

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

Voluntary Protection Programs To Provide Safe and Healthful Working Conditions, Draft Revisions; Notice

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

ACTION: Notice of proposed changes to the program; request for comments.

SUMMARY: The Occupational Safety and Health Administration requests comments on a proposed revision to its Voluntary Protection Programs (VPP) that would change the benchmark injury and illness rates used to determine whether VPP applicants and participants meet the rate requirements for the VPP Star Program. This change would also apply to the requirements for construction applicants' qualification for the Merit Program.

DATES: Comments must be submitted by the following dates:

Hard Copy: Your comments must be postmarked by August 25, 2003.

Facsimile and electronic transmission: Your comments must be sent by August 25, 2003.

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 website. 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 website and for assistance in using the website 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 website, <http://www.osha.gov>.

SUPPLEMENTARY INFORMATION:**I. Introduction***A. Background*

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

One way that OSHA determines the qualification of applicants and the continuing qualification of participants in the VPP Star Program, the most challenging participation category, is to compare their injury and illness rates to industry rates—benchmarks—published annually by the Bureau of Labor Statistics (BLS). For Star eligibility, rates must be below the benchmark BLS rates. This notice proposes to change the benchmark rates that OSHA employs. Until now, the benchmarks have been two rates obtained from the most recent

year's industry averages for nonfatal injuries and illnesses. OSHA proposes to now require that, to qualify for Star, applicants' and participants' rates must be below the two BLS industry rates for at least 1 of the 3 most recent years published. This change would also apply to the requirements for construction applicants' qualification for the Merit Program.

B. Statutory Framework

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

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

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

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

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

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

II. Discussion of the Proposed Change

OSHA has been concerned for some time about the effect on some VPP applicants and participants of substantial fluctuations from year to year in a limited number of BLS rates. For example, worksites in the manufacturing classification Petroleum and Coal Products/Petroleum Refining (Standard Industrial Classification—SIC—Code 29/291) were compared with published average total recordable case incidence rates (TCIR) of 2.50 in 1999, 3.70 in 2000, and 1.40 in 2001. This represented a rate change from 1999 to 2000 of plus 32 percent, and from 2000 to 2001 of minus 62 percent. Similarly, worksites in the manufacturing classification Sanitary Paper Products (SIC 2676) were compared with a published average TCIR of 7.00 in 1999, 4.50 in 2000, and 5.40 in 2001. This represented a 20 percent increase from 1999 to 2000, and a 35 percent decrease from 2000 to 2001.

The effect of these rate fluctuations is to create an unpredictable moving target that, in any particular year, may not fairly represent the injury and illness situation in an industry. It certainly creates a difficult dilemma for OSHA if the agency must approve one worksite and disapprove another when both have similarly excellent safety and health management systems and similar injury and illness experience. This situation occurs when OSHA compares one worksite against a 2000 benchmark rate, for example, and a similarly performing site against an unreasonably divergent 2001 benchmark rate.

There is no easy solution to this problem. Injury and illness rates are useful tools in judging how well a worksite is protecting its employees. OSHA believes, however, that the goals of VPP are not well served when worksites that have established excellent protective systems and that are steadily improving their injury and illness rates fail to obtain Star approval because of statistical anomalies in national rates.

After exploring various ways to address this problem, OSHA proposes to change the way it compares VPP applicants' and participants' injury and illness rates to the national rates that BLS publishes. The agency would no longer compare the individual worksite rates to the most recently published BLS industry rates at the most precise level available (at this time usually three or four digits). Instead, OSHA would look at the most recent 3 years of BLS rates (at the most precise level available each year) and require that worksite rates be below at least 1 of those 3 years of rates to qualify or continue to qualify for Star participation.

This proposed change might have the effect of reducing somewhat the weight OSHA heretofore has assigned to rates within VPP. Rates will continue to play a significant role, however. They are one indicator of how well a safety and health management system is operating and of how well a VPP candidate or

participant is fulfilling the requirement for continuous improvement. In addition to examining a worksite's injury and illness rates, OSHA will continue to carefully evaluate how well a site is implementing the required major elements of Management Leadership and Employee Involvement; Worksite Analysis; Hazard Prevention and Control; and Safety and Health Training.

By going to the BLS website, a worksite aspiring to qualify for Star or to continue its Star qualification will be able to easily determine the rate against which its own rate will be compared. If there is a downward trend in the industry, that also will be apparent, but a sudden, inexplicably large drop in the BLS's industry rate will not have the impact it currently has for some VPP participants and applicants. And while a sudden, inexplicably large increase in the BLS's industry rate may make it easier for a worksite to meet the Star rate requirements, the program's many other, rigorous requirements will continue to ensure that only worksites with excellent safety and health management systems gain VPP Star approval.

To implement this revision, OSHA proposes changes in the following sections of the VPP:

III.F.4.a.(1) This is the basic Star rate requirement.

III.F.4.a.(2)(a) This is the alternative rate calculation available to qualifying small businesses.

III.H.2.b.(2) This deals with construction applicants' qualification for VPP's Merit Program.

III. Proposed Changes to the Voluntary Protection Programs

A. The Star Rate Requirement.

The beginning of III.F.4.a.(1) would change to:

"For site employees—Two rates reflecting the experience of the most recent 3 calendar years 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 available, either three or four digits) published by the Bureau of Labor Statistics (BLS)."

B. The Alternative Rate Calculation for Qualifying Small Businesses

The complete wording of III.F.4.a.(2)(a) would change to:

"To determine whether the employer qualifies for the alternative calculation method, do the following:

- Using the most recent employment statistics (hours worked in the most recent calendar year), calculate a hypothetical total recordable case incidence rate for the employer assuming that the employer had two cases during the year;

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

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

C. Construction Applicants' Qualification for Merit

The beginning of III.H.2.b.(2) would change to:

"For construction, if the incidence rates for the applicant site are not below the industry averages as required for Star, the applicant company must demonstrate that the company-wide 3-year rates are below at least 1 of the 3 most recently published years of BLS rates for the industry (at the three-digit level)."

Signed at Washington, DC this 8th day of July 2003.

John L. Henshaw,

Assistant Secretary of Labor for Occupational Safety and Health.

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