

that all companies willing to make the effort to achieve VPP recognition deserve the opportunity and the help they may need. OSHA, VPP participants, and others offer outreach, mentoring, VPP application workshops, and training opportunities to interested employers. OSHA is in the process of launching new pilot initiatives designed to assist and recognize incremental improvements in the safety and health management systems of employers willing to commit to the VPP process.

A general theme among the nine respondents who opposed the proposed change was concern that OSHA maintain the high standards of its premier recognition program. Many of the nine interpreted OSHA's proposal as a weakening of VPP eligibility requirements that, as one respondent put it, "would allow substandard applicants [to] achieve the most prestigious safety designation in the United States, that being a VPP Star facility." (James J. Mercurio, CSP.) See II.I. below for a discussion of this concern.

Several respondents took this opportunity to make other suggestions—not related to the benchmark rate issue—for improving VPP. OSHA appreciates this input and intends to consider these suggestions in its continuing effort to improve the program.

What follows is a discussion of alternative proposals put forward by respondents.

A. Address Root Cause of the Rate Fluctuations

One respondent noted that OSHA's proposal did not address the root cause of the rate fluctuations. Bureau of Labor Statistics (BLS) yearly injury and illness rates fluctuate because of the limited size of the sample and the different establishments surveyed each year. Any attempt to eliminate the substantial fluctuations encountered in some industries would require BLS to survey a much larger sample of employers each year. BLS has no plans to change its sampling methodology at this time.

B. Alternative Use of BLS Average Rates

Two respondents favored use of a "rolling average" derived from 3 or 5 years of Bureau of Labor Statistics industry average rates. A site's 3-year rates would have to be below this multiple-year industry average to qualify for Star. Before issuing its proposal, OSHA considered and rejected this approach. A rolling average of, for example, 3 years of BLS industry averages would be meaningful only if the hours worked were roughly equal

for each year. However, hours worked in an industry vary from year to year, depending on the economy. It is possible, using unpublished BLS data, to calculate legitimate 3-year averages. Because VPP spans so many industries, however, this would be a costly, time-consuming task. Each year new 3-year averages would need to be calculated and published. OSHA does not consider this a reasonable solution.

C. Alternative To Using National Statistics

One respondent objected to using national statistics when judging a company's qualification for Star. The respondent suggested that OSHA "put the pressure on the companies to really keep the employees safe. Use a hard gauge as a standard. For example, zero deaths, no lost workdays, or no broken bones." The agency has no problem supporting a goal of zero deaths. It believes, however, that setting the injury and illness rate standard for VPP qualification as high as the respondent suggests would be counter-productive. Fewer worksites, particularly those in traditionally hazardous industries, would be willing to commit to the VPP process, a process that has proven its value as a feasible and flexible way to reduce injuries, illnesses, and fatalities substantially. The number of qualifying worksites would drop drastically. Fewer sites would enjoy the benefits of VPP participation, not least of which are the prestige and national recognition that invigorate a site's efforts to continuously improve worker protection. Industries would lose models that currently demonstrate VPP's successful, systematic approach to safety and health management and generously share their expertise and resources by mentoring other companies. As one corporation with sites in the program and a corporate-wide commitment to VPP noted, "The purpose of VPP is to form a partnership between employees, OSHA, and company management to ensure a safe working environment." An unduly restrictive standard for qualification "is not in the best interest of the company and, most importantly, the employees." (Kerry A. Shaffar, Safety Director, Lozier Corporation.)

D. Data From Worker's Compensation System as Alternative Benchmark

One respondent suggested that VPP adopt as its Star benchmark the workers' compensation insurance experience modification rate (EMR), asserting that this is a more reliable indicator of an employer's safety and health experience. The respondent proposed an EMR of less than 1.0 as the rate

criterion for Star qualification. OSHA has considered using EMRs for various purposes in the past and has concluded that, for most purposes, EMRs are not as reliable an indicator of industry and worksite conditions as the data the agency currently employs. For example, experience modifications differ from state to state. Using such data for a national program such as VPP poses numerous difficulties. Moreover, workers' compensation system data reflect claims made for compensation, a different universe of injuries and illnesses than OSHA recordables.

As OSHA noted when it issued its final rule revising the recordkeeping requirements " * * * the injury and illness information compiled pursuant to Part 1904 [which BLS uses to calculate its industry rates] is much more reliable, consistent and comprehensive than data from any available alternative data source * * * This is the case because, although some State workers' compensation programs voluntarily provide injury and illness data to OSHA for various purposes, others do not. Further, workers' compensation data vary widely from state to state. Different state workers' compensation laws and administrative systems have resulted in large variations in the content, format, accessibility, and computerization of that system's data. In addition, workers' compensation databases often do not include injury and illness data from employers who elect to self-insure." (66 FR 5923-4, January 19, 2001)

E. Median or Other Distributional Statistic as Alternative Benchmark

One respondent argued that average rates are appropriate only when data follow a normal distribution, with half the sample having values above and half below the median or midpoint of the distribution. The respondent pointed to BLS published data that show injury and illness rates to be skewed, with average rates well above the median. Instead of using an average rate, the respondent argued for OSHA to "designate what fraction of worksites would be considered 'exemplary,' and then set a percentile recorded injury and illness rate based on that * * * . The 75th percentile recorded injury illness rate is readily accessible and would be a minimal criterion." OSHA does not view this approach as a solution. So long as OSHA uses a single year BLS rate as its benchmark—whether that be an industry average rate or an industry 75th percentile rate—the problem of rate fluctuations will remain.