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Part IV

Department of Labor

**Occupational Safety and Health
Administration**

**Voluntary Protection Program for
Construction, Draft; Notice**

DEPARTMENT OF LABOR**Occupational Safety and Health Administration****Voluntary Protection Program for Construction, Draft; Notice**

AGENCY: Occupational Safety and Health Administration (OSHA), U.S. Department of Labor.

ACTION: Notice of proposed new program within the Voluntary Protection Programs (VPP); request for comments.

SUMMARY: OSHA requests stakeholder and public comments on a proposed new Voluntary Protection Program for Construction (VPPC), published in draft below. The program is intended to create greater opportunity for employers and employees in the construction industry to participate in and obtain the benefits of OSHA's VPP, the agency's premiere recognition program. To qualify for VPP, employers must provide exemplary worker protection by establishing effective Safety and Health Management Systems (SHMS).

DATES: Comments must be submitted by the following dates:

Hard Copy: Your comments must be postmarked by November 1, 2004.

Facsimile and Electronic

Transmission: Your comments must be sent by November 1, 2004.

ADDRESSES:

Regular mail, express delivery, hand-delivery, and messenger service: You must submit three copies of your comments and attachments to the OSHA Docket Office, Docket No. C-06, Room N-2625, Occupational Safety and Health Administration, U.S. Department of Labor, 200 Constitution Ave., NW., Washington, DC 20210. Please contact the OSHA Docket Office at (202) 693-2350 for information about security procedures concerning the delivery of materials by express delivery, hand delivery, and messenger service. OSHA Docket Office and Department of Labor hours of operation are 8:15 a.m. to 4:45 p.m., EST.

Facsimile: If your comments, including any attachments, are 10 pages or fewer, you may fax them to the OSHA Docket Office at (202) 693-1648. You must include the docket number of this document, Docket No. C-06, in your comments.

Electronic: You may submit comments, but not attachments, through OSHA's Web site at the following address: <http://ecomments.osha.gov>. Information such as studies and journal articles must be submitted in triplicate hard copy to the OSHA Docket Office at

the address above. The additional materials must clearly identify your electronic comments by name, date, subject, and docket number so we can attach them to your comments.

Access to Comments and Submissions: OSHA will make all comments and submissions available for inspection and copying at the OSHA Docket Office at the above address. Comments, and submissions relating to this document that are not protected by copyright, will also be available on OSHA's Web site. OSHA cautions you about submitting personal information such as Social Security numbers and birth dates. Contact the OSHA Docket Office at (202) 693-2350 for information about materials not available through the OSHA Web site and for assistance in using the Web site to locate docket submissions.

FOR FURTHER INFORMATION CONTACT:

Cathy Oliver, Director, Office of Partnerships and Recognition, Occupational Safety and Health Administration, Room N3700, 200 Constitution Ave. NW., Washington, DC 20210, telephone (202) 693-2213.

Electronic copies of this **Federal Register** notice, as well as news releases and other relevant documents, are available at OSHA's Web site, <http://www.osha.gov>.

I. Introduction*A. Background*

The Voluntary Protection Programs (VPP), adopted by OSHA in **Federal Register** Notice 47 FR 29025, July 2, 1982, and revised in several subsequent Notices, 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 Safety and Health Management Systems (SHMS) with active employee involvement to prevent or control 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.

The well documented success of VPP, the applicability of VPP principles to diverse industries and work situations, and the presence within its ranks of world-class models of safety and health excellence have produced a continuing stream of applications from small and large businesses. OSHA, in an effort to further reduce workplace injuries and illnesses, is committed to even greater

growth of its premiere recognition program.

The construction industry, traditionally one of the nation's most hazardous, has never been able to take full advantage of the benefits of VPP participation. There are multiple reasons for the construction industry's under-representation. These include:

- VPP eligibility requirements traditionally apply to fixed worksites "controlled" by the applicant. This alone rules out many trades-oriented employers acting as subcontractors. (e.g., plumbers, heating and ventilation workers, sheetrock installers, etc.) Many of these employers, nevertheless, have exceptional SHMS that proactively identify and protect their workers from hazards, regardless of where they are working.

- The short-term scope of some construction projects and the mobile nature of the construction workforce have limited participation in VPP by the construction industry.

- A construction site, with its often hazardous and frequently changing working conditions, presents unique challenges to the development and implementation of an effective SHMS.

- Construction companies have expressed concern over the burdensome paperwork process and resources necessary for application and implementation of VPP Merit or Star.

For many years, the construction community and the Advisory Committee on Construction Safety and Health (ACCSH) have urged OSHA to create a means for greater construction industry participation in VPP. Moreover, industry statistics point to the need for increased, vigorous efforts to reduce industry hazards and the resulting fatalities, injuries and illnesses within the construction industry. For example, according to the Bureau of Labor Statistics (BLS), in calendar year 2002, construction companies accounted for an estimated six percent of total private sector employment, but almost nine percent of total work-related recordable injuries and illnesses. There were 1,121 work-related fatalities involving construction work, more than 20 percent of the private sector's 5,524 fatalities reported during that year.

OSHA agrees with ACCSH and industry representatives that making VPP a feasible goal for small, medium, and large construction employers would encourage a greater number of them to implement effective SHMS. In OSHA's experience, such systems are the best way to reduce work-related injuries, illnesses, and fatalities.

OSHA therefore implemented two Star Demonstration programs to

evaluate alternative VPP criteria that, if successful, could lead to greater construction participation. The Star Demonstration for Short-Term Construction Projects, approved April 10, 1998, involved construction employers and subcontractors working at selected short-term worksites (12–18 months duration). The program tested alternative VPP eligibility requirements and procedures, and enabled OSHA to gain experience as to how such companies ensure safe and healthful work environments at multiple, short-term construction sites. The Mobile Workforce Star Demonstration Program, approved November 13, 1998, gave companies whose employees travel from one site to another (and therefore typically do not “control” the worksite) the opportunity to demonstrate their ability to provide high level safety and health protection for their mobile workforce. OSHA required participants in both programs to maintain all four of the SHMS elements of the traditional VPP—management leadership and employee involvement, worksite analysis, hazard prevention and control, and safety and health training—at a level of excellence equal to VPP’s Star Program.

A successful VPP Star Demonstration Program, initiated in 1993, resulted in VPP’s expanded eligibility to resident contractors at existing VPP sites. The majority of construction contractors, however, continue to operate outside VPP eligibility parameters. There presently are only 42 construction projects participating in the federally-operated VPP out of a total of 798 participants.¹

To determine the effectiveness of these programs and the viability and feasibility of expanding VPP to more construction employers, OSHA undertook an analysis of the Star Demonstrations. In addition, over a 3-day period in December 2003, OSHA met with construction employers and trade association representatives in Washington, DC. OSHA also met in March 2004 with representatives of the Building and Construction Trades Department, AFL–CIO. The analysis; the stakeholder meetings; and ongoing discussions with ACCSH, other construction industry representatives, employee representatives, and OSHA VPP personnel indicated across the board support for a separate VPP for Construction (VPPC).

OSHA now proposes to establish VPPC. The details of this proposal reflect significant input from numerous stakeholders and OSHA’s own experiences with the Demonstration Programs. OSHA is grateful for the opportunity to work so closely with the construction industry to craft a program that will maintain VPP’s high performance standards and, at the same time, respond to the industry’s unique needs.

Once VPPC is finalized, OSHA expects to move current construction participants, including current Short-Term and Mobile Workforce Star Demonstration Participants and resident contractors, from the current VPP into the new VPPC. In rare instances where implementation of the VPPC requirements is still not feasible, and it is necessary to test alternative methods to these requirements, new Star Demonstration programs may be proposed. Section XI of this document contains procedures for applying as a Star Demonstration Program.

It has been OSHA’s practice to request public comment and to give serious consideration to all feedback before implementing significant changes to the VPP. This practice continues with the agency’s request for comments on its proposed VPPC.

B. Statutory Framework

The Occupational Safety and Health Act of 1970, 29 U.S.C. 651 *et seq.*, 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 that establish the legislative framework for the VPP:

“* * * (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.”

In addition, Section 21(c) provides that the Secretary, in consultation with the Secretary of Health and Human Services, shall:

“* * * (1) provide for the establishment and supervision of programs for the education and training of employers and employees in the recognition, avoidance, and prevention of unsafe or unhealthful working conditions in employments covered by this Act;” and

“* * * (2) consult with and advise employers and employees, and organizations representing employers and employees as to effective means of preventing occupational injuries and illnesses.

II. Discussion of Proposed VPPC

A. Overview

OSHA seeks to continue working cooperatively with construction employers of all types and sizes to assist them in developing and implementing effective SHMS that serve to actively prevent, eliminate, and/or control workplace hazards to achieve the ultimate goal of preventing work related injuries, illnesses, and fatalities. In order to provide opportunities for all construction employers to experience the benefits of VPP participation, OSHA is redesigning the VPP requirements to better meet the needs of the construction industry. While there will be minor changes in the SHMS elements (Management Leadership and Employee Involvement, Worksite Analysis, Hazard Prevention and Control, and Safety and Health Training), the major changes fall primarily within the areas of VPP eligibility, the application process, onsite evaluation and reevaluation, and the approval process.

The broadened opportunity for participation in VPPC should serve as an incentive for increased involvement by both small construction employers and general contractors who perform a wide spectrum of work on many projects/sites. Sections C-I below contrast current VPP eligibility with proposed VPPC eligibility.

B. Definitions

1. *Baseline Hazard Analysis.* The identification and documentation of common hazards associated with a project/site, such as those found in OSHA regulations, building codes, and other recognized industry standards and for which existing controls are well known.

2. *Business Unit.* (Sometimes referred to as a company or subsidiary of a corporation or division.) An entity that is engaged in construction-related work

¹ These numbers are accurate as of August 2004 and include participants in VPP Star and Merit, each of the Star Demonstration Programs, and resident contractors.

(typically contract work) within a designated Federal OSHA jurisdiction, and that has oversight authority for the SHMS and ultimate responsibility for assuring safe and healthful working conditions at or within projects/sites. One example of a business unit is the part of a company that bids and performs contract work and/or provides construction services for another company's plant or project.

3. *C/D/BU (Corporate, Division, or Business Unit)*—A term used to identify VPPC applicants/participants at a corporation, division, or business unit level versus a site-based level.

4. *Company*. A business entity, sometimes used interchangeably with corporation, business unit, division, general contractor, or subcontractor when referencing various aspects of VPPC.

5. *Controlling Employer*. For the purpose of VPPC a controlling employer is defined as any entity at a construction project/site (such as a general contractor or construction manager) that controls project/site operations and has ultimate responsibility for assuring safe and healthful work conditions at the project/site.

6. *Corporate Applicant/Participant*. An entity whose entire operations within a designated Federal OSHA jurisdiction are covered by the VPPC application. The entity must be engaged primarily in construction and normally must have corporate oversight authority for the SHMS, including ultimate responsibility for assuring safe and healthful working conditions at or within all projects/sites. Additional operations include the headquarters and other office buildings, maintenance facilities, warehouses, etc.

7. *Division Applicant/Participant*. (Sometimes referred to as an entity or subsidiary of a corporation.) A VPPC applicant or participant that is engaged primarily in construction, that performs contract work within a designated Federal OSHA jurisdiction, and that has corporate oversight authority for the SHMS and ultimate responsibility for assuring safe and healthful working conditions at or within projects/sites, including the activities of any divisions or business units under its control. Examples of divisions are power, refinery/chemical, heavy and highway, telecommunications, etc.

8. *Expansion Region*. Any OSHA region, other than the Primary Region, for which an applicant submits a VPPC application. A request for expansion must be coordinated through the Primary Region and Directorate of Cooperative and State Programs (DCSP)

and will be contingent upon obtaining VPPC approval in the Primary Region.

9. *General Contractor*. A company that controls operations at an entire project (or controls work within a project/site) and that normally has ultimate responsibility for assuring safe and healthful working conditions at the project/site.

10. *Geographical Area*. A boundary specified by a C/D/BU VPPC applicant where active worksites will be included in the application approval process. This would normally be an OSHA Area Office or a State within Federal OSHA jurisdiction. C/D/BU VPPC applicants may also specify region-wide participation with prior approval by the appropriate OSHA Regional Administrator.

11. *Primary Region*. The OSHA region where a company initially applies for VPPC participation under C/D/BU. Once OSHA approves a company in a Primary Region, that region becomes the main contact and coordinator if the company wishes to expand its participation to other OSHA regions.

12. *Site Implementation Plan (SIP)*. A brief (usually 1–5 pages) document that describes how safety and health policies and procedures are implemented and adhered to at each individual construction site or project.

13. *Special Government Employee (SGE)*. SGEs are qualified employees of a VPP or VPPC participant that are trained and approved by OSHA to function as members of OSHA's onsite evaluation teams for another applicant/participant's project/site.

14. *Subcontractor*. An entity that performs work for a general contractor, prime contractor, or project manager of a construction project/site. The subcontractor controls its own work operations but does not have overall control of the project/site. Subcontractors are directly responsible for assuring safe and healthful working conditions for their employees and other employees that they control at all locations within a project/site for which they are contractually responsible.

15. *Safety and Health Management System (SHMS)*. A method of preventing worker fatalities, injuries, and illnesses through the ongoing planning, implementation, integration and control of four interdependent elements: Management Leadership and Employee Involvement; Worksite Analysis; Hazard Prevention and Control; and Safety and Health Training. (For details, see Appendix A.)

16. *Temporary Employee*. Any employee who is temporarily obtained from an employment service or borrowed from another employer and

whose work activities the applicant/participant directs and controls.

C. Eligibility

1. *Current Eligibility*. VPP currently accepts construction applications from the general contractor, owner, or an organization that provides overall management at a site, controls site operations, and has ultimate responsibility for assuring safe and healthful working conditions at the site. OSHA accepts VPP applications only for individual construction projects/sites that will have been in operation for at least 12 months prior to approval and have no fewer than 12 months remaining onsite.

OSHA also accepts applications from resident contractors at participating VPP projects/sites for the contractor's operations at those VPP projects/sites. For employers not fitting these categories, the only other current means for VPP participation are through the Mobile Workforce and Short-Term Construction Star Demonstration Programs.

2. *Proposed Eligibility*. All construction employers (where OSHA has jurisdiction) will be eligible to submit an application for participation in VPPC, including subcontractors, general contractors with short-term projects, construction managers, and employers with mobile workforces.

D. Safety and Health Management Systems

The VPP requires that applicants implement all elements and sub-elements of an SHMS. The four elements are: Management Leadership and Employee Involvement, Worksite Analysis, Hazard Prevention and Control, and Safety and Health Training. OSHA realizes that, due to the frequency of changing conditions at construction sites and the short-term nature of the work, the requirements for baseline hazard analysis and annual emergency evacuation drills need modification if they are to be feasible and appropriate for the construction industry. OSHA learned this through experience with the Mobile Workforce and Short-Term Construction Star Demonstration programs; these issues were part of the demonstrations' alternative means to meet Star requirements.

1. *Current SHMS Elements*. Currently, under the worksite analysis element, OSHA requires that a baseline hazard analysis be conducted to identify common health and safety hazards and the means for their prevention or control. A new baseline is not required

unless processes, equipment or procedures change.

In addition, under the hazard prevention and control element, OSHA requires that emergency procedures include an annual evacuation drill.

2. Proposed SHMS Elements.

a. *Baseline Hazard Analysis:* OSHA proposes to allow VPPC applicants to utilize appropriate and relevant preexisting company data collected on similar tasks at previous jobsites as a sample data baseline. If exposure profiles and work tasks remain similar, OSHA will require no further sampling. If the work processes change, OSHA will require additional sampling.

b. *Annual Emergency Evacuation Drills:* OSHA proposes to accept alternative processes or systems to ensure employees are knowledgeable of emergency evacuation procedures. This includes the applicant's development of a more in-depth written plan that describes the policies and procedures it uses and the training it requires to ensure that employees know what to do in case of an emergency. Additionally, each employee should participate in at least one emergency evacuation drill each year. Further, OSHA proposes that during the onsite evaluations, the team assess the effectiveness of the plan through its evaluation of the worksite, including employee interviews.

E. Application Process

1. Current Application Process

OSHA currently accepts applications from controlling employers who operate construction sites that will have been in operation for at least 12 months prior to approval, with no fewer than 12 months remaining onsite.

OSHA also currently accepts applications for the Short-Term Construction Star Demonstration from general contractors or construction managers with projects/sites lasting 12–18 months. This application is submitted to OSHA's National Office. After approval, the applicant submits a streamlined, less burdensome Site Implementation Plan (SIP) for each project/site.

Finally, OSHA currently accepts applications for the Mobile Workforce Star Demonstration Program; these can be submitted to either the Regional or National Office.

2. Proposed Application Process

a. *Site-Based Application Process.* In VPPC, construction employers will submit site applications for long-term (two or more years) projects for approval in the Star and Merit Programs. Examples of these projects are airports,

powerhouses, stadiums, large office buildings, *etc.* Program requirements will be similar to those presently established in section III. F., G., and H. of 65 FR 45649, July 24, 2000, as amended by 68 FR 68475, December 8, 2003. The applicant will be expected to submit the required information to OSHA, including injury and illness data, and provide the required annual self-evaluation reports. The new VPPC extracts and incorporates the site-based application requirements from 65 FR 45649 with minor editorial modifications.

b. *C/D/BU Application Process.* New proposed requirements for VPPC will enable C/D/BUs with projects/sites in a defined geographic area to submit applications to OSHA. Normally a defined geographic area may not exceed one state, unless the applicant successfully negotiates a larger area with the Regional Administrator. The maximum geographic area a Regional Administrator may approve is region-wide. The application will cover work that the applicant is "contractually responsible for" or the specific scope of work the applicant is being paid to perform, rather than only work sites that the applicant actually "controls." This will place the responsibility for individual worker safety and health on the construction employer that employs the workers, whether or not the employees work on a site that is "controlled" by the employer. This is consistent with the statement of employer duties, Section 5.(a) of the Occupational Safety and Health Act of 1970, and allows a broad range of contractors performing a variety of different types of work to be eligible to apply for VPPC (for example, subcontractors, general contractors with short-term projects, mobile workforce employers, and construction managers). C/D/BU applications will be submitted to the Primary Regional Office. OSHA will only consider Expansion Regions after OSHA approves an application in the Primary Region.

F. Onsite Evaluation Process

1. *Current Evaluation Process.* In VPP, OSHA currently conducts onsite evaluations of individual construction sites after acceptance of a completed application. An OSHA evaluation team will conduct a multi-day onsite evaluation of the SHMS including an opening conference; walkthrough of the site; formal and informal interviews with management and employees; document review; and closing conference. The onsite evaluation covers all employees at the worksite

including contract, subcontract, and temporary employees.

For current Mobile Workforce and Short-Term Construction Star Demonstration Program participants, OSHA conducts onsite evaluations at the corporate headquarters. For Mobile Workforce, at least two onsite evaluations are conducted. For Short-Term Construction, onsite evaluations are conducted at each project/site.

2. Proposed Evaluation Process.

a. *Site-Based Evaluation Process.* For site-based applicants, the onsite evaluation process will remain the same as the current process.

b. *C/D/BU Evaluation Process.* For C/D/BU applicants, a two-step evaluation process is proposed. OSHA will first conduct an onsite evaluation at the C/D/BU headquarters offices to evaluate the C/D/BU-level safety and health policies, requirements, and management systems in place, to ensure they meet VPPC requirements. In those situations where a construction employer is additionally seeking approval in Expansion Regions, OSHA will conduct only one corporate onsite evaluation unless there are significant differences in the applicant's policies and requirements in the Expansion Regions.

In the second step, OSHA will conduct onsite evaluations at a sampling of projects/sites in each geographic area for which the applicant seeks approval. Projects/sites will be selected, at OSHA's discretion, from a list provided by the applicant. The purpose of these onsite evaluations will be to verify that the C/D/BU-level policies and requirements are being implemented appropriately at the project/site level. OSHA will conduct onsite evaluations in both the Primary and Expansion Region(s) as follows:

- When an applicant has 2–25 projects/sites in the defined geographic area, OSHA will perform 2 onsite evaluations.²
- When an applicant has 26–99 projects/sites in the defined geographic area, OSHA will perform 3 onsite evaluations.
- When an applicant has 100+ projects/sites in the defined geographic area, OSHA will perform 4 onsite evaluations.

The onsite evaluations will address all four SHMS elements. In addition, each individual project/site must have a Site Implementation Plan (SIP) that OSHA will review during the onsite

² Applicants who do not have at least two sites within a defined geographic area should not apply under C/D/BU for that geographic area. A possible exception is the approved Primary Region participant who wishes to expand into one or more regions.

evaluation and upon request thereafter. For additional details regarding SIPs, see section III.H.7.

G. Approval and Recognition Process

1. *Current Approval and Recognition Process.* Applicants with long-term construction projects/sites are currently recommended for approval by the Regional Administrator having jurisdiction over the site. The Assistant Secretary for OSHA approves all new applicants. The Regional Administrator reapproves existing participants after reevaluation. Once approved, the site is removed from OSHA's programmed inspection list. VPP recognizes individual construction site applicants in either the Star or Merit Programs.

For current Mobile Workforce and Short-Term Construction Star Demonstration Program participants, OSHA awards recognition to the corporate headquarters under Mobile Workforce and awards recognition to individual sites under Short-Term. The current Mobile Workforce and Short-Term Construction Star Demonstration Programs only provide recognition in the Star Program. There is no provision for Merit.

2. Proposed Approval and Recognition Process.

a. *Site-Based Approval and Recognition.* For site-based applicants, the VPPC approval and recognition process will remain the same as the current process.

b. *C/D/BU Approval and Recognition.* For C/D/BU applicants, the Regional Administrator will recommend VPPC approval and recognition at the level requested by the company in its application (for example, corporate, division, or business-unit level). The Assistant Secretary for OSHA will make the decision to approve. The Regional Administrator will approve reevaluations. For subcontractors, all work performed within the defined geographical area will qualify for an exemption from programmed inspections. For general contractors or other controlling employers, all work performed on sites within the approved geographic area will qualify for exemption from programmed inspections. OSHA will primarily base these exemptions on the site lists that participants will provide and routinely update. Sites that qualify for exemption, but for some reason do not appear on the lists (*i.e.*, the project/site is too new to have appeared on previous lists), may still receive the exemption provided that VPPC participation is verified with the inspecting official upon her/his arrival.

OSHA is proposing to have both the Star and Merit Programs available to all types of construction employers. The level of recognition achieved will depend on the degree to which the applicant meets Star or Merit requirements. Additional details regarding approval and recognition are available in section IV.

H. Reevaluation Process

1. *Current Reevaluation Process.* For Star participants, OSHA currently reevaluates the site three years after initial approval and every three to five years thereafter. For Merit participants, OSHA currently reevaluates the site 12–18 months after initial approval, and again at the end of the Merit term. OSHA reevaluates Short-Term Construction Star Demonstration Program participants every 12–18 months. For Mobile Workforce Star Demonstration program participants, the agency evaluates at least two additional worksites each year for the duration of the Demonstration.

2. *Proposed Reevaluation Process.* For VPPC Star participants, OSHA will reevaluate at 2-year intervals. For VPPC Merit participants, OSHA will reevaluate every 12–18 months.

The reevaluations will verify that the participant still is effectively meeting its responsibilities under the VPPC. For C/D/BU participants, these reevaluations will follow the chart found in section II.F.2.b. The number of reevaluations performed will be based on the number of sites within the jurisdiction at the time of the reevaluation, not the number of evaluations performed during initial approval.

OSHA may reevaluate sooner than this time frame if significant changes take place (*e.g.*, in ownership, senior level organizational structure, scope of work, injury and illness rates, or collective bargaining agreement representation) or if the company or project(s)/site(s) have experienced any other significant performance-related issues.

I. Additional Requirements

1. *Corporate Oversight for C/D/BU Applicants.* C/D/BU applicants must provide corporate oversight for all covered projects/sites. Corporate oversight must include provisions for each project/site ensuring that VPPC requirements are met, including an assurance that the C/D/BU-level SHMS and policies that are implemented across all projects/sites. A description of this process is required for all C/D/BU applications and will be verified by OSHA during the corporate onsite evaluation.

2. *Site Implementation Plans for C/D/BU Applicants.* A C/D/BU applicant must develop and maintain concise (normally 1–5 pages) SIPs for each listed project/site. (C/D/BU subcontractor applicants may, with the consent of the appropriate Regional Administrator, create one or more Master SIPs that will cover standard project/site procedures. Projects/sites that deviate from these procedures must have separate SIPs.) OSHA will review these SIPs during onsite evaluations and upon request thereafter.

3. *Quarterly Reports for C/D/BU Participants.* In addition to the annual self-evaluations, C/D/BU participants are required to prepare and submit quarterly reports to the appropriate OSHA Regional Office(s). Quarterly reports provide a description of any significant changes (*e.g.*, in ownership, senior level organizational structure, scope of work, injury and illness rates, or collective bargaining agreement representation) and an update of the participant's projects/sites list. (Subcontractors whose sites are in constant flux need only update their site lists for the annual reports and in preparation for scheduled onsite evaluations.) Annual self-evaluations will serve as fourth quarter reports.

4. *Injury and Illness Recordkeeping.* The requirements for site-based applicants/participants will remain the same as the current VPP: The total recordable case incidence rate (TCIR) and the days away/restricted activity/job transfer case rate (DART rate) will be calculated for the entire site. These rates must include the site injury and illness experience of all contractors, subcontractors, and temporary employees. The site must have at least one year of rates prior to approval. (See Appendix B for details.)

OSHA will require C/D/BU applicants to submit three-year corporate rates with their application. In addition, C/D/BU applicants who employ contractors, subcontractors and/or temporary employees must include these rates going back at least one year. By the end of one year of VPPC participation, the C/D/BU must maintain records that reflect two years of contractor, subcontractor and temporary employee rates. Thereafter, three years of rates must be maintained. (See Appendix B for details.)

III. VPPC Requirements

A. Eligibility

OSHA will accept VPPC applications from:

1. Construction companies engaged in long-term construction projects for

specific construction sites (site-based), and from

2. Construction companies at the corporate, division, or business unit levels in a defined geographical area (C/D/BU-based).

Both types of applicants must meet all requirements and agree to applicable assurances as set forth in section III.H of this document.

B. Cooperative Relationship

VPPC emphasizes the importance of cooperation among labor, management, and government to implement comprehensive worksite SHMS. This innovative public/private partnership helps carry out OSHA's mission "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), Occupational Safety and Health Act of 1970, 84 STAT.1590) Labor, management, and government actively collaborate in efforts to resolve safety and health problems and reach the VPPC standards of excellence. Participating construction employers at the corporate, division, business unit, and site levels, and the employees who work cooperatively with management to ensure worksite safety and health excellence, receive official recognition from OSHA.

VPPC participants' cooperation with OSHA, and their promotion of effective SHMS, may also take such forms as presentations before meetings of labor, industry, and government groups; input in OSHA rulemaking; and participation in activities including OSHA Special Government Employees (SGEs), mentoring, outreach, and training. OSHA designates a contact person, usually the Regional VPP Manager, who coordinates each approved participant's contact with the agency.

C. Injury and Illness Performance Requirements

All applicants must meet the minimum injury and illness performance criteria as set forth in Appendix B of this document.

D. Safety and Health Management System Requirements

All applicants/participants must have implemented an effective SHMS that addresses all four elements and meets minimum requirements. The quality and degree to which an applicant has implemented the elements and sub-elements will determine whether OSHA approves the applicant for Star or Merit. The requirements for an effective SHMS are documented in Appendix A. Minimum requirements for Merit

approval will be detailed in the VPPC Policies and Procedures Manual.

E. Corporate Oversight

C/D/BU applicants/participants must have established and implemented an ongoing corporate oversight system that assures each project/site maintains VPPC-level safety and health performance. This requires an effective oversight system that must include the following processes:

1. Effective communication between Corporate-level management and each project/site;
 2. A means for assuring that both Corporate-level management and project/site management and employees remain committed to VPPC performance and participation;
 3. An internal Corporate-level system to ensure each project/site meets VPPC requirements;
 4. A process to review and analyze project/site information regarding the identification, correction, and tracking of workplace hazards;
 5. A system to hold projects/sites and/or program managers accountable for SHMS deficiencies;
 6. A process to review and analyze injury and illness data (including near-misses) on at least a quarterly basis;
 7. Policies and procedures to protect employees from hazards at a project/site that are outside of the employer's control; and
 8. A process to review SIPs to assure they adequately address applicable hazards and implement the necessary site-specific actions and procedures to protect workers.
9. A process to verify that supervisors and employees receive appropriate worker safety and health training.

F. Compliance With OSHA Standards

Each VPPC applicant must comply with all OSHA requirements. Any deficiencies related to compliance uncovered through an OSHA onsite evaluation, an internal inspection, an employee report, or any other means must be corrected promptly. Correction time frames and consequences for non-correction are detailed in III.J.

G. OSHA History

All applicants must inform OSHA of their OSHA inspection history.

Site-Based Applicants. If the project/site was inspected by OSHA within the 36-month period preceding the application, the inspection, abatement, and/or any other history of interaction with OSHA must indicate good faith attempts to improve safety and health. A project/site's inspection history must include no open investigations, no

pending or open contested citations or notices under appeal at the time of application, no affirmed willful violations, and not have been subject to an Enhanced Enforcement Program activity during the prior 36 months.

C/D/BU applicants. All of the above tenets apply. However, the OSHA history will be examined for work performed by the applying entity within the defined geographical area.

Note: OSHA history pertaining to non-VPPC projects/sites of the same company will not adversely affect VPPC participation, unless it is determined that an entity's decision, program, or policy, which applies to all projects/sites, does not meet OSHA standards.

H. Assurances

Applications must be accompanied by assurances that the applicant will honor the agreed upon actions if the application is approved. The following assurances are required in both the Star and Merit Programs. All applicants must assure OSHA that they will:

1. Comply with the Act and will correct (and provide effective interim hazard protection as necessary), in a timely manner, all hazards discovered through self-inspections, employee notification, accident investigations, OSHA onsite evaluations, process hazard reviews, annual evaluations, or any other means.
2. Develop, maintain, communicate, enforce, and oversee policies and requirements that meet a level of safety and health performance consistent with VPPC requirements.
3. Allow OSHA to perform onsite evaluations of the applicant/participant's work activities (subcontractors must receive controlling entity approval), and correct any conditions identified by OSHA that are deemed to be a violation of an OSHA rule or are otherwise harmful to employees, as outlined in section III.J of this document.
4. Correct within an agreed upon time period any/all deficiencies identified during the OSHA onsite evaluation relating to compliance with OSHA requirements.
5. Meet annual and final self-evaluation requirements as described in Appendix A, section A.8.

In addition to the above assurances, C/D/BU applicants must additionally provide the following assurances:

6. In addition to the annual self-evaluations, participants will prepare quarterly reports, including an updated site list and a description of significant changes (e.g., in ownership, senior level organizational structure, scope of work, injury and illness rates, or collective

bargaining agreement representation) affecting VPPC participation. (Specialty trade contractors whose projects/sites are in a constant state of flux need only update their project/site lists for the annual report and in preparation for scheduled onsite evaluations.) The annual self-evaluations will serve as fourth quarter reports.

7. Develop and maintain concise (normally 1–5 pages) SIPs for each listed project/site. C/D/BU subcontractor applicants may, with the consent of the appropriate Regional Administrator, create one or more Master SIPs that will cover standard projects/sites procedures. Work that deviates from these procedures must have a separate SIP. SIPs must include, at a minimum, each of the following elements:

- a. Site name and address;
- b. Site manager/Project Manager (name, title, phone numbers, and e-mail address);
- c. Project/site VPPC Contact (name, title, phone numbers, and e-mail address);
- d. The major phases of the construction project, including projected completion time (controlling contractors only);
- e. Written documentation that indicates the owner, unions (where applicable), and subcontractors at the site/project formally agree to follow VPPC requirements (controlling contractors only);
- f. A written summary that indicates how Management Leadership, Employee Involvement, Worksite Analysis, Hazard Prevention and Control, and Training will be implemented onsite;
- g. Written description of how the applicant's SHMS will be implemented onsite.

I. Employee Support

1. *Employee Support at Non-Union Sites.* Employee support for projects/sites that do not fall under collective bargaining agreements will be determined through OSHA interviews with employees selected by OSHA. Based on these interviews, OSHA will determine whether the projects/sites or C/D/BU meet the requirements of employee involvement and support for the VPPC application.

2. Employee Support at Union Sites.

a. *For Site-Based Applicants.* Options to signify employee support for participation in VPPC include:

- The authorized representative for each collective bargaining unit provides a signed statement with the application indicating that the union supports VPPC participation; or
- The president of the local Building Trades Council provides a signed

statement of support on behalf of all local unions on the Council that represent employees at the site. (Unions not party to the Building and Construction Trades Department AFL/CIO, such as the United Brotherhood of Carpenters and Joiners of America, shall sign a statement independently of the other trade unions showing support for VPPC.)

OSHA will not approve an application package until it has assurance of support from authorized collective bargaining representatives working at the applicant's project/site; or, who have signed agreements with the subcontractor who is applying for VPPC.

b. *For C/D/BU applicants.* C/D/BU projects/sites must have one of the following three forms of signed support in order for the application to be processed.

- The authorized representatives from the local unions with which the C/D/BU applicant has collective bargaining agreements must provide a signed statement; or
- The president of the local Building Trades Council signs a statement of support on behalf of local unions on the Council with whom the C/D/BU applicant has collective bargaining agreements (Unions not party to the Building and Construction Trades Department AFL/CIO, such as the United Brotherhood of Carpenters and Joiners of America, shall sign a statement independently of the other trade unions showing support for VPPC.); or
- A signed statement from the President, Building and Construction Trades Department, AFL-CIO; and/or the general presidents of the respective international unions. (This option is only for C/D/BU applicants who are signatory to national collective bargaining agreements.)

OSHA recognizes the burden of obtaining 100% union support for all C/D/BU projects/sites. As a result, OSHA requires that an applicant submit estimated levels of support along with the signed support documents. OSHA will then make a case-by-case determination regarding whether or not the level of employee support is sufficient based on factors such as, but not limited to, number and percentage of employees under the umbrella of the dissenting union(s) and the length of time that employees from dissenting unions are performing work at the project/site.

J. OSHA Enforcement

1. *General.* The history of VPP demonstrates that safety and health

problems discovered during OSHA contact with participants normally are resolved cooperatively. OSHA nevertheless must reserve the right, where employees' safety and health are seriously endangered, to refer the situation for review and potential enforcement action. In cases where the hazard is not controlled by the participant, and the responsible party refuses to correct the situation, OSHA will refer the situation to the Regional Administrator for review and enforcement action. For VPP applicants/participants, OSHA will inform the responsible party that a referral is being made to the Assistant Secretary and that enforcement action may result.

2. Programmed Inspections.

a. Participants, unless they choose otherwise, are removed from OSHA's programmed inspection lists, including any lists of targeted sites, for the duration of approved participation in the VPPC.

b. For C/D/BU participants, when OSHA conducts a programmed inspection of a construction project/site where a VPPC participant is working but not in control of the site, OSHA will not enter the work area controlled by the participant unless a hazard is apparent during the inspection. OSHA may have foreknowledge that the VPPC participant will be onsite. However, when this is not the case, the participant may declare its VPPC status to the OSHA personnel.

3. *Unprogrammed Inspections.* OSHA enforcement personnel will respond to formal complaints, referrals, all fatalities and catastrophes, and other significant events in accordance with normal OSHA enforcement procedures.

4. *Enforcement related to a VPP Onsite Evaluation.* If, during the course of the onsite evaluation of a VPPC applicant/participant, the OSHA team identifies hazards in work areas not controlled by the VPPC applicant/participant, the following actions will be taken:

a. OSHA will inform the responsible party's management of the identified hazards.

b. The responsible party must correct the identified hazard within an agreed upon time frame, not to exceed 48 hours, with interim protection provided. (In certain circumstances, OSHA may grant additional time for hazard correction as long as interim protection is provided and/or employees are removed from the hazard.)

c. Either OSHA must observe the correction or the responsible party must provide evidence of hazard correction to OSHA.

d. If the responsible party fails to correct the hazard within the agreed upon time frame, a referral to enforcement will be made.

If the OSHA team determines that the number, frequency, or severity of the hazards is so great, or an imminent danger situation exists, the team must skip steps b-d above, forgo the VPPC onsite evaluation, and refer the situation to enforcement.

K. Public Access to Company Site Records

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

1. *In the National Office*—Information and the general description of the SHMS from the application; approval report and subsequent evaluation reports prepared by OSHA; the Regional Administrator's letter of recommendation; transmittal memoranda to Assistant Secretary; SIPs where applicable; and the Assistant Secretary's and Regional Administrator's approval letters.

2. *In the Regional Office*—Complete VPPC application and amendments; approval report and subsequent evaluation reports; the Regional Administrator's letter of recommendation; Regional Administrator transmittal memoranda to the Assistant Secretary via the Director of Cooperative and State Programs; the Assistant Secretary's approval letters; the memorandum to the appropriate Area Director(s) removing the approved participant from the general inspection list; and related correspondence.

L. Post-Approval Contact/Assistance

1. *OSHA Contact Person.* The Contact Person for each VPPC worksite is the appropriate Regional VPP Manager or his/her designee. This person is available to assist the participant, as needed.

2. Assistance.

a. In some cases, such as when needed for the Merit Program, an onsite assistance visit may be scheduled to respond to employer technical inquiries.

b. Whenever there are significant changes in ownership, senior level organizational structure, scope of work, injury and illness rates, or collective bargaining agreement representation, the VPPC applicant/participant must notify OSHA's Regional Administrator with a copy to DCSP within 30 working days of the change. The Regional Administrator will decide, in conjunction with DCSP, whether to require a new signed Statement of

Commitment and/or perform additional onsite evaluation(s).

c. Whenever an applicable rate (either TCIR or DART rate) of a Star Program participant exceeds all 3 most recent years of specific industry national averages published by BLS, at the discretion of the Regional Administrator, the VPPC 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.

M. Outreach, Mentoring and SGE Participation

The VPPC benefits from outreach, mentoring and SGE participation.

1. Outreach.

a. *VPPC-Related Outreach.* Participant assistance and information provided to prospective VPPC applicants, including but not limited to: conducting VPPC workshops at conferences, providing training in support of the VPPC, and serving as an advocate for VPPC in the business community.

b. Other forms of Outreach.

Participant assistance and information provided to either other internal or external entities to promote general safety and health principles and practices, including but not limited to: participating in OSHA Strategic Partnerships and Alliances, making presentations on safety and health issues at conferences, holding community safety days, or conducting training workshops.

2. Mentoring.

a. *Informal Mentoring.* One-on-one assistance from a VPPC participant to a prospective VPPC applicant (from their own company or someone from another company) can be useful to help them improve their SHMS and/or prepare a VPPC application.

3. *SGE Participation.* A VPPC participant may, in its sole discretion, nominate one or more qualified employees to potentially serve as SGEs.

IV. VPPC Programs

A. VPPC Star Program

The Star Program recognizes leaders in occupational safety and health that are successfully protecting workers from death, injury, and illness by implementing comprehensive and effective SHMS and complying with OSHA regulations. Star participants willingly share their experience and expertise, and they encourage others to work toward comparable success. Star is the highest level of recognition for excellence in worker safety and health awarded by OSHA.

1. *Experience.* All elements of an SHMS needed for program success, detailed in Appendix A, must be operating for a period of 12 months, at either the site (for site-based participants) or corporate-wide/division-wide/business unit-wide (depending on the applicant) for C/D/BU applicants, prior to Star approval. In addition, C/D/BU applicants must also implement ongoing corporate oversight systems as described in III.E.

2. *Injury and Illness Performance.* To qualify for Star, an applicant's TCIR and DART rates, at the time of application, must meet the Star requirements set forth in Appendix B of this document.

3. *Safety and Health Management System.* To qualify for Star, OSHA must determine that all elements of an applicant's SHMS to be fully operative and effective in proactively preventing worker injuries and illnesses. See Appendix A for SHMS details.

4. *Terms of Participation.* The term for participation in an approved VPPC Star Program is open-ended, as long as:

- The participant continues to maintain its excellent SHMS as evidenced by favorable OSHA reevaluations every 24 months;
- The participant continues to meet all assurances as set forth in section III.H; and
- Construction activities are ongoing.

B. VPPC Merit Program

The VPPC Merit Program is aimed at entities or projects/sites that do not yet meet the qualifications for the Star Program, but have implemented a basic SHMS and want to work toward Star excellence and recognition. The eligible applicant may not have met each specific Star requirement within each element. Participation in the Merit Program is an opportunity for employers and their employees to work with OSHA to improve the quality of their SHMS and, if necessary, reduce their injury and illness rates to meet the requirements for Star. If OSHA determines that a construction employer has demonstrated the commitment and possesses the resources to achieve Star requirements within 3 years (and injury/illness rates within 2 years), Merit participation is used to set goals that, when achieved, qualify the project/site or entity for Star participation.

1. *Experience.* Each applicant must have in place before approval an active program for protecting workers that provides for conducting safety and health inspections by trained and competent employees. In addition, C/D/BU applicants must also implement ongoing corporate oversight systems as described in III.E.

2. *Injury and Illness Performance.* To qualify for the Merit Program, the applicant's TCIR and DART rates must meet the Merit requirements as set forth in Appendix B.

3. *Safety and Health Management System.* To qualify for Merit, the basic elements and sub-elements of an SHMS, set forth in Appendix A, must be operational or, at a minimum, must be in place and ready for implementation by the date of approval. If, in OSHA's judgment, the SHMS is not operating as effectively as it should, and/or deficiencies in SHMS elements and sub-elements exist, a plan and timeline to correct these problems must be in place.

4. *Terms of Participation.* OSHA will approve applicants to the Merit Program for a time period agreed upon in advance of approval, but not to exceed three years. This term will depend upon how long it is expected to take the applicant to accomplish the goals for Star participation. Merit participation is canceled at the end of the term unless approval for a second term is recommended by the Regional Administrator and is approved by the Assistant Secretary. The Regional Administrator will recommend a second term only when unanticipated unique circumstances slow the participant's progress toward accomplishing the Merit goals.

V. Application Process

Applicants must obtain and completely fill out an application. Applications are available from the Office of Partnerships and Recognition in the National Office, the VPP Manager in the appropriate Regional Office, or they can be downloaded from OSHA's Web site, <http://www.osha.gov>.

A. Application Instructions

OSHA prepares, keeps current, and makes available application instructions for VPPC. All interested parties may obtain this information from the Office of Partnerships and Recognition in the National Office, the VPP Manager in the appropriate Regional Office, or it can be downloaded from OSHA's Web site.

B. Content

1. Applicants must provide all information described in the most current version of the application instructions for VPPC.

2. If the application information is incomplete or otherwise insufficient to determine an applicant's eligibility, OSHA may request an applicant to submit an application amendment with the needed supplementary information.

3. Materials documenting the applicant's SHMS that contain trade

secrets or employee privacy interests must not be included in the application. Instead, the applicant must describe such materials in the application and provide them for review during an application assistance visit and/or during the onsite evaluation.

4. All applications must, at a minimum, include the following information:

a. The applicant's official name, address, and phone number(s).

b. The name, title, address, phone/fax number(s), and e-mail address(es) of the applicant's primary VPPC contact person.

c. The applicant's safety and health policies, requirements, and management systems, and a discussion of how they meet the specific VPPC requirements described in Appendix A.

d. The applicant's recordkeeping data, including TCIR and DART rates (see Appendix B for details); and

e. A description of how the applicant communicates and enforces its safety and health policies, requirements, and management systems.

In addition to these contents, C/D/BU applicants must include the following additional information:

f. A description of the corporate oversight system(s) that the applicant uses to ensure that the SHMS is implemented effectively at all projects/sites.

g. An identification of the geographic boundaries for which the applicant is seeking VPPC status; and

h. An estimate of the number of projects/sites that will be covered in the defined geographic area.

C. Submission to OSHA

Applicants must submit their application packages to the appropriate OSHA Regional Office. Additional copies of the application package will be requested and forwarded to the National Office and/or C/D/BU Expansion Regions as appropriate. OSHA normally requires at least two copies, but the number requested may vary depending upon circumstances particular to the program and/or the applicant. The applicant should determine the actual number of copies to submit during pre-application discussions with OSHA VPPC personnel.

D. Initial OSHA Review

OSHA conducts an initial review of each VPPC application to determine whether it meets all VPPC requirements, including: injury and illness rates, a written SHMS, and any additional supporting documentation.

1. *Acceptance of Application.* a. If an application package appears to meet all

VPPC requirements, it moves on to the next phase of the approval process, which is an onsite evaluation.

b. If the initial application package is incomplete, or provides insufficient evidence of VPPC qualifications, OSHA will give the applicant an opportunity to improve its application by submitting amended or additional materials. A site-based applicant will have 30 days to respond to this request. A C/D/BU applicant will have 90 days.

2. *Denial of Application.* a. If the application is incomplete or insufficient, and if after notification the applicant has not responded within either 30 or 90 days (whichever applies) to an OSHA request for more information, the agency considers the application unacceptable and notifies the applicant of that determination. The applicant may resubmit the application when it has rectified the deficiencies.

b. If, upon reviewing the application package, OSHA determines that an application does not meet VPPC requirements, OSHA will notify the applicant of that determination. The applicant may submit a new application after one year.

3. *Withdrawal of Application.* a. An applicant may withdraw a submitted application at any time. When the applicant notifies OSHA of its desire to withdraw, the original application(s) may be returned to the applicant.

b. OSHA may keep the assigned VPP Manager's marked working copy of the application for up to one year before discarding it, in order to respond knowledgeably should the applicant raise questions concerning the handling of the application. Once an applicant withdraws its application, it must submit a new application to be considered for VPPC approval.

VI. Evaluation Process

A. Evaluation Process for a Site-Based Applicant

1. *Purpose.* After completing the initial review of an application, OSHA, in its non-enforcement capacity, will perform an onsite evaluation. The purpose of the onsite evaluation is to verify that the application information is complete and accurate, and to determine whether or not the applicant meets all VPPC requirements.

2. *Preparation.* The onsite evaluation is arranged at the mutual convenience of OSHA and the applicant. The evaluation team consists of a team leader, a back-up team leader (whenever possible); and health, safety, and other specialists as required by the size of the sites, the complexity of the construction work, and inherent hazards.

3. *Duration and Scope.* a. *Duration.* The time required for the onsite evaluation depends on the size of the worksite, the extent of the safety and health policies and requirements, the complexity of the site construction work, and the inherent hazards.

b. *Scope.* All onsite evaluations follow a three-pronged strategy that assesses an applicant's SHMS by means of document review, site walkthrough, and employee interviews. The onsite evaluation includes a review of elements found in Appendix C of this document.

B. Evaluation Process at a C/D/BU Headquarters

The purpose, preparation, duration, and scope of a C/D/BU headquarters evaluation reflect the information found in section VI.A (above) unless otherwise noted.

1. *Scope.* While a C/D/BU headquarters evaluation will follow the three-pronged approach as described in section VI.A.3.b and Appendix C, the amount of emphasis placed on the site walkthrough will depend on the scope of work at the site. The scope of the walkthrough will be at the discretion of the evaluation team leader.

C. Evaluation Process at a C/D/BU Project/Site

The purpose, preparation, duration, and scope of a C/D/BU projects/sites evaluation reflect the information found in section VI.A (above) unless otherwise noted.

1. *Preparation.* OSHA will announce the worksite evaluations in advance of arrival to assure the presence of representatives of the employer and employees or the appropriate personnel needed to aid in the evaluation. (Staff from Expansion Regions may also participate, as appropriate.) The length of advanced notice is at the discretion of the Regional Administrator but should not exceed the amount of time it takes to coordinate a successful onsite evaluation. The applicant must obtain permission from the owner, general contractor, or other controlling employer of the worksite for OSHA to come onsite to conduct the VPPC onsite evaluation. (In instances where the applicant is the general contractor or controlling employer, this will not be an issue.) Additionally, the contractor must agree to immediately correct, or include in an abatement plan, any violations identified by OSHA while evaluating the participant. Failure to comply with these assurances will result in a referral to enforcement. Detailed steps regarding how OSHA will handle non-VPPC

applicant/participant violations are found in section III.J.4.

OSHA must be able to obtain access permission, along with the controlling employer assurances stated above, to a representative sample of sites in order to approve a C/D/BU applicant. The C/D/BU applicant will supply a list of sites when OSHA is ready to conduct the onsite evaluations. The list will identify any sites where OSHA access may be an issue. At that time, the Regional Administrator will determine if the list provided enables OSHA to review a good cross section of the company's operations to determine VPPC approval.

2. *Scope.* OSHA will conduct onsite evaluations in each designated geographical areas as follows:

- When an applicant has 2–25 projects/sites in the defined geographic area, OSHA will perform 2 onsite evaluations.³
- When an applicant has 26–99 projects/sites in the defined geographic area, OSHA will perform 3 onsite evaluations.
- When an applicant has 100+ projects/sites in the defined geographic area, OSHA will perform 4 onsite evaluations.

Projects/sites will be selected, at OSHA's discretion, from a list provided by the applicant. In addition to the documentation review list found in Appendix C, the team will also review the project/site SIP.

VII. Approval Process and Recommendations

A. Approval Process

To become an approved VPPC participant, applicants must, through their application package and onsite evaluation(s), demonstrate that they meet either the minimum Star or minimum Merit requirements, as set forth in section IV, at the site (for site-based applications) or at *all* projects/sites in the defined geographical area (C/D/BU). For C/D/BU applicants, if one of the projects/sites fails to meet minimum requirements, then OSHA will ask the applicant to withdraw.

B. OSHA Recommendations

The Primary Region is responsible for developing an approval recommendation, including SHMS improvements the applicant may need to make. This recommendation will be based on the application package and

³ Applicants who do not have at least two sites within a defined geographic area should not apply under C/D/BU for that geographic area. A possible exception is the approved Primary Region participant who wishes to expand into one or more regions.

the onsite evaluation(s). This recommendation will help the Assistant Secretary make the final decision for approval into VPPC, as well as whether to approve in the Star or Merit Programs.

1. *Approval.* An applicant may be approved for either the Star or Merit Program. General approval requirements for each level are set forth in section IV.

2. *Deferred Approval.* If the onsite evaluation(s) determine that the applicant needs to take steps to come into compliance with OSHA rules, OSHA will give the applicant 48 hours to come into compliance before making a recommendation for VPPC approval to the Assistant Secretary. (At the evaluation team leader's discretion, longer periods of time may be given, up to 90 days, when interim protection is provided.) Deficiencies related to the applicant's SHMS may become the subject of Merit goals.

3. *Withdrawal.* If the Regional Administrator determines that the applicant does not meet the requirements for participation at the Merit level of VPPC, the agency will allow a reasonable amount of time (not to exceed 30 calendar days) for the applicant to withdraw its application before the Director of Cooperative and State Programs makes a denial recommendation to the Assistant Secretary.

4. *Denial.* If OSHA denies approval, the denial becomes effective on the date that the Assistant Secretary signs the denial letter informing the applicant of the decision.

An applicant may appeal the findings of the OSHA evaluation team(s) to the Assistant Secretary. The Director of Cooperative and State Programs will forward the appeal to the Assistant Secretary, along with the team's findings, Regional Administrator's recommendation of denial, and the Director's own recommendation.

Should the Assistant Secretary reject an approval recommendation made by the Director of Cooperative and State Programs and/or the Regional Administrator, the Assistant Secretary will send a letter to the applicant denying approval and explaining the rejection. The decision becomes effective on the date this letter is signed.

VIII. Recognition

When OSHA approves an applicant, it recognizes that the senior management has established, communicated, assessed, and enforced an SHMS that provides effective protection of workers at their projects/sites through the systematic implementation of VPPC's basic elements and requirements. This

protection makes general OSHA scheduled inspections unnecessary. Therefore, OSHA removes the site (for site based applicants) and the work performed within the defined geographic area (for C/D/BU applicants) from the agency's programmed inspection lists (unless the participant chooses not to be removed).⁴

The participant receives a congratulatory letter from senior OSHA officials recognizing its approval as a VPPC organization. OSHA additionally awards the participant with a flag or banner that it can fly or otherwise display. OSHA also will make available for purchase extra flags, decals for vehicles and trailers, certificates and plaques for posting in offices, or other means to proclaim VPPC recognition and participation. The participant also may choose to use program logos on such items as letterhead, shirts, and mugs.

All VPPC participants will be recognized by OSHA in publications, newsletters, and OSHA's Web site as appropriate.

IX. Reevaluation Process

A. The Star Program

1. *Purpose.* The onsite reevaluations of Star participants are intended to:

- a. Determine continued qualification for the Star Program;
- b. Document results of program participation in terms of the evaluation criteria and other noteworthy aspects of the participant's SHMS; and
- c. Identify any problems that have the potential to adversely affect continued Star Program qualification and determine appropriate follow-up actions.

2. *Frequency.* OSHA will perform all reevaluations at no greater than 2-year intervals after the initial Star approval. (The identification of potentially serious safety and health hazards may create the need for more frequent evaluations.) For C/D/BU participants, the number of reevaluations performed will follow the chart found in section VI.C.2. OSHA will base the number of reevaluations it performs on the number of sites within the defined geographic area at the time of the reevaluation, not the number of evaluations performed during initial approval.

3. *Scope.* OSHA's reevaluation of Star Program participants consists mainly of an abbreviated onsite evaluation. OSHA

reviews documents related to SHMS implementation since the most recent evaluation, interviews employees, and walks through the project/site. The evaluation will include a review of TCIR and DART rates as described in Appendix B.

4. *Measures of Effectiveness.* The measures of effectiveness are identical to the elements described generally in Section IV.A., and with greater detail in Appendices A and B.

5. *Reevaluation Recommendations.*

The OSHA onsite evaluation team makes one of the following recommendations to the Regional Administrator, and the Regional Administrator decides to:

- a. Approve continued participation in the Star Program;
- b. *Allow a conditional participation in the Star Program.* The VPPC onsite evaluation team may recommend this alternative if it finds that the participant has allowed one or more program elements to slip below Star quality. The participant must return its SHMS to Star quality within an agreed upon time period and must demonstrate a commitment to maintain that level of quality. A VPPC onsite evaluation team must return to determine if the participant's SHMS has again achieved Star quality. If the participant has restored and maintained full Star quality, the team recommends the participant for reapproval to the Star Program; or
- c. *Recommend termination.* After considering the recommendation of the VPPC onsite evaluation team, the Regional Administrator may recommend to the Assistant Secretary that a participant be terminated if VPPC Star requirements are no longer being met. See section X for termination procedures.

B. The Merit Program

1. *Purpose.* The onsite reevaluations for Merit participants are intended to:

- a. Determine whether the participant qualifies for approval to the Star Program;
- b. Determine whether adequate progress has been made toward the agreed-upon Merit goals;
- c. Identify any problems in the participant's SHMS or its implementation that require resolution in order to continue qualification or meet agreed-upon goals;
- d. Document program improvements and/or improved results; and
- e. Provide advice and suggestions for needed improvements.

2. *Frequency.* The onsite reevaluation of a Merit participant is conducted every 12–18 months. The participant

may request an earlier reevaluation if it believes it has met Star Program qualifications. For C/D/BU participants, the number of reevaluations performed will follow the chart found in section VI.C.2. OSHA will base the number of reevaluations it performs on the number of sites within the defined geographic area at the time of the reevaluation, not the number of evaluations performed during initial approval.

3. *Scope.* OSHA's reevaluation of Merit Program participants consists mainly of an abbreviated onsite evaluation. OSHA reviews documents related to SHMS implementation since the most recent onsite evaluation, interviews employees, and walks through the project/site. The evaluation will include a review of TCIR and DART rates as described in Appendix B for the most recent three calendar years (when available).

4. *Measures of Effectiveness.* The measures of effectiveness are identical to the elements described generally in Section IV.B and with more detail in Appendices A and B.

5. *Reevaluation Recommendations.*

The OSHA onsite evaluation team makes one of the following recommendations to the Regional Administrator and the Regional Administrator decides to:

- a. Approve continued participation in the Merit Program;
- b. Approve advancement to the Star Program; or
- c. *Recommend termination.* After considering the recommendation of the VPPC onsite evaluation team, the Regional Administrator may recommend to the Assistant Secretary that a participant be terminated if the participant has been found to have significantly failed to maintain its SHMS at Merit quality. See section X for termination procedures.

X. Separation from VPPC

A. Project/Site Completion

A participant is separated from VPPC when:

1. *Site-Based.* Construction work at the site has been completed.
2. *C/D/BU.* All construction work in a defined geographic area has been completed and no new work is expected within a reasonable timeframe (as determined by the appropriate Regional Administrator).

B. Withdrawal

1. *Withdrawal of a Participating Site.* A participant may withdraw from VPPC for any reason, including a receipt of a notice of intent to terminate, by submitting written notification to the appropriate Regional Administrator.

⁴ Sites that qualify for exemption, but for some reason do not appear on the lists (*i.e.*, the project/site is too new to have appeared on previous lists), may still receive the exemption provided that VPPC participation is verified with the inspecting official upon her/his arrival.

2. *Reapplication Following Withdrawal.*

a. If a participant withdraws its application or withdraws from the program of its own accord, and if it has met OSHA inspection history conditions and assurances, then the participant may reapply at any time.

b. If a participant withdraws its application or withdraws from the program due to an OSHA enforcement inspection, and if it has met OSHA inspection history conditions and assurances, then the participant may reapply when the agency has closed all enforcement activity.

c. If a participant withdraws its application or withdraws from the program due to withdrawal of union support, and if it has met OSHA inspection history conditions and assurances, then the participant may reapply when the Regional VPP Manager receives a new letter of union support.

C. *Termination*

1. *Reasons for Termination.* A participant is terminated from VPPC when:

a. Senior management or the duly authorized collective bargaining agent(s), where applicable, withdraw support for VPPC participation.

b. A participant fails to maintain its SHMS in accordance with the requirements detailed in Appendix A and B.

c. Within the designated timeframe, the participant makes no significant progress toward achieving the established Merit or Star Conditional goals.

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

e. 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. (The company may petition the Assistant Secretary to explain unusual circumstances that might allow it to continue in the program.)

f. A fatality or series of imminent danger situations occur. (The company may petition the Assistant Secretary to explain unusual circumstances that might allow it to continue in the program.)

2. *Termination Notification and Appeal or Withdrawal.* Under most circumstances, OSHA will notify a participant with its intention to terminate 30 days prior to executing the decision. During the 30-day period, the

participant is entitled to appeal the decision, in writing, to the Assistant Secretary. OSHA does not provide 30 days' notice when:

a. Construction has been completed at a participating site or in a defined geographic area;

b. Other terms for termination were agreed upon during the approval process; or

c. A set period for approval is expiring.

3. *Reapplication Following Termination.* OSHA does not consider the reapplication of a terminated participant for a period of 3 years from the date of termination. Reinstatement requires reapplication.

XI. *VPPC Demonstration Program*

A. *Program Purpose and Approval*

1. The VPPC Demonstration Program provides the opportunity for construction companies and/or individual worksites to demonstrate the effectiveness of alternative methods for achieving safety and health excellence. These alternatives, if judged successful, may lead to changes in VPPC requirements. Alternatives to any current requirements and procedures may be included in a Demonstration Program so long as OSHA is convinced that all employees and contractors continue to receive VPPC quality protection.

2. The initial suggestion to develop a new Demonstration Program may come from either OSHA or any stakeholder, for example, employers, individual worksites, unions, or other organizations. Examples of possible purposes include:

a. Alternative application and approval protocols;

b. Alternatives to current injury and illness rate requirements and other performance requirements; and

c. Alternative methods for implementing the four SHMS elements.

3. A VPPC Demonstration Program may also explore the potential for a new VPPC program.

4. A formal, written proposal for a VPPC Demonstration Program will be developed at the National Office or Regional Office level and will include a detailed description of the proposed program, including:

a. The desirability of establishing the program, and how it would serve the goals of VPPC.

b. The alternative approaches to be tested, including proposed methodology and potential benefits.

c. VPPC Star or Merit requirements, if any, that participants would not be expected to meet.

d. Measures to ensure that all employees and subcontractors will receive the protection of a VPP quality safety and health management system.

e. System to evaluate the demonstration to determine its success or failure.

5. The Assistant Secretary will decide whether to approve a proposed program. The Assistant Secretary must be satisfied that the proposed alternative approach shows reasonable promise of being successful and of leading to changes in the VPPC.

6. OSHA will consider applications upon public announcement of the Assistant Secretary's decision to implement a new program. This announcement may take the form of a fact sheet, press release, entry on OSHA's Web site, or other means.

B. *Qualifications for VPPC Demonstration Programs*

Demonstration Program applicants must have a VPP quality safety and health management system that, at a minimum, addresses the elements and sub-elements as demonstrated in Appendix A. Applicants must also comply with 29 CFR 1926.20 requirements for construction sites. How the applicant implements these elements may be the subject of demonstration so long as the applicant ensures VPPC quality protection for all employees and contractors.

C. *Term of Participation*

Construction participants may be approved to a Demonstration Program for the time period agreed upon in advance of approval and subject to regular evaluation as defined in the Demonstration Program.

D. *Successful VPPC Demonstration Program*

If the alternatives tested in a VPPC Demonstration Program have proven successful, OSHA may choose to change the provisions of VPPC Star or Merit to incorporate the successful aspects of the demonstration. Furthermore, the successful Demonstration Program participants may be approved to VPPC Star or Merit.

1. Any change in either VPPC Star or Merit will require a decision by the Assistant Secretary that including the Demonstration Program alternatives is desirable and will result in a continuing high level of worker protection.

2. Once the Assistant Secretary makes a decision to change VPPC provisions, the change(s) become effective on the date OSHA announces them to the public.

3. When the change(s) become effective, the VPPC Demonstration participants may be approved to VPPC Star or Merit 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 have elapsed, OSHA must conduct an evaluation prior to recommending the participant for approval to VPPC Star.

E. Program Termination

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

- a. The Demonstration Program is likely to endanger workers at participating projects/sites;
- b. It is unlikely that the Demonstration Program will result in participants' approval to the Star Program or creation of a new program;
- c. The Demonstration Program period has expired; or
- d. Construction work at all approved projects/sites has been completed or otherwise has stopped.

2. When a Demonstration Program ends, any participants not approved to Star are terminated from VPP for Construction.

XII. Questions for Public Feedback

OSHA has not resolved all issues raised during its discussions with stakeholders. Therefore, OSHA asks for public comment on the following questions in addition to the preceding proposal.

A. Should OSHA Continue to Rely on Its Traditional Measures of Applicant/ Participant Performance, or Should It Consider Alternatives?

For example, some parties have suggested that OSHA develop a "scorecard" of leading indicators that could be used in conjunction with current injury and illness rate requirements. If OSHA were to place less reliance on rates, what should it include in a scorecard? Examples: experience modification rates, tracking of hazards and corrective actions, work practice assessment, etc.

B. Should OSHA Expand Current Performance Requirements?

Examples:

1. Specific minimum training requirements. For employees, OSHA 10-hour or equivalent training; for supervisors, OSHA 30-hour or equivalent training.
2. 100% fall protection over 6 feet for all trades/employees.

3. Prequalification for all subcontractors. For example, injury/illness rates below BLS industry averages, experience modification rates at 1 or below, written safety and health program/management system, etc.

4. Required drug testing/screening policy. For example, screening for all employees, including subcontractors and temporary employees.

5. Required daily meetings/employee safety briefings devoted to planning and safety awareness.

C. How Should OSHA Assure Union Support for VPPC Participation?

Meaningful employee involvement is a cornerstone of OSHA's Voluntary Protection Programs (VPP), and OSHA considers it essential to continue this tradition in its Voluntary Protection Program for Construction (VPPC). When some or all of a VPP participant's employees are represented by labor unions, OSHA has recognized the importance of union support for VPPC participation.

Early **Federal Register** notices required that when a VPP applicant "has a significant portion of its employees organized by one or more collective bargaining units, the authorized agent(s) must either sign the application or submit a signed statement indicating that the collective bargaining agent(s) do(es) not object to participation in the program."

The requirement for union support became more comprehensive with the July 2000 **Federal Register** notice, which provided "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."

OSHA seeks public input on the question of how to assure union support for an applicant/participant's VPPC participation. We recognize the complexity of this question. At a typical construction project, multiple unions may represent workers, and different unions may represent workers at different phases of the project. Some unions may represent many workers, others only a few. Should OSHA require written support from some or all? What means should OSHA accept as demonstrations of support? Should the requirement be different for site-based applicants and C/D/BU applicants? How should OSHA respond if one of multiple authorized representatives at an approved site or C/D/BU subsequently withdraws support?

D. How Many Onsite Evaluations Should OSHA Require for C/D/BU Applicants/Participants?

Some C/D/BU applications may encompass dozens, even hundreds of worksites in a single region. Others may involve only a handful of sites. How do we formulate this requirement to ensure an adequate evaluation of the applicant's actual practices, fairness to the applicant, and feasibility in the expenditure of OSHA resources?

In this document, OSHA is considering a tiered approach for this element. The minimum required number of worksite evaluations per approved geographic area for each C/D/BU applicant will be two. (For details, see section VI.C.2) Is this a fair and adequate approach to worksite evaluations?

E. For C/D/BU applicants, this proposal requires a corporate oversight system to verify that the applicant/participant's projects/sites are maintaining VPPC-level safety and health performance. The participant must perform various specified oversight actions on an ongoing basis. (For details, see section III.E) OSHA is interested in learning whether this list of actions accurately reflects companies' safety and health oversight practices. Are there other actions companies take to assure that their worksites are operating effective safety and health management systems and successfully eliminating/controlling hazards and minimizing injuries and illnesses?

F. Some subcontractors applying to OSHA for consideration as participants in VPPC may be so small (*i.e.*, employ 10 or fewer employees) that they are not required to keep OSHA logs. Are there alternative records or indicators that small employers can use to demonstrate that their injury and illness rates are low? For example, would an employer's Experience Modification Rate (EMR) be an appropriate alternative? Please describe the potential advantages and disadvantages of any approach you suggest as an alternative.

G. The Short-Term Construction and Mobile Workforce Star Demonstration Programs conducted by OSHA showed that VPP elements may be implemented differently on construction sites than at fixed worksites. For example, standing safety and health committees may not be feasible in a mobile work environment, but other forms of employee involvement, such as regular tool box meetings, may be used instead. Are there other forms of employee involvement that are used on construction sites that have been found

to be effective? Please describe the basis for your answer.

H. Management leadership also may be evidenced differently in the construction environment than in a fixed worksite environment. What methods of demonstrating top management's accessibility and commitment have proven effective in the construction environment? Please discuss your reasons for believing that these methods are effective.

Appendix A. Safety and Health Management System Requirements

To be approved as a VPPC participant, a site-based or C/D/BU applicant must meet and be effectively performing all the elements and sub-elements of a comprehensive SHMS. The four elements are:

- Management leadership and employee involvement;
- Worksite analysis;
- Hazard prevention and control; and
- Safety and health training.

A. Management Leadership and Employee Involvement

Each applicant must be able to demonstrate top-level management leadership in the development, implementation, and ongoing operation of the project/site's SHMS. The following sub-elements are required to demonstrate this leadership:

1. Management 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. Policies for worker safety and health protection that are clearly established, are communicated to and understood by employees, and, where applicable, subcontractor and temporary employees.
- b. Effective and meaningful goals for safety and health are established, communicated and reviewed annually. Results-oriented objectives for meeting the goals are also established and all employees must understand the results desired and the measures planned for achieving them, especially those factors that directly apply to them.

2. Commitment to VPPC Participation. Management must clearly demonstrate commitment to meeting and maintaining the requirements of the VPPC.

3. Planning. Planning for safety and health must be a part of the overall management planning process, including pre-job planning and preparation for different phases of construction. Where applicable, subcontractors should be included as participants in the planning process.

4. Written SHMS. All four elements of a basic SHMS must be part of the written program and must also meet the requirements of 29 CFR 1926.20. All aspects of the SHMS must be appropriate to the size of the worksite and the nature of the work activity conducted. For small contractors, OSHA may waive some formal

documentation requirements where the effectiveness of the systems has been evaluated and verified.

5. Visible Leadership. Managers must provide visible leadership in implementing the SHMS elements. This must include:

- a. Establishing clear lines of communication with employees; subcontractors, and temporary employees;
 - b. Setting an example of safe and healthful behavior;
 - c. Creating an environment that allows for reasonable employee access to top site or company management;
 - d. Ensuring that all workers at the projects/sites, including, if applicable, subcontractors and temporary employees, 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 safety and health responsibilities;
 - 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 access to Certified Safety Professionals (CSP), Certified Industrial Hygienists (CIH), licensed health care professionals, and other experts as needed, based on the risks at the project(s)/site(s); and
 - h. Holding construction site managers, supervisors, and non-supervisory employees accountable for meeting their safety and health responsibilities. In addition to clearly defining and implementing policy for 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 company and site culture must enable and encourage effective employee involvement in the planning and operation of the safety and health management system 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 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. Subcontractor Worker Coverage. All contractors and subcontractors working onsite must follow worksite safety and health rules and procedures applicable to their activities while at the site.

a. In addition to ensuring that subcontractors follow site safety and health rules, VPPC participants are expected to encourage their subcontractors to develop and operate effective SHMS.

b. To this end, VPPC applicants and participants must have in place a documented oversight and management system for applicable subcontractors that ensure their site employees are provided effective protection in a manner that drives improvement for their safety and health. Such a system should ensure that safety and health considerations are addressed during the subcontractor selection process and when they are working onsite.

8. Annual Self-Evaluation. Every participant must have a system for annually evaluating the operation of their SHMS. (C/D/BU participants are expected to evaluate their program annually but may evaluate all sites collectively.) Each year, by February 15, participants must send their annual self-evaluation to their designated OSHA Regional VPP Manager. This system judges success in meeting the program's goal and objectives, and assists those responsible to determine and implement changes for continually improving worker safety and health protection. The following information must be included in each annual self-evaluation:

- a. The site's TCIR and DART rates for the previous calendar year, including the injury and illness experience of all subcontractors and temporary employees;
- b. The total number of cases for each of the above two rates;
- c. Total hours worked at participating VPPC worksites;
- d. Estimated average employment for the last full calendar year;
- e. A copy of the most recent annual self-evaluation of the applicant's safety and health program; and
- f. A description of any worksite success stories (e.g., reductions in workers' compensation rates, increases in employee involvement in the program, etc.)

In addition:

g. 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;

h. The evaluation must assess the effectiveness of all elements and sub-elements of the company/site's SHMS; and

i. The evaluation may be conducted by any of the following: 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.

9. Final Evaluation. A final evaluation must also be conducted immediately prior to

completion of construction to determine what has been learned about safety and health activities that can be used to improve the SHMS at other sites. Under C/D/BU, the company may submit a summary of these evaluations for completed work along with their annual self-evaluation.

B. **Worksite Analysis.** Management of a construction site SHMS 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 materials, equipment, facilities etc., or before beginning a new process, or phase(s) of work, to identify hazards and the means of prevention or control.

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

a. Identification of safety and health hazards by an initial comprehensive baseline survey and then subsequent surveys as needed.

b. Conduct of a Baseline Hazard Analysis, which must:

- Identify and document common safety hazards (a hazard exposure profile) associated with the site (such as those found in OSHA regulations for which existing controls are well known), and how they are controlled.

- Identify and document common health hazards (usually through initial screening using direct-reading instruments) and determine if further sampling (such as full-shift dosimetry) is needed. The employer shall sample for employee exposures to health hazards and shall base baseline determinations on the employee exposure results.

- Identify and document safety and health hazards that need additional study.

- Cover the entire worksite or location within the site, and indicate who conducted the survey and when it was completed.

In addition:

- Applicants/participants may use historical data collected from similar tasks from previous jobsites as a sample data baseline provided that the sampling was conducted under workplace conditions closely resembling the processes, type of material, control methods, work practices, and environmental conditions prevailing in the employer's current operations. Historical data must be reviewed and updated as appropriate to the type of operations performed.

- Employees are expected to have been trained appropriately and have access to the historical database before beginning a task.

- If the operation(s), equipment or material(s) that are being used on a job vary significantly from an established hazard exposure profile (e.g., a change of equipment, process, personnel or a new task has been initiated that may result in additional employee exposure), a new hazard analysis must be conducted prior to beginning that task/phase to ensure appropriate hazard controls are in place, and sampling or monitoring is conducted as required.

3. **Industrial Hygiene Program.** Identification of health hazards and employee exposure levels accomplished through a written industrial hygiene program including a sampling rationale and strategy. The sampling strategy and rationale must be documented, include when initial screening and full shift sampling are needed/performed, and must follow nationally recognized procedures for sampling, testing and analysis. An example of developing a sampling rationale could include review 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.

4. Examination and analysis of safety and health hazards associated with routine 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 with an emphasis on special safety and health hazards of each craft and each phase of work.

5. Examination and analysis of safety and health hazards associated with non-routine tasks (those performed less than once a year), and significant changes such as new processes, materials, and equipment must also be conducted to identify uncontrolled hazards and provide controls prior to the activity or use.

6. 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. For site-based participants inspections must be conducted as often as necessary, but cover the entire worksite at least weekly.

b. For C/D/BU participants, inspections must be conducted as often as necessary based on the operation, hazards associated with the tasks, and regulatory requirements. However, at a minimum an inspection must be performed and documented at least weekly for all work within the Federal OSHA jurisdiction covered by the application.

- For subcontractor C/D/BU participants it is expected that only the scope of work at assigned work areas will be included in the inspections.

7. A reliable system for employees working at the projects/sites 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.

8. 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. (Root Cause Analysis education and training may be required by the contractor to fully understand how to conduct and complete a root cause analysis.)

9. A system to analyze trends at the site 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.

10. C/D/BU subcontractor applicants/participants must be able to demonstrate that a system is in place to correct hazards created by others if their employees are exposed. This could include providing interim protections such as temporary guards or removing employees from the hazard. The subcontractor must be able to demonstrate that these policies are understood by their employees and the controlling employer, who has ultimate responsibility for safety on the site.

C. Hazard Prevention and Control

Site hazards identified during the hazard analysis processes 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 site 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. The applicant/participant will develop an emergency action plan commensurate with the complexity and/or proximity to outside hazards to the project/site. This will include the need to conduct emergency drills when feasible as the project progresses from phase to phase.

- OSHA realizes that it may be technically infeasible or unnecessary to conduct annual emergency drills at all projects/sites. The

Onsite evaluation team will consider the effectiveness of alternative processes or systems. The applicant's written plan will be expected to be more in depth with a strong emphasis on employee and subcontractor orientation and training, including the applicant's development of a written plan that describes the policies and procedures it uses and what training it requires to ensure that employees know what to do in case of an emergency.

- Emergency procedures must also include emergency rescue procedures for situations such as in the event of a catastrophic collapse or confined space entry.

3. The following hierarchy should govern actions to eliminate or control hazards, with engineering controls 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 site 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. Construction company and site managers and supervisors understand their safety and health responsibilities and are able to carry them out effectively;

2. Managers, supervisors, and non-supervisory employees (including subcontractor and temporary 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 subcontractor and temporary employees) learn the site 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 subcontractor and temporary 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.

Appendix B. Injury and Illness Data and Rate Requirements

To assess a VPPC applicant/participant's injury and illness performance, OSHA compares the total case incidence rate (TCIR) and the incidence rate for days away/restricted work activity/job transfer (DART rate) to industry national averages—benchmark rates—published annually by the Bureau of Labor Statistics (BLS).

The benchmark rates that OSHA uses will depend on the applicable Standard Industrial Code (SIC)/North American Industrial Classification System (NAICS) code. This is determined by:

- The prevalent type of construction work (for general contractors, construction managers, and other controlling employers); or

- The appropriate specialty contractor code (for craft/trade contractors).

A. Rate Requirements for VPPC STAR

1. Site-based Applicants/Participants. The site-based applicant must meet the following criteria at the time of approval:

a. The project/site for which the VPPC application is being made must have been in operation for at least 12 months.

b. The project/site must be able to provide combined TCIR and DART rates from the project/site's inception through the date of application. A combined rate must include the experience of all employees, subcontractors, and temporary employees actually working on the project/site.

c. The combined TCIR and DART rates, from the project's/site's inception through the date of application, must be below at least 1 of the 3 most recent years of specific industry national averages for nonfatal injuries and illnesses at the most precise level published by the BLS. (For additional details regarding the VPP benchmark, see the **Federal Register** Notice announcing the most recent VPP revision, 68 FR 68475–68479, December 8, 2003.)

2. C/D/BU Applicants. The C/D/BU applicant must meet the following criteria at the time of approval:

a. The C/D/BU must have been in operation for at least 3 years.

b. The C/D/BU must be able to provide the following rate information:

- TCIR and DART rates that reflect the experience of C/D/BU employees during the 3 most recent calendar years.

- Combined TCIR and DART rates that reflect the experience of all employees, subcontractors, and temporary employees for the most recent calendar year.

c. Each of the above TCIR and DART rates must be below at least 1 of the 3 most recent years of specific industry national averages for nonfatal injuries and illnesses at the most precise level published by the BLS.

d. In subsequent years, the combined TCIR and DART rates will reflect a phase-in of subcontractor and temporary employee data.

- At the end of the first year of participation, participants must provide to OSHA:

- ▶ TCIR and DART rates that reflect the experience of C/D/BU employees during the 3 most recent calendar years.

- ▶ Combined TCIR and DART rates that reflect the experience of all employees, subcontractors, and temporary employees for the 2 most recent calendar years.

- At the end of the second year of participation, and for each subsequent year, participants must provide to OSHA:

- ▶ Combined TCIR and DART rates that reflect the experience of all employees, subcontractors, and temporary employees for the 3 most recent calendar years.

e. Some C/D/BU applicants may be eligible for an alternative method for calculating incidence rates. See section C below.

B. Rate Requirements for VPPC MERIT

1. Site-based Applicants. The site-based applicant must meet the following criteria at the time of approval:

a. The project/site for which the VPPC application is being made must have been in operation for at least 12 months.

b. The project/site must be able to provide combined TCIR and DART rates from the project/site's inception through the date of application. A combined rate must include the experience of all employees, subcontractors, and temporary employees actually working on the project/site.

c. If the applicant's combined TCIR and DART rates do not meet Star requirements, the applicant must have a plan to achieve Star rates, as listed above in section A.1.c of Appendix B, within 2 years. It must be programmatically and statistically feasible, as determined by OSHA, for the project/site to meet this goal.

2. C/D/BU Applicants. C/D/BU applicants, at the time of approval, must meet the following criteria:

a. The C/D/BU must have been in operation for at least 3 years.

b. The C/D/BU must be able to provide OSHA with the following rate information:

- TCIR and DART rates that reflect the experience of C/D/BU employees during the 3 most recent calendar years.

- Combined TCIR and DART rates that reflect the experience of all employees, subcontractors, and temporary employees for the most recent calendar year.

c. If the applicant's combined TCIR and DART rates do not meet Star requirements, the applicant must have a plan to achieve Star rates, as listed above in section A.2.c of Appendix B, within 2 years. It must be programmatically and statistically feasible, as determined by OSHA, for the C/D/BU to meet this goal.

d. In subsequent years, the combined TCIR and DART rates will reflect a phase-in of subcontractor and temporary employee data.

- At the end of the first year of participation, participants must provide to OSHA:

- ▶ TCIR and DART rates that reflect the experience of C/D/BU employees during the 3 most recent calendar years.

- ▶ Combined TCIR and DART rates that reflect the experience of all employees, subcontractors, and temporary employees for the 2 most recent calendar years.

- ▶ At the end of the second year of participation, and for each subsequent year, participants must provide to OSHA:

- ▶ Combined TCIR and DART rates that reflect the experience of all employees, subcontractors, and temporary employees for the 3 most recent calendar years.

e. Some C/D/BU applicants may be eligible for an alternative method for calculating incidence rates. See section C below.

C. Alternative Rate Calculation for Qualifying Small C/D/BU's

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

2. To determine whether the C/D/BU qualifies for the alternative calculation method, do the following:

- a. Using the most recent employment statistics (hours worked during the most recent calendar year by C/D/BU employees plus other employees controlled by the C/D/BU, for example, subcontractors and temporary workers), calculate a hypothetical total recordable case incidence rate for the C/D/BU assuming two cases during the year.

- b. Compare that hypothetical rate to the 3 most recently published years of BLS combined injury/illness total recordable case incidence rates for the industry.

- c. If the hypothetical rate (based on two cases) is equal to or higher than the national average for the C/D/BU's industry in at least 1 of the 3 years, the C/D/BU qualifies for the alternative calculation method.

3. If the C/D/BU qualifies for the alternative calculation method, it may use the best 3 of the last 4 calendar years of C/D/BU employee injury/illness experience when calculating both the 3-year TCIR and the 3-year DART rate.

Appendix C. Protocol of Onsite Evaluations

Onsite evaluations will include the following procedures:

- A. An opening conference;
- B. A review of Injury, illness, and fatality records of the worksite(s);

- C. Recalculation and verification of the TCIR and DART rates. (For C/D/BU evaluations OSHA may request a combined rate for all projects/sites as well as for individual sites);

- D. A site walkthrough, including the following elements:

- 1. A general assessment of safety and health conditions to determine if the SHMS adequately protects workers from the hazards at the projects/sites;

- 2. Verification of compliance with OSHA and VPPC requirements; and

- 3. Verification that the SHMS described in the application has been implemented effectively.

- E. Formal and informal interviews with relevant individuals involved in directing, enforcing, and overseeing the VPPC program such as senior management personnel, safety and health management, office managers, labor relations personnel, and human resources personnel. (For union companies, advance notice to the company prior to the evaluation team visiting the office should be given so that the company has an opportunity to have one or more of the labor representatives present to be interviewed.);

- F. A review of the corporate oversight system; (For C/D/BU applicants/participants only)

- G. An onsite document review entailing the examination of the following documents and records (or samples) if they exist and are relevant to the application or to the SHMS (trade secret concerns are accommodated to the extent feasible):

- 1. Management Leadership and Employee Involvement

- a. Vision and goals statements (their reference to VPP);

- b. Management statements of commitment to safety and health (and VPPC);

- c. Policies and requirements regarding the enforcement of safety rules;

- d. Written corporate SHMS;

- e. Safety and health manual(s);

- f. Records that indicate resources devoted to safety and health;

- g. Accountability and responsibility requirements and documentation (e.g., performance standards and appraisals); and
- h. Employee involvement activities.

2. Worksite Analysis

- a. Baseline safety and industrial hygiene exposure assessments and updates;

- b. Employee reports/complaints regarding safety and health problems and documentation of management's response;

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

- d. Annual safety and health program evaluations and site audits that assess effectiveness, including records of follow-up activities stemming from program evaluation recommendations;

- e. Self-inspection procedures, site reports, and correction tracking;

- f. The OSHA Form 300 logs for the projects/sites (including contractors);

- g. Accident investigation requirements, site reports, and analyses; and

- h. Safety and health committee minutes.

3. Hazard Prevention and Control

- a. Safety rules, emergency procedures, and examples of safe work procedures

- b. Preventive maintenance program requirements;

- c. Occupational health care programs and records;

- d. Subcontractor safety and health program(s) and requirements (including subcontractor selection criteria);

- e. Process Safety Management (PSM) documentation, if applicable; and

- f. Hazard and process analysis requirements.

4. Safety and Health Training

- a. Employee orientation records; and

- b. Safety training records.

5. General. Other records that provide relevant documentation of VPP qualifications.

H. A closing conference.

Signed at Washington, DC, this 24th day of August, 2004.

John L. Henshaw,

Assistant Secretary of Labor for Occupational Safety and Health.

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