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July 26, 1982

MEMORANDUM TO CLIENTS

Re: OSHA Voluntary Compliance Programs

INTRODUCTION

On July 2, 1982, the U.S. Department of Labor, Occupational Safety and Health Administration ("OSHA") published a Notice regarding its implementation of three voluntary compliance programs whose collective purpose is to exempt employers with better than average safety records from routine OSHA inspections. This Notice revises and implements a Notice published on January 19, 1982, which sought comments regarding several possible efforts to encourage safety and health protection programs by employers and employees. A copy of the Application Guidelines for the compliance programs, which took effect July 6, is attached.

The main incentives for participating in one of the three programs is that all who do will be removed from OSHA's general schedule inspection list and their variance requests will be given priority treatment. However, OSHA will continue to respond to employee complaints, accidents and fatalities.

The expected result of these programs will be less regulation of employers with fairly good safety and health records, but employers who have had problems in the past should be prepared for closer scrutiny of their operations because OSHA plans to target its limited inspection force at high-hazard work sites.

What follows is a discussion of the key aspects of each of the three programs named "Star," "Try," and "Praise," respectively.

SUMMARY OF PROGRAMS

I. "Star"

The "Star" program is billed by OSHA as the center-piece of the three initiatives. This effort can cover either safety or health, or both. Such an initiative must be structured as either an employee participation program requiring the use of a labor-management committee or a

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management initiative program requiring company accountability for safety/health and a mechanism for communicating with all employees at a particular work site. The participants in the program will be evaluated every three years.

The following are the basic criteria for all "Star" programs:

1. Applicant must have a better than average safety record for the specific industry as determined by the SIC Code for the most recent three-year period;
2. Applicant's existing inspection record must show a good faith effort to improve safety and health, i.e., if the applicant has received any upheld citations for willful violations in the last three years, it will not be accepted in the program;
3. Applicant must provide information which will be used for the OSHA review;
4. Applicant must provide OSHA a written safety program;
5. Applicant must adopt an internal mechanism for handling employee safety/health complaints; and
6. If health is included, applicant must provide information regarding that aspect of the initiative.

In addition to the above criteria which must be satisfied for all "Star" initiatives, if the effort is structured as an employee participation program, the standards set forth in Attachment A must be met. Similarly, if the effort is structured as a management initiative program, the standards set forth in Attachment B must be satisfied.

II. "Try"

"Try," the experimental program of the three initiatives, is aimed at determining the effectiveness of alternative safety/health efforts. Additionally, the purpose of "Try" is to give those employers who cannot meet the criteria of "Star" an opportunity to work with OSHA on improving their safety/health performance. Although the criteria for "Try" is significantly less stringent than for "Star," applicants applying for "Try" will be expected to show that their effort will lead to significant accident or illness prevention.

As with "Star," "Try" may also cover safety or health or both. Moreover, the effort, like a "Star" program, can be structured either as employee-participation or management initiative. "Try" programs will be evaluated on an annual basis.

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The qualifications for "Try," which are quite general, are as follows:

1. Applicant should have either a better than average safety record (determined in a more flexible manner than "Star") for the specific industry as determined by the SIC Code for the most recent three-year period, show a positive trend regarding safety or indicate objectives for improving safety record and the means for achieving them;
2. If OSHA has inspected applicant in the last three years, the record should show a good faith effort in improving safety/health conditions;
3. Applicant must submit a program which includes:
 - (a) solving safety/health problems;
 - (b) employee training; and
 - (c) a demonstration of company commitment to safety/health;
4. Applicant must provide data for evaluation;
5. Applicant must conduct site inspections, investigate accidents and have a process for handling employee complaints; and
6. Applicant must provide resources necessary to handle size of work sites covered and types of hazards presented.

In addition to these standards which must be satisfied for all "Try" programs, if the effort is structured as an employee participation program, qualifications that appear in Attachment C must be met. Likewise, if the effort is set up as a management initiative program, the criteria indicated in Attachment D must be satisfied.

III. "Praise"

"Praise" is a recognition program targeted at and structured for employers in low-hazard industries who have a good safety record and active prevention programs. The initiative provides recognition for past safety efforts and encourages improvement in such work. A "Praise" program can only cover safety.

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The qualifications for "Praise" are as follows:

1. Applicant must be in a low-hazard industry, i.e., an industry which has an average lost work day injury rate less than the national average for the private sector; and
2. Applicant must have a better than average safety record for the specific industry for the last five years. OSHA reserves the right to review injury rates on an annual basis.

PROGRAM APPLICATION

Although no particular format is required for the Application, the Application Guidelines attached hereto as Attachment E must be followed. The Application should be submitted to Frank Fordyma, Office of Policy Analysis, Integration and Evaluation, OSHA, 200 Constitution Avenue, N.W., Washington, D.C. 20210.

Every applicant's program will be subject to a pre-approval review except where information obtained by an inspection within the last 18 months can be used to verify the applicant's information. Such a review will consist of a records inspection, interviews with relevant parties and a general assessment of safety (and health if it is included in program) conditions. Neither information submitted in the Application nor gathered from pre-approval reviews will be made available to enforcement personnel.

A variety of entities can participate in the programs including companies, general contractors and small businesses. An applicant for the programs can be an employer operating a single site (an employer with multiple sites can apply for only a single site), multiple site or a multiple-employer operating a single site.

If a covered work site is unionized to any significant extent, the applicant must demonstrate that the union(s) do not object to the program. While OSHA does not define what it means by "unionized to any significant extent," we suggest that a union's cooperation be sought as a matter of course whenever it represents any affected employees.

* * *

If you have any questions regarding this memorandum, please contact Thomas H. Barnard, Kenneth B. Stark, Tom McDonald, or any other attorney in the Firm with whom you have contact.

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Attachments

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ATTACHMENT A

Additional Qualifications for Star
Employee Participation Programs Only

1. The applicant must be able to demonstrate that it has a joint employer-employee committee for safety (and health) with the following characteristics:

- a. A minimum of one year's experience providing safety (and health) advice and making periodic site inspections (construction applicants are exempted from this requirement);
- b. Has at least equal representation by bona fide worker representatives who work at the site and who are either elected by all employees or selected by a duly authorized representative organization;
- c. Meets regularly, keeps minutes of the meetings, and has a quorum consisting of at least half of the members of the committee with representatives of both employees and management; and,
- d. Makes workplace inspections (with at least one worker representative) regularly, as needed, and has provided for at least yearly coverage of the whole worksite.

2. The joint committee must be allowed to:

- a. Observe or assist in the investigation and documentation of major accidents;
- b. Have access to all relevant safety and health information; and,
- c. Have training so that the committee can recognize hazards, and have continued training as needed.

3. The applicant must assure that:

- a. All hazards noted during site inspections by the joint committee or by management will be abated in a timely manner; and,
- b. The following information will be retained and available for OSHA review during the pre-approval stage and for evaluation:

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- (1) Safety (and health, where applicable) program(s);
- (2) Copies of the log of injuries and illnesses and the OSHA 101 or its equivalent;
- (3) Agreement between management and the employee representatives concerning the functions of the committee and its organization;
- (4) Minutes of each committee meeting;
- (5) Committee inspection and accident investigation records; and,
- (6) Records of employee safety (and health) complaints received and action taken, taking into account appropriate privacy interests.

ATTACHMENT B

Additional Qualifications for Star
Management Initiative Programs Only

1. The applicant must be able to demonstrate that, for at least one year, it has had the following characteristics:
 - a. Reasonable site access to certified safety (and health) professionals as well as medical personnel;
 - b. A system for holding line managers and supervisors accountable for safety (and health) conditions;
 - c. Routine site inspections by safety (and health) professionals which provide for at least yearly coverage of the whole worksite and for written reports of findings and abatement; and,
 - d. Internal safety (and health) audit or evaluation.
2. The applicant must routinely review job hazards for inclusion in training and hazard control program.
3. The applicant must demonstrate that:
 - a. All hazards noted during management site inspections will be abated in a timely manner; and,
 - b. The following information will be retained and available for OSHA review:
 - (1) Written safety (and health) program(s);
 - (2) Copies of the log of injuries and illness and the OSHA 101 or its equivalent;
 - (3) Monitoring and sampling records (if health is covered by the program);
 - (4) Staff inspection and accident investigation records which also shall be available upon request for review by employees included in the program;
 - (5) Records of employee safety (and health) complaints received and action taken, taking into account appropriate privacy interest; and
 - (6) Annual internal evaluations or audits.

ATTACHMENT C

Additional Qualifications for Try
Employee Participation Programs

1. The program must have some aspect of active (rather than passive) employee participation.
2. Where employee representatives are used, they should be elected by all employees or selected by a duly authorized representative organization.

ATTACHMENT D

Additional Qualifications for Try
Management Initiative Programs

1. The program should include a system for holding managers accountable for safety (and health) conditions.
2. The applicant should be willing to institute an internal system of audit or evaluation, if not already in place.
3. Staff inspection and accident investigation reports shall be available upon request for review by covered employees.

ATTACHMENT E

APPLICATION GUIDELINES
VOLUNTARY PROTECTION PROGRAMS

To apply for participation in OSHA's Voluntary Protection Programs, applicants should supply the information listed below. No particular format is necessary for your application. The only requirement is, that the necessary information be included. OSHA staff will be happy to discuss your proposal and to provide assistance in preparing a complete application. Staff may assist, for example, in the selection of the appropriate program and coverage. Staff also will be able to clarify requested information in terms of your existing program.

The application will provide the basis for a pre-approval program review, which will include records review, interviews with relevant parties, and a general assessment of safety (and health) conditions. If more than one site is covered by the application, please give information by site where requested below or where differences between sites exist.

None of the submitted information will be used for enforcement purposes.

I. Voluntary Protection Program Selection

Indicate program you would like to apply for.

A. "Star"

1. Employee participation
2. Management initiative

B. "Try"

1. Employee participation
2. Management initiative

C. "Praise"

II. Background Information

A. Names and Addresses

- | | |
|---|---|
| <ol style="list-style-type: none"> 1. Company or organization name
Home address
Site address(es) | <ol style="list-style-type: none"> 3. Employee representative
(corporate and by site,
where applicable)
Address
Phone Number |
| <ol style="list-style-type: none"> 2. Company or organization representative for voluntary program (corporate and/or by site, where applicable)
Address
Phone Number | <ol style="list-style-type: none"> 4. Company bargaining agent
(where applicable)
Address
Phone Number |

B. Other Information

1. Program coverage (safety, health or both)
2. Number of workers (at each site)
3. Type of work performed (at each site)
4. Industry SIC Code(s) (at each site)
5. Injury incidence rates for last 5 years, if available (by site)
6. Lost workday injury case rates for the last 5 years (by site)
7. Estimated date of job start (construction only)
8. Estimated date of job completion (construction only)

III. Attachments

- A. Safety (and health) program
- B. Description of internal complaint mechanism
- C. Description of method for notifying employees about program
- D. Short/long term goals and methods for reducing incidence rates, for those companies above industry averages
- E. Assurances required:
 1. Statement of willingness to provide relevant information for OSHA review and evaluation, including:
 - a. Internal complaint records (for "Star" and "Try")
 - b. Inspection and accident investigation records (for "Star" and "Try")
 - c. Committee minutes (where labor-management committees are used)
 - d. Audit or evaluation reports (for management initiative programs)
 - e. Monitoring and sampling records (for management initiative programs if health is covered)
 2. Statement of commitment to abate identified hazards in a timely manner
 3. Statement of willingness to provide accident/inspection records to employees, on request (for management initiative programs)

IV. Employee Participation Program Information (if applicable)

- A. Agreement signed by labor and management outlining employee participation

B. Labor-management committee (by site) (where applicable)

1. Date of committee inception
2. Method of selection of committee members
3. Names of management members and length of committee service, address and job title of each
4. Names of employee members and length of committee service, address and job title of each
5. Average length of committee service for employee members
6. Description of committee role
 - a. Frequency and scope of committee inspections
 - b. Procedure for inspecting entire worksite (including frequency)
 - c. Role in accident investigations
7. Description of hazard recognition training
8. List of safety and health information accessible to committee

C. Alternative method of employee participation (where applicable, "Try" only)

1. Nature of employee participation
 - a. Duties of participating employees
 - b. Impact of participation on safety and health decisions
2. Date of participation program start-up
3. Method of selection for participating employees

V. Management Initiative Program Information (if applicable)

- A. Description of system for job hazard analysis
- B. Description of system for line accountability for safety and health
- C. Description of audit or evaluation process

VI. Internal Authorization

- A. If the application is for an employee participation program, both employee and management representatives should sign and date the application. If a collective bargaining agreement is in effect, the application should be signed by appropriate authorized representatives.

- B. If the application is for a management initiative program in a unionized establishment, demonstration that the union does not object to the proposal should be provided.

VII. Assistance

If you have any questions about the application you may call or write:

U.S. Department of Labor - OSHA
Office of Policy Analysis, Integration
and Evaluation
Room N3622
200 Constitution Avenue, N.W.
Washington, D.C. 20210
(202) 523-7361 }

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