

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

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

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

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

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

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

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

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

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

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

III. Proposed Changes to the Voluntary Protection Programs

A. The Star Rate Requirement.

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

"For site employees—Two rates reflecting the experience of the most recent 3 calendar years must be below at least 1 of the 3 most recent years of

specific industry national averages for nonfatal injuries and illnesses (at the most precise level available, either three or four digits) published by the Bureau of Labor Statistics (BLS)."

B. The Alternative Rate Calculation for Qualifying Small Businesses

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

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

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

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

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

C. Construction Applicants' Qualification for Merit

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

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

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

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