

F. Greater Use of Merit Program

One respondent interpreted the proposed change as a way to increase the number of sites participating in VPP and suggested that, rather than change Star requirements, OSHA should admit a company to the VPP Merit program when the applicant's rates do not qualify it for Star. In fact, OSHA currently offers Merit participation to applicants with good safety and health management systems but lower-than-Star-standard rates. The Agency also is piloting a program designed to offer VPP participation to sites not ready for Merit. OSHA desires and expects to expand program participation. However, when a substantial BLS rate fluctuation—a fluctuation that does not appear to reflect a genuine industry trend—is the only reason a site fails to qualify in a particular year for Star and its attendant prestige, OSHA does not view this as a fair and consistent way to operate VPP. It is not unusual for applicants, once they make the commitment to seek Star recognition, to spend years developing and improving their safety and health management systems. The majority of new VPP approvals are to the Star program precisely because most applicants wait until they are operating excellent programs with rates well below their industry average. For a fluctuating industry rate to stymie employees' and managers' efforts to gain Star approval can be frustrating and demoralizing, as attested by numerous applicants, including respondents to this proposal who have gone through this experience.

An applicant, nonetheless, can temporarily enter the Merit program and look forward to gaining Star approval. No such solution exists for the worksite that gains Star approval and continues to provide its employees with exemplary protection, only to have its participation jeopardized by a subsequent substantial one-year drop in the BLS rate. See G. below.

G. Two-Year Rate Reduction Plan

One respondent wrote that OSHA already has a model for addressing the fluctuation in rates: the 2-year rate reduction plan that a Regional Administrator may provide, on a case-by-case basis, to a Star participant whose rate fails to stay below the latest BLS national average. The agency does not view this existing mechanism as a solution to the problem of fluctuating rates. If the site is operating a comprehensive safety and health management system, if there is no indication of problems with the system or the site's performance, if the site's

rates are stable or decreasing, and if the site is demonstrating continuous improvement as required, then it is OSHA's position that the site deserves continued, unconditional Star participation.

H. Impact of NAICS on Benchmark Rates

Two respondents suggested postponing any change until more is known about the impact of the changeover from SIC codes to NAICS. OSHA's Office of Statistics and economists we consulted in BLS do not expect the transition to NAICS to produce a different situation with respect to rate fluctuations and benchmarking. No purpose would be served by postponing a solution to this problem.

I. Is This Change a Weakening of VPP Standards?

Among the comments opposing the benchmarking change, one theme stood out: This change will weaken VPP eligibility standards. This is neither OSHA's intent nor its expectation. Central to VPP's eligibility standards is the complex requirement that a site demonstrate it has a safety and health management system that effectively protects employees. Injury and illness rates have always been one of many performance criteria that OSHA uses when assessing a worksite's qualification for VPP Star.

The benchmark change will have the greatest impact on those industries that show significant injury and illness rate variation year to year. Most industries show small trend changes on a year-to-year basis and will be impacted in a small way. Other criteria, including the expectation of continuous improvement, remain unchanged.

One respondent predicted that, under the proposal, a site could potentially have 3 consecutive years of significantly declining performance as measured by rates and still meet the qualification criteria. OSHA cannot imagine a situation where an applicant or participant with such experience would meet the criteria of continuous improvement. Applicants to VPP undergo a lengthy, rigorous review of their safety and health management system and their performance. Once approved, participants continue to undergo OSHA scrutiny. Each year they must submit to OSHA a detailed evaluation of their performance, progress, and plans for improvement that the OSHA Regional VPP Manager then reviews. In addition, OSHA periodically sends a team of safety and health specialists onsite to perform a

critical assessment, issue a report, and make a recommendation about continued participation. None of this will change.

In its response to the proposal, the Voluntary Protection Programs Participants' Association (VPPPA), a long-time and vocal advocate for maintaining VPP's high standards, wrote, "The VPPPA believes OSHA's proposal would have the desired effect of normalizing in a fair and equitable manner the benchmarking rates by adjusting for unreasonably divergent rates that may occur in any one particular year." The respondent acknowledged that a "sudden inexplicably large increase in a particular industry rate may make it easier for a worksite to meet the VPP Star requirements." It nonetheless gave its support to the benchmarking change, concluding, "The Association is certain the many other stringent requirements and numerous elements of the VPP certainly continue to ensure that only the worksites with excellent safety and health management systems will gain VPP Star approval, thus maintaining the quality and integrity of the VPP."

OSHA has carefully considered the comments submitted. All clearly were offered in the spirit of protecting and improving a remarkable program that has had a strongly positive impact on worker safety and health. The agency's analysis of the varied alternatives offered, with their potential advantages and disadvantages, has strengthened OSHA's confidence in its original proposal.

Therefore, OSHA is making the following changes to the Voluntary Protection Programs. These changes apply to the latest full version of VPP, published as **Federal Register** notice 65 FR 45650, July 24, 2000.

II. Changes to the VPP

A. The Star Rate Requirement

The following language is substituted for the first sentence of III.F.4.a.(1): 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 published by the Bureau of Labor Statistics (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." The two site rates referenced here are the 3-year total recordable case incidence rate (a single rate that reflects 3 years of total recordable injuries and illnesses), and the 3-year incidence rate for cases