

**DEPARTMENT OF LABOR****Occupational Safety and Health Administration****Revisions to the Voluntary Protection Programs To Provide Safe and Healthful Working Conditions**

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

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

**SUMMARY:** The Occupational Safety and Health Administration, wishing to revise the benchmark injury and illness rates used within its Voluntary Protection Programs (VPP), published proposed changes and requested comments from the public (**Federal Register** notice 68 FR 44181, July 25, 2003). The Agency now publishes a discussion of those comments and its final VPP revisions. The revisions change the way OSHA uses Bureau of Labor Statistics industry injury and illness rates to determine whether VPP applicants and participants meet the rate requirements for the VPP Star Program. The revisions also apply to construction applicants' qualification for the Merit Program. No other VPP requirements are changed. Participants will continue to undergo rigorous OSHA assessment to ensure that only worksites with excellent, effective safety and health management systems qualify for VPP Star.

**EFFECTIVE DATE:** December 8, 2003.

**FOR FURTHER INFORMATION CONTACT:**

Cathy Oliver, Director, Office of Partnerships and Recognition, Occupational Safety and Health Administration, Room N-3700, 200 Constitution Ave. NW., Washington, DC 20210, telephone (202) 693-2213.

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

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

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

Until now, the benchmarks have been two rates obtained from the most recent year's BLS industry averages for nonfatal injuries and illnesses. These are the industry average incidence rate for nonfatal injuries and illnesses (at the most precise level available), and the industry average incidence rate for cases involving days away from work and restricted work activity. OSHA has been concerned for some time about the effect on some VPP applicants and participants of substantial fluctuations from year to year in a limited number of these BLS industry rates. These fluctuations, statistical anomalies related to BLS sampling, have resulted in the creation of an unpredictable moving target. In any particular year, the fluctuating rate may not fairly represent the injury and illness situation in an industry. 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.

In a July 25, 2003 **Federal Register** notice (68 FR 44181), OSHA proposed a change in the VPP Star benchmark rates and requested public comment. After careful consideration, including analysis of comments received, OSHA has decided to adopt its original proposal. To qualify for Star, applicants' and participants' rates will need to be below the two BLS industry rates for at least 1 of the 3 most recent years published. This change also will apply to construction applicants' qualification for the Merit Program.

No other initial application requirements or ongoing requirements for continued participation are changed. Participants will continue to undergo rigorous OSHA assessment to ensure that only worksites with excellent, effective safety and health management systems qualify for VPP Star.

*B. Statutory Framework*

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

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

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

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

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

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

**II. Discussion of the Comments**

This section includes a review of the public comments submitted to OSHA in response to its July 25, 2003 notice. OSHA received comments from 21 respondents. These included seven VPP participating companies, three companies attempting to qualify for VPP, one labor organization, four trade associations, two private consultants, two other occupational safety and health professionals, the Voluntary Protection Programs Participants' Association, and one respondent contacting OSHA on a matter unrelated to VPP.

*Overview of Comments*

Of the 20 relevant responses, 11 fully supported OSHA's proposal. These included current VPP Star participants, companies seeking VPP approval, and other organizations. A twelfth respondent wrote that the proposal was a "step in the right direction" (Manuel (Mel) Rosas, Safety and Health Consultant, Carolinas Associated General Contractors) and suggested OSHA go further by welcoming into VPP any employer that applies and then mentoring those who need help to meet program requirements. OSHA agrees