



Federal Register

**Monday,
July 24, 2000**

Part II

Department of Labor

**Occupational Safety and Health
Administration**

**Revisions to the Voluntary Protection
Programs To Provide Safe and Healthful
Working Conditions; Notice**

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

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

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

ACTION: Notice of revisions to the program.

SUMMARY: The Occupational Safety and Health Administration, wishing to revise its Voluntary Protection Programs (VPP), published draft revisions and requested comments from stakeholders and the general public (**Federal Register** Notice 64 FR 55390, October 12, 1999). The Agency now publishes a discussion of those comments and its final VPP revisions. 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.

EFFECTIVE DATE: The revisions are effective January 1, 2001, except that III.F.4.a.(2) and III.G.4. are effective July 24, 2000.

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, telephone (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 worksite. 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 Worksite 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, in keeping with the President's "Plain Language in Government Writing" Memorandum of June 1, 1998. 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 three most notable changes are an expansion of eligibility to certain classes of worksites previously not covered by the program, increased expectations concerning the management of the safety and health of contractors' employees working at VPP sites, and a new illness reporting requirement. This last means OSHA will consider a worksite's illness experience together with 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.* (hereinafter referred to as the Act or 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 safe 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. Discussion of the Comments

This section includes a review of the public comments submitted to OSHA in response to its October 12, 1999 Notice, and the Agency's decisions to either change or let stand certain provisions in that Notice. OSHA received comments from 15 respondents. These included 8 VPP participating companies, 2 professional associations, 2 trade associations, 2 private consultants, and the Voluntary Protection Programs Participants' Association. The comments are addressed in the order in which the topics are found in the draft Notice.

A. Eligibility

1. Resident Contractors. VPP accepts applications from resident contractors at participating VPP sites for the contractors' operations at those VPP sites. One respondent held that contractors at VPP sites should not have to make separate application and undergo separate onsite review. The respondent suggested that OSHA include in the VPP application every organization with workers at the site for 500 hours or more in a quarter (the draft revision's definition of applicable contractor) and award VPP approval to them all. OSHA does not consider this in the best interest of the VPP or individual applicants. Not all contractors meet the VPP's rigorous standards. While OSHA is not prepared to take the respondent's suggestion, it is willing to assess contractors desiring VPP participation at the same time as it assesses the site applicant when it considers such an action appropriate and conserving of resources.

2. Unionized Sites. A basic tenet of VPP is that, at the worksites with the best safety and health protection—those worthy of VPP recognition—management and employees work cooperatively to ensure a safe and healthful worksite. Therefore, at unionized sites, the authorized collective bargaining representative(s) must support VPP participation. One respondent was concerned that union

support for VPP could become a leveraging tool during collective bargaining and requested language to discourage this practice. While OSHA certainly hopes that support for VPP by either the union or management does not become an issue in matters unrelated to workplace safety and health, the Agency's role does not extend to advising the parties on appropriate collective bargaining methods.

B. Assurances

1. The draft revisions provided that applicants assure they "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." Two respondents voiced concern about guaranteeing in writing that all Section 5(a)(1) "general duty" hazards will be identified and corrected, suggesting that the practical difficulty of fulfilling this assurance may discourage applications to the program. Full compliance with the OSH Act has always been a basic assumption of the VPP, and OSHA did not intend to suggest that any change in policy or procedure was being proposed. Upon consideration, the Agency sees no reason to single out the Act's Section 5(a)(1). Therefore, to the 1988 Notice's requirement that applicants assure that "All hazards discovered through self-inspections, accident investigations or employee notification will be corrected in a timely manner," this Notice's Assurances section will now add the explicit requirement that VPP applicants assure compliance with the Act and, for Federal agencies, with 29 CFR 1960.

2. The draft revisions provided that applicants assure that "site employees support the VPP application." One respondent asked for guidance on how non-union applicants demonstrate employee support. How employees show their support varies from site to site. At unionized sites, employee support is evidenced by the collective bargaining representative either signing the application or submitting a signed statement of support for VPP participation (required at III.D.2.). At non-union sites, it has been OSHA's experience that employee attitudes about VPP will become evident to management during the process of improving the site's safety and health program and putting together the VPP application. No specific demonstration of employee support is needed before management can assure OSHA that site workers support the application. When OSHA's review team visits the site for its pre-approval review (and on

subsequent visits), team members will verify during employee interviews that the employees are supportive of VPP participation.

3. Applicants must assure that, each year by February 15, they will send certain performance data to the designated OSHA VPP Manager. An important change contained in the draft revisions was the addition of illnesses to the data. Previously, only information about injuries had to be reported. No respondent objected to the addition of a site's illness experience to VPP requirements. Seven respondents addressed this issue, however, and most recommended postponing implementation of the illness rate reporting requirements until proposed revisions to OSHA's general recordkeeping standard go into effect. Respondents were anxious that VPP reporting requirements be consistent with any new OSHA recordkeeping requirements.

OSHA agrees with the need for consistency, and the VPP staff has had extensive discussions with OSHA's Directorate of Safety Standards Programs (which has been working on the new recordkeeping standard) since receiving the comments. The Agency has decided not to postpone its new VPP reporting requirements pending final publication of a revised recordkeeping standard. However, the requirement to begin reporting data on both injuries and illnesses will be effective January 1, 2001, the new effective date of most provisions in this final **Federal Register** Notice, rather than immediately upon publication of this Notice. Therefore, beginning in 2001, OSHA will require applicants and existing sites to submit the total recordable case incidence rate (combining injuries and illnesses) and the incidence rate for days away from work and restricted work activity (combining injuries and illnesses). For sites already participating in VPP, the first reporting to OSHA of this data will occur by February 15, 2001, and will reflect the calendar year 2000 experience. Days away from work and restricted work activity will continue to be combined; these previously were termed "lost workdays." These categories of performance data also will apply to the required reporting of applicable contractor safety and health experience.

For the first year only of the new reporting requirements, OSHA will need additional data in order to recalculate 3-year incidence rates that reflect illnesses as well as injuries. Therefore, when participating sites submit their information to OSHA by February 15,

2001, they will be expected to report the total recordable case incidence rate, the incidence rate for total cases involving days away from work and restricted work activity, the total number of cases reflected in these rates, average annual employment, and the total hours worked for calendar years 1998 and 1999 as well as calendar year 2000. OSHA does not need and is not asking participating sites to submit contractor data for calendar years 1998 and 1999, unless the contractor is directly supervised by site management and is normally included in the site's employee injury/illness data reporting.

OSHA wishes to reassure its VPP sites that the newly required data can be obtained from both the OSHA Form 200 (the "OSHA Log") and its expected successor OSHA Form 300.

The proposed revision of OSHA's recordkeeping standard is expected to make certain changes in the definitions of injury and illness. VPP applicants and participating sites will continue to employ the existing definitions until a revised standard becomes effective.

4. Under the draft revisions, the annual data submission included data on applicable contractors' employees. An applicable contractor was defined as one whose employees worked a total of 500 or more hours (the equivalent of one full-time employee) in at least one calendar quarter at the site. Three respondents recommended changing the definition of applicable contractor in ways that would have the effect of reducing the number of contractors whose safety and health data VPP sites must report to OSHA. One respondent recommended basing contractor applicability on contractor hours relative to total site hours, for example, contractors whose average hours per quarter are equal to or greater than 1% of the site's average hours. OSHA is concerned that, at large sites, one consequence of such a change would be to exclude from applicability contractors who have relatively few employees at the site but who, in actuality, may have substantial numbers of employees performing highly hazardous work. For example, at a site with 2,000 employees, a contractor would have to employ the equivalent of at least 20 full-time employees to be considered applicable under the 1% definition. The Agency believes this would be an unwise reduction in contract worker protection.

Another respondent suggested increasing the threshold from 500 hours per quarter to 5,000 hours per quarter, the equivalent of 10 full-time employees. Still another respondent suggested 1,500 hours (the equivalent of

3 full-time employees) instead of 500. OSHA concedes that 500 hours, i.e., one full-time contractor employee, may pose unduly burdensome reporting requirements at some VPP sites. However, the Agency is reluctant to raise the number dramatically, because it could weaken the VPP requirements concerning contractor safety and health. The purpose of this revision is to strengthen the program. Therefore, the Agency has decided on a modest change in the definition of applicable contractor, from 500 hours in a calendar quarter to 1,000 hours.

5. Two respondents objected to the requirement to collect and report site performance data for applicable contractors, characterizing this requirement as burdensome, expensive, and unachievable. Given the reality of contractor presence in today's workplace, OSHA is convinced that contractor data are essential to assess the safety and health performance of a VPP applicant or participant site. The collection and reporting of contractor rates also will help a site identify areas of needed improvement in its contractor management and oversight system. Therefore, OSHA will expect sites to assure they will submit annual performance data on applicable contractors. The data to be submitted are for performance at the site only.

6. Under the draft revisions, applicants were expected to submit each year to the VPP Manager a description of worksite outreach activities. Some readers of the Notice interpreted this as a requirement to conduct outreach. OSHA wants to encourage mentoring, community involvement, and other forms of outreach by VPP worksites. Further, the information sites share with the Agency concerning their outreach activities is useful in documenting the value of VPP. However, at this time OSHA believes that VPP eligibility should be based on an applicant's onsite safety and health performance. Therefore, while the Agency intends to continue encouraging voluntary outreach, it is removing from the Notice references to reporting of outreach activities.

C. Status of Participants Whose Rates Are Impacted by Addition of Illnesses

A Star participant voiced concern that the addition of illness data in the calculation of a site's performance rates could push the rates above the national average and jeopardize the site's Star status. OSHA realizes that the addition of illnesses may indeed cause rates to increase above the national average at some VPP sites. Further, there will be a period of time when a site's rates under

the proposed new OSHA recordkeeping standard, if finalized, are being compared with rates developed under the prior recordkeeping standard. While the basic categories of information will not change, some definitions will, e.g., what injuries and illnesses are recordable. This may result in some temporary rate fluctuations not truly indicative of substantive changes in the site's safety and health performance. The Agency is prepared to assist current Star participants on a case by case basis and believes the VPP already contains the appropriate means. At III.N.2.c., the VPP gives the Regional Administrator discretion to provide a grace period in the form of a 2-year rate reduction plan whenever a Star participant's 3-year rates exceed the latest national average published by BLS.

D. Small Worksite Alternative Method of Calculating Rates

The proposed alternative calculation is intended to help primarily small sites to qualify for VPP even when they have experienced 1 year of abnormally high rates. One respondent believes that small companies in its industry will not benefit from this provision and recommends a different means to help small companies: extending eligibility to small employers with 19 or fewer employees who exceed their industry average in any 1 year by 1.5 to 2 times.

OSHA's VPP staff availed itself of extensive assistance from OSHA's Office of Statistics when developing the alternative rate calculation proposed in the Notice. The Agency is confident that the proposed alternative method will effectively enable the small employer with an excellent safety and health management system to qualify for VPP even when a small number of injuries/illnesses in 1 year disproportionately affects the site's rates.

E. Safety and Health Program Requirements

1. One respondent requested clarification of the requirement that the safety and health program be written. Worksites that already have a comprehensive written safety and health program that includes the VPP elements need not create a new, separate document for VPP eligibility. The VPP application guidelines specify that, where existing written policies, guidelines, forms, etc. describe an applicant's programs, OSHA encourages the site to submit these documents rather than write new material for the VPP application.

2. OSHA received several comments on the meaning of Management Leadership. The Agency believes the

subelements provided in the Notice offer an adequate framework within which each VPP site may establish systems appropriate to its company culture and site needs. "Reasonable employee access to top site management" (III.F.5.a.(5)(c)) refers to onsite managerial personnel and not to managers located elsewhere, e.g., a corporation's chief executive officer.

3. One required aspect of Management Leadership is the provision of adequate resources to those who have safety and health responsibility and authority. The draft Notice went on to give examples of such resources, including "appropriate use of certified industrial hygienists (CIH) and certified safety professionals (CSP) as needed * * *." One respondent suggested this language be expanded to recognize other occupational health care professionals who participate in the management of workplace safety and health issues. OSHA recognizes that many professionals other than CIHs and CSPs provide important services to VPP worksites. Therefore, in both the Management Leadership section and later in the discussion of the occupational health care program, the use of these other professionals has been acknowledged.

4. OSHA received several comments on the meaning of Employee Involvement. The Agency agrees that the effectiveness of employee participation in the site's safety and health program is paramount. At VPP sites, meaningful and active employee involvement helps ensure that, every day, the site's protective systems operate successfully and employees understand their essential roles within these systems. OSHA's evaluation of the effectiveness of a site's employee involvement is accomplished by examining documents, interviewing employees, and conducting the site walkthrough during the VPP onsite review.

5. The requirement for increased participant responsibility for contractor safety and health drew several comments. OSHA is not convinced by the argument that VPP sites should not be expected to ensure high-quality protection of contract workers. The Agency believes that a more performance-based requirement would be reasonable, however, thus giving the sites greater latitude to design site-appropriate contractor oversight and management programs. Changing to a less prescriptive contractor oversight requirement also may resolve a potentially serious problem raised by a federal agency participant, i.e., that the change proposed in the draft Notice

conflicted with the Federal Agency Regulation (FAR) governing federal sites and could prevent federal sites from qualifying for VPP. Therefore, OSHA has substantially rewritten the requirements relating to contractor safety and health. The requirement in the Assurances to report contractor information remains (although, as noted above, the definition of applicable contractor has changed), but the entire section III.F.4.a.(2) from the draft Notice is deleted, including the requirement that applicable contractors' rates be below the national averages. Section III.F.5.a.(7) has been substantially rewritten and now reflects OSHA's expectation that VPP sites will develop and implement contractor oversight and management systems that effectively protect contractor employees and the site employees whose safety and health are affected by the presence of contract workers.

6. The identification and analysis of worksite hazards are essential components of an effective safety and health program. One respondent asked about the extent to which OSHA is requiring the involvement of occupational health care professionals in site hazard analysis. The need to involve occupational health care professionals, and the type of professionals involved, will depend on the hazards of the site and the extent of in-house expertise. Whether the analysis is performed by regular onsite staff or by outside staff contracted for this purpose is irrelevant; in either case, OSHA expects the professionals to be familiar with the operations and hazards of the site (an initial walkthrough may be appropriate to ensure familiarity). A variety of qualified occupational health care professionals (occupational health nurses, occupational physicians, industrial hygienists, ergonomists, etc.) may be used to manage the site's hazards depending on the nature of those hazards.

F. Multi-Site Merit Eligibility

The draft Notice stated that if a company has many sites applying to VPP, and if OSHA determines that the company has the resources to develop Star quality sites, the Agency has the discretionary authority to limit the number of Merit sites approved from that company. This provision was intended to help OSHA effectively manage its limited VPP resources in situations where a large company wishes to bring numerous sites into VPP. Four responders were concerned about this program change. They argued that limiting the number of Merit sites will undercut the efforts of hardworking

employees and may undermine the momentum to improve safety and health. One responder pointed out that the impetus to apply for VPP often originates at the site level, with minimal corporate level involvement, and that limiting such a site's opportunity to participate in VPP would be unfair. One large multi-site company suggested that there are other ways to address the resource issue. It pointed out that while it hopes to bring many sites into VPP, it also intends to sponsor dozens of new VPP Volunteers, an innovative aspect of the VPP which allows qualified employees of VPP sites to assist OSHA personnel as members of onsite review teams.

OSHA considers the above arguments compelling. Further, the stronger requirements for Merit eligibility, and the stated expectation that in order to qualify for Merit, a site must demonstrate the commitment and possess the resources to achieve Star within 3 years, should effectively limit the growth of Merit participation to sites worthy of VPP recognition. Therefore, OSHA has removed the provision on limiting the number of Merit sites.

G. Examination of Corporate Audits

Four respondents were concerned about OSHA's onsite examination of corporate audits during the pre-approval onsite review. One respondent held that existing requirements of facility-based audits and other supporting documentation should be sufficient at a VPP-quality site. In similar vein, another initially suggested (but in later discussion changed its position) that, if a site does not maintain all required documentation, OSHA should cease its review rather than expect the site to provide access to corporate-level documents. Still another responder stated that expecting companies to turn over voluntary self-audit information seemed inconsistent with OSHA's proposed enforcement policy on use of self-audit records.

OSHA believes the VPP policy does not conflict with the Agency's proposed enforcement policy on self-audits, although OSHA procedures during an enforcement visit are not especially relevant in the context of a voluntary VPP onsite visit. The Agency does believe that the VPP onsite review team needs the discretionary authority to ask about additional documents when site documents are insufficient to establish VPP qualification. Many sites rely on corporate-level safety and health personnel to conduct certain aspects of the site's ongoing hazard analysis, and the findings would typically be contained in corporate documents. To

the extent these documents are needed to determine VPP eligibility, OSHA may ask to examine them, and the site may voluntarily choose to provide them. If such documentation is not provided and is necessary to demonstrate VPP criteria are being met, OSHA may find itself unable to approve the site for participation.

H. Right To Appeal a Notice of Termination

Under most circumstances, OSHA will provide a participant and its bargaining unit representatives 30 days' notice of intent to terminate the site's participation in VPP. One respondent thought that 30 days was not enough time for an employer to properly file an appeal and suggested 60 days' notice. OSHA believes that 30 days is sufficient. In practice, the participant almost always will know well in advance of the official notice that OSHA believes there is a serious problem warranting termination.

The final revised program follows.

III. 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 OSH Act. Compliance with occupational safety and health standards, OSHA regulations, 29 CFR 1960 for Federal agencies, 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 and health 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, the OSHA VPP Volunteers, 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 and, for Federal agencies, under 29 CFR 1960. 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 1960 that have implemented a safety and health program meeting the requirements of § 1960. 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. Any application received by OSHA 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 or notices under appeal 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 comply with the Act and, in the case of Federal agencies, 29 CFR 1960, and will correct in a timely manner all hazards discovered through self-inspections, employee notification, accident investigations, an OSHA onsite review, process hazard reviews, annual evaluations, or any other means. The applicant will provide effective interim protection as necessary.

2. Site deficiencies related to compliance with OSHA requirements and identified during the OSHA preapproval onsite review will be corrected within 90 days.

3. Site employees support the VPP application.

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

5. 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 or 29 CFR part 1960.

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 and 29 CFR 1960.46(a) protect employees who exercise their rights.

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 III.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 III.N.1.):

- a. The site's total recordable case incidence rate for injuries and illnesses combined for the previous calendar year and
- b. the site's incidence rate for cases involving days away from work and restricted work activity.

Each site will also submit the total number of cases for each of the above two rates; hours worked; 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; and a description of any worksite success stories, *e.g.*, reductions in workers' compensation rates, increases in employee involvement in the program, etc.

c. In the year 2001 only, when participating sites submit their information to OSHA by February 15, 2001, they will be expected to report the total recordable case incidence rate, the incidence rate for days away from work and restricted work activity, the total number of cases reflected in these rates, total hours worked, and estimated average employment for calendar years 1998 and 1999 as well as calendar year 2000.

11. At the same time, each participating general industry, maritime, or federal agency site will send to the designated OSHA VPP Manager site data on each applicable contractor's employees.

a. Applicable contractors are those employers who have contracted with the site to perform certain jobs and whose employees worked a total of 1,000 or more hours in at least 1 calendar quarter at the worksite.

b. The data will consist of the site's total recordable case incidence rate and the incidence rate for cases involving days away from work and restricted work activity for each applicable contractor's employees; total number of cases from which these two rates were derived; hours worked; and estimated average employment for the past full calendar year.

12. Whenever significant organizational or ownership changes occur, the site will provide OSHA within 60 days a new Statement of Commitment signed by both management and any authorized collective bargaining agents.

13. Whenever a change occurs in the authorized collective bargaining agent, the site will provide OSHA within 60 days a new signed statement 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 III.E.10.–11.).

Note: In the construction industry, Star and Merit 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 III.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—Two rates reflecting the experience of the most recent 3 calendar years must be below the most recent specific industry national averages for nonfatal injuries and illnesses (at the most precise level available, either three or four digits) published by the Bureau of Labor Statistics (BLS). These rates are:

(a) The 3-year total recordable case incidence rate (a single rate that reflects 3 years of total recordable injuries and illnesses), and

(b) The 3-year incidence rate for cases involving days away from work and restricted work activity (previously referred to as the lost workday case incidence rate).

(2) 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/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 total recordable case incidence rate for the employer assuming that the employer had two cases during the year;
 - Compare that hypothetical rate to the most recently published BLS combined injury/illness total recordable case incidence rate for the industry; and
 - If the hypothetical rate (based on two cases) is equal to or higher than the national average for the firm's industry, the employer qualifies for the alternative calculation method.

(b) If the employer qualifies for the alternative calculation method, the best 3 of the last 4 calendar years may be used to calculate both 3-year rates (specified in (1)(a) and (1)(b) above) for the employer.

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 total recordable case incidence rate and its incidence rate for cases involving days away from work and restricted work activity, 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 appropriate and representative SIC code. The site's SIC code is determined by the type of construction project, not individual trades.

c. Federal agency applicants must 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.

d. When BLS changes from the SIC classification system to the North American Industry Classification System (NAICS) and begins publishing data under the new system, VPP applicant/participant site rates will be compared with the rates generated under NAICS.

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 the goal(s), so that all members of the organization understand the results desired and the measures planned for achieving them, especially those factors that directly apply to them.

(2) Commitment to VPP Participation. Management must 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. Federal agency safety and health programs must also meet the requirements of 29 CFR part 1960, and construction site safety and health programs must also meet the requirements of 29 CFR 1926.20. All aspects of the safety and health program must be appropriate to the size of the worksite and the type of industry. For small businesses, OSHA may waive some formal requirements, such as certain written procedures or documentation, 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 information and experts, including appropriate use of certified safety professionals (CSP), certified industrial hygienists (CIH), other licensed health care professionals, and other experts as needed, based on the risks at the site; and

(h) Holding managers, supervisors, and non-supervisory employees accountable for meeting their safety and health responsibilities. 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 correcting deficient performance.

(6) Employee Involvement. The site culture must enable and encourage effective 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, maritime, or federal agency sites, must follow worksite safety and health rules and procedures applicable to their activities while at the site.

(a) In addition to ensuring that contractors follow site safety and health rules, VPP participants are expected to encourage their contractors to develop and operate effective safety and health program management systems.

(b) To this end, participants must have in place a documented oversight and management system for applicable contractors (see definition at III.E.11.a.) that ensures the contractors' site employees are provided effective protection and that drives improvement in contractor safety and health. Such a system should ensure that safety and health considerations are addressed during the contractor selection process and when contractors are onsite.

(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 at III.F.5. and any other elements of the site's safety and health program.

(c) The evaluation may be conducted by competent site, corporate, or other private sector persons who are trained and/or experienced in performing such evaluations. The evaluation should follow any format recommended by OSHA.

(d) 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. Site hazards identified during the hazard analysis process must be eliminated or controlled by developing and implementing the systems discussed at (2) below and by using the hierarchy provided at (3) below.

(1) The hazard controls a site chooses to use must be:

(a) Understood and followed by all affected parties;

(b) Appropriate to the hazards of the site;

(c) 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;

(d) Written, implemented, and updated by management as needed, and must be used by employees; and

(e) Incorporated in training, positive reinforcement, and correction programs;

(2) The required systems of hazard prevention and control are:

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

(b) 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;

(c) 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, access to certified first aid and cardiopulmonary resuscitation (CPR) providers, physician care, and emergency medical care for all shifts within a reasonable time and distance. Occupational health care professionals should be used as appropriate to accomplish these functions; and

(d) 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.

(3) The following hierarchy should 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.

(d) Personal protective equipment.

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 III.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 contractor 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 deficiencies related to compliance that are uncovered through an OSHA onsite review, an internal inspection, an

employee report, or other means must 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 will be developed at the National Office or Regional level and will include a clear outline of specific requirements.

d. The decision to implement a Demonstration Program must 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 at III.F.5. above, including 29 CFR 1960 requirements for Federal agencies and 29 CFR 1926.20 requirements for construction sites. 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. Where an alternative is being tested, the applicant may not be required to meet each of the specific sub-elements that comprise each basic element.

b. Injury/Illness Performance Requirements. These are identical to Star Program rate requirements. See III.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 becomes 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 18 months following the last evaluation under the Demonstration Program. If more than 18 months has elapsed, an evaluation must 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; or

(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 at III.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 before approval an active program that provides for safety and health inspections involving trained employees.

(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. Combined Injury and Illness Rates

(1) For general industry, maritime, and federal agencies, if the applicant's 3-year total recordable case incidence rate reflecting all recordable injuries and illnesses and/or the applicant's 3-year incidence rate for cases involving days away from work and restricted work activity, for the last 3 calendar years prior to approval, does not meet the Star rate requirements (III.F.4.a.), the applicant must have a plan to achieve Star rate requirements within 2 years. It must be statistically possible to achieve this goal.

(2) For construction, if the incidence rates for the applicant site are not below the industry averages as required for Star, the applicant company must demonstrate that the company-wide 3-year rates are below the most recently published BLS national average for the industry (at the three-digit level). The total recordable case incidence rate and the incidence rate for cases involving days away from work and restricted work activity must each be calculated

over the last 3 complete calendar years. The rates 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 will not be 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 (III.F.5.a.(8)).

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.

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 must provide all information described in the most current version of the relevant application instructions.

b. OSHA will request amendments to submitted applications 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 must 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. OSHA normally will require at least two copies, 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 will 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 will 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 will be arranged at the mutual convenience of OSHA and the applicant. The review team will 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 will include a review of injury, illness, and fatality records; recalculation and verification of the total recordable injury and illness case incidence rate and the incidence

rate for cases involving days away from work and restricted work activity (the two rates submitted with the application); 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; verification of compliance with OSHA and VPP requirements; and verification that the safety and health program described in the application has been implemented effectively.

The review will 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, union representatives, and contract workers.

Onsite document review will entail examination of the following records (or samples) if they exist and are relevant to the application or to the safety and health program (trade secret concerns will be accommodated to the extent feasible):

- a. Written safety and health program;
- b. Management statement of commitment to safety and health;
- c. The OSHA Form 200 log (or a successor OSHA form) 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, site audits, and, when needed to demonstrate that VPP criteria are being met, corporate audits that a site voluntarily chooses to provide in support of its application. The review of evaluative documents needed to establish that the site is meeting VPP requirements will cover at least the last 3 years and will include records of follow-up activities stemming from program evaluation recommendations;

- 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 (PSM) 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 will 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 will be made to the Regional Administrator, who, on concurrence, will recommend approval to the Director of Federal-State Operations (FSO). The Director of Federal-State Operations will review the pre-approval report for compliance with the program criteria and consistent application of the qualifications requirements and, on concurrence, will forward the recommendation to the Assistant Secretary to approve participation. Approval will 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 will 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 will 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, will 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 will 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 will 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 will 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 any 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 will 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 that warrants reevaluation of the site's VPP qualification.

N. Post-Approval Contact/Assistance

1. OSHA Contact Person

The Contact Person for each VPP worksite will be the appropriate Regional VPP Manager or his/her designee. This person will 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 within 60 days, and a new signed Statement of Commitment will be required. The Statement must be signed by management and appropriate bargaining representatives.

c. Whenever a 3-year rate (either the total recordable case incidence rate or the incidence rate for cases involving days away from work and restricted work activity) of a Star Program participant exceeds 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 will 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 will 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 will consist mainly of an onsite visit similar in duration and scope to the pre-approval program review described in III.J.3-4. OSHA will review the documentation of program implementation since pre-approval review or since the previous evaluation. The evaluation will include a review of incidence rates and supporting data (specified in III.E.10.-11.) for the site and for its applicable contractor employees for the latest 3 complete calendar years. The review of applicable contractor data will be part of OSHA's evaluation of the effectiveness of the site's contractor oversight and management system. The review of applicable contractor rates will be phased in as follows:

- (1) In 2001, contractor data for calendar year 2000;
- (2) In 2002, contractor data for calendar years 2000 and 2001;
- (3) Thereafter, data for the most recent 3 calendar years.

d. Measures of Effectiveness. OSHA will 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 will 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 will 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 will 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 will be evaluated every 12 to 18 months.

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

d. Measures of Effectiveness. A Demonstration Program evaluation will assess the effectiveness of the alternate criteria being demonstrated. It also will consider all factors used to measure the effectiveness of Star Program participants. See III.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 will 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 will consist mainly of an onsite visit similar in duration and scope to the pre-approval program review described at III.J.3-4. OSHA will review documentation of program implementation since the pre-approval review or the previous evaluation. The evaluation will include a review of total recordable case incidence rates and incidence rates for cases involving days away from work and restricted work activity, for both the site and its applicable contractor employees as described at III.E.10.-11.

d. Measures of Effectiveness. The following factors will 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 will 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 18th day of July 2000.

Charles N. Jeffress,

Assistant Secretary for Occupational Safety and Health.

[FR Doc. 00-18605 Filed 7-21-00; 8:45 am]

BILLING CODE 4510-26-P