ABD00001347

information as the warning statements required by this paragraph.

(4) *Material safety data sheets.* (i) Any employer who uses formaldehyde-containing materials that constitute a health hazard as defined in this standard shall comply with the requirements of 29 CFR 1910.1200(g) with regard to the development and updating of Material Safety Data Sheets

(ii) Manufacturers, importers, and distributors of formaldehyde containing materials that constitute a health hazard as defined in this standard shall assure that Material Safety Data Sheets and updated information are provided to all employers purchasing such materials at the time of the initial shipment and at the time of the first shipment after a Material Safety Data Sheet is updated.

Signed at Washington, DC, this 6th day of July, 1988.

Theresa M. O'Malley,

Acting Departmental Clearance Officer.

Appendix II. Memo to the Field—Labeling of Formaldehyde-Containing Products Under the Hazard Communication Standard

September 9, 1986.

MEMORANDUM FOR ALL REGIONAL ADMINISTRATORS

FROM: JOHN B. MILES, JR., Director, Directorate of Field Operations.

SUBJECT: Labeling of Formaldehyde-Containing Products Under the Hazard Comunication Standard.

Several parties have asked for guidance on the subject issue. The Hazard Communication Standard (HCS) does not establish a clear threshold for the inclusion of hazard warnings on product labels. The term "appropriate hazard warning" found under 29 CFR 1910.1200(f) is the determining factor in the standard's labeling requirements.

While it is not the Agency's intent to provide specifications that might erode the standard's inherent flexibility, it is necessary to establish guidelines to ensure uniformity in our enforcement evaluations of employer programs. Guidelines were published, originally on May 16, 1986 and further refined recently on July 18 in OSHA Instruction CPL 2-2.38A and CPL 2-2.38A CH-1 (pages A-12 through A-18). The guidelines provide criteria that are summarized in Table 1 of the directive on page A-18. These guidelines establish the presence of a single valid positive study showing human evidence of carcinogenicity as a sufficient basis for the inclusion of a carcinogen warning on product labels.

In a recent formaldehyde rulemaking proposal (50 FR 50412), the Agency considered the epidemiological evidence as suggestive based on a consideration of all available evidence. There are, however, several valid, positive studies showing human carcinogenicity. The following are examples (all exhibit numbers refer to the formaldehyde docket, number H225 and H225A):

1 Stroup, Exhibit 73–42
2 Acheson et al., Exhibit 42–1
3 Blair et al., (recent NCI report)
4 Olsen et al Exhibit 73–36

In addition, formaldehyde has been tested and shown to cause cancer in three separate animal studies by CIIT (Exhibit 42–131), New York University (Exhibits 42–3, 42–4) and (Exhibit 73–146) Genotoxicity has also been documented through several short term assays

Health professionals must employ a large measure of judgment when making decisions about the appropriateness of a label warning They must keep in mind that the HCS is primarily an information standard and as such expresses an intent to disclose information rather than to withhold information. Accordingly label warnings stating the carcinogenic potential for formaldehyde will generally be required under the HCS.

The specific words or phrases used to warn of formaldehyde carcinogencity will vary. Compliance officers should expect to see warnings such as "CARCINOGEN," "POTENTIAL CARCINOGEN," and "ANIMAL CARCINOGEN." Others will incorporate modifying statements such as "INCONCLUSIVE EVIDENCE OF HUMAN CARCINOGENCITY." Wide latitude should be permitted as long as the label being evaluated warns of the potential cancer risk.

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Voluntary Protection Programs To Supplement Enforcement and To Provide Safe and Healthful Working Conditions; Changes

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

ACTION: Clarifications to the voluntary protection programs (VPP) regarding injury rates and referrals.

SUMMARY: Documentation retention duration, applicability of the requirements to small businesses, Star construction and Merit injury rates, frequency on consultation safety committee inspections and areas of generic employee participation requirements are clarified, and OSHA's policy on referral for enforcement is specified. Other program requirements and OSHA responsibilities remain unchanged.

EFFECTIVE DATE: June 29, 1988.

FOR FURTHER INFORMATION CONTACT: James Foster, Room N3647, Office of Information and Consumer Affairs, Occupational Safety and Health Administration, 200 Constitution Avenue, NW., Washington, DC 20210, (220) 523–8148.

SUPPLEMENTARY INFORMATION:

I. Introduction

A Background

The Voluntary Protection Programs (VPP), adopted by OSHA on July 2, 1982 have established the credibility of cooperative action among government, industry and labor to address worker safety and health issues and expand worker protection Requirements for VPP participation are based on comprehensive management systems with active employee involvement to prevent and control the potential safety and health hazards of the site Companies which 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.

From the beginning, OSHA has reserved the right to use its enforcement authority in specified instances such as the investigation of employee complaints, significant accidents, and chemical leaks or spills. On the other hand, OSHA has been careful to keep separate from enforcement any information submitted through the VPP application process, because applicants have voluntarily requested OSHA review and have voluntarily presented to OSHA safety and health program information not required by law. A 1984 study of private sector attitudes about the VPP indicated that the risk that most non-participating employers associated with VPP application was the possibility that a VPP review could lead to enforcement action. That has not ever been and is not now OSHA's intent.

The question has arisen as to what action OSHA would take in the event that, during the course of VPP interaction, it was determined that employees were endangered and the cooperative approach was not effective in resolving the situation. In the first place, OSHA believes that such a situation would be rare, if it ever were to occur. During the more than five-year history of the VPP, cooperation has always resolved any identified problems. Since it is conceivable, however, that a situation could arise where management would refuse to address a condition which poses a serious threat to the safety and health of employees, the agency wants to clarify how an unresolved situation of that nature would be handled.

The need for a variety of minor clarifications has been determined. For example, an organizational change is needed to that an assurance implied elsewhere in the document is specified in the assurance section.

VPP participants have requested clarification on the length of time program documentation must be maintained

Questions have arisen requiring a clarification of the time requirements for prior site experience at construction sites which are applying for Star participation, necessitating a clarification In addition, a previous change inadvertently eliminated an option for Merit construction participation, thereby warranting a reinstatement of earlier language.

A discrepancy between two sections addressing frequency of construction safety committee inspections has been noted and requires correction.

Langage intended to permit waivers of some requirements for written procedures and documentation for small businesses has not been clearly understood.

Finally, where employee participation has been implied in the generic sense, that term has been used instead of the reference to safety committees which was previously used. Where the intent was to refer specifically to safety committees, there has been no change.

B. Statutory Framework

The Occupational Safety and Health Act of 1970, 29 U.S.C 651 et seq. (the "Act" and the "OSH Act"), was enacted "to ensure 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 which establish the legislative mandate 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 safer 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. Structure of Notice

Section II deals with the rationale for the changes.

Section III incorporates the change of the name of the Try Program to the Merit Program as announced in 53FR2101 with the clarifications in the program requirements and OSHA responsibilities

II. Rationale for Change

The first change in section III.D 2 involves a specification in the assurances section of management's commitment to optimum occupational safety and health protection and to meeting and maintaining the requirements for program participation. This has been required as a part of management commitment in III.E.5 a. Instructions for VPP application and review tools used by OSHA staff, however, have addressed this issue primarily in the assurances area. So that VPP materials will reflect the order of requirements listed in the Federal Register, this assurance has been added to the assurances section as Section III S.2.a. The concept continues to be addressed in the management commitment section as well.

The second change is in section III.D.2.g. That section specifies the kind of program documentation which must be maintained for OSHA review. Implied in previous Federal Register language was the idea that such documentation must be kept for the duration of VPP participation. In fact, records required for VPP alone, such as documentation of self-inspection or safety committee activities must be retained for a minimum of twelve months or until OSHA has communicated its decision regarding program participation based on the results of its pre-approval review or regularly scheduled evaluation. This means that, initially, documentation of program activities for the previous twelve months is required to demonstrate whether or not the VPP requirements have been operational for the minimum amount of time. This documentation should be retained until OSHA has communicated its decision regarding VPP participation in case any questions arise about any aspects of the site program. The same type of safety and health program documentation must then be maintained throughout the period of participation to be covered by the OSHA evaluation, again until notification of OSHA's decision regarding continued approval is received, for the reason previously noted.

This time period is now specified to clear up any uncertainty for participants. Some of the items listed, such as the OSHA log and industrial hygiene records, must also be maintained for periods of time specified by other regulations.

The change is section III E.4 cla[illegible] the point that the length of time th[illegible] rates for all employees at a constr[illegible] site must have been kept together most recent twelve months The previous language requiring site ra[illegible] for "the last full year" Could be misconstrued as referring to the preceding complete calendar year.

Section III E 5 a(4) has been cha[illegible] to clarify the ability of OSHA to wa[illegible] formal requirements such as writter[illegible] procedures or documentation for sr[illegible] business where, due to the size of t[illegible] worksite and numbers of employee[illegible] such formalities are unnecessary fo[illegible] effective functioning of safety and health management systems. It is intended that OSHA will make the determination on a case-by-case bas[illegible] after thorough review of the effectiveness of the system in quest[illegible]

Section III.E.5 e. (2)(d) has been changed to coincide with the requirement in section III.E.5.b. (3)(c[illegible] that construction safety committee inspections cover the entire worksit[illegible] least monthly. Because of the consta[illegible] changing conditions at a constructio[illegible] site, more frequent coverage of the entire worksite is required to ensure prompt hazards correction than is required as a minimum for a static general industry site. Most general industry Star sites provide more frequent inspection coverage than is required.

In Section III.E.5 f. (2), N 1.c. (5), a[illegible] N.2.c. (6) the term "safety committee[illegible] had been used as a generic term to indicate some type of "employee participation." In order to reflect this generic connotation more accurately term "employee participation" is us[illegible] instead. When the VPP was adopte[illegible] 1982, the preponderance of informat[illegible] regarding employee involvement in safety and health programs focused [illegible] joint committees. During the agency' more than five years' experience wi[illegible] reviewing site programs, however, [illegible] different kinds of effective employe[illegible] participation have been seen. Whe[illegible] options are allowed, OSHA does no[illegible] want to limit, by its use of language, type of employee participation [illegible] company many choose. The second [illegible] third changes, regarding employee participation in the evaluation measures, clarify that the effectiven[illegible] of whatever type of participation th[illegible] uses will be a major determining fac[illegible] in continued VPP participation.

The change in section III.S.b.(2) [illegible] involves an injury rate clarification [illegible] previous revision to the Voluntary Protection Programs, 52 FR 7337, the language regarding injury rates for [illegible]

Try Program (now know as Merit) inadvertently omitted the fact that both the three-year average lost workday case rate and the total recordable incidence rate could be above the industry average for a general industry applicant if OSHA were convinced that the applicant's planned program improvements could be expected to bring the rates down to a level at or below the industry average in a reasonable time The language has been changed to reflect "either or both," in accord with original program design.

In response to questions from agency personnel, Section L has been revised to indicate how OSHA would handle enforcement referrals in unlikely event that a company would refuse to resolve a safety and health issue that had been identified during the course of VPP interaction To date, no enforcement referral has been needed to protect workers at potential or participating VPP sites.

There is always the potential for differences of opinion among reasonable people regarding the appropriate way to prevent and control hazards. The spirit of cooperation engendered by VPP facilitates open discussion of options and supports joint efforts for determining solutions to any safety and health problem that may arise. When joint efforts are successful and employees are protected, a referral is unnecessary and would not be made Given the cooperative spirit of the program, the need for referral is unlikely On the other hand, one can imagine a scenario where workers could be seriously endangered, and for one reason or another, management refused to make changes necessary to protect them. If that situation were to occur, it is clear that OSHA would be obligated to ensure the safety and health of those employees, and a referral to appropriate enforcement officials would be made because OSHA cannot ignore its responsibility to employee safety and health.

A referral to enforcement would never be made lightly. OSHA, in line with the cooperative spirit on which the VPP are based, would first make every effort to find a mutually satisfactory solution among government, management and labor. Since the companies that apply for VPP participation commit themselves to providing superior worker protection that goes beyond the minimum requirements of OSHA standards and since companies that are willing to work with OSHA on a cooperative basis are unlikely to take a negative approach to the resolution of any occupational safety and health concern, as indicated above, it is not anticipated that a situation of this nature will arise.

It is not OSHA's intent to jeopardize the cooperative relationship between volunteer companies and OSHA staff nor to squander enforcement resources in pursuing trivial concerns. It is, however, OSHA's intention that no safety and health problem which would seriously endanger employees, and which anyone acting in good faith would expect to see corrected, go unresolved The careful balance between these important needs requires an approach which emphasizes the gravity of the question and the need for consistency in selecting the best way to assure that the employees in question are protected. The agency has, therefore, determined that any referral to appropriate enforcement officials shall be decided by the Assistant Secretary.

Current participants in the VPP have expressed their recognition of the need for enforcement referrals in deplorable situations that remain unresolved and have indicated their trust in OSHA to make the determination of that need appropriately.

Other program requirements and OSHA responsibilities remain unchanged.

III. The Voluntary Protection Programs

A. Purpose of the Voluntary Protection Programs

OSHA has long recognized that compliance with its standards cannot be itself accomplish all the goals established by the Act. The standards, no matter how carefully conceived and properly developed, will never cover all unsafe activities and conditions. Furthermore, limited resources will never permit regular or exhaustive inspections of all of the Nation's workplaces. In addition, employers and employees, because of their day-to-day experience in the workplace, acquire a special knowledge of the processes, materials and hazards involved with the job. This knowledge, combined with the ability to evaluate and address unique hazards quickly and to provide rewards for positive action, can be used by employers to improve workplace safety and health in ways simply not available to OSHA.

The purpose of the Voluntary Protection Programs (VPP) is to emphasize the importance of, encourage the improvement of, and recognize excellence in employer-provided, site-specific occupational safety and health programs. These programs are comprised of managment systems for preventing or controlling occupational hazards. The systems not only ensure that OSHA's standards are met, but beyond the standards to provide the best feasible protection at that site.

When employers apply for and achieve approval for participation in VPP, they are removed from programmed inspection lists This frees OSHA's inspection resources for visits to establishments that are less likely meet the requirements of the OSHA standards VPP participants enter into new relationship with OSHA in which safety and health problems can be approached cooperatively, when and they arise

Participation in any of the programs does not diminish existing employer and employee rights and responsibilities under the Act. In particular, OSHA does not intend to increase the liability of a party at an approved VPP site. Employees or any representatives of employees taking part in an OSHA-approved VPP safety and health program are not assuming the employer's statutory or common law responsibilities for providing safe and healthful workplaces or undertaking in any way 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 and that any employer may volunteer for application to one of the VPP. Compliance with OSHA standards and applicable laws remains mandatory

Approval for participation is determined by the Assistant Secretary for Occupational Safety and Health.

B Purpose of this Notice

This notice describes the qualifications criteria for approval of participation in the Voluntary Protection Programs (VPP), and the conditions of participation, termination of or withdrawal from participation and means of reinstatement.

C Program Description

1 General

The VPP are voluntary programs which provide recognition to qualified employers and removes those "recognized employers" from programmed inspection lists. They emphasize the importance of worksite safety and health programs in meeting the goal of the Act "to assure so far as possible every working man and woman in the Nation safe and healthful working conditions . . ." through official recognition of excellent safety and health programs, assistance to employers in the efforts to reach a level of excellence and the use of the cooperative approach to resolve safety and health problems.

The VPP consist of two major programs, Star and Merit, plus a Demonstration Program to permit demonstration and/or testing of experimental approaches which differ from the two established programs. In addition, within the Star and Merit Programs there are some variations between general industry and construction industry requirements

2 Recognition

By approving an applicant for participation in the VPP, OSHA recognizes that the applicant is providing, at a minimum, the basic elements of ongoing systematic protection of workers at the site which makes routine Federal enforcement efforts unnecessary. The symbols of this recognition are certificates of approval and the right to use flags showing the program in which the site is participating. The participant may also choose to use program logos in such items as letter-head or award items for employee contests

In addition to removing approved worksites from programmed inspection lists (but not from valid, formal employee safety and health complaint, inspections, investigations of significant chemicals spills/leaks, nor fatality/catastrophe investigations), OSHA will provide the opportunity for a company to work cooperatively with the agency both in the resolution of safety and health problems and in the promotion of effective safety and health problems through such means as presentations before meetings of safety and health organizations such the National Safety Congress. Each approved site will have a designated OSHA Contact Person to handle information and assistance requests.

D Aspects Common to All VPP

1 The Eligible Applicant

a *Site Management.* Management at a site which is either independent or part of a corporation can make application to the VPP for that site.

b. *Corporate Management.* The management of a corporation may apply to the VPP on behalf of one or more sites in the corporation. This staff provide one or more aspects of the site safety and health program.

c. *General Contractors and Organizations Providing Overall Management at Multi-Employer Sites.* At multi-employer sites, such as in the construction industry, the only eligible applicant is the one which can control safety and health conditions of all employees at the site, such as the general contractor or the owner

d. *Organizations Representing Groups of Small Business in the Same Industry* OSHA will consider, for Demonstration Programs, applications from organizations providing health and safety program services to groups of small businesses of the same industry (at the three or four digit SIC level) in a limited geographical area All sites must meet requirements and will be subject to onsite review

2 Assurances

Applications for all VPP must be accompanied by certain assurances describing what the applicant will do if the application is approved for participation in one of the VPP. The applicant must assure that:

a. All the requirements for the VPP will be met and maintained.

b. All employees, including newly hired employees when they reach the site, will have the VPP explained to them, specifically including employee rights under the program and under the Act.

c. All hazards discovered through self-inspections, accident investigations or employee notification will be corrected in a timely manner.

d. If employees are given health and safety duties as part of the applicant's safety and health program, the applicant will assure that those employees will be protected from discriminatory actions resulting from the duties, just as section 11(c) of the Act protects employees for the exercise of rights under the Act.

e. Employees shall have access to the results of self-inspections and accident investigations upon request (in construction, this requirement may be met through the joint labor-management committee).

f. For construction, injury records for all work done at the site will be recorded *together* and the injury rates for that site will be maintained at or below the national average for that type of construction.

g. The information listed below will be maintained and available for OSHA review. It will be retained until OSHA communicates its decision approving VPP participation. The same information will be retained during participation for evaluation purposes for the time period covered by the evaluation until OSHA communicates its decision regarding continued approval for VPP participation.

(1) Written safety and health program;

(2) Copies of the log of injuries and illnesses and the OSHA 101 or its equivalent;

(3) Monitoring and sampling reco applicable.

(4) Agreement between managem and the collective bargaining agent(concerning the functions of the safet committee and its organization wher applicable.

(5) Minutes of each committee me where applicable,

(6) Committee inspection records where applicable,

(7) Management inspection and accident investigation records,

(8) Records of notifications of uns or unhealthful conditions received fr employees and action taken, taking i account appropriate privacy interest and,

(9) Annual internal safety and hea program evaluation reports (describ below in E.5.f.)

h. Applicants for the Merit or Demonstration Programs must provi assurance that any data necessary t evaluate achievement of individual goals not listed above will be made available to OSHA for evaluation purposes.

i. Each year by February 15, the participating site will send notificati to the designated OSHA Contact Pe described under Section III.M., of th site's injury incidence and lost work case rates, hours worked and estima average employment for the past full calendar year.

3 Unionized Sites

When a site covered by an applic for any of the VPP has a significant portion of its employees organized by one or more collective bargaining un the authorized agent must either sig application or submit a signed state indicating that the collective bargai agent(s) do(es) not object to participation in the program. Withou such concurrence, OSHA will not approve program participation.

4 Inspection/Interaction History

If the applicant has been inspected the last three years, the inspection, abatement and/or any other history c interaction with OSHA must indicate good faith attempts to improve safety and health and include no upheld wi violations during those last three y

E. The Star Program

1. Purpose

The Star Program is based on the characteristics of the most comperehensive safety and health programs used by American industry, aims to recognize leaders in injury a illness prevention programs who ha been successful in reducing workpla hazards and to encourage others to work toward such success

2. Term of Participation

The term for participation in an approved Star Program is unlimited, contingent upon continued favorable triennial evaluation In the construction industry, participation is ended with the completion of construction work at the site

3. Experience

All elements of the safety and health program must be in place and have been implemented for a period of not less than twelve months before Star approval at both general industry and construction sites Adequate written guidance must be available prior to Star approval.

4. Results

The general industry applicant must have an average of both lost workday injury case rates and injury incidence rates for the most recent three-year period at or below the most recent specific industry (at the three or four digit level) national average published by BLS. For the construction application, the average injury incidence rate and lost workday injury case rate for at least the most recent twelve months at the site applied for, including all workers of all subcontractors of the site, must be at or below the national average for that type of construction according to the most precise SIC code. The SIC for the site is based on the type of construction project, not individual trades.

5 Safety and Health Program Qualifications for the Star Program

a. *Management Commitment and Planning.* Each applicant must be able to demonstrate top-level management commitment to occupational safety and health in general and to meeting the requirements of VPP. Management systems for comprehensive planning must address safety and health.

(1) *Commitment to Safety and Health Protection.* As with any other management system, authority and responsibility for employee safety and health must be integrated with the management system of the organization and must involve employees. This commitment includes:

(a) *Policy:* Clearly established policies and results-oriented objectives for worker safety and health protection which have been communicated to all employees;

(b) *Line Accountability.* Authority and responsibility for safety and health protection clearly defined and implemented; accountability through evaluation of supervisors; and a system for rewarding good and correcting deficient performance

(i) The general industry applicant must have a documented system for holding all line managers and supervisors accountable for safety and health

(ii) The construction applicant must demonstrate that, at a minimum, the project manager and contractor superintendents are held accountable for safety and health conditions within their areas of responsibility.

(c) *Resources.* Commitment of adequate resources to workplace safety and health, in staff, equipment, promotion, etc.,

(d) *Management Involvement.* Top management involvement in worker safety and health concerns, including clear lines of communication with employees and setting an example of safe and healthful behavior; and

(e) *Contract Worker Coverage.* All contractors and subcontractors are required, whether in general industry, construction or other specialized industry, to follow worksite safety and health rules and procedures applicable to their activities while at the site, including special precautions necessary as a result of their activities.

(i) Except where precluded by government regulations, participants should be able to demonstrate that they have considered the safety and health programs and performance of major contractors during the evaluation and selection process, especially in operations such as construction where contractors and sub-contractors are a routine aspect of business arrangements.

(ii) In general industry, when the contractor's activities are not part of the overall operation and include special skills and hazards beyond the participant's expertise, the participant's responsibility is not expected to extend beyond proper diligence and prudence in both the selection and the oversight of the contractor.

(2) *Commitment to VPP Participation.* Management must also clearly commit itself to meeting and maintaining the requirements of the VPP for which application is made.

(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 program, which includes hazard assessment, hazard correction and control, safety and health training, employee participation and safety and health program evaluation, must be part of the written program All aspects of the safety and health program must be appropriate to the size of the worksite and the type of industry. Some formal requirements such as written procedures or documentation may be waived for small businesses where the effectiveness of the systems has been evaluated and verified. Waivers will be decided on a case-by-case.

b *Hazard Assessment.* Management of safety and health programs must begin with a thorough understanding of all potentially hazardous situations and the ability to recognize and correct all existing hazards as they arise This requires.

(1) Analysis of all new processes, materials or equipment before use begins to determine potential hazards and plan for prevention or control.

(2) Comprehensive safety and health surveys at intervals appropriate for the nature of workplace operations, and regular reviews (by a person(s) qualified to recognize existing hazards and potentially significant risks) to ensure the employer's awareness and control of those risks.

(a) A baseline survey of health hazards accomplished through initial comprehensive industrial hygiene surveying or other comprehensive means of assessment, such as complete industrial hygiene engineering studies, before equipment or process installation in general industry or in the pre-job planning for construction, and

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

(3) A system for conducting, as appropriate, routine self-inspections which follow written procedures or guidance and which result in written reports of findings and tracking of hazard correction.

(a) In general industry, these inspections must occur no less frequently than monthly and cover the whole worksite at least quarterly;

(b) In construction, this must include management inspections which cover the entire worksite at least weekly; and

(c) Also in construction, inspections by members of the safety and health committee which cover the entire worksite as appropriate, but no less frequently than once per month, are required.

(4) Routine examination and analysis of hazards associated with individual jobs, processes, or phases and inclusion of the results in training and hazard control programs. This includes, e.g., job safety analysis and process hazard

review. In construction, the emphasis should be on special safety and health hazards of each craft and each phase of construction.

(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 hazard corrections.

(6) An accident/incident investigation system which includes written procedures or guidance, with written reports of findings and hazard correction tracking; and review of injury/illness experience identifying causes and providing for preventive or corrective actions.

(7) A medical program which includes the availability of physician services and personnel trained in first-aid.

c. *Hazard Correction and Control.* Based on the results of hazard assessment, identified hazards and potential hazards must be addressed by the implementation of engineering controls; equipment maintenance; personal protective equipment; disciplinary action, when needed; and emergency preparedness. Safety rules and work procedures must be developed, thoroughly understood by supervisors and employees, and followed by everyone in the workplace, to prevent and control potential hazards. These include the following provisions:

(1) Reasonable site access to Certified Industrial Hygienists and Certified Safety Professionals or Certified Safety Engineers must be available, as needed, based on the potentially significant risks of the site.

(2) Means for eliminating or controlling hazards. These include the following:

(a) Engineering controls.

(b) Personal protective equipment.

(c) Safety and health rules, including safe and healthful work procedures for specific operations.

(i) Appropriate to the potential hazards of the site.

(ii) Written, implemented and updated by management as needed and used by employees.

(3) Procedures for disciplinary action or reorientation of employees and supervisors who break or disregard safety rules, safe work, materials handling or emergency procedures must be written, communicated to employees, and enforced.

(4) Procedures for response to emergencies listing requirements for personal protective equipment, first aid, medical care, or emergency egress must be written and communicated to all employees. Procedures should include provisions for emergency telephone numbers, exit routes, and training drills.

(5) Ongoing monitoring and maintenance of workplace equipment to prevent it from becoming hazardous.

(6) A system for initiating and tracking hazard correction in a timely manner.

d. *Safety and Health Training.* Training is necessary to implement management's commitment to prevent exposure to hazards. Supervisors and employees must know and understand the policies, rules and procedures established to prevent exposure. Training for safety and health must ensure that:

(1) Supervisors understand the hazards associated with a job, their potential effects on employees, and the supervisor's role, through teaching and enforcement, in ensuring that employees follow the rules, procedures and work practices for avoiding or controlling exposure to the hazards.

(2) Employees are made aware of hazards, and the safe work procedures to follow in order to protect themselves from the hazards, through training at the same time they are taught to do a job and through reinforcement.

(3) Supervisors and all employees understand what to do in emergency situations.

(4) 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.

e. *Employee Participation.* (1) For general industry, the requirement for employee participation may be met in any one of a variety of ways, as long as employees have an active and meaningful way to participate in safety and health problem identification and resolution.

(a) This is in addition to the individual right to notify appropriate managers of hazardous conditions and practices.

(b) Examples of acceptable means of providing for employee impact on decision-making include the following:

(i) Safety committees,

(ii) Safety observers,

(iii) Ad hoc safety and health problem-solving groups,

(iv) Safety and health training of other employees,

(v) Analysis of hazards of jobs, and

(iv) Committees which plan and conduct safety and health awareness programs.

(2) Construction sites must utilize the labor-management safety committee approach to involve employees in the identification and correction of hazardous activities and condit[ions]. This is required because of the seriousness of the hazards, the worksite conditions, the expan[ded] contracting work force and the turnover in the construction in[dustry]. The applicant must be able to demonstrate that the site has a labor-management committee [for safety] and health which has the follow[ing] characteristics.

(a) Has a minimum of one ye[ar] experience providing safety an[d] advice and making periodic site inspections.

(b) Has at least equal represe[ntation] by bona fide worker representa[tives] who work at the site and who a[re] selected, elected, or approved b[y] authorized collective bargaining organization.

(c) Meets regularly, keeps mi[nutes of] the meetings, and follows quor[um] requirements consisting of at le[ast half] of the members of the committee [and] representatives of both employ[ees and] management.

(d) Makes regular workplace inspections (with at least one w[orker] representative) at least monthly [or] more frequently as needed, and [is] provided for at least monthly co[verage] of the whole worksite.

(e) In addition, the joint comm[ittee] must be allowed to:

• Observe or assist in the investigation and documentation [of] major accidents;

• Have access to all relevant [safety] and health information; and,

• Have adequate training so t[he] committee can recognize hazar[ds;] continued training as needed.

(3) If a construction applicant [chooses] to use a joint committee that diff[ers] either in the membership compo[sition or] in the functional duties specified above, the applicant must:

(a) Meet operational requireme[nts for] quorum, meeting minutes, etc.

(b) Demonstrate that the alter[native] practices achieve the objectives [of the] practices they replace. For exam[ple, if] bona fide employee representati[on on] the joint committee is intended t[o ensure] that all site employees particip[ate] in matters of safety and health [and that] they are fully informed of decis[ions] affecting safety and health. In t[he] absence of bona fide employee representation on the joint comm[ittee,] means which are equally effect[ive in] achieving these objectives mus[t be] provided.

(c) Contractually bind all con[tractors] and subcontractors operating at [the] applicant's site to maintain effe[ctive] safety and health programs and

3 Term of Participation

Demonstration programs will be approved, subject to annual evaluation, for the period of time agreed upon in advance of approval but not to exceed five years.

4 Approval to Star

a Approval to Star is contingent upon.

(1) Successful demonstration of the alternative aspects; and,

(2) A decision by the Assistant Secretary that changing the requirements of the Star Program to allow inclusion of these alternative aspects is desirable.

b Once a decision has been made by the Assistant Secretary to change Star, those changes must be published in the Federal Register to provide public notice of the change.

c. When the published change has become effective, the demonstration site may be approved to Star without submitting a new application or undergoing further onsite review provided that the approval occurs no later than one year following the last evaluation under the Demonstration Program.

H. Application Requirements for All VPP

1. The Application Instructions

OSHA will prepare, keep current and make available to all interested parties, application guidelines which explain the type of information to be submitted for OSHA review.

2. Application Content

Eligible applicants will be required to provide all relevant information described in the most current version of the *Application Instructions* which apply to the program for which application is made.

Amendments to submitted applications will be requested when the application information is insufficient to determine eligibility for onsite review.

Materials needed to document the safety and health program which the applicant feels may involve invasion of privacy or a trade secret should not be included in the application. Instead, such materials should be described in the application and provided for viewing only at the site, if an onsite Pre-Approval Review is conducted as part of the application review.

3. Application Submission

Applications may be submitted to OSHA Regional Offices or, in the case of multi-regional applications, to OSHA's Directorate of Federal-State Operations in Washington, DC.

4 Application Withdrawal

Any applicant may withdraw a submitted application at any time after formal submission and before approval or denial When the applicant notifies OSHA of its withdrawal, the original application will be returned to the applicant.

OSHA may keep the assigned Program Officer's marked working copy of the application for a year before discarding it, in case the applicant should raise questions concerning the handling of the application. Once an application has been withdrawn, a new submission of a formal application is required to begin application review again.

5. Public Access

The following documents will be maintained in OSHA's National and applicable Regional Offices for public access beginning on the day the applicant is approved and for so long as VPP participation is active:

a. VPP application and amendments:

b. Pre-Approval report and subsequent *evaluation reports;*

c. Transmittal memoranda to Assistant Secretary;

d. Assistant Secretary's approval letter; and,

e. Notification memoranda to Regional Administrator.

I. Qualification Verification

1. Initial Review

The initial review of the application is made to ascertain whether those qualifications which can be documented by paper submission have been met. The applicant will be given the opportunity to amend the application with additional or substitute materials for the purpose of improving the application. Where resources allow, OSHA staff will assist with application preparation, particularly for the Demonstration Program.

2. Pre-Approval Onsite Reviews

a. *Purpose.* The Pre-Approval Review, which is conducted by a team of non-enforcement OSHA staff, on the site for which participation has been requested is a management review of the site safety and health program. It is conducted to:

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

(2) Identify the strengths and weaknesses of the site safety and health program;

(3) Determine the adequacy of the safety and health program to address the potential hazards of the site; and

(4) Obtain information to assist [t]he Assistant Secretary in making the approval decision

b *Preparation.* The review will [be] arranged at the mutual convenienc[e of] OHSA and the applicant. The revi[ew] team will consist of a team leader [and] back-up along with health and safe[ty] specialists as required by the size [of the] site and the complexity of the safe[ty and] health program

c. *Duration of the Review* The t[ime] required for the Pre-Approval Revi[ew] will depend upon the size of the sit[e and] the program applied for. Reviews [will] usually *average one-and-a-half to* [...] days onsite, unless the site has mo[re] than 1,000 workers or has other complicating factors.

d. *Content.* All Pre-Approval Re[views] will include a review of injury rec[ords,] recalculation of the rates submitte[d in] the application, verification that t[he] safety and health program describ[ed in] the application has been impleme[nted,] and a general assessment of safet[y and] health conditions to determine if t[he] safety and health program is adeq[uate] for the hazards of the site.

The review will also include [...] interviews with relevant individu[als] (such as members of joint safety [...] *committees, management person*[nel and] randomly selected non-supervisor[y] personnel).

Onsite document review will inc[lude] the following records (or samples [of] them) if they exist and are relevan[t to] the application or the safety and h[ealth] program:

(1) Management statement of [...] commitment to safety and health;

(2) The OSHA 200 log;

(3) Safety and health manual(s);

(4) Employee notifications of sa[fety] and health problems;

(5) Safety rules, emergency [...] procedures and examples of safe[...] procedures;

(6) The system for enforcing safe[ty] rules;

(7) Self-inspection procedures, r[...] and correction tracking;

(8) Accident investigations;

(9) Safety committee minutes;

(10) Employee orientation and training programs and attendance records;

(11) Industrial hygiene monitor[ing] records; and,

(12) Other records which provi[de] documentation of the qualification[s for] these programs.

comply with applicable safety and health rules and regulations:

(i) Such contract provisions must specify authority for the oversight, coordination and enforcement of those programs by the applicant and there must be documentary evidence of the exercise of this authority by the applicant:

(ii) Such contract provisions must provide for the prompt correction and control of hazards, however detected, by the applicant in the event that contractors or individuals fail to correct or control such hazards; and

(iii) Such contract provisions must specify penalties, including dismissal from the worksite, for willful or repeated non-compliance by contractors, subcontractors, or individuals.

f. *Safety and Health Program Evaluation.* The applicant must have a system for evaluating the operation of the safety and health program annually to determine what changes are needed to improve worker safety and health protection.

(1) The system must provide for written narrative reports with recommendations for improvements and documentation of followup action.

(2) In particular, the effectiveness of the operation of the self-inspection system, the employee hazard notification system, accident investigations, employee participation, safety and health training, the enforcement of safety and health rules, and the coverage of health aspects, including personal protective equipment and routine monitoring and sampling, should be determined and the findings should be used to improve the implementation of the company's written safety and health program.

(3) The evaluation may be conducted by corporate or site officials or by a private sector third-party.

(4) In construction, the evaluation should be conducted annually and immediately prior to completion of construction to determine what has been learned about safety and health activities that can be used to improve the contractor's safety and health program at other sites.

F. The Merit Program

1. Purpose

The Merit Program is aimed at employers in any industry who do not yet meet the qualifications for the Star Program but who wish to work toward Star Program participation. If OSHA determines that the employer has demonstrated the commitment and the potential to achieve the Star requirements, Merit is used to set goals that, when achieved, will qualify the site for Star participation.

2. Term of Participation

Merit Programs will be approved for a period of time agreed upon in advance of approval. The term will be dependent upon how long it is expected to take the applicant to accomplish the goals for Star participation. Participation is canceled at the end of the term.

3 Qualifications for Merit

a *Safety and Health Program Requirements.* An eligible applicant to the Merit Program must have a written safety and health program which covers the essential elements of a safety and health program as described in Section III E.5 for Star.

(1) The basic elements (management commitment and planning; hazard assessment; hazard correction and control; safety and health training; employee participation and safety and health program evaluation) should all be operational or, at a minimum, in place and ready for implementation by the date of approval. For the construction industry, the joint labor-management committee must have had a minimum of three months experience in providing safety and health inspections before approval.

(2) The elements are not expected to be at Star quality of completeness. The Merit applicant is not expected to meet each of the specific Star requirements in each element. Participation in Merit is an opportunity for employers to work with OSHA to improve the quality of their safety and health programs and reduce their injury rates to meet the requirements for Star

b. *Injury Rates.* (1) For the Merit Program in construction, if the injury rates for the site applied for are not at or below the industry averages for the preceding twelve months as required for Star, the applicant company must be able to demonstrate that the company's three-year average injury rates are at or below the most recently published BLS national average for the industry (at the three digit level). The injury incidence rate and the lost workday case rate must each be averaged over the last three complete calendar years. The rate must include *all* of the applicant's employees who are actually employed at construction sites in that SIC. The applicant may use nationwide employment or may designate an appropriate geographical area which include the site for which application is made.

(2) For general industry, if either the three-year average rate for all recordable injuries, or for injury lost workday cases, or both for the last th[...] calendar years is above the national average for the specific industry aver[...] (at the three or four digit level) as m[...] recently published by BLS, the applic[...] must indicate goals for the reduction [...] either or both of those rates and demonstrate that the methods planne[...] to reduce them are feasible.

c *Goals* Any system required for S[...] participation that is not in place or is [...] yet of Star quality at the time of approval must be set as a goal along with any rate reduction goals.

G The Voluntary Protection Demonstration Program

1. Purpose

This program provides the opportu[...] for companies to demonstrate the [...] effectiveness of alternative methods [...] which, if proven successful (usually a[...] more than one site), could be substitu[...] as alternative qualifications for the St[...] Program for certain situations; to explore the use of VPP in industries other than construction and those [...] classified as general industries, such [...] maritime or agriculture; and to test methods of overcoming problems whi[...] have kept certain employers, such as small business employers and many [...] contractors in the construction indust[...] from taking part in the VPP.

2. Qualifications

a. Like all VPP participants, those in the demonstration program must have site safety and health program that addresses a minimum of the basic elements (management commitment a[...] planning, hazard assessment, hazard correction and control, safety and hea[...] training, employee participation, and safety and health program evaluation described for Star in Section III.E.5 above. How the applicant implements those elements may be the subject of demonstration so long as Star quality protection is afforded all employees. The applicant is not expected to meet each of the specifics in each element.

b. Applicants for this program must demonstrate to the Assistant Secretar[...] satisfaction that the alternative [...] approach shows reasonable promise [...] being successful enough to serve as a alternative basis for inclusion in the [...] Program. This includes having averag[...] injury incidence and lost workday ca[...] rates for the previous three years at [...] below the specific industry average. Injury rates for mobile worksites suc[...] in the construction industry must be [...] or below the specific industry averag[...] for the life of the worksite.

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Application Approval

1. Deferred Approval

If, at the conclusion of the Pre-Approval Review, the applicant needs to take actions to meet the qualifications for approval, reasonable time—up to 90 days—will be allowed for those actions to be taken before a recommendation is made to the Assistant Secretary. Where necessary, an onsite visit will be made to verify the actions taken after the Pre-Approval Review visit

Application Withdrawal

If the applicant cannot meet the requirements for participation in one of the VPP or for any reason does not wish to continue the approval process, reasonable time shall be allowed for application withdrawal as provided for in III.H.4., before recommendation is made to the Assistant Secretary

Application Approval

If, in the opinion of the Pre-Approval Review team, the applicant has met the qualifications requirements of the VPP applied for or an alternative VPP acceptable to the applicant, the team's recommendation will be made to the Regional Administrator, who, on concurrence, will recommend approval to the Director of Federal-State Operations. The Director of Federal-State Operations shall review the report for consistent application of the qualification 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.

Application Denial

1. Should the Assistant Secretary, for any reason, reject the FSO and/or Regional recommendation to approve, a letter from the Assistant Secretary denying approval will be sent to the applicant. The denial will occur as of the date of the letter.

2. Should an applicant appeal to the Assistant Secretary a finding by the team that qualifications are not met, the Director of Federal-State Operations will forward the appeal to the Assistant Secretary, along with the team's recommendation of denial.

If the Assistant Secretary accepts the recommendation to deny approval, the denial will occur as of the date the Assistant Secretary signs a letter informing the applicant of the decision.

L. Inspection Requirements

1 Programmed Inspections

Participating work sites will be removed from OSHA's programmed inspection lists.

2. Workplace Complaints

Employee complaints to OSHA will be handled by enforcement personnel in accordance with normal OSHA enforcement procedures.

3 Chemical Leaks/Spills

Any significant chemical leaks spills will be handled by enforcement personnel in accordance with normal OSHA enforcement procedures.

4. Fatalities and Catastrophes

All fatalities and catastrophes will be handled by enforcement personnel in accordance with normal OSHA enforcement procedures.

5. Referrals

Although the history of the VPP indicates that safety and health problems discovered during contact with worksites for VPP purposes are resolved cooperatively, OSHA must reserve the right, where the safety and health of employees is seriously endangered and site management refuses to correct the situation, to refer the situation to the Assistant Secretary for review and enforcement action if warranted.

a The employer will be informed in advance that a referral will be made to the Assistant Secretary and that enforcement action may result.

b. Because companies with excellent safety and health programs that are interested in participating in the VPP are not likely to refuse to address a serious problem in a cooperative spirit, a situation of this type is unlikely to occur. It is important, however, for interested employers and employees to be aware of and understand OSHA's obligation in the event that such a situation should occur.

c. Where a cooperative spirit does not exist between OSHA and a company, VPP participation is not appropriate. Therefore, if a company in this situation does not choose to withdraw from VPP consideration, VPP participation shall be denied or terminated.

M. Post-Approval Assistance

1. OSHA Contact Person

An OSHA official will be assigned to each VPP participating worksite as Contact Person. This person will be available to assist the participant as needed, to assure smooth interface with OSHA and to provide expertise as required

2. Problem Solving

If a problem comes to the attention of the OSHA Contact Person, either through evaluation efforts, review of injury rates, records of OSHA complaint inspections, chemical leaks/spills or accident investigations, or by request of the VPP participant, the Contract Person will attempt to assist the participant in resolving the problem, including, if necessary, arranging with the participant for an onsite visit to assess the problem and its possible causes.

3 Scheduled Onsite Assistance

In some cases, such as in the Demonstration Program, in the construction program or when needed for the Merit Program, a schedule of onsite assistance visits shall be agreed upon before approval.

4. Significant Organizational or Ownership Changes

Whenever significant changes are made in ownership or organizational structure at a VPP site, the Contact Person should make an onsite assistance visit to determine the impact of the changes on VPP participation.

N. Evaluation

1 The Star Program

a *Purpose.* (1) To determine continued qualification for the Star Program.

(2) To document results of program participation in terms of the evaluation criteria and other striking aspects of the site program or its results.

(3) To identify any problems which have the potential of adversely affecting continued Star Program qualifications and to determine if those problems require additional evaluations.

b. *Frequency.* Star Programs shall be evaluated every three years (except when serious problems have been identified which require an earlier evaluation) with an annual review of injury incidence and lost workday injury case rates which shall include a recalculation of the latest three-year averages.

c. *Measures of Effectiveness.* The following factors will be used in the evaluation of Star Program participants:

(1) Continued compliance with the program requirements;

(2) Satisfaction of the participants;

(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 participation programs

d *Description of Evaluation* OSHA's evaluation of Star Program participants will consist mainly of an onsite visit of similar duration and scope of the Pre-Approval Program Review described in III I.2. Documentation of program implementation from pre-approval review or the previous evaluation will be reviewed

2 The Merit Program

a *Purpose* (1) To determine continued qualification for the Merit Program, or to determine whether the applicant may be approved for the Star Program.

(2) To determine whether adequate progress has been made toward the agreed-upon goals.

(3) To identify any problems in the safety and health program or its implementation which need resolution in order to continue qualification or meet agreed-upon goals.

(4) To document program improvements and/or improved results.

(5) To provide advice and suggestions for improvements that might be made.

b *Frequency.* All merit programs will be evaluated annually for the duration of the period of approval, except where the participant requests an evaluation before the annual evaluation for the purpose of determining whether the Star qualifications have been met.

c *Measure of Effectiveness.* The following factors will be used in the evaluation of Merit Programs:

(1) Continued adequacy of the safety and health program to address the potential hazards of the workplace,

(2) Comparison of rates to the industry average;

(3) Satisfaction of the participants;

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

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

(6) Effectiveness of the employee participation program; and,

(7) Progress made toward goals specified in the pre-approval or previous evaluation report.

d. *Description of Evaluation.* OSHA's evaluation will consist mainly of an onsite visit of duration and content similar to the Pre-Approval Review described in III.I.2.

O. Termination or Post-Approval Withdrawal

1 Reason for Termination

a. Completion of covered construction work at the site will terminate a construction industry approval.

b. Sale of the approved site to another company or any management change that eradicates or significantly weakens the safety and health program may terminate the approval.

c The participating site management, or the duly authorized collective bargaining agent where applicable, may terminate participation for any reason.

d. OSHA may terminate participation for cause

2 Cause for OSHA Termination

a *Star Program* Termination by OSHA will occur when a significant failure to maintain the safety and health program in accordance with the program requirements has been identified.

b. *Merit Program.* Termination by OSHA will occur when:

(1) A significant failure to maintain the safety and health program in accordance with the program requirements has been identified; or,

(2) No significant progress has been made toward the goals; or

(3) The term of approval has expired.

c. *The Voluntary Protection Demonstration Program.* Termination by OSHA will occur when:

(1) OSHA determines that continuation of the experiment will:

(a) Endanger workers at the covered site(s), and/or,

(b) Be unlikely to result in inclusion into the Star Program, or,

(2) The period of approval has expired

3 Notification

OSHA will provide the participant and other relevant parties 30 days notice of intent to terminate participation unless:

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

(b) A set period for approval is expiring or construction has been completed.

4. Post-approval Withdrawal

Upon receipt of notice of intent to terminate, or for any other reason, a participant may withdraw from the VPP by submitting written notification to the assigned Contract Person.

P. Reinstatement

Reinstatement requires reapplication.

Signed at Washington, DC, this 29th day of June

John A. Pendergrass,

Assistant Secretary

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BILLING CODE 4510-26-M

NATIONAL LABOR RELATIONS BOARD

Experimental Modification of Procedures Governing the Rescheduling of Unfair Labor Hearings

AGENCY: National Labor Relat[ions] Board.

ACTION: Notice of experimental modification of procedures gov[erning] the rescheduling of unfair labor hearings

SUMMARY: Notice is hereby give[n] the National Labor Relations Bo[ard] commence a one-year experim[ent] August 1, 1988, transferring, und[er] certain circumstances, the auth[ority to] reschedule unfair labor practic[e] hearings from the Regional Dir[ectors to] the administrative law judges. T[he] experiment modifies the proced[ure set] forth in § 102.16 of the Board's R[ules and] Regulations.

FOR FURTHER INFORMATION CON[TACT]: John C. Truesdale, Executive Se[cretary], 1717 Pennsylvania Ave., NW., R[oom], Washington, DC 20570, Teleph[one] 254-9430.

SUPPLEMENTARY INFORMATION: S[ection] 102.16 of the National Labor Rela[tions] Board's Rules and Regulations, S[eries 8,] as amended, currently permits th[e] Agency's Regional Directors to [extend] the date of a scheduled unfair lab[or] practice hearing either upon his/h[er] own motion or upon proper cause [shown] by any other party It appears tha[t there] is a public perception that this procedure is unfair insofar as the Regional Directors are also the pe[rsons] responsible for prosecuting the un[fair] labor practice cases. Recognizing [the] detrimental effect such adverse p[ublic] perceptions may have on the Age[ncy's] continued credibility and stature, [the] National Labor Relations Board w[ill] implement a one-year experiment [in some] of its Regional Offices whereby th[e] authority currently granted the Re[gional] Directors under Section 102.16 wil[l be] transferred, under certain circumstances, to the administrat[ive law] judges.

With respect to all unfair labo[r] practice complaints issued betw[een] August 1, 1988 and July 31, 1989, authority to extend the date of a scheduled hearing shall reside w[ith] administrative law judges, excep[t] the Regional Directors shall reta[in] authority to extend the date of a scheduled hearing in the followin[g] limited circumstances:

(1) Where all parties agree to extension of the date of hearing