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OCCUPATIONAL SAFETY AND
HEALTH ADMINISTRATION



**VOLUNTARY PROTECTION PROGRAM:
CONTROLS ARE NOT SUFFICIENT TO ENSURE
ONLY WORKSITES WITH EXEMPLARY SAFETY
AND HEALTH SYSTEMS REMAIN IN THE
PROGRAM**

Date Issued: December 16, 2013
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BRIEFLY...

Highlights of Report Number 02-14-201-10-105, issued to the Assistant Secretary for Occupational Safety and Health.

WHY READ THE REPORT

Since 1982, the Occupational Safety and Health Administration (OSHA) has used the Voluntary Protection Programs (VPP) to establish cooperative relationships with businesses and their workers to help prevent fatalities, injuries, and illnesses; and to officially recognize worksites with exemplary safety and health management systems. Once approved for VPP, a worksite was exempt from OSHA programmed inspections as long as it complied with program requirements and maintained exemplary systems.

To ensure VPP participants maintained exemplary systems, OSHA evaluated the systems while selecting, reevaluating, and monitoring worksites. First, a worksite submitted an application to OSHA describing its systems and opened itself to agency scrutiny that included an onsite evaluation by a team of safety and health experts. Second, OSHA conducted periodic onsite reevaluations to ensure participants maintained the requirements of the program. Third, OSHA monitored the participant between onsite reevaluations by reviewing their annual self-evaluation report, following up on inspections, and performing other oversight activities.

WHY OIG CONDUCTED THE AUDIT

We conducted a performance audit of VPP for Fiscal Year (FY) 2012 to answer the following question:

- Does OSHA have sufficient controls for the selection, timely reevaluation, and monitoring of VPP participants?

READ THE FULL REPORT

To view the report, including the scope, methodology, and full agency response, go to:

<http://www.oig.dol.gov/public/reports/oa/2014/02-14-201-10-105>.

December 16, 2013

VOLUNTARY PROTECTION PROGRAM: CONTROLS ARE NOT SUFFICIENT TO ENSURE ONLY WORKSITES WITH EXEMPLARY SAFETY AND HEALTH SYSTEMS REMAIN IN THE PROGRAM

WHAT OIG FOUND

OSHA did not have sufficient controls to ensure VPP worksites maintained exemplary occupational safety and health systems.

- 13 percent of participants had injury and illness rates above industry averages or were cited with violations of safety and health standards, but most of these participants were allowed to remain in the program. Moreover, OSHA policy allowed participants with injury and illness rates above industry averages to potentially remain in the program for up to 6 years, raising serious questions as to whether the companies were fully protecting their workers.
- 11 percent of participants were not evaluated in a timely manner. Policy had timeliness requirements for onsite evaluations, but OSHA's existing processes did not effectively ensure compliance.
- OSHA could not identify the universe of participants or applicants because it tracked VPP data in at least 11 different databases that were not reconciled; and data ranged between 1,743 to 1,859 for participants, and 19 to 274 for applicants.
- OSHA used unreliable injury and illness data to evaluate participants and in reported program statistics. For a judgmental sample, 60 percent of reported rates differed significantly (by more than half) from source documents.

WHAT OIG RECOMMENDED

The OIG made recommendations to the Assistant Secretary for Occupational Safety and Health covering policies, controls, and oversight so OSHA can better ensure only VPP participants with exemplary safety and health systems remain in the program.

OSHA agreed with the recommendations, but stated it generally followed its policies and procedures and most VPP sites had exemplary safety and health systems.

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Table of Contents

Inspector General’s Report	1
Results In Brief	2
Objective — Does OSHA have sufficient controls over the selection, timely reevaluation, and monitoring of VPP participants?	4
<i>VPP’s evaluation processes and monitoring controls are not sufficient to ensure only participants with exemplary safety and health systems were in the program.</i>	4
Finding 1 — Policy allowed participants with injury and illness rates higher than industry averages to remain in VPP for up to 6 years	5
Finding 2 — Participants with serious violations of safety and health standards remained in VPP	8
Finding 3 — Participants were not evaluated in a timely manner.	11
Finding 4 — OSHA did not maintain reliable data for applicants and participants.....	13
Finding 5 — Reported program success in reducing injury and illness rates were not based on reliable data.	15
Recommendations	17
Exhibits	
Exhibit 1 Application Processing Timeframe and Results.....	21
Exhibit 2 Reevaluation Processing Timeframe and Results	23
Appendices	
Appendix A Background	27
Appendix B Objective, Scope, Methodology, and Criteria	31
Appendix C Acronyms and Abbreviations	35
Appendix D OSHA Response to Draft Report	37
Appendix E Acknowledgements	43

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U.S. Department of Labor

Office of Inspector General
Washington, D.C. 20210



December 16, 2013

Inspector General's Report

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Since 1982, the Occupational Safety and Health Administration (OSHA) has used the Voluntary Protection Programs (VPP) to establish cooperative relationships with businesses and their workers to help prevent fatalities, injuries, and illnesses; and to officially recognize worksites with exemplary safety and health management systems. Once approved for VPP participation, a worksite is exempted from OSHA programmed inspections as long as it complies with program requirements and maintains exemplary systems.

To ensure VPP participants maintain exemplary systems, OSHA evaluates the systems while selecting, reevaluating, and monitoring worksites. First, a worksite submits an application to OSHA describing its systems and opens itself to agency scrutiny that includes an onsite evaluation by a team of safety and health experts. Second, OSHA conducts periodic onsite reevaluations to ensure participants maintain the requirements of the program. Third, OSHA monitors the participant between onsite reevaluations by reviewing their annual self-evaluation report, following up on inspections, and performing other oversight activities. See **Appendix A** for additional background information.

We conducted a performance audit of VPP for Fiscal Year (FY) 2012 to answer the following question:

Does OSHA have sufficient controls for the selection, timely reevaluation, and monitoring of VPP participants?

We reviewed the OSHA Directive *Voluntary Protection Programs (VPP): Policies and Procedures Manual* and related policy memoranda. We conducted interviews at OSHA's National Office and 4 sampled regional offices, and tested compliance with program requirements. We analyzed FY 2012 data on VPP applications, reevaluations, and active participants from OSHA's National Office and all 10 regional offices. We

statistically sampled and reviewed documentation at 4 regional offices for 28 initial applications and 78 reevaluations. See **Appendix B** for the complete scope, methodology, and criteria.

We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objective. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objective.

RESULTS IN BRIEF

The purpose of VPP is to recognize worksites with exemplary safety and health management systems. However, OSHA did not have controls in place to sufficiently select, reevaluate, and monitor VPP participants to ensure their worksites maintained exemplary status. As a result, we found approximately 13 percent of VPP participants had injury and illness rates above industry averages or had been cited for violations of safety and health standards. Most of these participants were still allowed to remain in the program. Additionally, OSHA had not reevaluated another 11 percent of VPP participants timely enough to ensure they maintained exemplary systems. Some reevaluations had still not been performed a year past their due dates.

During the selection, reevaluation, and monitoring processes, OSHA reviewed participant injury and illness rates and compared them to industry averages. However, OSHA policy allowed participants with rates above industry averages to potentially remain in the program for up to 6 years. The fact companies were allowed up to 6 years to correct their higher-than-average injury and illness rates raises serious questions about whether or not these companies were fully protecting their workers. Additionally, for participants that had been inspected and cited for serious violations of safety and health standards, VPP policies did not require OSHA to determine the underlying causes for those serious violations.

For the selection, reevaluation, and monitoring processes, we found issues regarding data reliability, which impacted VPP entry and exit, participant reevaluations, and reported successes. For instance, OSHA could not identify all VPP participants or applicants because it tracked VPP data in at least 11 different databases that were not reconciled. As a result, OSHA did not have an accurate count of how many worksites were in the program (1,746 to 1,851) or how many applications were awaiting approval (20 to 232). Additionally, OSHA used injury and illness data for the reevaluation process and to report on overall program successes, however the information was not reliable.

We made recommendations to the Assistant Secretary for Occupational Safety and Health covering policies, controls, and oversight so OSHA can better ensure only VPP participants with exemplary safety and health systems remain in the program.

OSHA’S RESPONSE

OSHA acknowledged some deficiencies and inconsistencies remain in the management of the VPP program and agreed to take action on the report recommendations. However, OSHA questions the assumption that its policies for oversight of VPP participants – such as allowing up to 4 years of higher than industry average injury and illness rates, and an additional 2 years to reduce rates before voluntary withdrawal or termination – do not fully protect workers. Injury and illness rates are only one of many factors used to evaluate participants and OSHA does not believe that every participant that exceeds the industry average is necessarily failing to fully protect its workers. OSHA believed it was generally following its policies and procedures for implementing VPP and that the vast majority of the sites in the program have exemplary safety and health management systems. The Assistant Secretary’s entire response is contained in Appendix D.

OIG’S CONCLUSION

The VPP manual states that VPP participants are models of safety and health excellence with systems to effectively prevent and control hazards so that worker injuries and illnesses are prevented. The audit raised serious concerns regarding OSHA policies based on indicators (higher than industry average injury and illness rates, and inspections citing serious violations of OSHA standards) that some VPP participants were not effectively preventing and controlling hazards.

With few exceptions, OSHA followed its policy for participants with higher than average injury and illness rates. OSHA’s policy requires using 3-year average rates as the benchmark, waiting up to 4 years before taking action on participants with higher than industry average rates, and then waiting another 2 years before termination or requesting voluntary withdrawal from VPP. OSHA provided documentation to support the use of the 3-year average rates as the benchmark, but has not justified the waiting periods – up to 4 years before initial corrective actions and another 2 years before final actions. Since VPP participants are supposed to model safety and health excellence and prevent worker injury and illnesses, we question the appropriateness of OSHA’s policy to delay actions on participants with higher than industry average rates.

RESULTS AND FINDINGS

Objective — Does OSHA have sufficient controls over the selection, timely reevaluation, and monitoring of VPP participants?

VPP's evaluation processes and monitoring controls are not sufficient to ensure only participants with exemplary safety and health systems were in the program.

For selecting, reevaluating, and monitoring VPP participants, OSHA did not have sufficient controls to ensure the worksites maintained exemplary occupational safety and health systems. We found approximately 13 percent of participants did not have systems that fully protected their employees' safety and health. Most of these were still allowed to remain in the program. Additionally, 11 percent of participants were not evaluated timely to ensure they maintained exemplary systems – some of which were still not performed a year past the reevaluation due date.

The purpose of VPP is to recognize worksites with exemplary safety and health management systems. OSHA established policies and procedures to ensure VPP participants had and maintained exemplary systems during the selection, reevaluation, and monitoring of worksites. During selection, OSHA reviews the worksite's application and conducts an onsite evaluation to determine whether the applicant worksite has established exemplary systems. After approval for the program, OSHA conducts periodic on-site reevaluations and monitoring (review of participant's annual self-evaluation and other oversight) to determine the participant's continuing eligibility for the program. These policies and procedures are explained further in **Appendix A**.

However OSHA's system of internal controls had weaknesses where it did not meet the following Federal standards for control activities, information and communication, and monitoring the effectiveness of controls. OMB Circular A-123, *Management's Responsibility for Internal Control*, states "Effective internal control is a key factor in achieving agency missions and program results through improved accountability." The Circular also states:

Control activities should include policies, procedures and mechanisms to help ensure that agency objectives are met and that data is valid and complete.

Relevant, reliable and timely information should be communicated to relevant personnel within an organization and with outside organizations.

Monitoring the effectiveness of controls should occur in the normal course of business. Periodic reviews, reconciliations or comparisons of data should be included as part of the regular assigned duties of personnel.

As a result, 236 of 1,834 participants¹ (13 percent) did not fully protect their employees, and most were allowed to remain in the program. Specifically, 157 participants (9 percent) had injury and illness rates above industry averages and, according to policy, were allowed to remain in VPP for up to 6 years before voluntary withdrawal or termination (**Finding 1**). Another 79 (4 percent) were inspected because of fatalities, catastrophic injuries, complaints, or referrals, and were allowed to remain in VPP even though they were cited for serious, willful, and/or repeat violations of safety and health standards (**Finding 2**). Also, 200 participants (11 percent) were not evaluated timely to ensure they maintained exemplary systems and some of the evaluations had still not been performed a year past the reevaluation due date (**Finding 3**).

Moreover, OSHA had data reliability issues that impacted tracking the entry into and exit from the program, as well as reevaluations. OSHA could not identify the universe of participants or applicants because it tracked VPP data in at least 11 different databases that were not reconciled; and data ranged between 1,743 to 1,859 for participants, and 19 to 274 for applicants (**Finding 4**). OSHA used injury and illness data for the reevaluation process and to report on overall program successes, but did not ensure the information was reliable. For a judgmental sample of 63 onsite evaluations, 38 (60 percent) reported injury and illness rates that differed significantly (more than 50 percent) from data based on employers annual self-assessment reports (**Finding 5**).

In 2009, GAO issued a report on VPP entitled: *OSHA's Voluntary Protection Programs Improved Oversight and Controls Would Better Ensure Program Quality* (report number GAO-09-395, May 20, 2009). GAO reported OSHA's internal controls were not sufficient to ensure that only qualified worksites participate in the VPP. While OSHA has taken steps to address GAO's recommendations, the VPP control processes need additional improvements to ensure participants maintain exemplary occupational safety and health systems that fully protect employees from injury and illness. The areas needing additional improvements are discussed in detail in the findings below.

Finding 1 — Policy allowed participants with injury and illness rates higher than industry averages to remain in VPP for up to 6 years

VPP policy allowed participants to remain in the program for up to 6 years, even though they did not fully protect employees from work-related injuries and illnesses. The VPP manual allows OSHA 3 to 4 years² before requiring program managers to take action on participants with injury and illness rates higher than industry averages, and then another 2 years for the rate reduction plan. OSHA did not provide justification for waiting 3 years to take action on participants with rates higher than industry averages and allowing participants to remain in the program for up to 6 years before withdrawal or termination. Moreover, OSHA did not have adequate controls to ensure that participants with high rates were remediated as required.

¹ See **Finding 4** for our reconciliation of OSHA data to determine the total number of participants.

² The condition of "high injury and illness rates" is determined using a 3 year rate comparison. The rates are from 3 consecutive years for larger participants, or the 3 lowest rates from 4 consecutive years for smaller participants. Therefore, it could take 3 to 4 years to determine whether a participant has high injury and illness rates.

For FY 2012, we found 9 percent of participants (157 of 1,834) had injury and illness rates higher than the averages for their industries. Of 157 participants with high rates, 108 had rates higher than their industry averages for the most recent 3 years, while another 49 had higher rates for the most recent 2 years. Generally, OSHA followed policy by taking action on participants with high rates for 3 years and no action on those with high rates for 2 years. However, OSHA could not justify how its policy (no action for 3 years and allowing high-rate participants to remain in the program up to 6 years) corresponds with VPP's purpose – to recognize worksites with exemplary safety and health management systems. Moreover, the actions required under the policy were not always taken because offices did not comply with the requirements or because inconsistencies in data between the National Office and regional offices were not addressed.

Although OSHA explained why it is using a 3-year average (discussed below), it did not demonstrate how this is consistent with the purpose of the program. OSHA uses the average industry injury and illness rates as the benchmark to judge how well a worksite is protecting its employees. Trends of increasing rates, particularly those above industry averages, are signs that participants are not maintaining VPP-quality systems. However, OSHA policy allows worksites to keep the VPP designation and benefits, such as exemption from programmed inspections for up to 6 years, even though they may not be maintaining VPP-quality systems.

OSHA's policy and participants with high rates are discussed in the two sections below. Inconsistencies in data between National Office and regional offices are discussed in **Finding 5**.

VPP Policy

According to the VPP manual, OSHA reviews the participant's injury and illness rates during selection, reevaluation, and monitoring through the review of the VPP Participant Annual Self-Evaluation. If the VPP Manager notices a significant increase or decrease in the rates, they may request an explanation from the participant, but the manual does not require remediation actions until the participant's 3-year average rates exceed industry averages.

The 3-year rate comparison has been in place since 2003 when OSHA changed the benchmark injury and illness rate comparison due to substantial fluctuations from year to year in industry rates that may not fairly represent the injury and illness situation in an industry. OSHA also explored other ways to address this situation before deciding to change the injury and illness rate comparison. OSHA acknowledged that this change might have the effect of reducing somewhat the weight assigned to injury and illness rates in VPP, but believed that it will have the greatest impact on those industries that show significant injury and illness rate variation year to year. OSHA officials noted that the use of a three-year

average in evaluating a worksite's injury and illness rates is included in other agency policies and procedures outside of VPP.

The manual requires that the participant's 3-year Total Case Incident Rate (TCIR) or Days Away, Restricted and Transferred (DART) rate must be below at least 1 of the 3 most recent years of specific industry national averages as published by the Bureau of Labor Statistics (BLS). An alternative rate calculation may be used for eligible smaller participants³ using their lowest 3 of the most recent 4 years of injury and illness rates. The TCIR represents the number of recordable injuries and illness cases and DART, a subset of TCIR, represents the number of cases resulting in days away from work, restricted work activity, or job transfer. Both rates are compared to the highest BLS rates from the most recent 3 years.

When a participant's 3-year TCIR or DART rate exceeds the BLS rates, the participant is placed on a 2-year rate reduction plan if the rates can statistically and realistically be reduced below the industry average. If the rates cannot be reduced below industry averages, or after 2 years on a rate reduction plan the rates have not decreased below BLS averages, the participant will be asked to withdraw or will be terminated from the program. Therefore, a participant may remain in the program for up to 6 years even though its rates exceed the BLS average – 3 years for larger participants or 4 years for smaller participants before action is taken, and then 2 years under a rate reduction plan.

Participants with Injury and Illness Rates Higher Than the Average for Their Industries

Based on OSHA's data compilation, 108 participants had 3-year TCIR or DART injury and illness rates above the averages for their industries for Calendar Years 2009 through 2011. After 3 years of higher than industry average injury and illness rates, 75 of these participants were placed on 2-year rate-reduction plans⁴ and 5 withdrew from VPP. For 80 participants, OSHA complied with VPP policy. Also according to policy, 75 of the 80 participants could have rates higher than industry averages and remain in the program for up to 6 years.

However, for the remaining 28 participants, either OSHA did not document that any actions were taken or it acknowledged the participants with rates higher than industry averages were not placed on rate-reduction plans as required. For 22 of these participants, inconsistencies in data between the National Office and regional offices were not addressed. When presented with the National Office data, the sampled regional offices stated that they disagreed with the data, while the National Office affirmed that the data was correct. With the regions not

³ The manual defines smaller participants as those with less than 250 employees at the worksite and under 500 employees companywide.

⁴ Another 3 participants were placed on rate-reduction plans in March 2013, when the 2012 injury and illness rates were reported. OSHA allowed the participants 4 years before action was taken.

complying with VPP policy and data inconsistencies, OSHA does not have sufficient controls to ensure that the regions were taking the required actions on participants with rates above industry averages. As a result, some participants that did not meet a key requirement of the VPP have remained in the program. (See **Finding 5** of this report for more information on the reliability of the injury and illness data.)

Moreover, another 49 participants had 2-year TCIR and/or DART injury and illness rates above the averages for their industries for Calendar Years 2010 and 2011. According to the VPP manual, the regions are not required to take any action until a participant's 3-year rate is above the industry average. However, regions may take action if they notice any unusual trends in injury and illness rates as reported in the annual participant self-evaluations.

OMB Circular A-123 states that control activities should include policies, procedures, and mechanisms to help ensure that agency objectives are met. We believe that OSHA has not demonstrated that its policies help to ensure that the objectives of the VPP program are met. The fact that companies are allowed up to 6 years to correct their higher rates raises serious questions as to whether these companies are fully protecting their workers. Further, OSHA's controls did not ensure that the appropriate actions were taken to address participants with high rates or that reevaluation and monitoring were sufficient to ensure only participants with exemplary systems that fully protect their employees are in the program.

Finding 2 — Participants with serious violations of safety and health standards remained in VPP

When participants are inspected, policy requires VPP managers in the regional offices to keep informed on the inspection status and to follow up with participants after the inspection is closed. Once inspections are completed, the policy allows regional office discretion in determining the type and extent of follow-up actions to take. However, VPP policy does not require OSHA to determine the underlying causes for why participants' systems did not protect employees, and whether OSHA's reevaluation processes could have, but did not identify deficiencies in the participant's systems. As a result, OSHA did not utilize this opportunity for "lessons learned" to ensure the program was operating as intended, its processes were effective, and it continuously improved.

Between October 2008 and September 2012, 4 percent of participants (79 of 1,834) were inspected by OSHA and cited with serious violations of safety and health standards after incidents involving fatalities or catastrophic injuries, or due to complaints or referrals. Once the inspections were closed, VPP managers generally followed up with participants as required by policy, but the extent of follow-up varied significantly with onsite visits conducted at only 34 percent of participants. As of April 2013, 55 of 79 participants (70 percent) remained in VPP with no change in status. However, follow-up did not include analyzing whether OSHA's evaluation processes should be improved or requirements for participants' health and safety systems should be enhanced.

Participant follow-up and analysis for continuous improvement are discussed in the two sections below.

Follow-up on Participants with Inspections

OSHA provided the following information and comments on the 79 participants inspected and cited with serious violations after incidents involving fatalities or catastrophic injuries or due to complaints or referrals.

- For 38 participants, the regions reviewed case files, placed phone calls, or interviewed Area Directors who conducted the inspections. As a result, 12 participants withdrew or were terminated from VPP, and 26 continued in VPP with no change in status.
- For 27 participants, the regions conducted or planned to conduct site visits, conducted inspections, or placed the participants on conditional status. As a result, 3 participants withdrew from VPP, 2 were placed on conditional status, and 22 continued in VPP with no change in status.
- For 14 participants, OSHA did not provide information on the specific follow-up performed, but indicated that 7 of these participants withdrew or termination was pending. Therefore, 7 participants continued in VPP with no change in status.

In total, 55 participants remained in VPP with no status change, while 22 withdrew, were terminated, or were pending termination, and 2 were placed on conditional VPP status.

According to the VPP manual, participants are exempt from program inspections, but an inspection is conducted when OSHA is notified of fatalities, catastrophes, or other events such as complaints and referrals. The National Office and program managers are notified when inspections are performed. When the inspection is closed, the VPP Manager and Regional Administrator must assess whether deficiencies in the participant's safety and health management system led to the event, and use their professional judgment to determine which course of action to pursue. These actions include placing phone calls to the participants to obtain assurances that management is committed to and still qualified to remain in VPP, conducting an onsite evaluation, or withdrawal or termination proceedings if the participant no longer meets the requirements of VPP.

Subsequent to the audit period, OSHA issued additional guidance regarding inspections at participants – *VPP Policy Memorandum #7: Further Improvements to the Voluntary Protection Programs (VPP)*, effective May 29, 2013. OSHA officials said, "...implementation of this new policy will identify and address enforcement issues at VPP sites in a more timely and consistent fashion." The

Policy stipulates when a fatality or catastrophe triggers an inspection, the participant's VPP status will be changed within 10 days to "Inactive Pending Fatality/Catastrophe Inspection," and will be reflected in all print and electronic materials, including OSHA's website and tracking systems.

Analyzing Participants with Inspections to Improve VPP

According to OSHA, the principle of continuous improvement is well-established within VPP. As described above, OSHA followed up on participants with inspections to ensure hazards were abated and they remained committed to VPP. However, the National Office did not determine the underlying causes why the participants' health and safety systems did not fully protect employees and whether OSHA's evaluation processes should have, but did not identify timely the deficiencies in the systems. OSHA could utilize the "lessons learned" to improve the quality of participants' health and safety systems, and OSHA's reevaluation process.

In the 2009 Federal Register notice on revisions to VPP, OSHA provided the following:

Continuous improvement is a well-established principle of VPP. Participants strive to make ongoing gains in performance and protective systems, and OSHA strives to improve the VPP, its policies and procedures, and its impact on workplaces throughout the United States.⁵

According to the VPP manual, "...approval into VPP is OSHA's official recognition of the outstanding efforts of employers and employees who have created exemplary worksite safety and health management systems." However, at some point, the systems may have failed – resulting in fatalities, injuries, complaints and referrals that triggered the inspections. Moreover, the participants were cited with serious violations of standards such as process safety management of highly hazardous chemicals, respiratory protections, safeguarding personal protections, and/or the general duty clause of the Occupational Safety and Health Act (OSH Act). Section 5 of the OSH Act (the general duty clause) requires employers to follow OSH Act standards and maintain places of employment which are free from recognized hazards that cause or are likely to cause death or serious physical harm to employees.

While OSHA followed up on the specific circumstances of the inspections, it did not use the opportunity to identify potential weaknesses in VPP operations and policies such as issues with the quality or frequency of onsite evaluations. If the worksites with the best safety and health management systems experienced

⁵ Federal Register, Volume 74, Number 6, Friday, January 9, 2009, Notices, page 927.

problems that result in enforcement actions, then determining why and how VPP could be improved could have significant impact on other workplaces.

Finding 3 — Participants were not evaluated in a timely manner.

OSHA's processes did not adequately ensure it performed onsite visits timely enough to determine the continuing eligibility of participants for the program, and to identify and remediate unqualified participants. The VPP manual established guidelines with specific timeframes for the application and reevaluation processes. OSHA stated it was aware of the backlog on performing reevaluations, emphasized clearing the backlog to the regions, and believed it was making substantial progress. However, OSHA's existing processes did not effectively ensure the timeliness of onsite visits. As a result, OSHA's controls to ensure the continuing eligibility of participants were weakened and the program was not operating consistently.

Based on the VPP manual, there were nine key milestones for application processing and five for reevaluations. The manual established specific timeframes for achieving half the milestones, but did not establish timeframes for the other milestones or an overall timeframe. Using the specific timeframes and in consultation with National Office staff, we estimated that it could take a year from the time an application is accepted until it is given final approval, and 6 months from the time a reevaluation starts at the opening conference to the final decision whether the participant remains suitable for VPP.⁶ OSHA officials agreed that the estimates of 1-year (applications) and 6-months (reevaluations) were reasonable, and indicators of timely and appropriate processing of applications and reevaluations.

For FY 2012, applications and reevaluations were generally processed within the timeframes allowed by the VPP manual.⁷ However, significant delays were noted in scheduling onsite visits. These results are discussed in the following two sections.

Application Process

Most applications were processed within the 1-year timeframe. However, one sampled regional office had applications that took an average of 503 days to process through the transmission of their reports to the National Office. The table in Exhibit 1 shows application processing timeframe for each key milestone, and results from the sampled applications and data analysis for all applications processed for FY 2012.

Accepting the applications is the first milestone with a specific timeframe. However, the average application waited for 3 months before it was accepted for processing. During this "wait" time, the application may be read, returned for edits and changes, and the applicant contacted. Considering that wait time, the

⁶ Estimated processing time was rounded up to 12 months (1-year) for application processing and 6 months for reevaluations to allow for completion of milestones without specific timeframes.

⁷ Conclusion based on data analysis and documentation for a sample of 28 applications and 78 evaluations.

average application processing was completed 14 months after the application was received by OSHA. One sampled region had a significant backlog of applications resulting in an average wait time of 687 days before processing.

OSHA officials stated that the timeliness of application processing continues to be of concern. OSHA began implementing a variety of possible solutions to better target its limited resources, such as increasing the number of Special Government Employees used during onsite visits. However, OSHA has not considered establishing a specific timeframe between the receipt and acceptance of an application because timeframes may vary by region based on the number of applications received, the size and complexity of the worksite and application, and the regional resources available to review the application.

Reevaluation Process

Reevaluations were generally processed within the 6-month timeframe. However, 26 reevaluations (12 percent) took longer: 14 took between 6 and 9 months, and 12 took between 9 and 15 months. The table in Exhibit 2 shows reevaluation processing time for each key milestone.

National data showed 200 active participants (11 percent) that should have been evaluated before September 30, 2012, but there was no record of an onsite evaluation or that the participant had withdrawn from VPP. The VPP manual established specific timeframes (ranging from 12 to 60 months) for when onsite reevaluations should be scheduled based on type and duration of VPP participation. These onsite visits were potentially overdue by an average of 449 days. Of the 200 active VPP participants, OSHA's National data showed that 138 (8 percent) were overdue by at least 6 months and 91 (5 percent) were overdue by at least 1 year. However, in response, OSHA provided additional information that was not captured in its National data:

- 74 participants were either evaluated after the due date and/or have "issues/holds" for a specific reason as allowed by policy.
- 11 participants withdrew or were terminated from VPP.
- 6 participants' onsite evaluations were completed before the due date, but the evaluation report was not issued until after the due date.

Based on our review of this information, 11 participants were either reevaluated timely or withdrew from VPP prior to the reevaluation due date, and therefore OSHA complied with its policy. As previously noted, this information was not reflected in the National data for FY 2012. This is consistent with the other data reliability issues cited in the report. However, even after making adjustments to the National data, this still leaves 127 (7 percent) that were overdue by at least 6 months.

OSHA stated that in FY 2013, it made significant strides in addressing the backlog of VPP reevaluations and reapproved more than 250 sites, but resource limitations and sequestration have negatively impacted this effort. Delays in scheduling reevaluations and backlogs of applications are likely to worsen due to sequestration and other budget constraints. OSHA officials commented that VPP travel was limited to local travel for half of FY 2013 and a number of onsite visits were postponed, and that budget constraints may result in additional processing delays in FY 2014 and onward.

Finding 4 — OSHA did not maintain reliable data for applicants and participants

To track and monitor VPP participants and applications, OSHA used at least 11 different databases – one for the National Office and one in each of 10 regional offices – but did not reconcile the data.⁸ The national database is the official database for VPP and was used primarily to report program results and respond to information requests from Congress, the media, and individuals under the Freedom of Information Act. Regional offices maintained their own data because they asserted the national database did not contain all data fields necessary for their program management, and was subject to errors and significant lags in updating essential data. Through our audit testing, we verified the regional offices' assertions about the national database, but also found that regional databases had similar issues. The 11 databases also had differences in the fields collected, different interpretations for the same date fields, and timing differences on when the data was entered in the systems. As a result, OSHA could not ensure that VPP data was valid and complete. Without quality data, OSHA cannot ensure all participants are monitored and reevaluated timely.

Specific results on data quality for active participants and applications are discussed in the following two sections.

Active Participants⁹

For FY 2012, national data showed 1,820 participants were active in the program while regional data identified 1,779 participants. Based on our reconciliation summarized below, total active participants for FY 2012 were estimated at 1,834. Both national and regional data were missing records of active participants and included invalid records where the participants had been misidentified as active.

⁸ Some area offices also maintained data separately, but this audit did not include those systems.

⁹ Active participants included all participants with VPP status at any point of FY 2012 including new approvals, and terminations or withdrawals during the year.

Reconciliation of Active Participants from National and Regional Data for FY 2012

Description	National Data	Regional Data
Records provided	1,820	1,779
Missing records	+28	+59
Invalid records	-14	-4
Active VPP participants	1,834	1,834

In total, 87 participants (5 percent) had missing records – 28 from national data and 59 from regional data. Another 18 participants (1 percent) had invalid records – 14 from national data and 4 from regional data. Weak controls over this data could lead to participants not being properly monitored or inappropriately exempted from program inspections.

Applicants

National data listed 141 potential VPP participants with applications in inventory at any point of FY 2012, while regional data listed 152 applicants. Although the totals vary by 7 percent, the differences are more extensive to the point that the number of applications in inventory could not be reasonably estimated. Only 19 applicants were in both national and regional data, while combined data listed 232 applicants.

Applications in Inventory at Any Point of FY 2012 from National and Regional Data

Description	National Data	Regional Data	In Both Data Sets ¹⁰
All Applications	141	152	19
Disposition at Year End			
In Inventory	130	50	3
Withdrawn by Applicant	2	34	6
Accepted by OSHA	9	68	10

We also noted the following issues that could have been identified through management review and data reconciliation:

- National data included 52 applicants that had been approved for VPP participation prior to FY 2012, and should no longer have applications in inventory. Almost all of these participants were identified using national data by comparing applications and active participants.
- National data contained 59 applicants pending approval whose applications were received in FY 2010 or earlier. Although OSHA had not established an overall timeframe for processing applications, officials

¹⁰ For counts of applicants in both data sets, regional data was used to identify the disposition category in which to count the applicant – “In Inventory,” “Withdrawn by Applicant,” or “Accepted by OSHA.”

stated that one year would be a reasonable estimate for processing time. Based on national and regional data, OSHA generally processed applications within 14 months from the time the application was received through final decision on participation. Therefore, these applications probably should not still be in inventory after 2 years or more, but the national data did not have any information on the disposition of these applications.

- Most participants were not initially tracked as applicants. For all years contained in the database, national data listed a total of 3,604 participant records, but only 745 applicant records.

Weak controls over this data could lead to concerns regarding the timeliness of application processing or lack of follow-up on applications that remain in inventory for more than two years. Officials stated that effective October 2012 (FY 2013), the National Office reiterated the VPP policy for regions to submit a VPP Monthly Activity Log. The log contains information on all applications in the region, application status and significant dates such as received, read, and accepted. Officials stated that the national office data has been updated based on application information on the FY 2013 activity logs.

Officials acknowledged that the national database needed improvements, but OSHA had not dedicated the necessary resources to improve the data as the system was to be replaced by OIS, the new OSHA Information System. Officials agreed that absent the replacement of the national system, more rigorous and routine reconciliation of national and regional data would be required. Officials stated that the National Office would work with the regions to develop protocols to improve the completeness of the national data and would implement these protocols, effective October 1, 2013 (FY 2014).

Finding 5 — Reported program success in reducing injury and illness rates were not based on reliable data.

OSHA used injury and illness data to monitor participants and report on program successes, but did not ensure the information was reliable. For example, in congressional testimony as well as on its webpage, OSHA included the statistic that the average VPP participant had injury and illness rates that were 52 percent below the average for its industry.¹¹ However, we found significant differences between the rates used to develop the statistics, and the injury and illness rates for the same period as reported on the participants' annual self-assessments and OSHA's onsite reevaluations. OSHA compiled the statistic from employers' annual self-assessment reports but did not reconcile the information with onsite evaluation results. As a result, OSHA's data was not reliable and could not be used to support performance results.

¹¹ Statistics can be found on OSHA's website at https://www.osha.gov/dcsp/vpp/success_stories.htm. Also, the statistics were included in the Deputy Assistant Secretary's testimony at the June 28, 2012, hearing "Promoting Safe Workplaces through Voluntary Protection Programs" before the U.S. House of Representatives, Subcommittee on Workforce Protections, Committee on Education and the Workforce.

GAO's 2009 report on VPP criticized OSHA for not making sufficient use of the injury and illness information because it was mostly maintained in the regional offices, and not sent to the National Office. Also, GAO reviewed injury and illness rates for Calendar Years 2003 through 2007 and found discrepancies for 35 percent of sampled participants between the rates on the participants' annual self-assessment reports and rates noted in OSHA's onsite reevaluation reports for the same time periods.¹²

Subsequent to GAO's report, OSHA's National Office started compiling injury and illness rate information from employer self-assessment annual submissions to the regional offices. Regional offices enter the injury and illness rates from the self-assessments into spreadsheets which are consolidated by the National Office into their compilation. According to OSHA officials, the results of this compilation were used in a variety of OSHA presentations throughout the year. However, the officials stated there were no written policies for evaluating the injury and illness information in the compilation.

Although the National Office affirmed the data on the compilation was correct, regional offices disagreed with some rates in the compilation and we found differences when comparing the compilation rates to other documents. As discussed in **Finding 1**, the regional offices disagreed with the compilation data for 22 of 28 participants where either OSHA did not document any actions were taken or it acknowledged the high-rate participants were not placed on rate-reduction plans as required. For a judgmental sample of 78 participants with reevaluations, 77 had data on the National Office compilations for Calendar Years 2010 and 2011. For the 77 participants, we compared the compilations' injury and illness rates to the participants' self-assessment annual submissions and to OSHA onsite reevaluation reports and found the following.

- For 63 participants, OSHA's onsite evaluation reports were available. We compared the information in the compilation to the data contained in OSHA's onsite evaluation reports and found the rates were different for 43 participants (68 percent), and for 38 participants (60 percent), the rates differed by 50 percent or more.
- For 69 participants, their annual self-assessment reports were available. We compared the information in the compilation to data on the self-assessment reports and found the rates were different for 55 participants (80 percent), and for 31 participants (45 percent), the rates differed by 50 percent or more.

Officials explained that some differences may be due to timing. When regional offices submit the onsite reevaluation reports, the National Office reviews the reports and updates data in the compilation if differences in the rates are identified. However, the reported statistic is not recalculated.

¹² GAO Report #GAO-09-395.

Collectively, these differences may impact the “52 percent below average” statistic reported by OSHA. Moreover, as discussed in **Finding 1**, these differences affect operations as OSHA cannot be sure the regions were taking the required actions on participants with rates higher than industry averages. Therefore, weak controls over injury and illness data bring into question the reliability of reported program successes and effectiveness of program operations.

RECOMMENDATIONS

We recommend that the Assistant Secretary for Occupational Safety and Health:

1. Reevaluate the policy of allowing worksites with high injury and illness rates to stay in VPP for up to 6 years to ensure that only employers who operate systems which meet the objective of the VPP program are allowed to participate.
2. Improve data reliability by using one database with appropriate information controls, or implement processes ensuring reconciliations of VPP databases are conducted regularly and before reports on VPP statistics are generated.
3. Monitor implementation of *VPP Memorandum #7* to ensure sites with fatalities and enforcement actions are addressed consistently and timely.
4. Establish a system to analyze inspection information for continuous improvement of VPP.
5. Establish a control to monitor whether sites with higher than industry average injury and illness rates are consistently and timely addressed within VPP.
6. Develop and implement processes and priorities that will ensure participants are evaluated timely for continuing eligibility for VPP. In developing these processes and priorities, OSHA should evaluate all viable options to ensure that the integrity of the program is maintained given the constraints of its available resources.
7. Ensure reliable injury and illness data are used to report VPP successes tied with injury and illness statistics.

We appreciate the cooperation and courtesies that OSHA personnel extended to the Office of Inspector General during this audit. OIG personnel who made major contributions to this report are listed in Appendix E.



Elliot P. Lewis
Assistant Inspector General for Audit

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Exhibits

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Exhibit 1

Application Processing Timeframe and Results

The following table shows the application processing timeframe and results for the number of elapsed days to reach the next key milestone in the application process. For example, there was no specified timeframe for the number of days between the date the application was received and it was accepted for processing, but actual results for FY 2012 were an average of 76 days (according to sample results) and 105 days (according to universe of data). Regional data was used for milestones between the date the application was received (“Application Received”) through to the date of the Regional Recommendation. National data was used for the National Office review and the Assistant Secretary approval of the participant for VPP status (“Approval”).

Key Milestones in Timeline for <u>Application Processing</u>	Timeframe per <u>VPP Manual</u>	Actual Results <u>for Sample</u>	Actual Results <u>for Universe</u>
Application Received	Not specified	76 days	105 days
Application Accepted	180 days	118 days	97 days
Onsite Opening	Not specified	3 days	3 days
Onsite Closing	90 days	533 days	107 days
90-day Items Cleared	Not specified	N/A	4 days
Report Completion	30 days	15 days	26 days
Regional Recommendation	10 days	52 days	83 days
National Office Review	Not specified	5 days	4 days
Approval			
Total Processing	310 days rounded up to 12 months	802 days or about 27 months	429 days or about 14 months

The timeframe was developed in consultation with OSHA officials from VPP manual criteria. While some milestones had specific timeframes specified, others did not as were noted in the above exhibit. Officials agreed that the overall estimated timeframe of 1-year for application processing was reasonable, and an indicator of timely and appropriate processing. For consistency of presentation, the timeframes were converted from months to days by multiplying by 30.

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Exhibit 2

Reevaluation Processing Timeframe and Results

The following table shows reevaluation processing timeframe and results for the number of elapsed days to reach the next key milestone in the reevaluation process from the onsite opening conference (“Onsite Opening”) through to the regional report with the decision on VPP status (“Regional Report with Decision”). For example, there was no specified timeframe for the number of days between the onsite opening and closing conferences, but actual results for FY 2012 were an average of 4 days (according to sample results) and 7 days (according to the universe). Regional office data was used for all actual results.

Key Milestones in Timeline for Reevaluation Processing	Timeframe per VPP Manual	Actual Results for Sample	Actual Results for Universe
Onsite Opening	Not specified	4 days	7 days
Onsite Closing	90 days	94 days	77 days
90-day Items Cleared	30 days	60 days	41 days
Report Completion	Not specified	119 days	53 days
Regional Report with Decision			
Total Processing	120 days rounded up to 6 months	277 days or about 9 months	178 days or about 6 months

The timeframe was developed in consultation with OSHA officials from VPP manual criteria. While some milestones had specific timeframes specified, others did not as were noted in the above exhibit. Officials agreed that the overall estimated timeframe of 6-months for reevaluation processing was reasonable, and an indicator of timely and appropriate processing. For consistency of presentation, the timeframes were converted from months to days by multiplying by 30.

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Appendices

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Background

OSHA offers cooperative programs, such as VPP, to allow businesses, labor groups, and other organizations to work with OSHA to help prevent fatalities, injuries, and illnesses in the workplace. For VPP, the applicant submits information to OSHA on its safety and health management system and opens itself to agency review. OSHA's verification includes an application review and onsite evaluation by a team of safety and health experts to assess the applicant's compliance with performance-based criteria for a managed safety and health system. Approval into VPP is OSHA's official recognition of the outstanding efforts of employers and employees who have achieved exemplary occupational safety and health.

OSHA formally announced the VPP and approved the first site in 1982 and allowed Federal worksites to be eligible in 1998. OSHA approves qualified participants to one of 3 program levels:

1. **Star:** Demonstrated exemplary achievement in the prevention and control of occupational safety and health hazards through the development, implementation, and continuous improvement of their safety and health management systems.
2. **Merit:** Developed and implemented good safety and health management systems, but who must take additional steps to reach Star quality.
3. **Demonstration:** Operated effective safety and health management systems that differ from current VPP requirements. This program enables OSHA to test the efficacy of different approaches.

Once approved for VPP participation, a worksite is exempted from OSHA programmed inspections as long as it complies with program requirements and maintains exemplary systems. To ensure participants maintain exemplary systems, OSHA evaluates worksites during the selection, reevaluation and monitoring processes. These three processes are described in detail below.

Selection Process

OSHA accepts applications from owners and officials who control site operations and have ultimate responsibility for assuring safe and healthful working conditions. Applications are accepted from private sector general industry, maritime and construction employers, and from Federal agencies. Applications may be site-based (specific for one location) or within a specific designated geographic area for mobile workforce (employees move from location to location or are resident contractors at multiple locations) and corporate (large organizations with multiple facilities).

Applicants must meet a number of requirements, such as having an active safety and health management system which includes four essential elements – management leadership and employee involvement, worksite analysis, hazard prevention and control, and safety and health training. This system covers all employees, contractors, and sub-contractors while on site. Additionally, applicants must have injury and illness rates that are below industry averages (Star) or establish goals for lowering the rates to below industry averages (Merit) within two years. Once the application is accepted for processing, an onsite review is conducted to: ensure the applicant’s safety and health management system has the four elements in place, determine how well the system is working, verify injury and illness rates, interview employees and management, and walk through the facilities. The application process is summarized below.

1. **Application Received:** Regional offices receive applications and review the documents for completeness. Applicants are notified about missing items, and then may withdraw the application or provide additional information. There is no standard timeframe for this part of the process.
2. **Application Accepted:** Once an application is considered complete, the VPP Manager performs a technical review of the document for VPP requirements, officially “accepts” the application, and schedules an onsite evaluation. This step must be completed within six months of the date the application was accepted.
3. **Onsite Evaluation:** The Evaluation Team is comprised of trained safety and health professionals from OSHA and VPP participants (Special Government Employees). Team composition varies depending on the size and complexity of the applicant’s worksite, and the availability of qualified team members. During the onsite evaluation, the team conducts walkthroughs of operations, interviews management and employees, reviews employee medical records, and recalculates injury and illness rates. The team evaluates the comprehensive safety and health management system to ensure that each element and sub-element is in place and active. A process safety review is also required at all worksites producing or using highly hazardous chemicals. The applicant is given 90 days to correct any hazards identified by the team (“90-Day Items”). If the applicant does not meet VPP requirements, the team recommends withdrawal.
4. **Evaluation Report:** The Evaluation Team Leader (usually the VPP Manager) ensures that “90-Day Items” are corrected and prepares the VPP Evaluation Report recommending the applicant for Star, Merit, or Demonstration participation. The report must be prepared within 90 days of the closing conference of onsite evaluation. The Assistant Regional Administrator and/or Regional Administrator must review the completed report and send it to OSHA’s National Office within 30 days. The National Office performs a technical and editorial review of the report, notifies VPP Manager if changes

are needed, and prepares the final recommendation package for Assistant Secretary.

5. **Final Approval:** The Assistant Secretary grants the final approval and signs a Congratulatory Letter which is mailed with the VPP report to the newly approved participant. To recognize initial achievement, OSHA awards a plaque and flag to new participants which may be presented at a formal award ceremony.

Reevaluation Process

After approval, participants must be reapproved at specific intervals to ensure they maintain the requirements of the program: Star (every 3 to 5 years), Merit (every 18 to 24 months), and Demonstration (every 12 to 18 months). Reevaluations are conducted based on prior approval level of VPP participation and the duration at that level. The following table summarizes frequency of reevaluations based on program type:

VPP Participation Level and Duration	Starting point for measurement	Allowed Months to Next Onsite
Star - First reevaluation	prior onsite approval	30 to 42
Star - Subsequent reevaluation	prior onsite done	60
Star Conditional	prior onsite approval	15
Merit - First reevaluation	prior onsite approval	18 to 24
Merit - Subsequent reevaluation	first approved at merit	36
Star Demonstration	prior onsite done	12 to 18

Conducting the onsite evaluation and preparing the report are similar to steps in the application process. In addition, the evaluation team reviews the most recent participant self-evaluation report and verifies the accuracy of the reported data by recalculating injury and illness rates.

The Regional Administrator is responsible for re-approving Star and Merit participants and placing Star participants on 1-Year Conditional status. The regional office mails re-approval letter to participants, but the VPP Manual does not specify the timeframe for mailing these letters. The Assistant Secretary is responsible for all other decisions such as lifting the 1-Year Conditional status, Merit to Star level, and withdrawals.

Monitoring Process

Monitoring processes include review of the participant’s annual self-evaluation, follow up on participants with inspections, and other oversight activities to determine whether the participant continues to be eligible for the program between onsite reevaluation visits. These three areas are discussed below.

1. **Annual Self-Evaluation:** The participant prepares and submits by February 15 an annual self-evaluation report on their VPP program and identifies program successes, areas needing improvement, and progress towards Merit or 1-Year Conditional goals (if applicable). The report includes injury and illness rates for the participant and its contractors which are compared to their industry's National average rates published by the Bureau of Labor Statistics (BLS). OSHA regional offices review the reports for indications of system weaknesses, and trends in injury and illness rates. Regional offices also compile data from the reports and submit it to the National Office for the injury and illness rate compilation.
2. **Participants with Inspections.** The National Office and program managers are notified when an inspection is conducted due to fatalities, catastrophes, or other events such as complaints and referrals. When the inspection is closed, the VPP Manager and Regional Administrator must assess whether deficiencies in the participant's safety and health management system led to the event, and use their professional judgment to determine which course of action to pursue. These actions include placing phone calls to the participants to obtain assurances that management is committed to and still qualified to remain in VPP, conducting an onsite evaluation, or withdrawal or termination proceedings if the participant no longer meets the requirements of VPP.
3. **Other Oversight Activities.** Regional offices also perform other oversight activities to identify participants with potential health and safety issues or for changes in management. These monitoring activities are generally ad hoc and informal. These activities include use of news agencies, social media, emergency alerts and informal dialogs with participants and with enforcement and whistleblower investigators.

Appendix B

Objective, Scope, Methodology, and Criteria

Objective

Does OSHA have sufficient controls over the selection, timely reevaluation, and monitoring of VPP participants?

Scope

The audit examined Federal OSHA's VPP for FY 2012 (October 1, 2011, through September 30, 2012), including all participants in the program and applications in inventory at any point of that period. Fieldwork was conducted at OSHA's National Office in Washington, DC, and at a statistical random sample of four regional offices (New York, NY; Chicago, IL; Kansas City, MO; and Dallas, TX).

The audit did not include applicants and participants in VPP programs operated by states with OSHA-approved state plans, or an assessment of the data related to those state programs.

We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate, evidence to provide a reasonable basis for our findings and conclusions based on our audit objective. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objective.

Methodology

In performing the audit, we reviewed OSHA's policies and procedures, and prior GAO and OIG reports to gain an understanding of internal controls considered significant to the audit objectives and testing compliance with Federal standards. In planning and performing our audit, we considered if internal controls significant to the audit objectives were properly designed and placed in operation. This included reviewing OSHA's policies and procedures for approving and reapproving VPP participants. We confirmed our understanding of these controls and procedures by conducting interviews and reviewing documentation.

We assessed the reliability of data for active participants, applicants, reevaluations, and injury and illness rates to ensure they were appropriate for testing.

- For active participants, we considered the completeness and reliability of the national and regional data by performing edit/logic checks. National data was compared to data reported on OSHA's webpage and then compared to regional data. Differences noted in the edit/logic checks and in comparison data sets were discussed with officials in the National Office and 10 regional offices, and issues

were resolved. We reconciled the data, and then concluded the reconciled data was sufficiently reliable for testing and this report. The reconciliation process for active participants is reported under **Finding 4** of this report.

- For applicants, we considered the completeness and reliability of the data by performing edit/logic checks on regional and national data. National data was compared to regional data and significant differences were found. Differences were discussed with officials in the National Office and 4 sampled regional offices, but we were unable to reconcile data or ensure it was substantially complete. For a statistical sample of applications from the regional database, we validated data accuracy by comparing the data to source documentation. While the data could not be reconciled, the data in the regional databases was substantially accurate. Therefore, we concluded that the regional data on applicants was sufficiently reliable to be used for the milestone analysis summarized in **Exhibit 1**. However, the deficiencies with the completeness of the application data are reported under **Finding 4** of this report.
- For reevaluations, we considered the reliability and completeness of the national and regional data. For completeness, we measured the time since the most recent onsite evaluation and compared it to time allowed under the VPP manual. We performed edit/logic checks for all reevaluations, and compared completed reevaluations listed in both data sets. Differences were discussed with officials in the National Office and 10 regional offices, and the data found to be substantially complete even though the national data only contained the completed reevaluations. For a statistical sample of reevaluations, we validated regional data accuracy by comparing it to source documentation and found it to be substantially accurate. Therefore, regional data on reevaluations was sufficiently reliable to be used for the milestone analysis summarized in **Exhibit 2**. Discussion of the overdue reevaluations can be found in **Finding 3**.
- For injury and illness rates, we considered the completeness and reliability of the information contained in the National Office's compilation. For completeness, we compared participants on the compilation to active participant lists. For reliability, we used the statistical sample of reevaluations and traced data to source documentation (participant annual self-evaluation report) and to injury and illness data in the reevaluation report. We found significant differences and concluded the data was not sufficiently reliable. Deficiencies with the injury and illness data are reported in **Findings 1** and **5**.

In assessing the effectiveness of controls, we reviewed the VPP manual, documentation provided by the National Office and sampled regional offices, and interviewed national and regional officials on the application and reevaluation processes, and any processes to monitor active participants between formal reevaluations to ensure the participants maintain exemplary safety and health systems.

- We reviewed OSHA’s policy related to injury and illness rates and obtained documentation regarding usage of a 3-year comparison as the benchmark before taking any action against VPP participants. We analyzed injury and illness data for participants with 2 or 3 consecutive years of high rates and followed up with the National Office and sampled regional offices on remediation actions taken.
- We tested compliance with controls to conduct regular onsite reevaluations of participants by calculating the interval since the most recent reevaluation date and following up with national office officials regarding overdue reevaluations.
- We researched participants’ inspection histories from FY 2008 through FY 2012 using OSHA’s online inspection data to determine if participants had recent inspections with citations. We confirmed the results with national and regional offices, and requested information on follow-up remediation actions taken by the regions.

We used a stratified two-stage random sampling plan for sample selection to identify regional officials to interview (stage 1) and applications and reevaluations to review (stage 2). Stage 1 – 4 regional offices (Chicago, Dallas, Kansas City, and New York) were randomly selected out of 10 regions after stratification into 2 sampling pools using the number of active VPP participants. Stage 2 – for each sampled region, we randomly selected a combined sample of applications and reevaluations. In total, 106 case files (28 applications and 78 reevaluations) were selected and tested for the accuracy of national and regional data. The testing results were not projected due to the number of errors and concerns regarding data reliability. We confirmed the sample results with regional officials and used the validated data for **Exhibit 1** and **Exhibit 2**.

Applications, Reevaluations and Combined for All Regions, and the 4 Sampled Regions (Stage 1) – Universe and Sample			
Description	Applications	Reevaluations	Combined
Universe – All Regions	137	335	472
<u>Universe – 4 Sampled Regions</u>			
Chicago	19	75	94
Dallas	21	75	96
Kansas City	7	22	29
New York	<u>29</u>	<u>33</u>	<u>62</u>
Total 4 Sampled Regions	76	205	281
<u>Sampled Case Files</u>			
Chicago	4	31	35
Dallas	9	27	36
Kansas City	4	7	11
New York	<u>11</u>	<u>13</u>	<u>24</u>
Total 4 Sampled Regions	28	78	106

From the random sample of applications and reevaluations, we judgmentally used the 78 reevaluations to analyze injury and illness data. Out of 78 sampled, 1 participant was

not included on the injury and illness data compilation, 14 onsite evaluation reports and 8 participant annual self-assessment reports were not available. Results for the 63 reevaluations with onsite evaluations reports and 69 reevaluations with self-assessment reports are presented in the report under **Finding 5**.

Criteria

- Occupational Safety and Health Act of 1970
- OSHA Directive CSP 03-01-003, *Voluntary Protection Programs (VPP): Policies and Procedures Manual*, and related policy memoranda
- OMB Circular A-123, *Management's Responsibility for Internal Control*

Acronyms and Abbreviations

BLS	Bureau of Labor Statistics
DART	Days Away, Restricted, or Transferred
OMB	Office of Management and Budget
OSH Act	Occupational Safety and Health Act of 1970
OSHA	Occupational Safety and Health Administration
TCIR	Total Case Incident Rate
VPP	Voluntary Protection Programs

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OSHA Response to Draft Report

U.S. Department of Labor

Assistant Secretary for
Occupational Safety and Health
Washington, D.C. 20210

OCT 24 2013

MEMORANDUM FOR: ELLIOT P. LEWIS
Assistant Inspector General for Audit

FROM: 
DAVID MICHAELS, PhD, MPH

SUBJECT: Response to OIG's Draft Audit Report No. 02-13-203-10-105
"The Voluntary Protection Program: Controls Are Not Sufficient
to Ensure Only Worksites with Exemplary Safety and Health
Systems are in the Program"

This memorandum is in response to your September 13, 2013, transmittal of the Office of the Inspector General (OIG) Audit Report No. No. 02-13-203-10-105, *The Voluntary Protection Program: Controls Are Not Sufficient to Ensure Only Worksites with Exemplary Safety and Health Systems are in the Program*. Thank you for the opportunity to comment on your draft report and for addressing some of our concerns with the discussion draft.

While we acknowledge that there remain some deficiencies and inconsistencies in the management of the VPP program, we believe that OSHA is generally following its policies and procedures for implementing VPP and that the vast majority of the sites in the program have exemplary safety and health management systems. Most of the deficiencies identified in the report have been recognized by OSHA and identified in previous evaluations, including the GAO Report *OSHA's Voluntary Protection Programs: Improved Oversight and Controls Would Better Ensure Program Quality* (GAO-09-395, 2009) and OSHA's own internal review completed in 2011.

The report makes clear that some deficiencies continue to impact the program. However, the agency has made a substantial effort to address them over the last four years, and has significantly improved its management of the program. OSHA's most recent action, issuance of VPP Memo # 7 (May 2013), designed to better define immediate and required actions following fatalities, catastrophes, and enforcement actions, was noted in the report. The agency issued six previous memos and enhanced other areas of its program management beginning in 2009 to address inconsistencies and issues raised in the internal and GAO reports.

OSHA disagrees with a central statistic presented in the report. OIG repeatedly states that 13 percent of sites did not have systems that fully protected employees' safety and health. This includes 4 percent that were cited for serious violations and 9 percent with injury and illness rates above their respective industry averages. The vast majority of sites were addressed in accordance with OSHA policy. As a result, we believe that OIG's statement about these sites is

misleading because it is based on the questionable assumption that OSHA policy does not fully protect workers.

First, by issuing VPP Memo # 7 in May 2013, OSHA has addressed the 4 percent of sites that were cited for serious violations of OSHA standards. VPP Memo #7 eliminates the referenced variation in agency action following enforcement activity that was allowable under its previous policy.

Second, with regard to the remaining 9 percent, OSHA takes issue with OIG's presumption that simply having average injury and illness rates above industry rates, whether for two or three years, results in VPP participant programs that are not fully protective.

OSHA does not believe that every participant that exceeds the industry average is necessarily failing to fully protect its workers. OSHA provided its reasoning for using the 3-year average, which is included in the report. OSHA believes that given the sensitivity and variation of injury and illness rates, especially for small businesses, it is better to average rates over a specified timeframe and provide companies a designated period to correct conditions leading to higher rates. OSHA policy provides an opportunity for employers with higher rates to address these instances through the rate reduction plan.

Furthermore, injury and illness rates are only one of many factors that OSHA evaluates during the approval and reapproval processes, and when reviewing the annual evaluations. VPP sites have programs and procedures in place that promote employee involvement and assure notification of hazards and issues in the workplace. While we agree that generally this should lead to rates that are lower than industry averages, this may not always be the case. In addition, injury and illness rates are lagging indicators that provide only a partial impression of an overall program. As a result, we do not agree that the review of injury and illness rates alone provides enough data to support OIG's conclusion that participants with higher than industry average injury and illness rates do not have systems that fully protect employees. OIG may disagree with OSHA's policies, and we will review the policies, but OSHA does not believe that it is clear that the current policy necessarily results in the retention of VPP participants that do not provide a fully protective workplace.

OSHA does agree that data integrity and timeliness are issues that we must continue to address. As noted in our response below, we plan to take the additional steps to improve the program. OSHA takes seriously the VPP principle of continuous improvement, which we expect of both participants and ourselves.

In response to the draft report, please find OSHA's responses to the recommendations.

1. Reevaluate the policy of allowing worksites with high injury and illness rates to stay in VPP for up to 6 years.

OSHA response: OSHA believes that it evaluated the policy when it was adopted in 2003 but will reevaluate the policy as recommended. OSHA established a 3-year rate comparison (4 years for smaller participants) in 2003 due to substantial fluctuations from year to year in

industry rates that may not fairly represent the injury and illness situation in an industry. The use of a 3-year average in evaluating a worksite's injury and illness rates is included in other agency policies and procedures outside of the VPP program. While participants with higher than industry average rates after the 3 or 4 year period are not removed from the program, they are put on 2-year rate reduction plans during which the participants address the issues that led to the higher than average rates.

It is important to note that this policy impacts only a small number of VPP participants – only 6 percent of VPP participants (107 of 1,834) had 3-year rates above the industry average. Of those participants, OSHA followed its policy in most cases (80 of 107), and placed these sites on a rate reduction plan. As a result, injury and illness rates at these sites were addressed within 3-4 years. OSHA also uses other mechanisms (e.g., participant's annual self-evaluation and quarterly reports to the Region) to ensure participants' are monitored appropriately while rates are being addressed.

We believe that the statements about sites with 2-year averages that exceed BLS rates are not relevant to the overall discussion. The VPP manual does not require the Regions to take any action until a participant's 3-year rate is above the industry average and the OIG has presented no evidence that two years of exceeding the BLS rates necessarily indicates that workers are not fully protected. Nevertheless, as stated above, OSHA will examine this policy to determine if adjustments would improve the program.

2. Improve data reliability by using one database with appropriate information controls, or implement processes ensuring reconciliations of VPP databases are conducted regularly and before reports on VPP statistics are generated.

OSHA response: OSHA agrees that more effective processes should be established to ensure that the national VPP database is reconciled with the Regional VPP databases. OIG notes that the OSHA Information System (OIS) was the planned replacement for the 11 databases currently used (one national and ten regional). At present, OSHA has determined that OIS will not be expanded to include a module for VPP users. OSHA will pursue other steps to improve data reliability, including National Office coordination with the Regional Offices to conduct data integrity checks on a regular basis.

3. Monitor implementation of VPP Memorandum #7 to ensure sites with fatalities and enforcement actions are addressed consistently and timely.

OSHA response: OSHA agrees with this recommendation. OSHA is evaluating several options for improving notification and tracking of actions following fatalities and enforcement actions. OSHA currently requires that Regions notify the National Office of fatalities/catastrophes at VPP sites. Relevant information is tracked in a VPP fatality tracking database, which is being updated to improve tracking of the steps taken following an event. This system may be expanded to track other enforcement actions. OSHA is also exploring the addition of a VPP code in OIS to ensure that any investigation initiated at a VPP site is coded as such. If implemented, this will improve the notification and tracking of

sites where enforcement activities are ongoing and will reinforce the integrity of the existing VPP fatality database.

Updating the database and adding the code to OIS will allow OSHA the ability to consistently and timely address these sites. While these events are serious and require robust action on the part of the agency, we again would like to emphasize that they occurred at only 4 percent of VPP participants between FY 2009 and 2012.

4. Establish a system to analyze inspection information for continuous improvement of VPP.

OSHA response: OSHA agrees with this recommendation, but it will likely take some time and thoughtful consideration to decide how best to address it. As noted, this recommendation addresses a very small subset of the VPP sites in the program. OSHA will look at ways that it can coordinate more effectively with the Regions in reviewing fatality/enforcement cases and identifying areas for improving both the quality of participants' safety and health management systems and OSHA's evaluation process. The fatality database discussed above in recommendation 3 will facilitate the review of these fatality/enforcement cases.

OSHA currently uses success stories posted on its public web page to highlight VPP participants who have achieved outstanding results in protecting workers and improving safety and health management systems. Similarly, OSHA could gather inspection information from affected VPP sites and develop "lessons learned" summaries that could be shared internally and possibly with other VPP participants.

5. Establish a control to monitor whether sites with higher than industry average injury and illness rates are consistently and timely addressed within VPP.

OSHA response: OSHA has taken measures to address this recommendation but agrees that additional controls should be implemented.

OSHA clarified its controls for addressing participants with higher than industry average injury and illness rates in VPP Policy Memo #1 (Aug. 3, 2009). The Policy Memo lays out the steps that Regions must take when a VPP participant's 3-year rates exceed industry averages, including reviewing the rates during reapprovals and upon receiving annual self-evaluation reports, and documenting this review in the participant file. The Policy Memo also includes procedures for the National Office to ensure the Regions are complying with the evaluation timeframes.

In addition to documenting the procedures in Memo #1, the National Office conducts annual comprehensive reviews of Regional VPP participant files. This file review allows the National Office to monitor whether the Regions are following procedures and meeting deadlines. OSHA has also added categories to the annual data reports that the Regions submit to the National Office. The new categories document when a participant has been placed on a rate reduction plan, 1-year conditional status, and the dates the action was

implemented and completed. This level of tracking enables the National Office to monitor participants whose rates or safety and health management systems need improvement.

Improvements in data integrity made to address in response to Recommendation 2 will also help assure that the Region and National Office have similar data regarding sites for which action should and has been taken. Review of the data for these sites on a routine basis is central to the program and can be formalized in internal operating practices to address this recommendation.

6. Develop and implement processes and priorities that will ensure participants are evaluated timely for continuing eligibility for VPP. In developing these processes and priorities, OSHA should evaluate all viable options to ensure that the integrity of the program is maintained given the constraints of its available resources.

OSHA response: OSHA agrees with this recommendation. OSHA will continue to refine its processes and priorities to more efficiently match its resources to the need for onsite visits and ensure that participants are timely evaluated for continuing eligibility. OSHA made substantial progress in addressing the backlog of overdue VPP reevaluations in FY 2012 and 2013. However, OSHA's efforts to eliminate the backlog were hindered by resource limitations and sequestration, which restricted travel for onsite visits. OSHA is aware of the budget uncertainty, but will continue to look at all possible options to address the backlog while still processing new applications. OSHA is working with the Regions to develop a rational approach to prioritizing pending and overdue reapprovals. In addition, OSHA will implement ways to ensure greater Regional adherence to evaluation timeframes by providing periodic reports of overdue evaluations to the Regions.

OSHA has no plans to develop an alternative to the onsite evaluations. We believe that onsite evaluations are a critical part of the process for evaluating a participant's continuing eligibility for VPP.

7. Ensure reliable injury and illness data are used to report VPP successes tied with injury and illness statistics.

OSHA response: OSHA agrees with the recommendation and will continue to work with the Regions to improve the process for collecting injury and illness data.

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Appendix E

Acknowledgements

Key contributors to this report were Mark Schwartz, Rebecca Bowen, Sean Ally, Cassie Galang, Nadeem Afzal, Mary Lou Casazza, and Ajit Buttar.

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