

original records resulting from its product testing and evaluation functions. These critical documents allow NRTLs to exercise quality control over product testing and evaluation functions, and permit OSHA to perform an accurate audit of these NRTL functions. SNAP sites must have the capability to maintain, and provide OSHA with access to, records of functions performed on behalf of NRTLs.

*D. Perform final technical reviews and make decisions on product certification.* Final technical reviews and subsequent decisions regarding product certification are the last functions performed in the technical process for product certification. To provide assurance that a product meets the relevant test standard(s), only a well qualified technical staff can perform these functions. As with recognized sites, SNAP sites can perform these functions only if they have demonstrated the capability of doing so.

*E. Authorize use of an NRTL's mark.* An NRTL's mark symbolizes the final decision to certify a product, and clearly identifies the NRTL as the source responsible for testing and certifying the product. While the SNAP will permit a SNAP site to authorize the mark of the NRTL for which it performs product-testing and -certification functions, the NRTLs must control the use of their marks and ensure that SNAP sites authorize this use only after the decision to certify a product.

*F. SNAP product-testing activity.* SNAP sites may perform product testing within the scope of recognition of the NRTL, provided that the NRTL qualifies the site as having the capability for this testing. This activity may be the only activity performed by a SNAP site, or supplement one or more SNAP functions.

#### IV. Submitting SNAP Applications

OSHA will begin accepting applications from NRTLs for the SNAP after its effective date of May 11, 2009. At that time, OSHA will invite NRTLs and NRTL applicants to apply for approval to participate in SNAP and establish SNAP sites. Prior to submitting a SNAP application, applicants should review the SNAP Description, which OSHA will make available on its Web site for the NRTL Program at <http://www.osha-slc.gov/dts/otpca/nrtl/index.html>. This Web site will contain instructions describing the information to submit in a SNAP application and will provide an application format that may be used for this purpose.

#### V. Authority and Signature

Thomas M. Stohler, Acting Assistant Secretary of Labor for Occupational Safety and Health, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210, directed the preparation of this notice. Accordingly, the Agency is issuing this notice pursuant to sections 6(b) and 8(g) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 655 and 657), Secretary of Labor's Order 5-2007 (72 FR 31160), and 29 CFR 1911.

Signed at Washington, DC, on January 5th, 2009.

**Thomas M. Stohler,**

*Acting Assistant Secretary of Labor for Occupational Safety and Health.*

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**BILLING CODE 4510-26-P**

#### DEPARTMENT OF LABOR

##### Occupational Safety and Health Administration

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

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

**ACTION:** Notice of revisions to the program.

**SUMMARY:** This notice, which sets forth the basic philosophy and requirements of the Occupational Safety and Health Administration's Voluntary Protection Programs (VPP), revises VPP's traditional focus on individual fixed worksites by adding two new ways to participate: Mobile workforce and corporate. A significant reorganization of the program helps clarify the multiple participation options now available. Additional changes include: Greater flexibility in the VPP Demonstration Program; modified provisions concerning Star Program Rate Reduction Plans and 1-Year Conditional status; clarified requirements for Federal agency participants performing construction activities; and a new expectation concerning outreach and mentoring activities.

**DATES:** The revisions are effective 120 days from date of publication in the **Federal Register**.

**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>.

#### SUPPLEMENTARY INFORMATION:

##### I. Introduction

###### A. Background

The Voluntary Protection Programs (VPP), adopted by OSHA in **Federal Register** Notice 47 FR 29025, July 2, 1982, and subsequently revised, 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 significant management leadership and 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.

Continuous improvement is a well-established principle of VPP. Participants strive to make ongoing gains in performance and protective systems, and OSHA strives to improve the VPP, its policies and procedures, and its impact on workplaces throughout the United States.

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 and Federal agencies, both union and non-union. VPP, OSHA's premier recognition program, has become a powerful tool for reducing workplace injuries and illnesses.

VPP's original focus was on establishing effective safety and health management systems at individual fixed worksites where the employer had responsibility and authority to control safety and health. OSHA's experience with VPP Demonstration Programs and other cooperative programs, and the public comments on its proposal in the **Federal Register** to establish a VPP for Construction, 69 FR 53300, August 31, 2004, have demonstrated that the basic principles of site-based safety and health management apply equally well to workforces that move from one work project and location to another and whose employers may not have controlling authority for safety and health.

Therefore, VPP now changes from a primarily site-based program to one that welcomes applications from both individual fixed worksites and employers with mobile workforces. This change opens new opportunities for participation by exemplary employers in the construction industry plus mobile workforce employers in other industries. OSHA is pleased to extend the benefits of VPP to these employers and employees.

In addition to its efforts to make VPP eligibility more inclusive, OSHA has been experimenting with ways to make the VPP application and review process more efficient and less resource-intensive for applicants and the Agency. The VPP Corporate Pilot, operating since 2004, has tested new VPP processes for multi-facility applicants who demonstrate a strong commitment to employee safety and health and VPP. These applicants, typically large corporations or Federal agencies, have adopted VPP on a broad scale for protecting the safety and health of their employees.

OSHA has required VPP Corporate Pilot applicants and participants to have established, standardized corporate-level safety and health management systems that are effectively implemented organization-wide, as well as internal screening processes for evaluating their facilities' safety and health performance. Under the VPP Corporate Pilot, OSHA has offered streamlined processes to eliminate redundancies in application requirements and onsite review procedures while continuing to perform careful onsite reviews of all applicant facilities. The efficiencies tested successfully within this pilot have encouraged numerous multi-facility employers to make an organization-wide commitment to VPP. The lessons learned (discussed in Section II) now enable OSHA to add to VPP the new option of corporate participation.

Once the following revisions become effective, OSHA will move current participants in its VPP Mobile Workforce Demonstration for Construction and its VPP Corporate Pilot into the appropriate VPP program (Star or Merit) and way to participate (site-based, mobile workforce, or corporate).

### B. Statutory Framework

The Occupational Safety and Health Act of 1970, 29 U.S.C. 651 *et seq.* (hereinafter referred to as 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. The following are provisions which represent the legislative authority applicable to 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."

### C. States with OSHA-approved State Plans

As provided by Section 18 of the OSH Act, 26 States have received OSHA approval to operate their own occupational safety and health programs, which must be at least as effective as the Federal OSHA program. Twenty-two of these State Plans cover both private and public sector employees; four cover public sector only. The States have been encouraged to establish their own VPPs parallel to the Federal VPP. All States with OSHA-approved State Plans have established VPPs, submitted documentation, and received approval from OSHA.

State VPPs may contain different participation categories, processes, and criteria. Some States include programs that correspond to OSHA's current Star, Merit and Demonstration Programs. Some States already have expanded their construction industry VPP participation options.

When the following revisions become effective, all State Plans will be required to advise OSHA whether they intend to adopt similar changes to their current programs, including the addition of mobile workforce and corporate ways to participate. They will be asked to submit documentation on any revisions for OSHA review. OSHA will make available on its Web site summary information on the States' responses to this Federal Program Change.

## II. Discussion of the Changes

### A. Mobile Workforce Participation

The construction industry, traditionally one of the nation's most

hazardous, has not been able to take full advantage of the benefits of VPP participation. There are multiple reasons for the industry's underrepresentation. 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, for example, plumbers, heating and ventilation workers, drywall installers, etc. Many of these employers, nevertheless, have exceptional safety and health management systems 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 construction industry participation in VPP.

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

OSHA, the Advisory Committee on Construction Safety and Health (ACCSH), and industry representatives agree that making VPP a feasible goal for small, medium, and large construction employers would encourage a greater number of them to implement effective safety and health management systems. In OSHA's experience, such systems are the best way to reduce work-related injuries, illnesses, and fatalities.

To that end, OSHA implemented two VPP Demonstration programs in 1998 to evaluate alternative VPP criteria that, if successful, could lead to greater construction participation. The Star Demonstration for Short-Term Construction Projects 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 in how such companies ensure safe and healthful work environments at multiple, short-term construction sites. The Mobile Workforce Star Demonstration Program gave companies whose employees travel from one site to another and that 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 safety and health management system 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.

The documented success of those demonstrations, and especially a modified demonstration within Region V's Cincinnati Area Office, led to meetings in 2003 and 2004 with construction employers, trade association representatives, and representatives of the Building and Construction Trades Department, AFL-CIO.

OSHA, convinced of the importance and feasibility of bringing more construction companies into VPP, proposed in **Federal Register** Notice 69 FR 53300, August 31, 2004, to establish a new VPP for Construction. The Agency asked for comments on its proposal from stakeholders and the general public.

OSHA received feedback from 18 commenters: two associations representing VPP participants; two national unions; one association of safety professionals; six trade associations representing construction industry employers; three VPP participating companies; one construction company outside VPP; and three private individuals. The numbered sections below review comments relevant to major issues, the Agency's subsequent decisionmaking, creation of the 2006 Mobile Workforce Demonstration for Construction, and VPP revisions contained in this notice.

Based on comments received in 2004 and further discussion within the Agency, OSHA chose to continue exploring alternative VPP policies and procedures for the construction industry in a new, nationwide VPP Mobile Workforce Demonstration for Construction, launched in 2006. OSHA welcomed applications from construction companies ranging from large, controlling general contractors to small specialty trade contractors whose employees moved frequently from site to site.

OSHA's various construction demonstrations have had the positive effect of increasing construction industry participation in VPP. The overall experience of these construction participants has been outstanding. Construction employers who have participated in VPP Demonstration Programs have achieved, as a group, Total Case Incidence Rates (TCIR) and Days Away/Restricted/Transfer (DART) rates 54 percent and 56 percent below published Bureau of Labor Statistics industry rates (2006 VADS, OSHA's VPP data system). Their injury and

illness rate experience subsequent to entering VPP programs has been either on par or below the overall VPP average rates for general industry.

### 1. Safety and Health Management System

Several commenters voiced concern that the proposed safety and health management system for construction employers, which did not differ significantly from the comprehensive system required of site-based VPP participants, placed too great a burden on small construction companies and failed to recognize the construction industry's differences from other industries. Several commenters were particularly critical of requiring site implementation plans for every work project.

OSHA's VPP experience provides ample evidence that VPP's safety and health management system, which is performance-based and requires participants to identify their specific hazards, needs, and appropriate protective measures, provides sufficient flexibility and can be applied to any industry. The experience of the early construction demonstrations, as well as the ongoing experience of VPP's site-based construction participants, shows that even small construction companies are capable of working successfully with the VPP model, attaining VPP approval, and maintaining VPP-quality systems and performance. The 2006 Mobile Workforce Demonstration bears out this earlier experience: As of December 2007, 28 percent of all mobile workforce participants reported fewer than 100 employees including contractor/subcontractor employees (whose injury and illness experience is rolled up with regular employees).

OSHA did recognize that requiring individual, comprehensive site implementation plans might be an unnecessary and burdensome condition of participation, and the Agency eliminated this feature in the subsequent 2006 Demonstration Program. Moreover, OSHA decided to build additional flexibility and sensitivity to construction workplace conditions into the 2006 Demonstration by having applicants develop a unique Participation Plan. This plan was limited to addressing elements of the applicant's participation that differed in substance or emphasis from the traditional VPP requirements, such as different employee involvement strategies, baseline hazard analysis, and emergency response and evacuation procedures. The Participation Plan has been a valuable feature of the 2006 Demonstration and is now made part of

the mobile workforce way to participate (VI.C.1.b.).

### 2. Geographic Boundary for Participation

Some commenters questioned the need for construction company participation boundaries defined by OSHA Region or Area Office. OSHA understands that mobile construction operations do not adhere to Federal agency boundaries. However, the Regions and Area Offices are best able to establish close working relationships with mobile workforce participants, and it is through these relationships that OSHA is able to provide the cooperative dialogue and support that is expected within VPP.

There may be companies whose very scattered work projects pose a barrier to their mobile workforce participation. Site-based participation may be appropriate for some of these companies. OSHA's experience indicates that the vast majority of construction employers, especially small employers whose operations tend to be more restricted geographically, will be able to identify and participate within what these revisions now identify as a Designated Geographic Area (DGA) (VI.C.1.c.). Multiple DGAs have been utilized successfully by several participants in the 2006 Demonstration to expand their participation to more than one OSHA Area Office or Region.

### 3. Onsite Evaluations

Most comments dealing with the onsite evaluation process for construction applicants/participants focused on:

- The number of different worksites/projects OSHA would evaluate during the approval process, and
- The frequency of reapproval visits.

The proposed tiered approach (2–25 sites = 2 visits; 26–99 sites = 3 visits; 100+ sites = 4 visits) elicited both positive and negative responses. Some commenters recommended more visits, some less, and some recommended OSHA visit a percentage of sites. After considerable discussion within the Agency, which included reference to OSHA's unsuccessful attempt to implement a similar tiered approach within the OSHA Strategic Partnership Program, OSHA decided to eliminate the tiered approach. In many instances, it would obligate OSHA to perform more inspection visits than a non-VPP participant typically would receive, an impractical consequence that OSHA Partnership personnel first reported.

In the 2006 Demonstration, OSHA tested a new approach that set a

minimum of one visit and gave Regional Administrators the responsibility and flexibility to decide, based on the complexity and scope of an applicant's operations, whether and how many additional sites should be visited.

Four commenters questioned OSHA's proposal to reevaluate construction participants on a 2-year cycle. They argued that the frequency of reevaluation should be consistent with the existing VPP reevaluation schedule, which calls for Star reevaluations every 3 to 5 years. In the subsequent 2006 Demonstration, OSHA adhered to the Demonstration Program requirement for reevaluation every 12 to 18 months. OSHA personnel administering the Demonstration found that a 12- to 18-month frequency is unnecessary and burdensome. However, OSHA does not believe that the site-based 3- to 5-year interval is appropriate, given the dynamic, frequently changing sites/projects and conditions of construction employers. OSHA has decided to reevaluate mobile workforce Star participants within 18 to 24 months of initial approval, and subsequently at no greater than 36-month intervals. While OSHA recognizes the value of consistency across the programs, and has built consistency into most areas of this revised VPP, the Agency believes this differing reevaluation schedule is most likely to ensure worker protection without overburdening the Agency and mobile workforce participants.

#### 4. Union Support for Participation

The mobile workforce way to participate contains a requirement for documented union support that differs from the traditional, site-based requirement. This change is grounded in OSHA's experience with VPP construction applicants/participants.

When multiple unions represent employees at an applicant/participant site or within a DGA, OSHA's willingness to consider less than 100 percent union support first appeared in the proposal for a VPP for Construction, 69 FR 53300, August 31, 2004. OSHA sought public input on the complex question of how to assure union support when, "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 [multi-site, mobile workforce] applicants? How should OSHA respond

if one of multiple authorized representatives \* \* \* subsequently withdraws support?"

OSHA received comments on this issue from nine respondents, including two associations that represent VPP participants and employer associations with both unionized and non-union member companies. At one end of the spectrum was the recommendation to drop the requirement for union support if the workforce is not fully unionized. At the other end of the spectrum was the recommendation to continue the current site-based requirement of 100 percent union support and thereby maintain consistency throughout the VPP. Other commenters suggested various degrees and methodologies of union support, depending on employer and worksite circumstances.

After considering these comments and further internal Agency discussion, OSHA, in its 2006 Mobile Workforce Demonstration for Construction, introduced a compromise provision: When a majority of employees are represented by unions, OSHA requires (in the Demonstration) signed statements of support from enough unions to represent a majority of all employees. This new approach continued to recognize the importance of union support for VPP while, at the same time, it recognized that obtaining 100 percent union support may not be feasible at construction worksites. The notion of fairness also entered into the decision to test an alternative requirement for union support. Many VPP supporters, within the Agency, at approved VPP sites, and elsewhere, have voiced concern over the years about the possibility of a small minority preventing the VPP participation desired by the majority.

OSHA's experience with the alternate union support requirement it has been testing in the 2006 Mobile Workforce Demonstration for Construction has been positive. There has been no problem implementing the new requirement. For some Demonstration participants, union support for participation within the participant's DGA has been obtained from the local building trades council. For other participants, union support has been obtained at the worksite level. OSHA has received no objections to this policy from affected unions or any other parties and now is applying it to the mobile workforce way to participate. The existing union support requirement will continue for site-based applicants/participants.

#### 5. Extending Mobile Workforce Participation to All Industries

Over the years OSHA has been approached by various general industry employers who do not perform all of their work tasks at an individual fixed location. These include, but are not limited to, utilities, couriers, and maintenance contractors. The experiences of these employers have demonstrated to OSHA that it is possible for a general industry employer to maintain a VPP-quality safety and health management system for employees who complete some of their work tasks away from a fixed worksite. The positive experience of these participants, coupled with the experience of the 2006 Mobile Workforce Demonstration for Construction, demonstrates that both construction and general industry employers can successfully implement a safety and health management system that encompasses mobile employees. Therefore, the new VPP option of mobile workforce participation will be available to any eligible employer whose workers move from one work location to another and who meets VPP's rigorous requirements.

#### B. Corporate Participation

The continuing growth of VPP is a sign that businesses throughout the U.S. are recognizing the value of implementing effective safety and health management systems. As more companies come into VPP, ever greater numbers of participating employers and employees benefit from reduced injuries and illnesses and fewer workplace fatalities. VPP's success, however, means that more and more applications must be reviewed and onsite evaluations conducted. This has challenged OSHA resources and encouraged the Agency to seek ways to administer the program more efficiently.

Large employers who have committed to bringing multiple facilities into VPP have also experienced resource challenges as they prepare multiple individual applications that contain repetitive information and then undergo multiple onsite evaluations. Seeking new ways to ease the resource burden on these employers and also on OSHA, the Agency established the VPP Corporate Pilot in 2004.

Prior to 2004, several VPP stakeholders had independently discussed the burden of gathering and providing safety and health management system information that was universal to all of their sites and needed to be provided to OSHA each time a site applied for VPP. OSHA also

recognized this burden—the Agency repeatedly had to review similar or identical systems documentation when it reviewed applications from multiple facilities of a single large organization.

The 2004 VPP Corporate Pilot provided a means to eliminate the paperwork redundancies for both multi-facility applicants and OSHA reviewers. Carefully selected participants underwent in-depth reviews of their organization-wide safety and health management systems. An important element of the review was verification of the participant's active management commitment, not just to safety and health excellence, but specifically to VPP. Pilot applicants also were required to provide evidence of pre-screening and oversight of all facilities within their organization, to ensure that the safety and health management system was being implemented effectively.

Following the corporate-level evaluation of a pilot participant's safety and health management system, OSHA sent VPP teams to each applicant facility. The teams were able to focus on how managers and employees implemented the safety and health system. These site reviews, which typically were shorter in duration than normal VPP onsite evaluations, consisted of employee and management interviews, a site walkthrough, and a review of site-specific performance and systems documentation.

OSHA learned that by eliminating the repetitious review of safety and health management system documentation and focusing on system implementation, it could reduce the Agency resource expenditure for application and onsite review by 40 percent without affecting the quality of that review. Similarly, pilot participants reported resource savings of up to 50 percent in application preparation and time devoted to OSHA's onsite visits.

The pre-screening required of pilot participants involved corporate-level safety and health personnel performing audit activities at each applicant facility to ensure that the facilities were ready for VPP. Corporate personnel also reviewed their facilities' VPP applications for completeness and accuracy. These efforts produced impressive results: 94 percent of the 162 facilities undergoing onsite evaluations in the Corporate Pilot achieved Star approval, well above the 80 percent benchmark established for the pilot.

The pilot produced other, non-quantifiable results. Participants reported an increased consistency in implementation of their safety and health management system throughout their organization. OSHA also believes

it has achieved a greater level of consistency across Regions in the procedures it uses to evaluate VPP applicants.

OSHA is also incorporating the concept of a Designated Geographic Area (DGA) into the corporate way to participate. Both the VPP Corporate Pilot and the Mobile Workforce Demonstration for Construction have relied on a two-step evaluation process in which the first step is an organizational safety and health management system review. This review is designed to determine if the applicant has a VPP-quality safety and health management system in place and the management commitment required to effectively implement the system at the worksite level. OSHA demonstrated that such a review is effective, whether the applicant's facilities are coming into VPP individually (site-based applicants) or as part of a DGA (mobile workforce applicants).

Incorporating the DGA concept into the corporate way to participate provides employers with additional flexibility with regard to the implementation and evaluation of their safety and health management system. OSHA recognizes that there are significant differences among the large employers willing to make the necessary commitment for corporate participation. These organizations may find it appropriate to seek participation at the individual site level, at multiple sites within a DGA, or both. Upon completing the corporate safety and health management system review, a participant can then choose either or both of the two participation options tested. That is, a participant can submit a streamlined application and undergo a streamlined onsite evaluation for an individual location, or a participant can seek participation by having OSHA visit a sampling of worksites within a DGA. In either case, the applicant site/DGA will be subject to the policies and requirements outlined in VI.B (site-based) or VI.C (mobile).

The successful experience of OSHA's VPP Corporate Pilot leads the Agency now to establish the new category of corporate participation. This corporate option is available for multiple-facility employers who have made a significant, organization-wide commitment to VPP and who have fixed locations, mobile workforces, or both.

#### *C. Reorganizing the VPP Criteria*

VPP policy and participant requirements historically focused on the three programs, Star, Merit, and Demonstration. For each of these programs there was only one way to

participate, individual site-based participation. All safety and health management system requirements and injury and illness performance requirements were embedded within the Star Program. Merit and Demonstration Program provisions specified how system and performance requirements differed from Star.

The backbone of VPP remains its safety and health management system, and OSHA desires to emphasize this system's applicability and feasibility for all types of industries, workplaces, and program participants. Therefore, OSHA has created a specific section devoted to the VPP safety and health management system. Other than minor variations to accommodate the different ways to participate, the VPP safety and health management system elements and sub-elements remain consistent with past notices.

The addition of new ways to participate has prompted OSHA to restructure VPP to clarify participation options and procedures. Each way to participate is spelled out individually, with its unique features, requirements, and evaluation processes. This has resulted in what may appear to be unnecessary repetition within the Ways to Participate Sections VI.B., C., and D. However, OSHA believes that this format actually facilitates clarity. An interested employer can go to one place within the notice to review relevant information and requirements. OSHA hopes that its reorganization of VPP criteria, now Sections III through VIII, will help employers and employees identify the most appropriate way to participate and all related requirements of the selected participation option.

#### *D. Demonstration Program Modification*

OSHA no longer will require that all Demonstration Program participants maintain Star-level safety and health management systems and injury and illness performance levels. Participants will be required to adhere to the provisions of their particular demonstration. In no circumstance will a demonstration allow approval below the minimum Merit level requirements.

The basic intent of the Demonstration Program always has been to enable OSHA to test alternate requirements and procedures. The requirement for Star-level performance unnecessarily limits the flexibility OSHA needs. OSHA believes its frequent onsite visits to Demonstration participant sites and continuing review of participant self-evaluations, coupled with the new minimum performance requirements, provide sufficient oversight and needed flexibility. Any Demonstration

participants initially approved at the Merit level will be subject to VPP requirement for continuous improvement and the Merit requirement to achieve Star-level systems and performance.

#### *E. Star Rate Reduction Plan and 1-Year Conditional Status*

Over the years, OSHA has had difficulty implementing in a fair and consistent manner the program's provisions that apply when a Star participant's rates climb above required levels. Under current procedures, if a participant's 3-year injury and illness rates slip during the period between regularly scheduled OSHA reapproval visits, OSHA must place the participant on a 2-year rate reduction plan. If rates slip in a year when an OSHA team visits, OSHA must place the participant on 1-year conditional status, and may also require a 2-year rate reduction plan.

A problem arises when a participant fits the latter scenario but has no identifiable safety and health management system deficiency. Conditional status is inappropriate and, in fact, cannot be lifted within the required 1-year timeframe because the participant may need the allowed 2 years to return to Star-level rates.

Therefore, the change in these provisions is to correct an unintended consequence of current rules. OSHA now may require a 2-year rate reduction plan whenever a Star participant's rates exceed required minimum levels. OSHA now may impose 1-year conditional status when an OSHA onsite team identifies a deficiency in a Star participant's safety and health management system.

#### *F. Federal Agency Construction Activities*

When OSHA opened VPP participation to Federal agencies, the Agency did not anticipate that some applicant facilities might be engaged primarily in construction activities. This revision makes clear that all applicants primarily engaged in construction activities must follow OSHA's construction regulations and VPP's additional construction requirements. This includes the requirement to include in a participant's injury and illness rates the experience of all employees, including contractors.

#### *G. Expectation of Continuous Improvement*

The principle of continuous improvement is integral to the VPP experience. Participants' required annual self-evaluations are intended to measure success, identify "what

improvements can be made to make [the safety and health management system] even more effective" (Appendix C, VPP Policies and Procedures Manual, OSHA Directive CSP 03-01-003), and determine goal modifications and needed and desirable changes. OSHA evaluation teams, during their periodic visits, verify this improvement and offer suggestions that will help participants create ever more effective employee protections.

Whenever OSHA officials describe VPP to interested parties, they stress that participants are expected to continuously improve. This principle, which is explicit in the VPP Policies and Procedures Manual, is now made explicit in this **Federal Register** notice in III.E. Additional Expectations.

#### *H. Expectation of Outreach and Mentoring Activity*

VPP has a long history of participants voluntarily reaching out to help other businesses, their industries and communities, and OSHA. Through mentoring, technical assistance, participation in training, presentations at conferences and other events, community service, and involvement in the VPP Special Government Employee Program, VPP participants have helped OSHA spread the message of effective safety and health management.

OSHA recognizes VPP participants as the best safety and health performers in the nation, the role models for others wishing to improve safety and health for their employees. It is through outreach and mentoring that VPP participants fulfill their responsibilities as role models and cooperative partners with OSHA.

The Gallup Organization, in its 2005 study commissioned by the Department of Labor, "Evaluation of the Voluntary Protection Program," included measuring the overall impact of VPP participants' outreach and mentoring programs. The study found impressive benefits and accomplishments in this area. For example, Gallup conservatively estimated that VPP participants in 2004 had 2,365 people performing mentoring activities that touched more than 529,000 employees beyond VPP facilities. Gallup reported that, at the request of organizations other than OSHA, VPP participants conducted outreach activities at a cost of 30,000 hours in 2004. Responding to OSHA requests, participants conducted an additional 41,400 hours of activity that year.

Because of the need for such activity and participants' well-established track record, OSHA now believes that outreach and mentoring should be

stated principles of VPP. Therefore, they are made explicit in this **Federal Register** notice in III.E. Additional Expectations.

### **III. The Voluntary Protection Programs**

#### *A. Purpose of the Voluntary Protection Programs*

OSHA has long recognized that a multifaceted approach is the best way to accomplish all the goals of the OSH Act. Employer compliance with occupational safety and health standards, OSHA regulations, 29 CFR part 1960 for Federal agencies, and the general duty clause—all the requirements of the OSH Act—is essential. Regulations and enforcement alone, however, cannot replace the understanding of work processes, materials, and hazards that comes with employers' and employees' daily on-the-job experience and commitment to workplace safety and health. This knowledge, combined with an ability to evaluate and address hazards rapidly, enables employers and employees to take responsibility for their own safety and health in ways not available to OSHA.

OSHA's substantial experience with safety and health management systems has shown the value of a comprehensive, systematic approach to worker protection. The principles of safety and health management can effectively prevent hazards and protect workers, whether implemented for fixed worksites or mobile workforces. It is OSHA's policy, therefore, to promote safety and health management systems tailored to the needs of particular worksites and situations.

The purpose of the Voluntary Protection Programs (VPP) is to emphasize the importance of, encourage the improvement of, and recognize excellence in comprehensive employer-provided, employee-participative occupational safety and health management systems in meeting the goal of the OSH Act "to assure so far as possible every working man and woman in the Nation safe and healthful working conditions and to preserve our human resources \* \* \*." This emphasis is demonstrated through assistance to employers in their efforts to reach the VPP level of systems and performance excellence; through cooperation among government, labor, and management to resolve safety and health problems; and through official recognition of employers and employees who together have developed and implemented excellent safety and health management systems. These systems provide the structures and strategies for preventing or controlling occupational hazards.

VPP participants are expected to effectively protect workers from the hazards of the workplace. They do this by meeting VPP's rigorous, time-tested criteria for approval, continued participation, and continuous improvement. Employers who develop and implement VPP-quality systems not only are working to remain compliant with OSHA's rules, but also are striving to excel. They use flexible and creative strategies that go beyond OSHA's basic workplace requirements in a quest to provide the best feasible protection for their workers.

VPP participants serve as models for effective employee protection in their industries. Impressive reductions in injuries and illnesses—participants' rates are well below industry averages—are the most obvious evidence of VPP's success. Other performance measures, plus anecdotal evidence and participant testimonials, reveal significant cost savings, including workers' compensation cost reductions; reduced employee turnover; improvements in the quality of participants' products and services; and other benefits. Participants speak often of the "cultural transformation" that can occur during the process of preparing for application to VPP. These experiences are helping to convince skeptics that productivity, quality, profitability, and safety and health are complementary goals.

VPP participants enter into a new relationship with OSHA. In this innovative public/private partnership, cooperation and trust nourish improvements in safety and health, not just at VPP sites, but also beyond the worksite boundaries. VPP companies are afforded the opportunity to provide the Agency with input on safety and health matters. At the same time, the recognition and status gained by their participation in VPP, and their commitment to improving their industries and communities, enable them to accomplish a broad range of safety and health objectives. VPP participants mentor other worksites interested in improving their safety and health management systems; conduct safety and health training and outreach seminars; and hold safety and health conferences that focus on leading-edge safety and health issues. VPP participants also participate with OSHA on VPP onsite reviews through the innovative VPP Special Government Employee (SGE) Program. The SGE Program offers private and public sector safety and health professionals and other qualified participants the opportunity to exchange ideas, gain new perspectives, and grow professionally while serving as full-fledged team

members on OSHA's VPP onsite evaluations.

One way OSHA recognizes VPP participants' safety and health excellence is by removing them from programmed inspection lists for the duration of their participation, unless they choose to remain on the lists. This helps OSHA to focus its enforcement inspections on establishments that are less likely to meet the requirements of the OSH Act. However, OSHA continues to investigate valid employee safety and health complaints, fatalities and catastrophes, and other significant events at VPP sites according to established Agency procedures.

Participation in any of the programs does not diminish existing employer and employee responsibilities and rights under the OSH Act and, for Federal agencies, under 29 CFR part 1960. In particular, OSHA does not intend to increase the liability of any party at an approved VPP site. Employees or any representatives of employees taking part in an OSHA-approved VPP safety and health program do not assume the employer's statutory or common law responsibilities for providing safe and healthful workplaces; nor are employees or their representatives expected to guarantee a safe and healthful work environment.

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

The Assistant Secretary for Occupational Safety and Health determines approval for initial participation in the VPP, advancement to the Star Program, all participation in Demonstration Programs, and termination from the VPP. The OSHA Regional Administrator who has jurisdiction over a participant determines approval for continuation in the Star (including 1-year Conditional Star participation) and Merit Programs.

#### *B. Purpose of This Notice*

This notice describes the Voluntary Protection Programs, VPP's constituent programs, the VPP Safety and Health Management System; how to apply; ways to participate and criteria for approval; participation decisions; and post-approval interactions.

#### *C. Programs Within VPP*

VPP consists of three programs: Star, Merit, and Demonstration.

- The Star Program recognizes employers and employees who

demonstrate exemplary achievement in the prevention and control of occupational hazards through the development, implementation, and continuous improvement of their safety and health management systems.

- The Merit Program recognizes employers and employees who have developed and implemented good safety and health management systems but who must take additional steps to reach Star quality.

- The Demonstration Program recognizes employers and employees who operate effective safety and health management systems that differ from current VPP requirements. This program enables OSHA to test the efficacy of different approaches.

#### 1. The Star Program

##### a. Purpose

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

##### b. Experience Operating the Safety and Health Management System

All elements of a successful safety and health management system, as delineated in Section IV. below, must be operating for a period of not less than 12 months before Star approval.

##### c. Injury and Illness Performance Requirements

In order to qualify for the Star Program, applicants/participants must meet and maintain certain injury and illness rate requirements. For further specifics on these requirements, see the Injury and Illness Performance sections at VI.B., C., and D.

#### 2. The Merit Program

##### a. Purpose

The Merit Program recognizes employers and employees in any industry who have implemented a safety and health management system that in one or more elements does not yet meet the level of development or performance required for the Star Program. If OSHA determines that an applicant has demonstrated the commitment and possesses the resources to achieve Star requirements within 3 years, then OSHA may approve Merit Program participation. As a condition of Merit participation, the applicant agrees to specified goals that,



when achieved, will raise performance to the Star level.

b. Experience Operating the Safety and Health Management System

To qualify for the Merit Program, an eligible applicant must have a written safety and health management system.

(1) The basic elements (management leadership and employee involvement, worksite analysis, hazard prevention and control, and safety and health training) must all be operational or, at a minimum, in place and ready for implementation by the date of approval.

(2) The eligible applicant may not have met each of the specific Star-level requirements comprising each basic element. Participation in Merit is an opportunity for employers and their employees to work with OSHA to more fully develop their safety and health management system and improve its performance. The participant's safety and health management system must be at Star quality within 3 years. For Star quality system requirements, see IV. below.

c. Goals

In consultation with the applicant, OSHA will set goals intended to bring the safety and health management system and its performance up to Star level.

3. Demonstration Programs

a. Purpose

(1) Demonstration Programs provide the opportunity for organizations and/or worksites to demonstrate the effectiveness of alternative methods of achieving safety and health management system excellence that could modify current VPP requirements. OSHA may approve a Demonstration Program for such purposes as:

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

(b) Testing alternative application and approval protocols that may expand VPP eligibility or serve other program objectives;

(c) Demonstrating the feasibility of joint Federal agency oversight of VPP applicants/participants, including joint evaluations, in the area of workplace safety and health.

(2) A Demonstration Program also may be used to test the potential for a new program within VPP or another cooperative initiative.

b. Program Development and Approval

(1). OSHA will develop the basic parameters of a Demonstration Program at the National Office or Regional level

and will include a clear outline of specific requirements.

(2) The decision to implement a Demonstration Program must be approved by the Assistant Secretary before any applicants are considered for participation.

c. Requirements for Demonstration Programs

(1) Safety and Health Management System Requirements. Demonstration Program applicants must have a safety and health management system that, at a minimum, addresses the basic VPP elements (management leadership and employee involvement, worksite analysis, hazard prevention and control, and safety and health training), plus 29 CFR part 1960 requirements for Federal agencies and 29 CFR 1926.20 requirements for construction applicants. How the applicant implements these elements may be the subject of demonstration.

(2) Applicants must demonstrate to the Assistant Secretary's satisfaction that the alternative approach shows reasonable promise of being successful and of leading to changes in VPP requirements.

(3) Injury/Illness Performance Requirements. A Demonstration Program's injury/illness rate requirements will depend on the specific provisions of the Demonstration.

d. Preapproval Onsite Evaluation

(1) Purpose. The preapproval onsite review, which OSHA conducts in a non-enforcement capacity, is a review of the applicant's safety and health management system and the effectiveness of the alternate criteria being demonstrated. It is conducted to:

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

(b) Identify the strengths and weaknesses of the applicant's safety and health management system and evaluate its adequacy to address hazards and to ensure compliance with all OSHA requirements;

(c) Determine how effectively the applicant has implemented its safety and health management system;

(d) Identify any deficiencies in the applicant's safety and health management system that must be satisfactorily addressed before OSHA will approve the applicant; and

(e) Obtain information to assist the Assistant Secretary in making the VPP approval decision.

(2) Duration and Scope. The duration and scope of the preapproval onsite evaluation will depend on the specific

provisions of the demonstration. OSHA expects that the onsite evaluation normally will include document review, walkthrough, and management and employee interviews. For more information on what OSHA looks for during onsite evaluations, see the Preapproval Onsite Review sections at VI.B., C., and D.

e. Term of Participation

Applicants may be approved to a Demonstration Program for the period of time specified in the particular program. The term normally will not exceed 5 years.

f. Periodic Reevaluation

(1) Purpose. Onsite reevaluation of Demonstration Program participants is intended to:

(a) Determine continued qualification for the Demonstration Program;

(b) Document results of Demonstration Program participation in terms of the evaluation criteria and other noteworthy aspects of the participant's safety and health management system;

(c) Ensure that the demonstration aspects of the program continue to be effective and protect employees; and

(d) Identify any problems that have the potential to adversely affect continued Demonstration Program qualification and determine appropriate follow-up actions.

(2) Frequency. OSHA will reevaluate Demonstration Program participants every 12 to 18 months.

(3) Duration and Scope. See III.C.3.d.(2) above.

g. Approval and Transition of Demonstration Program Participants to Another VPP Program

(1) Approval to another VPP program is contingent upon:

(a) Successful demonstration of the alternatives tested within the Demonstration Program;

(b) A decision by the Assistant Secretary that changing VPP requirements to allow inclusion of these alternative provisions is desirable and will result in a continuing high level of worker protection. Once the Assistant Secretary decides to change VPP requirements, the changes will be effective on the date announced to the public.

(c) OSHA's satisfaction that the participant meets all requirements of the VPP program to which it is transitioning.

(2) When the VPP changes become effective, a Demonstration participant may be approved to another program within VPP without submitting a new



application or undergoing further onsite review, provided that the approval occurs no later than 18 months following the last OSHA onsite evaluation under the Demonstration Program. If more than 18 months have elapsed, OSHA must conduct an onsite evaluation prior to recommending the participant's approval to another program.

#### h. Demonstration Termination

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

(a) The Demonstration is likely to endanger participating workers;

(b) It is unlikely that the Demonstration will result in participants' approval to another VPP program, creation of a new program, or other VPP changes; or

(c) The Demonstration period has expired.

(2) When a Demonstration Program ends, any participants not approved to another program within VPP will be terminated.

#### D. Guiding Principles

The following essential principles underlie all VPP participation. An applicant/participant's failure to adhere to these principles is grounds for disapproval or termination.

##### 1. Safety and Health Management System Excellence

VPP applicants and participants must demonstrate, in the development and ongoing implementation of their safety and health management systems, a level of excellence commensurate with the rigorous standards and performance requirements embodied within VPP. VPP-quality safety and health management systems effectively identify, analyze, and prevent/control hazards, thereby ensuring the protection of employees and the prevention of workplace injuries and illnesses.

##### 2. Cooperative Relationship

Based on the intent and history of VPP, OSHA expects participants to work cooperatively and proactively with the Agency, both in the resolution of safety and health problems and in the promotion of effective safety and health management systems. This cooperation is founded in an essential trust among labor, management, and OSHA. Applicants often report that the experience of developing and implementing a VPP-quality safety and health management system, with its emphasis on active management leadership and meaningful employee involvement, is a powerful catalyst for

strengthening cooperation and trust. OSHA facilitates cooperation by designating a contact person, usually the Regional VPP Manager, who coordinates each approved participant's contact with the Agency.

##### 3. Employee Support for VPP Participation

a. Any application received by OSHA must reflect the support of applicant's employees.

b. When an applicant's employees are unionized,

(1) The applicant may be required to provide evidence of support from applicable collective bargaining representatives. For specific requirements concerning union support for VPP participation, see the Eligibility sections at VI.B., C., and D.

(2) Unions retain the right to withdraw support at any time. In such event, OSHA will reevaluate the participant's continuing qualification. If a union's withdrawal of support results in a participant no longer meeting the VPP eligibility requirements of VI.B., C., or D., OSHA will ask the participant to withdraw or will terminate the participant from VPP.

##### 4. Compliance with the OSH Act

All VPP applicants and participants will comply with the OSH Act, OSHA requirements, and in the case of Federal agencies, 29 CFR part 1960. Any deficiencies related to compliance that are uncovered through OSHA onsite reviews, self-inspections, employee reports, accident investigations, process hazard reviews, annual self-evaluations, or any other means must be corrected promptly. OSHA expects applicants/participants to provide effective interim protection as necessary to keep employees safe while corrections are being made.

##### 5. OSHA History

If an applicant has been inspected by OSHA within the 36-month period preceding application, the inspection, abatement, and/or any other history of interaction with OSHA must indicate good faith attempts to improve safety and health. Which aspects of an applicant's history OSHA will examine depends on how the applicant proposes to participate, that is, site-based, mobile workforce, or corporate participation. For further specifics, see the Eligibility sections at VI.B., C., and D.

##### 6. Assurances

Applications to VPP must be accompanied by certain assurances describing what the applicant agrees to do if OSHA approves the application.

Some of these assurances apply across the entire VPP. Others differ slightly, depending on how the applicant proposes to participate, that is, site-based, mobile workforce, or corporate participation. See the Assurances sections at VI.B., C., and D.

#### E. Additional Expectations

The following provisions reflect longstanding aspects of VPP participation that further define OSHA's expectations for VPP participants:

##### 1. Continuous Improvement

VPP participants must demonstrate continuous improvement in the operation and impact of their safety and health management systems. Annual VPP self-evaluations help participants measure success, identify areas needing improvement, determine needed changes, and track the implementation of these changes. OSHA onsite evaluation teams verify this improvement.

##### 2. Outreach

OSHA expects its VPP participants to serve as models of safety and health excellence in their industries and their communities. This can be accomplished in a variety of ways, including

a. Mentoring other worksites interested in improving safety and health;

b. Participating and giving presentations at safety and health conferences; training initiatives; meetings of labor, industry and government groups; and other outreach opportunities;

c. Serving as Special Government Employees on VPP onsite evaluation teams; and

d. Sharing best practices and success stories.

#### F. Recognition

When OSHA approves an applicant for participation in the VPP, the Agency recognizes that the applicant is providing, at a minimum, the basic elements of ongoing, systematic protection of workers in accordance with rigorous VPP criteria. This protection makes general schedule inspections unnecessary. Therefore, the employer's approved site(s) are removed from OSHA's programmed inspection lists (unless the participant chooses not to be removed). OSHA also publicizes VPP participants' successes in a variety of ways, including stories on the Agency's Web site, <http://www.osha.gov>; press releases and other Agency media; and recognition during Agency officials' speeches and presentations.

The VPP symbols of recognition are plaques of approval and program flags. The participant also may choose to use the VPP logo on such items as letterhead, shirts, and mugs.

#### IV. The VPP Safety and Health Management System

This section sets forth the elements and sub-elements of the comprehensive workplace safety and health management system required of VPP participants.

##### A. Management Leadership and Employee Involvement

Each applicant must be able to demonstrate top-level management leadership in its safety and health management system. Management systems for comprehensive planning must address protection of worker safety and health. Employees must be meaningfully involved in the safety and health management system.

##### 1. Commitment to Safety and Health Protection

Authority and responsibility for employee safety and health must be integrated with the overall management system of the organization and must involve employees. This commitment includes:

- a. Policy. Clearly established policies for worker safety and health protection that have been communicated to and understood by employees; and
- b. Goal and Objectives. Established and communicated goals for the safety and health management system and results-oriented objectives for meeting the goals, so that all members of the organization understand the results desired and the measures planned for achieving them, especially those factors that directly apply to them.

##### 2. Commitment to VPP Participation

Management must clearly demonstrate commitment to meeting and maintaining the requirements of the VPP.

##### 3. Planning

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

##### 4. Written Safety and Health Program

All critical elements of a basic safety and health management system must be part of the written program. These critical elements are management leadership and employee involvement, worksite analysis, hazard prevention

and control, and safety and health training. Federal agencies' written programs must also meet the requirements of 29 CFR part 1960, and construction companies' written programs must also meet the requirements of 29 CFR 1926.20. All aspects of the safety and health management system must be appropriate to the size of the worksite(s) and the type of industry. For small businesses, OSHA may waive some formal requirements, such as certain written procedures or documentation, where the effectiveness of the systems has been evaluated and verified. OSHA will decide waivers on a case-by-case basis.

##### 5. Management Leadership

Managers must provide visible leadership in implementing the safety and health management system. This must include:

- a. Establishing clear lines of communication with employees;
- b. Setting an example of safe and healthful behavior;
- c. Creating an environment that allows for reasonable employee access to top site management;
- d. Ensuring that all workers at the site, including contract workers, are provided equally high quality safety and health protection;
- e. Clearly defining responsibility in writing, with no unassigned areas. Each employee, at any level, must be able to describe his/her responsibility for safety and health;
- f. Assigning commensurate authority to those who have responsibility;
- g. Affording adequate resources to those who have responsibility and authority. This includes such resources as time, training, personnel, equipment, budget, and access to information and experts, including appropriate use of certified safety professionals (CSP), certified industrial hygienists (CIH), other licensed health care professionals, and other experts as needed, based on the risks at the site; and
- h. Holding managers, supervisors, and non-supervisory employees accountable for meeting their safety and health responsibilities. In addition to clearly defining and implementing authority and responsibility for safety and health protection, management leadership entails evaluating managers and supervisors annually, and operating a documented system for correcting deficient performance.

##### 6. Employee Involvement

The site culture must enable and encourage effective employee involvement in the planning and

operation of the safety and health 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 ad hoc safety and health problem-solving groups;
- b. Participating in audits and/or worksite inspections;
- c. Participating in accident and incident investigations;
- d. Developing and/or participating in employee improvement suggestion programs;
- e. Training other employees in safety and health;
- f. Analyzing job/process hazards;
- g. Acting as safety observers; and
- h. Serving on safety and health committees constituted in conformance to the National Labor Relations Act.

##### 7. Contract Worker Coverage

All contractors and subcontractors, whether at general industry, construction, maritime, or Federal agency VPP sites, must follow worksite safety and health rules and procedures applicable to their activities while at the site.

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

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

##### 8. Self-Evaluation of the Safety and Health Management System

The applicant must have a system for annually evaluating the organization's safety and health efforts. This system will judge success in meeting goals and objectives, and will assist those responsible to determine and implement changes for continually improving worker safety and health protection.

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

b. The evaluation must assess the effectiveness of all elements described in Section IV and any other elements of the applicant's safety and health management system.

c. The evaluation may be conducted by competent site, corporate, or other persons who are trained and/or experienced in performing such evaluations. The evaluation should follow the format established by OSHA.

#### *B. Worksite Analysis*

The successful management of workplace hazards begins with a thorough understanding of all hazardous situations to which employees may be exposed and the ability to recognize and correct all hazards as they arise. This requires:

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

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

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

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

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

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

4. A system for conducting, as appropriate, routine self-inspections that follows written procedures or guidance and that results in written reports of findings and tracking of hazard elimination or control to completion.

a. For general industry and maritime applicants/participants under the site-based way to participate, these inspections must occur no less frequently than monthly and must cover the entire worksite at least quarterly;

b. For construction sites opting for the site-based way to participate and for all applicants/participants under the mobile workforce way to participate, these inspections must cover the entire worksite at least weekly and must involve trained employees.

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

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

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

#### *C. Hazard Prevention and Control*

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

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

a. Understood and followed by all affected parties;

b. Appropriate to the hazards of the site;

c. Equitably enforced through a clearly communicated, written disciplinary system that includes procedures for disciplinary action or reorientation of managers, supervisors, and non-supervisory employees who break or disregard safety rules, safe work practices, proper materials handling, or emergency procedures;

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

e. Incorporated in training, positive reinforcement, and correction programs.

2. The required systems of hazard prevention and control are:

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

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

c. An occupational health care program that uses licensed health care professionals to assess employee health status for prevention, early recognition, and treatment of illness and injury; and that provides, at a minimum, access to certified first aid and cardiopulmonary resuscitation (CPR) providers, physician care, and emergency medical care for all shifts within a reasonable time and distance. Occupational health care professionals should be used as appropriate to accomplish these functions; and

d. Procedures for response to emergencies on all shifts. These procedures must be written and communicated to all employees; must list requirements for personal protective equipment, first aid, medical care, and emergency egress; and must include provisions for emergency telephone numbers, exit routes, and training drills including, at a minimum, annual evacuation drills.

3. The following hierarchy should govern actions to eliminate or control hazards, with a. being the most desirable:

a. Engineering controls are the most reliable and effective type of controls. These are design changes that directly eliminate (ideally) or limit the severity and/or likelihood of the hazard, for example, 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. 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 latter types of controls, although not as reliable as true engineering controls, 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 hazards 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 (PPE).

#### *D. Safety and Health Training*

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

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

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

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

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

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

### **V. Application for VPP**

#### *A. General*

VPP accepts applications from private sector general industry, maritime, and construction employers subject to the Occupational Safety and Health Act, and from Federal agencies subject to 29 CFR part 1960. The VPP applicant must provide OSHA with information that illustrates an effective safety and health management system.

There is no VPP application form. OSHA prepares, keeps current, and makes available to all interested parties application guidelines that explain the information to be submitted for OSHA review.

There is no single correct way to meet VPP requirements. OSHA expects to see a system that works for the applicant's specific work activities and hazards. OSHA encourages applicants to use as much existing material as possible; there is no need to create a large quantity of new documents.

#### *B. Content*

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

2. OSHA will request amendments to submitted applications when the application information is insufficient to determine eligibility for onsite review.

3. Materials needed to document the safety and health management system that may involve trade secrets or employee privacy interests must not be included in the application. Instead, such materials must be described in the application and provided only for viewing at the site during an application assistance visit and/or during the preapproval onsite review.

#### *C. Submission*

The application and copies must be submitted to the appropriate OSHA Offices, as specified in the application instructions. OSHA normally will require applications be submitted electronically (on a CD or by e-mail), but this requirement may be waived depending on circumstances particular to the program, the applicant, or the OSHA Office.

#### *D. Acceptance of Application*

1. OSHA conducts an initial review of each application to determine whether it meets VPP criteria that can be substantiated by the applicant's written safety and health management system and supporting documentation. The applicant will be given the opportunity

to improve its application by submitting amended or additional materials.

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

#### *E. Withdrawal of Application*

1. Any applicant may withdraw a submitted application at any time. When the applicant notifies OSHA of its desire to withdraw, OSHA will delete any electronic application materials it holds, and will return to the applicant any materials held in hard-copy format.

2. Once an application has been withdrawn, a new submission of an application is required to be considered for VPP approval.

#### *F. Public Access*

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

1. In the National Office: Participant general information from the application; OSHA's preapproval report and subsequent evaluation reports; the Regional Administrator's or Director of Cooperative and State Programs' recommendation to the Assistant Secretary; and the Assistant Secretary's and Regional Administrator's approval letters.

2. The National Office also will maintain the complete application and related correspondence and amendments submitted by corporate applicants.

3. In the Regional Office: For all VPP applicants except corporate, the complete VPP application and amendments; preapproval report and subsequent evaluation reports; the Regional Administrator's recommendation to the Assistant Secretary via the Director of Cooperative and State Programs; the Assistant Secretary's and Regional Administrator's approval letters; any communications related to the Area Office removing the approved participant from the general inspection list; and related correspondence.

### **VI. Ways to Participate**

#### *A. Overview*

1. This section details the three primary ways in which businesses and other organizations can participate in

VPP: Site-based, mobile workforce, and corporate. The general principles and features of VPP-quality safety and health management systems are generally consistent for all types of participation. These principles can be found in IV. above.

2. There are some differences, however, in the details and implementation of these systems, and how OSHA will evaluate applicants/participants. These differences will depend on whether employees work at a single fixed site or move from one work project to another, and also whether an employer is applying individually or through a broader corporate commitment to VPP. OSHA therefore offers, at VI.B., C., and D. below, slightly differing requirements for the three participation options.

3. Demonstration Programs may present unique features, requirements, and processes that do not fit into a clear-cut VPP category (way to participate, Star or Merit Program). For this reason, Demonstration Programs are not addressed in this Ways to Participate section. Parties interested in a Demonstration Program should refer to III.C.3. above and the specific provisions of the Demonstration announced by OSHA.

#### B. Site-Based Participation

##### 1. Purpose

Site-based participation continues VPP's traditional acceptance of applications from fixed worksites and some long-term construction sites.

##### 2. Eligibility

a. General. OSHA welcomes site-based VPP participation and accepts VPP applications from the owners and site officials who control site operations and have ultimate responsibility for assuring safe and healthful working conditions of:

(1) Private-sector fixed worksites in general industry and the maritime industry;

(2) Construction worksites/projects that will have been in operation for at least 12 months at projected time of approval and that expect to continue in operation for at least an additional 12 months; and

(2) Federal-sector fixed worksites. OSHA also welcomes applications from:

(3) Resident contractors at participating VPP sites for the contractors' operations at those VPP sites. However, resident contractors participating at two or more VPP sites may be eligible for and prefer the mobile workforce way to participate (see VI.C.1.a.(2)); and

(4) Resident contractors at non-participating sites for the contractors' operations at those sites, so long as the resident contractors are part of a larger organization approved to participate under the corporate option (see VI.D. below).

b. Unionized Sites. At fixed worksites with employees organized into one or more collective bargaining units, the authorized representative for each collective bargaining unit must either:

(1) Sign the application or

(2) Submit a signed statement

indicating that the collective bargaining agent supports or is not opposed to VPP participation.

Without such concurrence from all such authorized agents, OSHA will not accept the application.

c. OSHA History. In addition to the general requirement concerning an applicant's inspection history (see III.D.5.), the following applies to site-based participation: The fixed worksite's history must include no open investigations and no pending or open contested citations or notices under appeal at the time of application, and no affirmed willful violations during those prior 36 months.

##### 3. Assurances

Site-based applications must include certain assurances describing what the applicant agrees to do if OSHA approves the application. The applicant must assure that:

a. Applicant will comply with the OSH Act and, in the case of Federal agencies, 29 CFR part 1960, and will correct in a timely manner all hazards discovered through self-inspections, employee notification, accident investigations, an OSHA onsite review or enforcement inspection, process hazard reviews, annual evaluations, or any other means. The applicant will provide effective interim protection as necessary to keep employees safe while corrections are being made.

b. Applicant will correct any site deficiencies related to compliance with OSHA requirements and identified during the OSHA preapproval onsite review. The correction period will be determined by the VPP team leader and will not exceed 90 days.

c. Applicant, following approval, will continue to meet and maintain the requirements of the elements. Site-based applicants whose primary activity is construction will continue to meet and maintain the construction requirements of the elements.

d. All employees, including newly hired employees and contractor/subcontractor employees when they reach the site, will have the VPP

explained to them, including employee rights under the program and under the OSH Act or 29 CFR part 1960.

e. All employees engaged in safety and health activities, including those specifically given safety and health duties as part of applicant's safety and health management system, will be protected from discriminatory actions resulting from their activities/duties, just as Section 11(c) of the OSH Act and 29 CFR 1960.46(a) protect employees who exercise their rights.

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

g. To enable OSHA to determine initial and continued VPP approval, applicant will maintain and make available for OSHA review the information listed below:

(1) Written safety and health management system;

(2) All documentation listed at VI.B.6.d. below; and

(3) Any agreements between management and the authorized collective bargaining agent(s) concerning safety and health.

h. Applicant will make available to OSHA any data necessary to evaluate the achievement of individual Merit or One-Year Conditional goals not listed above.

i. Each year by February 15, each site-based participant will send to its designated OSHA VPP contact (see VIII.A. below):

(1) The site's total recordable case incidence rate (TCIR) for injuries and illnesses of all employees including temporary employees for the previous calendar year and

(2) The site's incidence rate for cases involving days away from work, restricted work activity, and job transfer (DART rate) of all employees including temporary employees for the previous calendar year.

(3) Contractor data, the requirements for which differ for construction and non-construction participants.

(a) Fixed worksite participants whose primary activity is construction will include in the above rates and data required in VI.B.3.i.(4) below the experience of all employees including temporary employees and contractor/subcontractor employees.

(b) Fixed worksite participants whose primary activity is not construction will send to the designated OSHA VPP contact site data on each applicable contractor's employees. Applicable

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

The data will consist of the site's TCIR and DART rate for each applicable contractor's employees; total number of cases from which these two rates were derived; hours worked; and estimated average employment for the past full calendar year.

(4) Each site will also submit:

(a) The total number of cases for each of the above two rates;

(b) Hours worked;

(c) Estimated average employment for the past full calendar year;

(d) A copy of the most recent annual self-evaluation of the site's safety and health management system; and

(e) A description of any worksite success stories, for example, reductions in workers' compensation rates, increases in employee involvement in the program, etc.

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

k. Whenever a change occurs in union representation/status, the participant must notify the OSHA Regional Administrator in writing within 60 days. The Regional Administrator will determine what steps, if any, must be taken to reaffirm VPP support.

#### 4. Injury and Illness Performance

In determining a site's qualification for the Star or Merit Program, OSHA considers the most recent 3-year recordable injury and illness experience and compares that experience with industry averages published by the Bureau of Labor Statistics (BLS). Some sites may use an alternative calculation of injury and illness experience based on the best 3 out of the most recent 4 years (see c. below). The following provisions govern the injury and illness performance requirements for site-based Star and Merit approval.

##### a. Star Rate Requirements

(1) General industry, maritime, and Federal agency (however, see Note below) site-based applicants at the time of approval must meet the following employee performance criteria. Employees include all regular site employees, including temporary and contractor employees who are regularly intermingled with the owner's employees and under direct supervision by management.

**Note:** Any Federal agency or other site-based applicant whose work is primarily construction in nature must meet the performance criteria for site-based construction applicants. See VI.B.4.a.(2) below.

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 published by BLS. OSHA will compare the two site rates against the single year that is most advantageous to the site out of the last 3 published years. These rates are:

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

(b) The 3-year incidence rate for cases involving days away from work, restricted work activity, and job transfer (DART rate).

(2) The construction site-based applicant, including certain Federal agencies and other applicants (see Note at VI.B.4.a.(1) above), at the time of approval must meet the following criteria:

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

(b) OSHA will consider the applicant's TCIR and DART rate dating from time of application back to site inception but in no instance greater than 3 years (or 4 years if using the alternative method of calculating rates, VI.B.4.c.). These two rates must include all workers of all contractors/subcontractors and must be below the national average for the type of construction at the site according to the most appropriate and representative NAICS code. The site's NAICS code is determined by the type of construction project, not individual trades.

##### b. Merit Rate Requirements

(1) For general industry, maritime, and Federal agencies, if the applicant's 3-year TCIR and/or the applicant's 3-year DART rate for the last 3 calendar years prior to approval does not meet the Star rate requirements (VI.B.4.a.), the applicant must have a plan to achieve Star rate requirements within 2 years. It must be statistically possible to achieve this goal.

(2) For the construction industry and other applicants whose primary work activity at the site is 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 most precise published level. OSHA will compare the two company-wide rates against the single year that is most advantageous to the applicant out of the last 3 published years.

##### c. Alternative Rate Calculation

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

(1) To determine whether the applicant qualifies for the alternative calculation method, do the following:

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

(c) 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.

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

#### 5. Additional Safety and Health Management System Requirements

For site-based construction applicants/participants and others whose primary work activity is construction, the following applies in addition to the safety and health management system annual self-evaluation requirements found at IV.A.8. above:

The self-evaluation must be conducted annually and immediately prior to completion of construction. The final evaluation is to determine what has been learned about safety and health activities that can be used to improve the participant's safety and health management system at other sites. If a participant does not provide this final evaluation, OSHA will not consider subsequent VPP applications from the participant.

## 6. Preapproval Onsite Review of Site-Based Applicants

a. Purpose. The preapproval review, which OSHA conducts in a non-enforcement capacity, is a review of the site's safety and health management system. It is conducted to:

(1) Verify the information supplied in the application concerning qualification for VPP;

(2) Identify the strengths and weaknesses of the applicant's safety and health management system, and evaluate its adequacy to address the site's hazards;

(3) Determine whether the applicant's safety and health management system meets the requirements for Star or Merit approval;

(4) Determine how effectively the applicant has implemented its safety and health management system;

(5) Identify any deficiencies in the applicant's safety and health management system that must be satisfactorily addressed before OSHA will approve the applicant;

(6) Determine whether the applicant is in compliance with OSHA regulations; and

(7) Obtain information to assist the Assistant Secretary in making the VPP approval decision.

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

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

d. Scope. All preapproval onsite reviews follow a three-pronged strategy that assesses a site's safety and health management system by means of document review, site walkthrough, and employee and management interviews.

The onsite review will include a review of injury, illness, and fatality records; recalculation and verification of the TCIR and the DART rate (the two rates submitted with the application); a general assessment of safety and health conditions to determine if the safety and health management system adequately protects workers from the hazards at the site; verification of compliance with OSHA and VPP requirements; and verification that the safety and health

management system described in the application has been implemented effectively.

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

Onsite document review will entail examination of the following records (or samples) if they exist and are relevant to the application or to the safety and health management system. (OSHA will accommodate trade secret concerns to the extent feasible.)

(1) Written safety and health management system;

(2) Management statement of commitment to safety and health and union statement of support if applicable;

(3) The OSHA Form 300 log (or a successor OSHA form) for the site and for all site contractor employees who are required to report;

(4) Safety and health manuals;

(5) Safety rules, emergency procedures, and examples of safe work procedures;

(6) The system for enforcing safety rules;

(7) Reports from employees of safety and health problems and documentation of management's response;

(8) Self-inspection procedures, reports, and correction tracking;

(9) Accident investigation reports and analyses;

(10) Safety and health committee minutes;

(11) Employee orientation and safety training programs and attendance records;

(12) Baseline safety and industrial hygiene exposure assessments and updates;

(13) Industrial hygiene monitoring records, results, exposure calculations, analyses, and summary reports;

(14) Annual safety and health management system self-evaluations, site audits, and, when needed to demonstrate that VPP criteria are being met, corporate audits that a site voluntarily chooses to provide in support of its application. The review of evaluative documents needed to establish that the site is meeting VPP requirements will cover at least the last 3 years and will include records of follow-up activities stemming from self-evaluation recommendations;

(15) Preventive maintenance program and records;

(16) Accountability and responsibility documentation, for example, performance standards and appraisals;

(17) Contractor safety and health programs, including applicable contractor injury and illness data that non-construction site-based participants must maintain (see VI.B.3.i.(3));

(18) Occupational health care programs and records;

(19) Available resources devoted to safety and health;

(20) Hazard and process analyses;

(21) Process Safety Management (PSM) documentation, if applicable;

(22) Employee involvement activities; and

(23) Other records that provide relevant documentation of VPP qualifications.

## 7. Term of Participation

a. Star Program. A site-based participant's term of participation in the Star Program is open-ended so long as the participant:

(1) Continues to maintain its excellent safety and health management system as evidenced by favorable reevaluation by OSHA every 30 to 60 months; and

(2) Submits the annual information required, including annual rates data and program self-evaluation (see VI.B.3.i.).

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

**Note:** For site-based construction participants in both the Star and Merit Programs, participation ends with the completion of construction work at the site.

c. Demonstration Programs. See III.C.3.e.

## 8. Periodic Reevaluation of Site-Based Participants—Star Program

a. Purpose. OSHA periodically conducts onsite reevaluations of Star participants to:

(1) Determine continued qualification for the Star Program;

(2) Document results of program participation in terms of the evaluation criteria and other noteworthy aspects of the site's safety and health management system; and

(3) Identify any problems that have the potential to adversely affect



continued qualification and determine appropriate follow-up actions.

b. Frequency. OSHA will conduct the first reevaluation within 30 to 42 months of the initial Star approval or, in the case of a Demonstration Program site that has been approved to Star, within 30 to 42 months of the last Demonstration evaluation.

Subsequently, all site-based Star participants will be reevaluated at no greater than 60-month intervals. The identification of potentially serious safety and health risks may create the need for more frequent evaluation.

c. Scope. OSHA's reevaluation of site-based Star Program participants will consist mainly of an onsite visit similar in scope to the preapproval review described in VI.B.6.d. OSHA will review the documentation of system implementation since preapproval review or since the previous evaluation.

(1) The evaluation will include a review of employee incidence rates and supporting data specified at VI.B.4.

(2) For non-construction site-based participants, the review of applicable contractor data (see VI.B.3.i.(3)) will be part of OSHA's evaluation of the effectiveness of the site's contractor oversight and management system. For construction site-based participants, the performance of all contractors will be part of OSHA's evaluation (see VI.B.4.).

d. Measures of Effectiveness. OSHA will use the following factors in the reevaluation of site-based Star Program participants:

(1) Continued compliance with the program requirements and continuous improvement in the safety and health management system;

(2) Satisfaction and continuing demonstrated commitment of employees and management;

(3) Nature and validity of any complaints received by OSHA;

(4) Nature and resolution of problems that may have come to OSHA's attention since approval or the last evaluation; and

(5) The effectiveness of employee involvement provisions within the safety and health management system.

#### 9. Periodic Reevaluation of Site-Based Participants—Merit Program

a. Purpose. OSHA periodically conducts onsite reevaluations of Merit participants to:

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

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

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

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

(5) Provide advice and suggestions for needed improvements.

b. Frequency. OSHA will conduct the first reevaluation of a site-based Merit participant within 24 months (18 months is recommended) of approval. The site may request an earlier reevaluation if it believes it has met Star Program qualifications.

c. Scope. OSHA's reevaluation of site-based Merit participants will consist mainly of an onsite visit similar in scope to the preapproval review described at VI.B.6.c–d. OSHA will review documentation of system implementation since the preapproval review or the previous evaluation. The reevaluation will include a review of TCIR and DART rates for both the site and its applicable contractor employees as described at VI.B.4.

d. Measures of Effectiveness. OSHA will use the following factors in the reevaluation of site-based Merit Program participants:

(1) Continued adequacy of the safety and health management system to address the hazards of the workplace;

(2) Comparison of employer and contractor rates to the industry averages;

(3) Satisfaction and continuing demonstrated commitment of employees and management;

(4) Nature and validity of any complaints received by OSHA;

(5) Nature and resolution of problems that may have come to OSHA's attention since approval or the last evaluation;

(6) The effectiveness of employee involvement provisions within the safety and health management system; and

(7) Progress made toward goals specified in the preapproval or previous evaluation report.

#### 10. Periodic Reevaluation of Site-Based Participants—Demonstration Program

See III.C.3.f.

#### C. Mobile Workforce Participation

1. Purpose and Distinguishing Features

a. Mobile workforce participation is intended for:

(1) Applicants/participants whose employees move physically from one work project to another; and

(2) Applicants/participants whose employees work as resident contractors at two or more fixed locations.

b. Participation Plan. Each applicant will develop a unique Participation Plan

that includes a discussion of safety and health management system elements that differ in substance or emphasis from the basic system requirements provided at IV above. This may include, for example, management leadership and employee involvement strategies that ensure employee protection, such as employees' ability to leave the worksite if unsafe conditions exist; hazard analysis that uses historical sampling data for a baseline; emergency response policies and evacuation procedures appropriate to construction and other mobile workforce projects; and other alternative approaches to safety and health.

c. Designated Geographic Area (DGA). OSHA, after consulting with an applicant and considering the applicant's preference, will define a geographic area for VPP participation. The DGA will enable the applicant to achieve VPP participation and receive OSHA recognition for all its temporary work projects and resident contractor work projects in the designated area. This contrasts with site-based participation described at VI.B. above.

(1) A DGA cannot be smaller than an OSHA Area Office boundary and cannot exceed an OSHA Regional Office boundary.

(2) OSHA will provide procedures for mobile workforce applicants seeking to participate in, and approved participants seeking to expand into, more than one Region.

(3) The DGA will become part of the applicant's Participation Plan.

#### 2. Eligibility

a. General. OSHA welcomes mobile workforce VPP participation and accepts VPP applications from:

(1) Private sector employers at various organizational levels in the construction industry, general industry, and the maritime industry; and

(2) Federal agency employers at various organizational levels.

b. Designated Geographic Area (DGA). The DGA will define the physical boundaries of the applicant's VPP participation. See VI.C.1.c. above.

(1) At time of application, the applicant must have at least one active work project within the DGA.

(2) If the applicant has only one active work project within the DGA at time of application, applicant must have at least one additional work project scheduled to begin during the coming 12 months.

#### c. Unionized Workforce

(1) When, at the time of application, a majority of an applicant's employees and contractor/subcontractor employees are represented by unions, the applicant

must provide to OSHA signed documentation that the unions either support VPP participation or are not opposed to participation.

(2) OSHA expects each applicant to determine whether the requirement for union support applies. Calculate the percentage of employees (including temporary employees) and contractor/

subcontractor employees who are represented by unions at the time of VPP application. Then use the chart below.

If . . .	Then . . .
Majority of employees are represented by unions .....	Signed statement(s) required. Must be obtained from enough unions to represent a majority of all employees.
Some employees but less than a majority of all employees are represented by unions .....	No statement of union support required.
No employees are represented by unions .....	Requirement not applicable.

(3) An applicant required to obtain union support must obtain support from the authorized bargaining agents at its sites within the DGA; individual local unions that represent the applicant's employees; or, when appropriate, blanket support from a local, regional, or national industry council. Without such concurrence, OSHA will not accept the application.

(4) Where documented union support for VPP participation is not required, OSHA still will evaluate, through onsite interviews, employees' support for participation. A lack of employee support, for any reason, will impact OSHA's decision on the applicant's qualification. See Guiding Principles, Employee Support for Participation, III.D.3.

d. OSHA History

In addition to the general requirement concerning an applicant's inspection history (see III.D.5.), the following applies to mobile workforce participation:

The applicant's history within the DGA must include no open investigations and no pending or open contested citations or notices under appeal at the time of application, and no affirmed willful violations during those prior 36 months.

3. Assurances

Mobile workforce applications must include certain assurances describing what the applicant agrees to do if OSHA approves the application. The applicant must assure that:

a. Applicant will comply with the OSH Act and, in the case of Federal agencies, 29 CFR part 1960, and will correct in a timely manner all hazards discovered through self-inspections, employee notification, accident investigations, an OSHA onsite review or enforcement inspection, process hazard reviews, annual evaluations, or any other means. The applicant will provide effective interim protection as necessary.

b. Applicant will correct any site deficiencies related to compliance with OSHA requirements and identified during the OSHA preapproval onsite review. The correction deadline:

(1) Will depend on the length of the work project and the nature of the deficiency;

(2) Will be determined by the OSHA VPP team leader; and

(3) In no instance will exceed 30 days.

c. The systems and procedures of the safety and health management system are in place and effectively implemented at all work projects, and management provides effective oversight, to assure VPP-quality safety and health protection throughout the DGA.

d. Applicant, following approval, will continue to meet and maintain the requirements of the elements.

e. All employees, including newly hired employees and contractor/subcontractor employees, will have the VPP explained to them before they perform any work. This explanation will include employee rights under the program and under the OSH Act or 29 CFR part 1960.

f. All employees engaged in safety and health activities, including those specifically given safety and health duties as part of applicant's safety and health management system, will be protected from discriminatory actions resulting from their activities/duties, just as Section 11(c) of the OSH Act and 29 CFR 1960.46(a) protect employees who exercise their rights.

g. Employees will have access to the results of self-inspections, accident investigations, and other safety and health management system data upon request. For a unionized workforce, this requirement may be met through employee representative access to these results.

h. To enable OSHA to determine initial and continued VPP approval, applicant will maintain and make available for OSHA review the information listed below:

(1) Written safety and health management system;

(2) All documentation listed at VI.C.6.e-f. below; and

(3) Any agreements between management and the authorized collective bargaining agent(s) concerning safety and health.

i. Applicant will make available to OSHA any data necessary to evaluate the achievement of individual Merit or One-Year Conditional goals and not listed above.

j. Each year by February 15, each mobile workforce participant will send to its designated OSHA VPP contact (see VIII.A. below):

(1) The DGA's total recordable case incidence rate (TCIR) for injuries and illnesses for the previous calendar year; and

(2) The DGA's incidence rate for cases involving days away from work, restricted work activity, and job transfer (DART rate) for the previous calendar year.

(3) The participant will also submit:

(a) The total number of cases for each of the above two rates;

(b) Total hours worked;

(c) Estimated average employment for the past full calendar year;

(d) A copy of the most recent annual self-evaluation of the participant's safety and health management system; and

(e) A description of any success stories, for example, reductions in workers' compensation rates, increases in employee involvement in the program, etc.

k. Whenever significant organizational or ownership changes occur, the mobile workforce participant will provide OSHA within 60 days a new Statement of Commitment signed by management and, when applicable, any authorized collective bargaining agents.

l. The percentage of employees represented by unions may change. Therefore, an approved mobile workforce participant will report to OSHA, as part of its annual evaluation, any change in this percentage that

would have the effect of changing the participant's union support requirement.

m. When OSHA needs to visit a particular work project that the mobile workforce applicant/participant does not control, the applicant/participant will inform and should gain written permission from the controlling employer (for example, the general contractor) for OSHA to enter.

(1) In these instances, OSHA will provide reasonable notice prior to its visit.

(2) Should the controlling employer refuse permission for OSHA to enter, OSHA may consider visiting a different work project.

#### n. Project Lists

(1) Prior to OSHA's VPP preapproval onsite evaluation visit and subsequent reevaluation visits, the applicant/participant will provide OSHA with a list including addresses of all active work projects;

(2) If the applicant/participant is a controlling employer at any work projects within the DGA, it will provide OSHA with a list including addresses of all such active work projects and all such work projects scheduled or expected for the next 12 months;

(a) Applicant/participant will submit this list annually as part of the self-evaluation due by Feb. 15;

(b) For the purpose of VPP, a controlling employer is any entity at a work location (such as a general contractor or manager at a construction project) that controls project/site operations and has ultimate responsibility for assuring safe and healthful work conditions at the project/site.

#### 4. Injury and Illness Performance

In determining a mobile workforce applicant's qualification for the Star or Merit Program, OSHA considers the most recent 3-year recordable injury and illness experience for all work conducted within the DGA (including work conducted by contractors/subcontractors) and compares that experience with industry averages published by the Bureau of Labor Statistics. Some applicants may use an alternative calculation of injury and illness experience based on the best 3 out of the most recent 4 years (c. below). The following provisions govern the injury and illness performance requirements for mobile workforce Star and Merit approval. They also address a temporary policy that allows applicants who do not maintain sufficient contractor/subcontractor data

to phase in their reporting of this required data.

#### a. Star Rate Requirements

The mobile workforce applicant at the time of approval must meet the following employee performance criteria for the company's workforce within the DGA.

(1) The workforce consists of all employees over whom the applicant has responsibility and authority for safety and health, including regular hires plus temporary, contractor, and subcontractor employees. The term "combined workforce rates" as used here means injury and illness rates calculated from data that combine an applicant's regular workforce (which includes temporary employees) and its contractor/subcontractor employees.

(a) It is the applicant's responsibility to maintain records of hours worked by contractor/subcontractor employees under its control within the DGA plus any recordable injuries and illnesses these employees may experience.

(b) However, see VI.C.4.d. below for a phase-in of this combined workforce rate requirement.

(2) Two combined workforce 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 published by the Bureau of Labor Statistics (BLS). OSHA will compare the two DGA-wide rates against the single year that is most advantageous to the applicant out of the last 3 published years. These rates are:

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

(b) The 3-year incidence rate for cases involving days away from work, restricted work activity, and job transfer (DART rate).

#### b. Merit Rate Requirements

If an applicant's 3-year TCIR and/or the applicant's 3-year DART rate for the last 3 calendar years prior to approval does not meet the Star rate requirements (immediately above), the applicant must have a plan to achieve Star rate requirements within 2 years. It must be statistically possible to achieve this goal.

#### c. Alternative Rate Calculation

Some applicants, usually smaller employers with limited numbers of employees/contractors/subcontractors and/or hours worked, may use an alternative method for calculating incidence rates. The alternative method

allows the applicant to use the best 3 out of the most recent 4 years' injury/illness experience.

(1) To determine whether the applicant qualifies for the alternative calculation method, do the following:

(a) 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;

(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; and

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

(2) If the applicant qualifies for the alternative calculation method, the best 3 of the last 4 calendar years may be used to calculate both 3-year rates (specified in VI.C.4.a above).

d. Phase-in of combined workforce rate requirement. OSHA expects to receive a 3-year combined workforce rate from each mobile workforce applicant. However, for a limited time period, a phase-in combined rate requirement is available for applicants who do not maintain sufficient contractor/subcontractor data.

**Note:** Mobile workforce participants who came into VPP as part of the Mobile Workforce Demonstration for Construction, and who have not completed that program's available phase-in, may continue their phase-in schedule.

To apply using the phase-in policy:

(1) For the year 2009, as part of an applicant's mobile workforce application, OSHA expects to receive:

(a) Combined workforce TCIR and DART rates for calendar year 2008, plus

(b) Company-only rates (that include temporary employees) for calendar years 2007 and 2006.

These 3 years of rates should reflect an applicant's nonfatal injury and illness experience within the DGA only.

(2) For calendar year 2010, new applicants and participants who applied using the phase-in rate requirement must provide to OSHA:

(a) Combined workforce TCIR and DART rates that reflect the experience of the company's regular workforce (including temporary employees) and contractors/subcontractors for calendar years 2008 and 2009, plus

(b) Company-only TCIR and DART rates (which include temporary employees) for calendar year 2007.

(3) Beginning January 1, 2011, all applicants and participants must provide to OSHA combined workforce TCIR and DART rates for the 3 most recent calendar years in the DGA. The data for each of these 3 calendar years must reflect the experience of the company's regular workforce (which includes temporary employees) combined with its contractors/subcontractors at projects DGA-wide.

#### 5. Additional Safety and Health Management System Requirements

a. The mobile workforce applicant's safety and health management system must be fully established at the Star level and, therefore, must incorporate all elements of the VPP safety and health management system, as delineated at IV. above. Approval to either the Merit or Star Program will be determined by the degree and effectiveness of implementation at individual sites/projects.

b. Because the mobile workforce participant often relies on contractor/subcontractor employees, contract worker coverage (addressed at IV.A.7 above) is particularly critical for effective worker protection. Therefore, a mobile workforce participant's safety and health management system must provide thorough, documented oversight and management of all contractors/subcontractors under its control.

This oversight and management must include specific procedures for considering safety and health performance during the contractor selection process. If circumstances prevent the selection of contractors with a history of good safety and health performance, the participant's management system must provide sufficiently rigorous oversight to ensure the safety and health of all employees.

c. All mobile workforce applicants/participants must perform routine self-inspections of all their active worksites within the DGA. These self-inspections must follow written procedures or guidance, involve trained employees, and result in written reports of findings and tracking of hazard elimination or control to completion. Each worksite must be covered in its entirety at least weekly.

#### 6. Preapproval Onsite Review of Mobile Workforce Applicants

OSHA conducts a two-phased onsite review of mobile workforce applicants. The first phase consists of an evaluation of the applicant's safety and health management system. This is followed by a second phase, during which OSHA conducts onsite evaluations of selected

temporary, currently active worksites/projects within the DGA.

a. Purpose. This two-phased preapproval review, which OSHA conducts in a non-enforcement capacity, is intended to:

(1) Verify the information supplied in the application concerning qualification for VPP;

(2) Identify the strengths and weaknesses of the applicant's safety and health management system, and evaluate its adequacy to address the hazards of the applicant's worksites/projects;

(3) Determine whether the applicant's safety and health management system meets the requirements for Star approval;

(4) Determine how effectively the applicant has implemented its safety and health management system at its sites/projects, and how effectively it provides continuing oversight;

(5) Identify any deficiencies in the applicant's safety and health management system that must be satisfactorily addressed before OSHA will approve the applicant;

(6) Determine whether the applicant is in compliance with OSHA regulations; and

(7) Obtain information to assist the Assistant Secretary in making the VPP approval decision.

b. Preparation. The review will be arranged at the mutual convenience of OSHA and the applicant. The review team will consist of a team leader; a back-up team leader (when needed); and health, safety, and other specialists as required by the complexity of applicant's operations and the size and complexity of the worksites/projects OSHA visits.

c. Duration. The time required for the preapproval onsite review will depend upon the complexity of applicant's operations and the number, size and complexity of the worksites/projects OSHA visits.

d. Scope. The preapproval onsite review for mobile workforce applicants will consist of two phases: An evaluation of the applicant's safety and health management system, and onsite evaluations of temporary, currently active worksites/projects.

e. Phase 1: Safety and Health Management System Review. OSHA initially will conduct an evaluation of the applicant's safety and health management system to determine whether the system meets Star requirements. It will include systems for ensuring implementation and oversight of safety and health protection at all worksites/projects within the DGA. This evaluation normally will take place at

the fixed location where the applicant maintains safety and health records (typically the applicant's headquarters).

(1) Management Commitment. OSHA will carefully assess the applicant's management commitment to safety and health and to VPP. This assessment will include interviews with senior officials, employees, and union representatives where applicable.

(2) Document Review. OSHA will examine the following records (or samples) if they exist and are relevant to the application or to the safety and health management system. (OSHA will accommodate trade secret concerns to the extent feasible.)

(a) Written safety and health management system;

(b) Management statement of commitment to safety and health;

(c) The OSHA Form 300 log (or a successor OSHA form) for all sites/projects within the DGA;

(d) Safety and health manuals;

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

(f) The system for enforcing safety rules;

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

(h) Self-inspection procedures, reports, and correction tracking;

(i) Accident investigation reports and analyses;

(j) Safety and health committee minutes;

(k) Employee orientation and safety training programs and attendance records;

(l) Baseline safety and industrial hygiene exposure assessments and updates;

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

(n) Annual safety and health management system self-evaluations, site audits, and, when needed to demonstrate that VPP criteria are being met, corporate audits that an applicant voluntarily chooses to provide in support of its application. The review of evaluative documents needed to establish that the applicant is meeting VPP requirements will cover at least the last 3 years and will include records of follow-up activities stemming from self-evaluation recommendations;

(o) Preventive maintenance program and records;

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

(q) Contractor safety and health programs;

(r) Occupational health care programs and records;

(s) Available resources devoted to safety and health;

(t) Hazard and process analyses;

(u) Process Safety Management (PSM) documentation, if applicable;

(v) Employee involvement activities; and

(w) Other records that provide relevant documentation of VPP qualifications.

(3) Rates Review. OSHA will review DGA-wide injury, illness, and fatality records; and recalculate and verify the TCIR and the DART rate (the two rates submitted with the application).

f. Phase 2: Site/Project Evaluation. OSHA then will visit one or more temporary worksites/projects within the DGA. These worksite evaluations will assess how effectively the applicant has implemented its safety and health management system, including its system of oversight. The OSHA team will employ a strategy of site walkthrough, employee interviews, and site-specific document review.

(1) Site Walkthrough. The site walkthrough is a general assessment of safety and health conditions. It aims to determine whether the safety and health management system described in the application has been implemented effectively and is adequately protecting workers from site hazards. The walkthrough also will verify compliance with OSHA and VPP requirements.

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

(3) Site-Specific Document Review. OSHA will examine documents that demonstrate the site's implementation of applicant's safety and health management system, for example, specific rules regarding site hazards and site operations.

(4) Whenever possible, the onsite evaluations that OSHA conducts will be unannounced.

(5) However, when OSHA needs to visit a site that an applicant does not control,

(a) OSHA will provide reasonable notice prior to its visit;

(b) The applicant must inform and gain written permission from the controlling employer (for example, the general contractor) for OSHA to enter; and

(c) The applicant must inform the controlling employer that, while OSHA will focus primarily on the applicant's work at the site, any conditions

(including those created by others) that OSHA views and deems a violation must be abated immediately or confirmed as abated according to an abatement plan approved by OSHA. In the VPP spirit of cooperation, OSHA will take no enforcement actions and issue no citations if the hazardous conditions are corrected immediately or with an OSHA-approved abatement plan. Only if correction does not occur will OSHA have the option to exercise normal enforcement procedures.

(6) Number of Site/Project Evaluations. The number of site/project evaluations will depend on the complexity and scope of applicant's operations and the number of sites/projects within the DGA, and will be determined by the Regional Administrator.

(7) Evaluation of Fixed Locations. Some applicants may conduct certain operations at fixed locations, such as a headquarters, warehouse, or construction yard, that impact the safety and health of the applicant's mobile workforce. OSHA reserves the right to evaluate these fixed locations, although they will not be considered a worksite for purposes of mobile workforce participation. Should an applicant desire to bring such fixed work locations into VPP, OSHA will accept applications under VPP's site-based participation requirements, as provided in VI.B. above.

#### 7. Term of Participation

a. Star Program. A mobile workforce participant's term of participation in the Star Program is open-ended so long as the participant:

(1) Continues to maintain its excellent safety and health management system at its sites/projects within the DGA as evidenced by favorable reevaluation; and

(2) Submits the annual information required, including annual rates data and program self-evaluation (see VI.C.3.j. above).

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

c. Demonstration Program. See III.C.3.e.

#### 8. Periodic Reevaluation of Mobile Workforce Participants—Star Program

a. Purpose. Periodic evaluation of Star participants is intended to:

(1) Determine continued qualification for the Star Program;

(2) Document results of program participation throughout the DGA in terms of the evaluation criteria and other noteworthy aspects of the participant's safety and health management system; and

(3) Identify any problems that have the potential to adversely affect continued qualification and determine appropriate follow-up actions.

b. Frequency.

(1) OSHA will conduct the first post-approval reevaluation of a mobile workforce participant's sites/projects within 18 to 24 months of the initial Star approval or, in the case of a Demonstration Program participant that has been approved to Star, within 18 to 24 months of the last Demonstration evaluation.

(2) Subsequently, OSHA will reevaluate sites/projects within the DGA at no greater than 36-month intervals. The identification of potentially serious safety and health risks may create the need for more frequent evaluation.

(3) OSHA will reevaluate the participant's safety and health management system, normally at the participant's headquarters, beginning with the second post-approval reevaluation (see VI.C.8.b(2) above), and subsequently at the time of every second reevaluation period.

c. Scope. OSHA's reevaluation of mobile workforce Star Program participants will consist mainly of site/project visits and/or safety and health management system reviews similar in scope to the preapproval review described in VI.C.6.e-f. above. OSHA will review the documentation of system implementation since preapproval review or since the previous evaluation. The evaluation will include a review of DGA-wide incidence rates and supporting data (specified in VI.C.4. above) for all employees including temporary workers and contractor/subcontractor employees throughout the DGA for the latest 3 complete calendar years.

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

(1) Continued compliance with the program requirements and continuous improvement in the safety and health management system;

(2) Satisfaction and continuing demonstrated commitment of employees and management;

(3) Nature and validity of any complaints received by OSHA;

(4) Nature and resolution of problems that may have come to OSHA's attention since approval or the last evaluation; and

(5) The effectiveness of employee involvement provisions within the safety and health management system.

#### 9. Periodic Reevaluation of Mobile Workforce Participants—Merit Program

a. Purpose. Periodic reevaluation of Merit participants is intended to:

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

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

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

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

(5) Provide advice and suggestions for needed improvements.

b. Frequency.

(1) OSHA will reevaluate a mobile workforce participant's sites/projects every 12 to 18 months or, in the case of a Demonstration Program participant that has been approved to Merit, every 12 to 18 months following the last Demonstration evaluation. The identification of potentially serious safety and health risks may create the need for more frequent evaluation.

(2) The participant may request an earlier reevaluation if it believes it has met Star Program qualifications.

(3) OSHA will reevaluate the participant's safety and health management system, normally at corporate headquarters, before making any recommendation to advance the participant to the Star Program.

c. Scope. OSHA's reevaluation of mobile workforce Merit Program participants will consist mainly of site/project visits and safety and health management system reviews similar in scope to the preapproval review described in VI.C.6.e-f. above. OSHA will review the documentation of system implementation since preapproval review or the previous evaluation. The reevaluation will include a review of DGA-wide incidence rates and supporting data (specified in VI.C.4. above) for all employees including temporary workers and contractor/subcontractor employees

throughout the DGA for the latest 3 complete calendar years.

d. Measures of Effectiveness. OSHA will use the following factors in the reevaluation of mobile workforce Merit Program participants:

(1) Continued adequacy of the safety and health management system to address the hazards at sites/projects throughout the DGA;

(2) Comparison of injury/illness rates to the industry average;

(3) Satisfaction and continuing demonstrated commitment of employees and management;

(4) Nature and validity of any complaints received by OSHA;

(5) Resolution of problems that have come to OSHA's attention;

(6) The effectiveness of employee involvement provisions within the safety and health management system; and

(7) Progress made toward goals specified in the preapproval or previous evaluation report.

#### 10. Periodic Reevaluation of Mobile Workforce Participants—Demonstration Program.

See III.C.3.f.

#### D. Corporate Participation

The corporate way to participate may be appropriate for large organizations that have committed to bringing multiple facilities into VPP.

##### 1. Purpose and Distinguishing Features

a. Corporate participation is intended for applicants/participants who:

(1) Are committed to achieving VPP approval for multiple specified individual sites and/or sites within Designated Geographic Areas (DGAs) within their organization;

(2) Utilize a well-established, standardized safety and health management system at all sites and/or DGAs seeking VPP approval; and

(3) Employ prescreening processes to ensure that their sites have effectively implemented the safety and health management system, addressed site-specific hazards, satisfied the VPP requirements, and completed all sections of the application before submitting it to OSHA.

b. Streamlined application and onsite evaluation processes. Organizations who achieve corporate VPP status are able to utilize streamlined application and onsite evaluation processes to bring into VPP individual sites or all sites within a DGA. These streamlined processes focus on implementation of the corporation's standardized safety and health policies and systems and any site-specific programs. Typically, less

time is required for application preparation and review and the onsite evaluation, because:

(1) OSHA completes its evaluation of the corporation's standardized safety and health management system before focusing on individual sites/DGAs; and

(2) Before individual sites/DGAs apply under this option, they first undergo extensive screening processes, conducted by corporate personnel, to ensure readiness for VPP.

Individual sites/DGAs that come into VPP continue to be subject to the policies and requirements outlined in VI.B (site-based) and VI.C (mobile) above.

##### 2. Eligibility

a. General. OSHA welcomes corporate VPP participation and accepts VPP applications from:

(1) Employers at various organizational levels in general industry, the construction industry, and the maritime industry; and

(2) Federal agencies.

All applicants must have a demonstrated working knowledge and experience of VPP, either through the traditional site-based program or the mobile workforce approach, and must have resources dedicated to establishing VPP throughout the organization.

b. Unionized Organizations.

Organizations whose employees are organized into one or more collective bargaining units may wish to involve the unions during the corporate approval process. Individual sites/DGAs applying for VPP through the streamlined corporate application and onsite evaluation processes must adhere to the policies set forth in sections VI.B.2.b and VI.C.2.c above.

c. OSHA History. In addition to the general requirement concerning an applicant's inspection history (see III.D.5.), the following applies to corporate participation:

The applicant must not have any affirmed willful violations organization-wide during its most recent 36-month period. The applicant's history may include open investigations and/or pending or open contested citations or notices under appeal at the time of application. However, OSHA will review the applicant's most recent 36-month history for evidence of an overarching safety and health management system deficiency or events/actions that call into question the cooperative spirit and trust inherent in the VPP relationship (see III.D.1.).

##### 3. Assurances

Corporate applications must include certain assurances describing what the

applicant agrees to do if OSHA approves the application. The applicant must assure that:

a. Applicant will comply with the OSH Act and, in the case of Federal agencies, 29 CFR part 1960, and will correct in a timely manner all hazards discovered through self-inspections, employee notification, accident investigations, an OSHA onsite review, process hazard reviews, annual evaluations, or any other means. The applicant will provide effective interim protection as necessary.

b. Applicant will correct any deficiencies related to compliance with OSHA requirements and identified during the OSHA preapproval onsite reviews. The correction deadline:

- (1) Will depend on the nature of the deficiency;
- (2) Will be determined by the OSHA VPP team leader; and
- (3) In no instance will exceed 90 days.

c. A system for overseeing and monitoring safety and health management system implementation is maintained for all worksites/projects.

d. A system is maintained for pre-screening site/DGA readiness for VPP, so that at least 80 percent of an organization's site/DGA applicants are sufficiently qualified to achieve Star approval.

e. Applicant, following approval, will continue to meet and maintain the requirements of the VPP safety and health management system elements.

f. Applicant will bring no fewer than 10 sites and/or DGAs into VPP within 5 years of corporate approval, and then will continue to bring sites/DGAs into VPP.

g. Applicant has established and will maintain a documented, corporate-wide goal for VPP participation. Applicant will communicate this goal to employees organization-wide.

h. At applicant and approved sites, all employees, including newly hired employees and contractor/subcontractor employees, will have the VPP explained to them before they perform any work. This explanation will include employee rights under the program and under the OSH Act or 29 CFR part 1960.

i. All employees engaged in safety and health activities, including those specifically given safety and health duties as part of applicant's safety and health management system, will be protected from discriminatory actions resulting from their activities/duties, just as Section 11(c) of the OSH Act and 29 CFR 1960.46(a) protect employees who exercise their rights.

j. Employees will have access to the results of self-inspections, accident investigations, and other safety and

health management system data upon request. For a unionized workforce, this requirement may be met through employee representative access to these results.

k. To enable OSHA to determine initial and continued VPP approval, applicant will maintain and make available for OSHA review the information listed below:

- (1) Written safety and health management system;
- (2) All documentation listed at VI.D.6.d. below; and
- (3) Any agreements between management and the authorized collective bargaining agent(s) concerning safety and health.

l. Applicant will make available to OSHA any data not listed above that is necessary to evaluate identified deficiencies.

m. Each year by February 15, each corporate participant will send to its designated OSHA VPP contact (see VIII.A. below) data that will enable OSHA to evaluate its overall VPP performance and compare that performance to the organization's non-participating sites. This data will include:

- (1) Total recordable case incidence rate (TCIR) for injuries and illnesses at all approved sites for the previous calendar year;
- (2) Total recordable case incidence rate (TCIR) for injuries and illnesses at all non-VPP sites for the previous calendar year;
- (3) Total recordable incidence rate for cases involving days away from work, restricted work activity, and job transfer (DART rate) at all approved sites for the previous calendar year;
- (4) Total recordable incidence rate for cases involving days away from work, restricted work activity, and job transfer (DART rate) at all non-VPP sites for the previous calendar year;
- (5) The participant will also submit:
  - (a) Total number of cases and hours worked for each of the above four rates;
  - (b) Number and percentage of U.S.-based VPP-approved facilities for the past full calendar year;
  - (c) Number and percentage of U.S.-based employees participating in VPP for the past full calendar year;
  - (d) A list of applications submitted during the past full calendar year, and a list of projected applications for the current full calendar year;
  - (e) Any corporate-level safety and health management system policy/procedure changes;
  - (f) Any major changes in corporate management or structure;
  - (g) Information on Special Government Employee, mentoring, and

other outreach activities for the past full calendar year; and

(h) Corporate-wide success stories/best practices.

n. Whenever significant organizational or ownership changes occur, the corporate participant will provide OSHA within 60 days a new Statement of Commitment signed by management and, when applicable, any authorized collective bargaining agents.

#### 4. Injury and Illness Performance

There are no organization-wide injury and illness rate requirements for organizations desiring to come into VPP via the corporate way to participate. OSHA will examine, however, injury and illness trends during its review of an applicant's safety and health management system. After OSHA approves an organization under the corporate option, the individual sites/DGAs that apply are subject to the VPP rate requirements of a program (Star or Merit) and the chosen manner of participation (site-based or mobile workforce).

#### 5. Additional Safety and Health Management System Requirements

a. The corporate applicant's safety and health management system must be fully established at the Star level and, therefore, incorporate all elements of the VPP safety and health management system, as delineated in IV. above. OSHA may approve individual sites/DGAs to either the Star or Merit Program, depending on the degree and effectiveness of safety and health management system implementation. OSHA expects that at least 80 percent of an organization's sites/DGAs will achieve Star approval.

b. Pre-screening. A corporate applicant must have effective internal pre-screening processes to evaluate its sites/DGAs' level of preparedness to participate in VPP. VPP pre-screening processes are required for evaluating the implementation of the safety and health management system at each candidate site/DGA and the completeness of the VPP application prior to submission to OSHA.

c. A corporate applicant's safety and health management system must provide thorough, documented oversight, management, and evaluation of employee safety and health at all sites/DGAs.

#### 6. Preapproval Onsite Review of a Corporate Applicant's Safety and Health Management System

When an organization chooses the corporate way to participate, the first step in OSHA's preapproval onsite



review process will be an evaluation of the applicant's standardized safety and health management system. This will be followed by onsite evaluations of all applicant sites/DGAs.

a. Purpose of the Safety and Health Management System Review. This preapproval review, which OSHA conducts in a non-enforcement capacity, is intended to:

(1) Verify the information supplied in the application concerning qualification for VPP;

(2) Identify the strengths and weaknesses of the applicant's safety and health management system, and evaluate its adequacy to address the hazards of the applicant's sites/DGAs;

(3) Determine whether the applicant's safety and health management system meets the requirements for Star approval,

(4) Determine how effectively the applicant's safety and health management system addresses safety and health implementation at its sites/DGAs, and how effectively the system provides pre-screening and continuing oversight and evaluation;

(5) Identify any deficiencies in the applicant's safety and health management system that must be satisfactorily addressed before OSHA will approve the applicant.

(6) Determine whether the applicant is in compliance with OSHA regulations; and

(7) Obtain information to assist the Assistant Secretary in making the VPP approval decision.

b. Preparation. The review will be arranged at the mutual convenience of OSHA and the applicant. The review team will consist of a team leader; a back-up team leader (when needed); and health, safety, and other specialists as required by the complexity of applicant's operations.

c. Duration. The time required for the preapproval onsite review will depend upon the complexity of applicant's operations but normally will last 3 days.

d. Scope. OSHA will conduct an evaluation of the applicant's safety and health management system to determine whether the system meets Star requirements. It will include systems for ensuring safety and health management system implementation, pre-screening, and continuing oversight and evaluation of safety and health protection at sites/DGAs within the corporation. This evaluation normally will take place at the fixed location where the applicant maintains safety and health records (typically the applicant's headquarters).

(1) Management Commitment. OSHA will carefully assess the applicant's management commitment to safety and

health and to VPP. This assessment will include interviews with senior officials, regular and temporary employees, and union representatives where applicable, from headquarters and select sites/DGAs.

(2) Document Review. OSHA will examine the following records (or samples) if they exist and are relevant to the application or to the safety and health management system. (OSHA will accommodate trade secret concerns to the extent feasible.)

(a) Written safety and health management system, including policies and procedures that ensure compliance with OSHA standards;

(b) Management statement of commitment to safety and health;

(c) Safety and health manuals;

(d) Safety rules, emergency procedures, and examples of safe work procedures;

(e) The system for enforcing safety rules;

(f) The system for employee reporting of safety and health problems and management response;

(g) Self-inspection procedures, reports, and correction tracking;

(h) The system for investigating, documenting and analyzing accidents;

(i) The system for establishing and tracking safety and health performance goals;

(j) The system for tracking and responding to injury and illness trends;

(k) Employee orientation and safety training programs;

(l) The system for measuring, documenting, and assessing safety and industrial hygiene exposures;

(m) The system for conducting annual safety and health management system self-evaluations and site/DGA oversight and evaluation;

(n) The system for preventive maintenance;

(o) Accountability and responsibility documentation, e.g., performance standards and appraisals;

(p) Contractor safety and health programs;

(q) The system for occupational health care;

(r) Available resources devoted to safety and health;

(s) The system for conducting hazard and process analyses;

(t) The system to ensure meaningful employee involvement in safety and health;

(u) Other records that provide relevant documentation of VPP qualifications.

7. Site/DGA Evaluation. After OSHA reviews a corporate applicant's safety and health management system and grants VPP corporate approval, the

Agency will accept streamlined applications and conduct streamlined onsite evaluations of corporate sites/DGAs. These evaluations and subsequent reevaluations will focus on how effectively the sites/DGAs implement the corporate-wide safety and health management system and additional protective measures that address specific site/DGA conditions. The evaluations and reevaluations will conform to OSHA's policies and requirements for site-based participation (see VI.B. above) and mobile workforce participation (see VI.C. above).

#### 8. Term of Participation

a. A corporate participant's term of participation is open-ended so long as the participant:

(1) Continues to maintain its excellent safety and health management system;

(2) Submits the annual information required (see VI.D.3.n. above);

(3) Continues to bring acceptable numbers of new sites/DGAs into VPP (see VI.D.3.f. above).

b. The term of participation for individual sites/DGAs will depend on the program to which they are approved (Star or Merit) and their manner of participation (site-based or mobile workforce).

c. In the event a corporation withdraws from VPP, completes its participation, or is terminated by OSHA, individual qualified sites/DGAs are entitled to continue their participation under the site-based option.

#### 9. Periodic Reevaluation of Corporate Safety and Health Management System

a. Purpose. OSHA periodically conducts onsite reevaluation of a corporate participant's safety and health management system to:

(1) Determine continued qualification for corporate participation;

(2) Document results of participation in terms of the evaluation criteria and other noteworthy aspects of the participant's safety and health management system; and

(3) Identify any problems that have the potential to adversely affect continued qualification and determine appropriate follow-up actions.

b. Frequency. OSHA will conduct reevaluations of corporate participants' safety and health management systems at no greater than 60-month intervals. (Significant changes in the safety and health management system, corporate leadership or structure may trigger more frequent evaluation.) For corporate participants who participated in the Corporate Pilot, OSHA will conduct the initial reevaluation of the safety and health management system within 60

months of the last Corporate Pilot evaluation.

c. Scope. OSHA's reevaluation of corporate participants will consist mainly of an onsite visit similar in scope to the preapproval onsite review described in VI.D.6. above.

d. Measures of Effectiveness. OSHA will use the following factors in the reevaluation of corporate participants:

(1) Continued compliance with VPP requirements and continuous improvement in the safety and health management system;

(2) Satisfaction and continuing demonstrated commitment of employees and management; and

(3) Nature and resolution of problems that may have come to OSHA's attention since approval or the last evaluation.

## VII. Participation Decisions

### A. Recommendation for Program Approval

#### 1. Approval

If, in the opinion of the OSHA preapproval onsite review team, the applicant has met the qualifications for participation, the team leader will submit the team's recommendation to the appropriate OSHA official, normally the Regional Administrator. This official, on concurrence, will recommend approval to the Director of Cooperative and State Programs. The Director of Cooperative and State Programs will review the preapproval report for compliance with program criteria and consistent application of the qualifications requirements and, on concurrence, will forward the recommendation to the Assistant Secretary to approve participation. Approval will occur on the day that the Assistant Secretary signs a letter informing the applicant of approval.

#### 2. Deferred Approval

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

Upon satisfactory completion of the above steps, the onsite review team leader will initiate the approval process described in VII.A.1. above.

#### 3. Rejection of the Recommendation to Approve

Should the Assistant Secretary for any reason reject the recommendation to

approve made by the Regional Administrator or other appropriate official, a letter from the Assistant Secretary denying approval and explaining the rejection will be sent to the applicant. The denial will occur as of the date of the Assistant Secretary's letter.

### B. Recommendation for Program Denial

1. If OSHA determines that the applicant does not meet the requirements for VPP participation, the Agency will allow reasonable time (not to exceed 30 calendar days) for the applicant to withdraw its application or submit an appeal of the team recommendation.

a. If the applicant chooses to withdraw its application, the provisions of V.E. above will apply and no onsite team report will be generated.

b. If an applicant chooses to appeal the recommendation, it should submit its appeal within 30 calendar days to the Regional Administrator or other appropriate OSHA official. That official will submit the appeal, along with a denial recommendation, to the Director of Cooperative and State Programs, who will review the submission and forward it to the Assistant Secretary.

2. The Assistant Secretary will make a binding decision.

a. If the Assistant Secretary accepts the applicant's appeal, the applicant will be approved to VPP on the day the Assistant Secretary signs a letter conveying this decision to the applicant.

b. If the Assistant Secretary denies the applicant's appeal, participation denial will occur on the day the Assistant Secretary signs a letter conveying this decision to the applicant.

### C. Reapproval Recommendations and Decisions

#### 1. Star Program

The Regional Administrator or other appropriate official will make one of the following decisions/recommendations following a Star periodic reevaluation visit:

a. Decision to continue participation in the Star Program;

b. Decision to allow a 1-year conditional participation in the Star Program. The VPP onsite review team may recommend this alternative if it finds that the participant has allowed one or more safety and health management system elements to slip below Star quality. Before a participant can be placed on 1-year conditional status, the participant first must return its safety and health management system to Star quality within 90 calendar days of the evaluation visit and

must demonstrate a commitment to maintain that level of quality;

c. Recommendation to remove a Star participant's 1-year conditional status. A VPP onsite review team will return to a conditional Star participant's site/DGA 1 year after the onset of conditional status to determine if the participant's safety and health management system remains at Star quality. If the team is satisfied that Star quality has been maintained, it will recommend the participant be reapproved to the Star Program; or

d. Recommendation to Terminate. After considering the recommendation of the VPP onsite review team, the Regional Administrator or other appropriate official may recommend to the Assistant Secretary that a participant be terminated if the participant has been found to have significantly failed to maintain its safety and health management system at Star quality or meet other VPP requirements.

#### 2. Merit Program

The Regional Administrator or other appropriate official will make one of the following decisions/recommendations following a Merit periodic evaluation visit:

a. Decision for continued Merit participation;

b. Recommendation for advancement to the Star Program;

c. Recommendation for termination; or

d. Recommendation for a second Merit term. This recommendation will occur only when unanticipated unique circumstances slow the participant's progress toward accomplishing the goals.

#### 3. Demonstration Program

The Regional Administrator or other appropriate official will make one of the following decisions/recommendations to the Assistant Secretary following a Demonstration periodic reevaluation visit.

a. Decision to continue participation in the Demonstration Program at current recognition level (Star or Merit);

b. Recommendation for advancement to Star level recognition within the Demonstration Program; or

c. Recommendation for termination. This recommendation may occur when the unique aspects of the Demonstration do not provide VPP-quality protection or when the participant has significantly failed to maintain a VPP-quality safety and health management system.

#### 4. Corporate Safety and Health Management System

The Regional Administrator or other appropriate official will make one of the

following recommendations to the Assistant Secretary following a periodic reevaluation visit to reassess a corporate participant's organization-wide safety and health management system.

- a. Recommendation to continue participation; or
- b. Recommendation for termination.

#### 5. Effective Date of Reapproval Decisions

a. When the Regional Administrator or other appropriate official has authority to make a reapproval decision, the effective date will be the day the deciding official signs a letter conveying the decision to the participant.

b. When the Regional Administrator or other appropriate official makes a reapproval recommendation to the Assistant Secretary, the effective date will be the day the Assistant Secretary signs a letter conveying the decision to the participant.

#### D. Voluntary Withdrawal

1. A participant may withdraw from VPP for any reason, including receipt of an OSHA notice of intent to terminate, by submitting written notification to the Regional Administrator or other appropriate OSHA official.

2. The completion of work by a site-based construction participant, and the resulting final self-evaluation (see VI.B.5.), will constitute a withdrawal.

3. Before acting to terminate a participant from VPP (see VII.E. below), OSHA normally will give the participant the opportunity to voluntarily withdraw.

#### E. Termination of Participation

1. Reasons for Termination. OSHA will terminate a participant from VPP when:

a. Participant's management, or the duly authorized collective bargaining agent, where applicable, withdraws support for VPP participation;

b. A participant fails to maintain its safety and health management system in accordance with program requirements;

c. Following a fatality or other significant event and completion of OSHA enforcement action and/or a VPP reevaluation (see VIII.C.2-3), OSHA determines that the event reflects a serious deficiency in the participant's safety and health management system that warrants termination.

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

e. The 2-year period for a Rate Reduction Plan has expired without the participant returning injury and illness rates to acceptable levels;

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

g. The sale of a VPP participant to another company or a management change has significantly weakened the safety and health management system;

h. Resident contractor participation is no longer possible because the host site no longer participates in VPP and no other appropriate option is available. This reason for termination does not apply to resident contractors that are participating as part of a larger organization approved under the corporate option;

i. A corporate participant fails to meet expected numbers of new site/DGA participants;

j. OSHA terminates a Demonstration Program for just cause; or

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

#### 2. Termination Notification and Appeal or Withdrawal

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

b. OSHA will not provide 30 days' notice when:

(1) Other terms for termination were agreed upon before approval; or

(2) A set period for approval is expiring.

#### 3. Reapplication Following Termination

a. Reinstatement to VPP following termination requires reapplication.

b. OSHA will not consider the reapplication of a terminated participant for a period of 3 years from the date of termination.

### VIII. OSHA's Post-Approval Contact with Participants

#### A. OSHA Contact Person

The Contact Person for each VPP participant will be the appropriate Regional VPP Manager or his/her designee, or the appropriate OSHA National Office representative. This person will be available to assist the participant, as needed.

#### B. OSHA Compliance Assistance

1. In some cases, OSHA may schedule and conduct an onsite assistance visit, for example, to respond to employer technical inquiries or to ensure the efficacy of a Demonstration.

2. Whenever significant changes in ownership or organizational structure occur, or a change occurs in an authorized collective bargaining agent required to provide evidence of support for VPP, OSHA may make an onsite assistance visit if needed to determine the impact of the changes on VPP participation. In the event of such changes, the Regional Administrator or other appropriate OSHA official must be notified of the change within 60 days, and a new signed Statement of Commitment will be required. The Statement must be signed by management and appropriate bargaining representatives.

3. Whenever a 3-year rate (either the TCIR or the DART rate) of a Star Program participant exceeds the 3 most recent years' national averages published by BLS, at the discretion of the Regional Administrator or other appropriate OSHA official, the participant may be required to develop an agreed upon 2-year rate reduction plan.

a. If appropriate, OSHA may make an assistance visit to help the participant develop the plan.

b. The plan may be developed in conjunction with needed corrections to deficiencies within the safety and health management system that have resulted in OSHA placing the participant on 1-year conditional status. (See VII.C.1.b.)

(1) OSHA may lift a participant's conditional status before completion of the rate reduction plan.

(2) If, after 2 years, a participant's rates have not returned to acceptable levels, the participant will be asked to withdraw from VPP. Failure to withdraw will result in termination.

#### C. OSHA Enforcement

1. Programmed Inspections. VPP applicants and participants, unless they choose otherwise, will be removed from OSHA's programmed inspection lists, including any lists of targeted sites.

a. OSHA will remove an individual site applicant or multiple sites within an applicant DGA from the programmed inspection lists.

(1) This will occur no more than 75 calendar days prior to the commencement of the scheduled preapproval onsite review.

(2) The applicant will remain off these lists until official denial of the application, applicant withdrawal of its

application, or, if the applicant is approved to the VPP, subsequent cessation of active participation in the VPP.

b. Upon approval, VPP participants will continue to be removed from OSHA inspection lists for the duration of approved participation.

c. Removal from OSHA programmed inspection lists does not apply to a corporate headquarters or DGA headquarters unless these locations have applied or been approved for site-based participation.

2. Unprogrammed Inspections

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

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

referral will be made to the Assistant Secretary and that enforcement action may result.

3. Additional VPP Investigations

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

b. OSHA also may choose to investigate other significant accidents or events that come to its attention and that are not required to be handled with normal OSHA enforcement procedures, whether or not injury/illness is involved. OSHA will use VPP personnel to determine whether the accident or incident reflects a serious deficiency in the participant's safety and health management system that warrants reevaluation of the participant's VPP qualification.

**Authority:** The Occupational Safety and Health Act of 1970, 29 U.S.C. 651 *et seq.*

Signed at Washington, DC, this 5th day of January, 2009.

**Thomas M. Stohler,**

*Acting Assistant Secretary of Labor for Occupational Safety and Health.*

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**MILLENNIUM CHALLENGE CORPORATION**

[MCC 09-05]

**Notice of Quarterly Report (July 1, 2008-September 30, 2008)**

**AGENCY:** Millennium Challenge Corporation.

**SUMMARY:** The Millennium Challenge Corporation (MCC) is reporting for the quarter July 1, 2008 through September 30, 2008 in respect to both assistance provided under Section 605 of the Millennium Challenge Act of 2003 (Pub. L. 108-199, Division D (the Act)), and transfers or allocations of funds to other federal agencies pursuant to Section 619(b) of the Act. The following report shall be made available to the public by means of publication in the **Federal Register** and on the Internet Web site of the MCC (<http://www.mcc.gov>) in accordance with Section 612(b) of the Act.

**ASSISTANCE PROVIDED UNDER SECTION 605**

Projects	Obligated	Objectives	Cumulative disbursements	Measures
Country: Madagascar Year: 2008 Quarter 4 Total obligation: \$109,773,000 Entity to which the assistance is provided: MCA Madagascar Total quarterly disbursement: \$12,296,269				
Land Tenure Project .....	\$37,803,000	Increase Land Titling and Security.	\$15,491,326	Legislative proposal reflecting the National Land Tenure Program submitted to Parliament and passed. Number of land disputes reported and resolved in the target zones and sites of implementation. Percentage of land documents inventoried, restored, and/or digitized. Average time and cost required to carry out property transactions. Percent of reported land conflicts resolved on titled land in zone 3, 4, 5 during the title regularization operations. Percentage of land in the zones that is demarcated and ready for titling.
Finance Project .....	\$35,888,000	Increase Competition in the Financial Sector.	\$11,298,895	The number of savings accounts and outstanding value of accounts from primary banks. Maximum check clearing delay. Volume of funds in payment system and number of transactions. Increased public awareness of new financial instruments as measured by surveys within intervention zones and large towns. The amount of government debt issued with maturities in excess of 52 weeks. The number of new individual investors buying government debt securities. The number of bank branches of the Central Bank of Madagascar capable of accepting auction tenders.