengths and weaknesses of the site's safety and health program;

c. Determine the adequacy of the site's safety and health program to address the hazards of the site and to ensure compliance with all OSHA requirements; and

d. Obtain information to assist the Assistant Secretary in making the VPP approval decision.

2. Preparation. The review shall be arranged at the mutual convenience of OSHA and the applicant. The review team shall consist of a team leader; a back-up team leader (whenever possible); and health, safety, and other specialists as required by the size of the site and the complexity of its operations.

3. Duration. The time required for the pre-approval onsite review will depend upon the size of the site and the complexity of its operations. Pre-approval reviews usually average 4 days onsite, but may be shorter or longer based on the decision of the Regional Administrator or Regional VPP Manager.

4. Scope. All pre-approval onsite reviews follow a three-pronged strategy that assesses a site's safety and health program by means of document review, site walkthrough, and employee interviews.

The onsite review shall include a review of injury and illness records, recalculation and verification of the injury/illness and incidence rates

submitted with the application, verification that the safety and health program described in the application has been implemented effectively, a general assessment of safety and health conditions to determine if the safety and health program adequately protects workers from the hazards at the site, and verification of compliance with OSHA and VPP requirements.

The review shall include random formal and informal interviews with relevant individuals (such as members of any safety and health committees, management personnel, randomly selected non-supervisory employees, and contract workers).

Onsite document review shall entail examination of the following records (or samples) if they exist and are relevant to the application or to the safety and health program:

a. Written safety and health program;

b. Management statement of commitment to safety and health;

c. The OSHA Form 200 log for the site and for all site contractor employees who are required to report;

d. Safety and health manual(s);

e. Safety rules, emergency procedures, and examples of safe work procedures;

f. The system for enforcing safety rules;

g. Reports from employees of safety and health problems and documentation of management's response;

h. Self-inspection procedures, reports, and correction tracking;

i. Accident investigation reports and analyses;

j. Safety and health committee minutes;

k. Employee orientation and safety training programs and attendance records;

l. Baseline safety and industrial hygiene exposure assessments and updates;

m. Industrial hygiene monitoring records, results, exposure calculations, analyses and summary reports;

n. Annual safety and health program evaluations and site and/or corporate audits (where site audits are not comprehensive) necessary to establish that VPP requirements are being met (trade secret concerns will be accommodated to the extent possible), including the documented follow-up activities, for at least the last 3 years;

o. Preventive maintenance program and records;

p. Accountability and responsibility documentation, e.g., performance standards and appraisals;

q. Contractor safety and health program(s);

r. Occupational health care programs and records;

- s. Available resources devoted to safety and health;
- t. Hazard and process analyses;
- u. Process Safety Management documentation, if applicable;
- v. Employee involvement activities; and
- w. Other records that provide relevant documentation of VPP qualifications.

K. Recommendation for Program Approval

1. Deferred Approval

If the pre-approval review determines that the applicant needs to take steps to meet one or more program requirements or to come into compliance with OSHA rules, the applicant will be given reasonable time (up to 90 days) before a recommendation for VPP approval is made to the Assistant Secretary. When necessary, an onsite visit shall be made to verify the actions taken after the pre-approval onsite review visit.

2. Approval

If, in the opinion of the OSHA pre-approval onsite review team, the applicant has met the qualifications for participation in a VPP, the team's recommendation shall be made to the Regional Administrator, who, on concurrence, shall recommend approval to the Director of Federal-State Operations (FSO). The Director of Federal-State Operations shall review the pre-approval report for compliance with the program criteria and consistent application of the qualifications requirements and, on concurrence, shall forward the recommendation to the Assistant Secretary to approve participation. Approval shall occur on the day that the Assistant Secretary signs a letter informing the applicant of approval.

L. Recommendation for Program Denial

1. If OSHA determines that the applicant does not meet the requirements for participation in one of the VPP, the Agency shall allow reasonable time (not to exceed 30 calendar days) for the applicant to withdraw its application before the Regional Administrator makes a denial recommendation to the Assistant Secretary.

2. If the Assistant Secretary accepts the recommendation to deny approval, the denial will occur as of the date the Assistant Secretary signs a letter informing the applicant of the decision.

3. An applicant may appeal to the Assistant Secretary a finding by the OSHA pre-approval team that requirements have not been met. The Director of Federal-State Operations

shall forward the appeal to the Assistant Secretary, along with the team's recommendation of denial and the FSO Director's own recommendation.

4. Should the Assistant Secretary for any reason reject the recommendation to approve made by the Director of FSO and/or the Regional Administrator, a letter from the Assistant Secretary denying approval and explaining the rejection will be sent to the applicant. The denial will occur as of the date of the letter.

M. Inspection/Investigation Provisions

1. Programmed Inspections

Participating worksites, unless they choose otherwise, shall be removed from OSHA's programmed inspection lists, including any lists of targeted sites for the duration of approved participation in the VPP. The applicant worksite shall be removed from the programmed inspection lists no more than 75 calendar days prior to the commencement of its scheduled pre-approval onsite review. The site shall remain off those lists until official denial of the application, applicant withdrawal of its application, or, if the applicant is approved to the VPP, subsequent cessation of active participation in the VPP.

2. Unprogrammed Inspections

a. Workplace complaints to OSHA, all fatalities and catastrophes, and other significant events shall be handled by enforcement personnel in accordance with normal OSHA enforcement procedures.

b. The history of the VPP demonstrates that safety and health problems discovered during contact with worksites normally are resolved cooperatively. Nevertheless, OSHA must reserve the right, where employees' safety and health are seriously endangered and site management refuses to correct the situation, to refer the situation to the Assistant Secretary for review and enforcement action. The employer shall be informed that a referral will be made to the Assistant Secretary and that enforcement action may result.

3. Additional VPP Investigations

a. Following significant events, e.g., fatalities, chemical spills or leaks, or other accidents, OSHA may choose to use VPP personnel to conduct an onsite review to determine a participating site's continued eligibility for VPP.

b. OSHA also may choose to investigate other significant accidents or events that come to its attention and that are not required to be handled with

normal OSHA enforcement procedures, whether or not injury/illness is involved. OSHA will use VPP personnel to determine whether the accident or incident reflects a serious deficiency in the site's safety and health program.

N. Post-Approval Contact/Assistance

1. OSHA Contact Person

The Contact Person for each VPP worksite shall be the appropriate Regional VPP Manager or his/her designee. This person shall be available to assist the participant, as needed.

2. Assistance

a. In some cases, such as in a Demonstration Program, at construction sites, or when needed for the Merit Program, an onsite assistance visit may be scheduled, e.g., to respond to employer technical inquiries or to ensure the efficacy of a Demonstration.

b. Whenever significant changes in ownership or organizational structure occur, or the authorized collective bargaining agent changes, OSHA may make an onsite assistance visit if needed to determine the impact of the changes on VPP participation. In the event of such changes, the appropriate Regional Administrator must be notified of the change, and a new signed Statement of Commitment shall be required. The Statement must be signed by management and appropriate bargaining representatives.

c. Whenever the 3-year injury and illness or lost/restricted workday rates of a Star Program participant exceed the latest national average published by BLS, at the discretion of the Regional Administrator, the participant may be required to develop an agreed upon 2-year rate reduction plan. If appropriate, OSHA may make an onsite assistance visit to help the site develop the plan.

O. Periodic Onsite Evaluation of Approved Worksites

1. The Star Program

a. Purpose. Onsite evaluations of Star participants are intended to:

- (1) Determine continued qualification for the Star Program;
- (2) Document results of program participation in terms of the evaluation criteria and other noteworthy aspects of the site's safety and health program; and
- (3) Identify any problems that have the potential to adversely affect continued Star Program qualification and determine appropriate follow-up actions.

b. Frequency. The first post-approval evaluation shall be within 30 to 42 months of the initial Star approval or, in the case of a Demonstration Program site

that has been approved to Star, within 30 to 42 months of the last Demonstration evaluation. Subsequently, all Star participants shall be evaluated at no greater than 60-month intervals. (The identification of potentially serious safety and health risks may create the need for more frequent evaluations.)

c. Scope. OSHA's evaluation of Star Program participants shall consist mainly of an onsite visit similar in duration and scope to the pre-approval program review described in J.3-4. OSHA shall review the documentation of program implementation since pre-approval review or since the previous evaluation. The evaluation shall include a review of injury and illness incidence and lost/restricted workday case rates for the site and for its applicable contractor employees as described in F.4. The rates reported shall be for the latest 3 complete calendar years. The report requirements for applicable contractor rates will be phased in as follows:

- (1) In 2000, contractor data for calendar year 1999;
- (2) In 2001, contractor data for calendar years 1999 and 2000;
- (3) Thereafter, data for the most recent 3 calendar years.

d. Measures of Effectiveness. OSHA shall use the following factors in the evaluation of Star Program participants:

- (1) Continued compliance with the program requirements and continuous improvement in the safety and health program;
- (2) Satisfaction and continuing demonstrated commitment of employees and management;
- (3) Nature and validity of any complaints received by OSHA;
- (4) Nature and resolution of problems that may have come to OSHA's attention since approval or the last evaluation; and
- (5) The effectiveness of employee participation programs.

e. Evaluation Decisions and Recommendations. The Regional Administrator may make one of the following decisions/recommendations following a Star evaluation visit:

- (1) Decision to continue participation in the Star Program;
- (2) Decision to allow a 1-year conditional participation in the Star Program. The VPP onsite review team may recommend this alternative if it finds that the site has allowed one or more program elements to slip below Star quality. The site must return its safety and health program to Star quality within 90 calendar days of the evaluation visit and must demonstrate a commitment to maintain that level of

quality. A VPP onsite review team shall return in 1 year to determine if the site's safety and health program remains at Star quality. If Star quality has been maintained, the team shall recommend the site be re-approved to the Star Program; or

(3) Termination. After considering the recommendation of the VPP onsite review team, the Regional Administrator may recommend to the Assistant Secretary that a site be terminated if the site has been found to have significantly failed to maintain its safety and health program at Star quality.

2. The Demonstration Program

a. Purpose of Evaluation. Onsite Demonstration evaluations are intended to:

- (1) Determine continued qualification for the Demonstration Program;
- (2) Document results of program participation in terms of the evaluation criteria and other noteworthy aspects of the site's safety and health program;
- (3) Ensure that the demonstration aspects of the program continue to be effective and to protect employees; and
- (4) Identify any problems that have the potential to adversely affect continued Demonstration Program qualification and determine appropriate follow-up actions.

b. Frequency. Demonstration Program participants shall be evaluated every 12 to 18 months.

c. Scope. Identical to Star Program evaluations; see O.1.c. above.

d. Measures of Effectiveness. A Demonstration Program evaluation shall assess the effectiveness of the alternate criteria being demonstrated. It also shall consider all factors used to measure the effectiveness of Star Program participants. See O.1.d. above.

e. Evaluation Recommendations and Decisions. The Regional Administrator may make one of the following recommendations to the Assistant Secretary following a Demonstration evaluation visit. The Assistant Secretary will then decide:

- (1) Continued participation in the Demonstration Program;
- (2) Changes in the Star requirements to include the aspects being demonstrated because they provide effective Star quality safety and health protection; or
- (3) Termination because either the Demonstration aspects do not provide Star quality protection or the site has significantly failed to maintain the remainder of its safety and health program at Star quality.

3. The Merit Program

a. Purpose of Evaluation. Onsite Merit evaluations are intended to:

(1) Determine continued qualification for the Merit Program, or determine whether the applicant may be approved for the Star Program;

(2) Determine whether adequate progress has been made toward the agreed-upon Merit goals;

(3) Identify any problems in the safety and health program or its implementation that need resolution in order to continue qualification or meet agreed-upon goals;

(4) Document program improvements and/or improved results; and

(5) Provide advice and suggestions for needed improvements.

b. Frequency. The first evaluation of a Merit participant shall be conducted within 24 months (18 months is recommended) of approval. The site may request an earlier evaluation if it believes it has met Star Program qualifications.

c. Scope. OSHA's evaluation of Merit Program participants shall consist mainly of an onsite visit similar in duration and scope to the pre-approval program review described in J.3-4. OSHA shall review documentation of program implementation since the pre-approval review or the previous evaluation. The evaluation shall include a review of injury and illness incidence and lost/restricted workday case rates for the site and for its applicable contractor employees as described in E.4.

d. Measures of Effectiveness. The following factors shall be measured in the evaluation of Merit Programs:

- (1) Continued adequacy of the safety and health program to address the potential hazards of the workplace;
- (2) Comparison of employer and contractor rates to the industry average;
- (3) Satisfaction and continuing demonstrated commitment of employees and management;
- (4) Nature and validity of any complaints received by OSHA;
- (5) Resolution of problems that have come to OSHA's attention;
- (6) Effectiveness of the employee participation program; and
- (7) Progress made toward goals specified in the pre-approval or previous evaluation report.

e. Evaluation Decisions and Recommendations. The Regional Administrator may make one of the following decisions/recommendations following a Merit evaluation visit:

- (1) Decision for continued Merit participation;
- (2) Recommendation for advancement to the Star Program; or
- (3) Recommendation for termination.

P. Termination or Withdrawal

1. Reasons for Termination.

A site will be terminated from the VPP when:

a. Participating site management, or the duly authorized collective bargaining agent, where applicable, withdraws support for VPP participation.

b. A site fails to maintain its safety and health program in accordance with the program requirements.

c. No significant progress has been made toward achieving the established Merit goals or 1-year Star Conditional goals.

d. The Merit term of approval has expired, and no recommendation has been made for a second term.

e. Construction work at a construction industry site has been completed.

f. The sale of a VPP site to another company or a management change has significantly weakened the safety and health program.

g. Resident contractor participation is no longer possible because the host site no longer participates in VPP.

h. OSHA terminates a Demonstration Program for just cause.

i. The Regional Administrator presents written evidence to the Assistant Secretary that the essential trust and cooperation among labor, management, and OSHA no longer exist, and therefore recommends termination, and the Assistant Secretary concurs.

2. Termination Notification and Appeal or Withdrawal

Under most circumstances, OSHA shall provide the participant and bargaining unit representatives 30 days' notice of intent to terminate a site's participation in the VPP. During the 30-day period, the participant is entitled to appeal in writing to the Assistant Secretary and to provide reasons why it believes the site should not be removed from the VPP.

OSHA will not provide 30 days' notice when:

a. Other terms for termination were agreed upon before approval;

b. A set period for approval is expiring; or

c. Construction has been completed at a participating construction site.

3. Withdrawal of a Participating Site. Upon receipt of an OSHA notice of intent to terminate, or for any reason, a participant may withdraw from the VPP by submitting written notification to the appropriate Regional Administrator.

4. Reapplication Following Termination. OSHA will not consider the reapplication of a terminated site for a period of 3 years from the date of termination.

Q. Reinstatement

Reinstatement requires reapplication.

Signed at Washington, DC, this 4th day of October, 1999.

Charles N. Jeffress,

Assistant Secretary for Occupational Safety and Health.

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