

publication of this Notice. The offer, as filed, shall contain information required pursuant to § 1121.38(b) (2) and (3) of the Regulations. If no such offer is received, the certificate of public convenience and necessity authorizing abandonment shall become effective 30 days from the service date of the certificate.

Agatha L. Mergenovitch,

Secretary.

[FR Doc. 82-18020 Filed 7-1-82; 8:45 am]

BILLING CODE 7035-01-M

[Docket No. AB-36 (Sub-No. 16)]

**Railroads; Oregon Short Line Railroad Co.; Abandonment and Discontinuance of Service by Union Pacific Railroad Co. Between Richfield and Ketchum, ID; Findings**

Notice is hereby given pursuant to 49 U.S.C. 10903 that the Commission, Review Board Number 3, has issued a certificate authorizing abandonment by Oregon Short Line Railroad Company and discontinuance of service by Union Pacific Railroad Company on a line of railroad known as the Ketchum Branch extending from railroad milepost 15.65 near Richfield, ID, to the end of the line at milepost 69.84 near Ketchum, ID, a distance of 54.19 miles, in Blaine and Lincoln Counties, ID, subject to certain conditions. Since no investigation was instituted, the requirement of § 1121.38(b) of the Regulations that publication of notice of abandonment decisions in the *Federal Register* be made only after such a decision becomes administratively final was waived.

Upon receipt by the carrier of an actual offer of financial assistance, the carrier shall make available to the offeror the records, accounts, appraisals, working papers, and other documents used in preparing Exhibit I (Section 1121.45 of the Regulations). Such documents shall be made available during regular business hours at a time and place mutually agreeable to the parties.

The offer must be filed with the Commission and served concurrently on the applicant, with copies to Louis E. Gitomer, Room 5417, Interstate Commerce Commission, Washington, DC 20423, no later than 10 days from publication of this Notice. The offer, as filed, shall contain information required pursuant to § 1121.38(b) (2) and (3) of the Regulations. If no such offer is received, the certificate of public convenience and necessity authorizing abandonment

shall become effective 30 days from the service date of the certificate.

Agatha L. Mergenovitch,

Secretary.

[FR Doc. 82-18021 Filed 7-1-82; 8:45 am]

BILLING CODE 7035-01-M

[No. 38828]

**Three Way Corp.; Petition for Exemption From Tariff Filing Requirements**

**AGENCY:** Interstate Commerce Commission.

**ACTION:** Notice of provisional exemption.

**SUMMARY:** Three Way Corporation, an applicant for motor contract carrier authority, has requested exemption from the tariff requirements in 49 U.S.C. 10702, 10761, and 10762. The sought relief is provisionally granted.

**DATES:** Comments are due by July 19, 1982. The sought relief will become effective on August 3, 1982 if no adverse comments are received.

**ADDRESS:** Send an original and six copies of comments to: Section of Rates, Interstate Commerce Commission, Room 5340, Washington, DC 20423.

**FOR FURTHER INFORMATION CONTACT:** Douglas Galloway, (202) 275-7277, or Stuart Postow, (202) 275-6439.

**SUPPLEMENTARY INFORMATION:** Petitioner, Three Way Corporation, is a specialist in the transportation of so-called "third proviso" household goods described in 49 CFR 1056.1(a)(3). It holds nationwide common carrier authority for this traffic, pursuant to which it serves the transportation needs of the aerospace, electronic, medical, scientific, and other high-technology industries. Recently it decided to expand into contract carrier service and has filed its first (temporary authority) application, No. MC-151878 (Sub-No. 6-2TA).

Three Way seeks an exemption from the tariff-filing requirements of 49 U.S.C. 10702, 10761, and 10762 for the contract operations in its pending application. Petitioner is anxious to avoid unnecessary expenses which may handicap its efforts to provide economical and efficient service.

We do not feel that, in the absence of compelling circumstances, it is in the public interest to consider exemptions of such a limited nature as are involved in an application for temporary authority or other instances restricted by time or breadth. On the other hand, there is nothing in the petition indicating that Three Way would be adverse to an exemption for all of its contract

operations, and we will consider the petition on this basis. Petitioner may, of course, submit comments indicating why a more limited exemption would be appropriate.

Relying on exemptions granted to another carrier, Three Way has offered to provide a copy of the rate provisions of its contract to interested parties upon request. However, in No. 38749, *UTF Carriers, Inc.—Petition for Exemption from Tariff Filing Requirements under 49 U.S.C. 10761(b)*, decided May 28, 1982 (not printed), the Commission recently granted an exemption without the requirements that the carrier furnish this information. Since the offer to make rates available appears to be based solely on a perception that the petition might be denied without this feature, which has been clarified by the Commission to the contrary, and since the petition is predicated on a desire to avoid all unnecessary costs of doing business in a regulated environment, we will consider the petition as though the offer had not been made.

We therefore provisionally grant the sought exemption. If we receive timely filed adverse comments, we will issue a further decision addressing them and deciding whether this tentative approval ought to be made final.

This decision would not appear to have a significant effect on either the quality of the human environment or conservation of energy resources. However, comments may be submitted on these issues.

(49 U.S.C. 10702(b), 10761(b) and 10762(f))

Decided: June 25, 1982.

By the Commission, Division 2, Commissioners Gresham, Taylor, and Simmons. Commissioner Taylor is assigned to this Division for the purpose of resolving tie votes. Since there was no tie in this matter, Commissioner Taylor did not participate.

Agatha L. Mergenovitch,  
Secretary.

[FR Doc. 82-18022 Filed 7-1-82; 8:45 am]

BILLING CODE 7035-01-M

**DEPARTMENT OF JUSTICE**

**Attorney General**

**Proposed Consent Decree in an Action To Require Compliance With Provisions of the Clean Water Act**

In accordance with Department Policy, 28 CFR 50.7, 38 FR 19029, notice is hereby given that on May 6, 1982 a Consent Decree resolving two cases styled *United States v. Rockingham Poultry Marketing Cooperative*, Civil Action Nos. 78-0089 and 79-0045, was



lodged with the United States District Court for the Western District of Virginia. The proposed decree requires Defendant to install waste treatment equipment, to pay a civil penalty and to comply with its National Pollution Discharge Elimination System permits.

The Department of Justice will receive for thirty (30) days from the date of publication of this notice written comments relating to the proposed decree. Comments should be addressed to the Assistant Attorney General, Land and Natural Resources Division, Department of Justice, Washington, D.C., and refer to *United States v. Rockingham Poultry Marketing Cooperative*, (W.D. Va., Civil Action Nos. 78-0089 and 79-0045), DOJ Nos. 90-5-1-1055 an 90-5-1-1-1196.

The proposed decree may be examined at the Office of the Clerk, U.S. District Court, Roanoke, Virginia; Office of the United States Attorney, P.O. Box 1709 Roanoke, Virginia 24008; Region III Office of the Environmental Protection Agency, Office of Regional Counsel, Sixth and Walnut Streets, Philadelphia, Pennsylvania 19106 and the Environmental Enforcement Section, Land and Natural Resources Division, Department of Justice, Ninth and Pennsylvania Avenue, N.W., Room 1515, Washington, D.C. 20530. In requesting a copy, please enclose a check in the amount of \$1.40 payable to the Treasurer of the United States (\$.10 per page reproduction cost).

Anthony C. Liotta,

Acting, Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 82-18065 Filed 7-1-82; 8:45 am]

BILLING CODE 4410-01-M

## DEPARTMENT OF LABOR

### Occupational Safety and Health Administration

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

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

**ACTION:** Notice of implementation of revised voluntary protection programs.

**SUMMARY:** OSHA announces the implementation of three Voluntary Protection Programs. The programs, revised from the January 19, 1982, notice in the *Federal Register* (47 FR 2796), seek out and recognize exemplary safety and health programs as a means of expanding worker protection. Companies, general contractors, and small business organizations which

meet specified programmatic safety and health criteria, which go beyond OSHA standards in providing safe and healthful workplaces for their employees, and which want to do more than is required to help the agency accomplish the goals of the Act are the applicants OSHA seeks for these voluntary programs. In return, OSHA will remove participants from general schedule inspection lists and give priority attention to any which request a variance.

The programs are called "Star," "Try," and "Praise." "Star" is aimed at those workplaces having superior safety and health programs that go beyond OSHA standards in providing worker protection, through either employee participation or management initiative efforts. "Star" is designed to demonstrate that good safety and health programs can prevent injury and illness. "Try" is a broader and, in a sense, more flexible program. On one hand, "Try" is designed to evaluate alternative internal safety and/or health systems for the prevention of workplace injuries and illnesses. On the other hand, "Try" allows participation by firms which have good safety records or are anxious to improve them. Finally, "Praise" is a recognition program for employers in low-hazard industries with good safety programs who have been successful in preventing injuries. The unifying purpose of all these programs is injury and illness prevention.

We have simplified the Voluntary Protection Programs. The six experimental programs originally announced in the earlier *Federal Register* notice have been reduced to three. "Star" now applies to any industries. In addition, while labor management committees were originally required for participation, the new Star Program will be available for either employee participation or management initiative projects. "Try" has also been expanded to allow management initiative projects. "Praise" remains a recognition program for companies which have good safety records.

Applicants now eligible for "Star" and "Try" include companies, general contractors, or groups of small businesses. Applicants which operate a single site, a multiple-employer single site, or multiple sites organized by one company, corporation, or organization may be eligible. While the group approach, allowing several small firms to participate as one applicant, is not feasible for "Praise," many small businesses may individually qualify for participation in the program.

Internal complaint mechanisms will be required for "Star" and "Try"

programs to give participants an opportunity to resolve complaints without OSHA involvement. Agency and internal complaint records will be reviewed as part of each program's evaluation. Complaints to OSHA from employees whose employer is participating in a voluntary program will be handled in accordance with OSHA procedures. For evaluation purposes the employee will be queried regarding his/her knowledge and use of the internal system.

Instead of the Resource Liaison contemplated in the earlier *Federal Register* notice, an OSHA official with technical expertise will be designated as the contact person for each Voluntary Protection Program. Except for construction sites under "Star" and the experimental programs under "Try," the contact person will have no required on-site presence. On-site assistance for the two excepted situations will be arranged before approval.

Pre-approval program reviews will be conducted except where information gathered by an inspection within the last 18 months can be used to verify the information submitted by the applicant. Where reviews are necessary, they will be done by OSHA staff from the national office and field. Information gathered in such reviews will not be made available to enforcement personnel. Each review will be arranged at the applicant's convenience and will take no more than two days. Experience rates are only one factor that OSHA will weigh in considering these programs. These provide an indication, not a conclusive measure, of performance. The other qualifications are spelled out in the program descriptions which follow. Those accepted into "Star" will be evaluated after three years, unless serious problems are identified earlier, and "Try" participants will be evaluated annually.

We have clarified labor-management committee responsibilities for those programs where such committees are used. Assuring abatement is a management prerogative and responsibility, and we have made this clear in the revised programs.

The agency will accept applications from interested parties for any of the programs, and, in accordance with the guidelines set forth above, may conduct on-site reviews of sites which appear to meet all of the program requirements, and will approve a limited number of participants in each category. We will remain cooperative and flexible in considering programs which will achieve our purpose. We will not, however, in any way diminish employer



or employee rights and responsibilities. OSHA will periodically evaluate the Voluntary Protection Programs to determine what changes, if any, the agency should make.

**EFFECTIVE DATE:** July 6, 1982.

**FOR FURTHER INFORMATION CONTACT:**

Frank Frodyma, Office of Policy Analysis, Integration and Evaluation, Occupational Safety and Health Administration, 200 Constitution Avenue, N.W., Washington, D.C. 20210, (202) 523-8021.

**SUPPLEMENTARY INFORMATION:**

**I. Background**

*A. Introduction*

On January 19, 1982, the Occupational Safety and Health Administration ("OSHA" and the "agency") published in the *Federal Register* a notice requesting information and comment about several possible initiatives to provide incentives for voluntary safety and health protection efforts by employers and employees. The agency invited public comments on the specified programs and requested suggestions for alternative programs. Comments were to be submitted by March 15, 1982.

The agency received numerous comments from businesses, unions, trade associations, State Labor Departments, and others. All submissions were made part of the official record and were considered.

*B. Statutory Framework*

The Occupational Safety and Health Act of 1970, 29 U.S.C. 651 et seq. (the "Act" and the "OSH Act"), was enacted "to assure so far as possible every working man and woman in the Nation safe and healthful working conditions and to preserve our human resources."

Section 2(b) provides a blueprint of activities which OSHA can use to carry out these purposes. In particular, the following provisions constitute the legislative authority for the Voluntary Protection Programs announced herein:

"\* \* \* (1) by encouraging employers and employees in their efforts to reduce the number of occupational safety and health hazards at their places of employment, and to stimulate employers and employees to institute new and to perfect existing programs for providing safe and healthful working conditions;"

"\* \* \* (4) by building upon advances already made through employer and employee initiative for providing safe and healthful working conditions;"

"\* \* \* (13) by encouraging joint labor-management efforts to reduce injuries and disease arising out of employment."

**II. Voluntary Protection Programs**

OSHA will accept applications for three Voluntary Protection Programs. The core program is the Star Program. As its name suggests, it is based on the characteristics of the most comprehensive safety and/or health programs used by American industry. Its standards are high, and it is not expected that large numbers of interested applicants will have the qualifications required for participation. It does recognize excellence in achieving significant accident reductions in high hazard industries by permitting applicants whose rates are lower than the average for their specific industry, but not necessarily lower than the national average for all manufacturing, to qualify if the other structural requirements are met.

Those employers whose programs and/or rates do not meet the "Star" requirements may be qualified for the more flexible experimental Try Program. In order to keep the flexibility desired in the program, OSHA has set very minimal and general requirements for "Try." Employers applying for "Try," however, will be expected to demonstrate to OSHA's satisfaction that significant accident or illness prevention will occur under the program.

Finally, the Praise Program provides the opportunity for OSHA to give recognition to employers in low-hazard industries who have better records than average for their industries. The Praise Program is a very different concept than "Star" or "Try," and different results should be expected from it. Protections, precautions and criteria found in "Star" and "Try" are neither necessary nor appropriate for "Praise." Only the lowest hazard firms of low-hazard industries are eligible for this performance recognition program. Because these firms are in low-hazard industries which do not appear on OSHA's targeting lists, they do not now receive routine inspections.

The emphasis in all of these programs is on implemented safety and/or health programs which encompass not just OSHA standards but all aspects of health or safety relevant to the worksite covered by the program. They are voluntary programs in that they are not and will not be mandated. It is completely the decision of individual businesses and, where applicable, their unions, as to whether they wish to apply for participation. OSHA is seeking only those who want to cooperate in good faith with the agency to demonstrate the importance of good internal safety and/or health systems for the prevention of injuries and illnesses. OSHA encourages

program participants to set goals for realistic reduction of injuries, illnesses and workplace hazards and for improved safety and/or health planning and programming. An applicant may be a company, a general contractor, or an organization of small businesses. An applicant which operates a single site, a multiple-employer single site, or multiple sites organized by one company, corporation or organization may be eligible.

Certain requirements pertain to all three programs. All require implemented safety programs. In all cases where employees take on safety-related duties for a voluntary program, the employer must assure that those employees will be protected from discriminatory actions resulting from those duties, just as Section 11(c) of the Act protects employees for the exercise of rights under the Act. Without such assurance, employees could not be expected to carry out these assigned safety duties with complete confidence.

It is also necessary to assure that voluntary programs are implemented in an atmosphere of cooperation if they are to succeed. Therefore, if a site covered by an application for any of these programs has a significant proportion of its employees organized by one or more collective bargaining agents, the employer must be able to demonstrate that the collective bargaining agent(s) do(es) not object to participation in such a program. Without such a demonstration, OSHA will not be able to approve program participation.

Once an applicant has been approved for participation in a program, all employees at the specific site covered by the approval, including new hires as they arrive, must be informed of the specifics of the approved program. Employees who understand these programs will be more likely to be aware of safety needs and will be able to help the programs succeed.

In all of these programs at all times, as in all agency initiatives, OSHA shall assure that participation in any of these programs shall not in any way diminish existing employer and employee rights and responsibilities under the Occupational Safety and Health Act of 1970. More specific information about each of the programs follows.

**The Praise Program**

The Praise Program is directed toward employers in low-hazard industries who have good safety records and active safety programs. It is designed to provide recognition for past achievement in safety and to encourage



continued improvements where possible. It will cover safety only.

#### *Goals and Objectives*

1. To recognize employers who have provided effective safety protection.
2. To encourage continued improvement in workplace safety conditions.

#### *Qualifications*

1. The applicant must be a member of a low-hazard industry which is defined as an industry which has an average lost workday injury case rate below the national average for the private sector; and,

2. The applicant must have an average lost workday injury case rate and injury incidence rate for the last five years below the national average for the specific (three or four digit SIC) relevant industry.

a. An applicant in business for less than five years but more than two may be considered on the basis of the average rates for the years actually in business.

b. OSHA shall reserve the right to review injury rates annually.

#### *The Star Program*

The Star Program is aimed at leaders in injury, illness and accident prevention programs. The Star Program may cover either safety or health, or both. There are two types of Star Programs, employee participation programs requiring the use of labor-management committees and management initiative programs requiring management accountability for safety and/or health and the provision of information feedback to all establishment employees. Due to the unique nature of the construction industry, particularly the seriousness of hazards, changing worksite conditions, its expanding and contracting workforce and high turnover, we will, for the foreseeable future, consider only proposals for employee participation programs in this industry. All participants in the Star Program shall be evaluated every three years.

#### *Goals and Objectives*

1. To demonstrate the importance of comprehensive safety and/or health programs in the prevention of workplace injuries and/or illnesses.
2. To provide recognition to safety and health leaders.
3. To form a nucleus of workplaces for increased cooperative approaches to occupational safety and health problems.
4. To maintain excellent employee protection and to improve it where

possible through the internal systems of the workplace.

#### *General Qualifications for All Star Programs*

1. The applicant must have an average of both lost workday injury case rates and injury incidence rates for the most recent three year period at or below the national average for the specific (three or four digit SIC) relevant industry.

2. If the applicant has been inspected by OSHA in the last three years, the inspection and abatement history should indicate good faith efforts to improve safety and health. For example, the company will not be eligible if it has received any upheld citations for willful violations of OSHA standards in the last three years.

3. The applicant must provide agreed-upon evaluation data for OSHA review.

4. The applicant must provide to OSHA written evidence of a safety program which establishes basic objectives in terms of the specific needs and problems of the company; addresses hazards specific to the workplace; includes any necessary personal protective equipment requirements; includes an employee training program in safe work practices; is effectively communicated and enforced; clearly assigns responsibilities for workplace safety and demonstrates high-level commitment and involvement.

5. The applicant must have an internal mechanism for responding to employee safety (and health) complaints in a timely fashion.

6. If health is to be covered by the program, the applicant shall provide a description of the program (which may be part of the safety program) which establishes basic objectives in terms of the specific health needs and problems of the company. It must include, as appropriate, an outline for company implementation and a means for monitoring and evaluating the program. Company procedures should include, as appropriate: industrial hygiene sampling and surveying; personal protective equipment program rules; employee training in personal protective devices, work practices and hazardous material handling; and medical recordkeeping. The health program must include:

(1) The services of appropriately trained personnel for initial and periodic monitoring of the workplace;

(2) A medical program including the availability of physician services; and,

(3) Testing, analyzing and sampling or surveys performed in accordance with nationally recognized procedures.

#### *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:

(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.



### 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:

- Reasonable site access to certified safety (and health) professionals as well as medical personnel;
- A system for holding line managers and supervisors accountable for safety (and health) conditions;
- 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,
- Internal safety (and health) audit or evaluation.

2. The applicant must routinely review job hazards for inclusion in training and hazard control programs.

3. The applicant must demonstrate that:

- All hazards noted during management site inspections will be abated in a timely manner; and,
- 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.

### The Try Program

The Try Program is an experimental program to determine the effectiveness of alternative internal safety and health systems and to provide an opportunity for participation by employers who want to cooperate closely with OSHA to improve their safety and health performance. Unlike "Star," qualifications for firms wishing to take part in "Try" are fairly general. This will allow the greatest flexibility in experimental program design. OSHA will, however, review each program to assure that it contains the elements necessary for success in meeting stated goals. Because of the experimental nature of "Try" and OSHA's limited resources, OSHA may not be able to accept all applicants satisfying minimum requirements.

Like "Star," "Try" may cover either safety or health or both. There are also both employee-participation and management initiative versions of "Try." Also like "Star," only proposals for employee participation programs will be considered in the construction industry. "Try" programs will be established for a period of time agreed upon in advance of approval and will be evaluated annually. The evaluation design will not be standardized but will instead be molded to fit each program. Demonstrably successful "Try" programs or ideas may be incorporated into "Star."

### Goals and Objectives

1. To demonstrate the importance of complete safety (and health) programs in the prevention of workplace injuries (and illnesses).
2. To provide recognition and support to the provision of innovation in safety (and health) programs.
3. To increase safety (and health) protection through the internal systems of the workplace.
4. To develop and evaluate alternative internal systems for the prevention of workplace injuries (and illnesses).

### General Qualifications for All Try Programs

1. The applicant should have an average of either the lost workday injury case rate or the injury incidence rate for the most recent three-year period which is at or below the national average for the specific industry (three or four digit SIC), show a downward trend over a three-year period, or indicate goals for reducing these rates and the methods by which the goals will be achieved.
2. If the applicant has been inspected by OSHA in the last three years, the inspection and abatement history should indicate good faith efforts to improve safety (and health).
3. The applicant must provide to OSHA written evidence of a program giving official recognition to the voluntary program, and the program itself must establish basic objectives in terms of the specific needs and problems of the company; address hazards specific to the workplace(s); include personal protective equipment requirements and an employee training program in safe work practices; be effectively communicated and enforced; clearly assign responsibilities for workplace safety (and health) and demonstrate high-level commitment and involvement.
4. The applicant must provide agree-upon evaluation data.
5. The applicant must make regular site inspections, conduct accident

investigations, and have an internal mechanism for responding to employee safety (and health) complaints in a timely fashion.

6. The applicant should have available sufficient safety (and health) resources for the size of the establishment(s) covered and the types of hazards faced.

### 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.

### 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.

### OSHA Responsibilities for "Praise," "Star" and "Try"

#### OSHA Contact Person

An OSHA technical official will be assigned to each program as a contact person. This person will be available to assist the participants as needed to assure smooth interface with OSHA and to provide expertise as required.

#### Pre-Approval Program Review

The "Praise" review will be confined to a review of records and a general assessment of safety conditions and facilities. Pre-approval review for "Star" and "Try" will include interviewing relevant parties such as committee representatives in employee participation programs, as well as reviewing records and a general assessment of (health and) safety conditions and facilities. Such information will not be made available to enforcement personnel. Preapproval program reviews will be arranged at the convenience of the applicant, if on-site review is necessary. If the applicant has been inspected within the last 18 months, an on-site review may not be necessary.

#### Enforcement Activity

Programmed Inspections. Work sites enrolled in a program will be removed



from OSHA's general schedule inspection list.

**Workplace Complaints.** Complaints will be handled in accordance with standard OSHA procedures. The employee will be queried regarding his knowledge and use of the internal complaint system.

**Fatalities and Accidents.** All fatalities or accidents shall be handled in accordance with standard OSHA procedures.

#### *Variances*

If a participant desires a variance from a standard, the OSHA contact will be available to assist in formulating the application, if requested. OSHA will ensure that the application receives attention in a timely manner. If the request is approved, OSHA will grant an interim order permitting the variance while the formal procedures are implemented.

#### *Evaluation*

OSHA will monitor the Praise Program by reviewing annual injury incidence and lost workday injury case rates. OSHA reserves the right to conduct on-site visits, in coordination with the company, to validate the safety program if serious problems arise.

All "Star" programs shall be evaluated every three years with a yearly review of experience rates and complaint activity. All "Try" programs will be evaluated annually for the duration of the program.

The following factors will be used to measure the effectiveness of "Star" and "Try" programs:

1. Comparison of rates to the industry average;
2. Satisfaction of the participants; and,
3. Nature and validity of complaints received by OSHA.

Employee participation programs will also be evaluated on the effectiveness of the joint committees. "Try" programs will have other individually designed evaluation measures.

#### **Termination of Participation in the Programs**

Participation can be terminated in either of two ways:

1. The firm or (where applicable) the employee representative(s) or (where applicable) the sponsoring organization may send a written notification of termination to OSHA and to any other party or parties 30 days prior to termination [except where another time period has been agreed upon before approval]; or,

2. OSHA may withdraw approval with written notification to the firm and (where applicable) to the employee

representative(s) or (where applicable) to the sponsoring organization 30 days prior to termination (except where another time period has been agreed upon before approval).

#### **Program Application**

Effective this date, initial applications for any of the three programs should be sent directly to the OSHA Office of Policy Analysis, Integration and Evaluation (see contact address). After an initial period to allow adjustment to the application process for streamlining and other improvements, applications may also be forwarded to the appropriate OSHA Regional Administrator(s). OSHA staff will assist interested parties in the preparation of complete applications. OSHA assumes that these programs will generate widespread interest and expects a significant number of applications. Should the number of applicants exceed OSHA's available resources, OSHA may limit the number initially approved to achieve appropriate geographical and industry distribution and to establish firmly the principles of the different programs.

#### **III. Summary and Analysis of Comments**

##### *Clarification*

Several misconceptions about the agency's intentions regarding Voluntary Protection Programs were evidenced in the comments. Some commentators interpreted "voluntary" to mean that employers could choose whether or not to comply with OSHA regulations. In fact, what is voluntary is the choice to participate in these special programs, not whether to comply with OSHA regulations.

A few commentators suggested that OSHA planned to require the use of labor-management safety and health committees in all cases. The agency recognizes that, in many areas, particularly in unionized workplaces, labor-management committees have made important contributions to worker protection. On the other hand, OSHA is well aware that there are employers without labor-management committees who have been successful in providing safe workplaces. The Voluntary Protection Programs are designed to recognize the effective efforts in both the use of labor-management committees and management intensive systems and possibly in alternative systems. We understand, however, that a voluntary program can succeed in a unionized establishment only if a non-adversarial climate exists. We will, therefore, expect an applicant with an organized workplace to demonstrate that the relevant union does not object

to the firm's proposal. We anticipate that recognition of good systems will encourage innovation in providing safe and healthful workplaces.

A few commentators expressed concern that all of the requirements suggested for participation in the voluntary programs would be mandatory for all companies. Although, for the construction industry, safety programs and self-inspections are already required by OSHA standards, it was never OSHA's intention that any firm would have to adopt any particular method or establish any system not already required or in place. As one commentator stated, "To restructure existing programs which have been effective will not be an acceptable option." We wholeheartedly agree. OSHA designed the Voluntary Protection Programs primarily for those companies with demonstrated records of success and with superior safety and health programs already in place.

One commentator urged that OSHA hold public hearings. While there is no requirement to hold hearings on the voluntary programs, OSHA already has held numerous meetings with representative groups to elicit opinions and has established a record of public comment which provided ample opportunity for proponents and opponents to make their views known. Hearings would, therefore, be redundant, costly and serve no useful purpose.

The January Federal Register notice indicated that the Voluntary Protection Programs would be started on an experimental basis with a few pilot projects; however, OSHA feels confident that the programs as now structured will not require this developmental stage. On the other hand, the number of participants will be limited by OSHA's resources for review, assistance, and evaluation. At this point the agency plans to use the voluntary programs to form a strategy of positive impact. The programs are intended to encourage the formation of a nucleus of companies with superior health and/or safety programs for a progressively more cooperative, non-adversarial relationship with OSHA; to provide recognition to companies with good programs and to encourage their expanded use; and to facilitate the provision of safety and health programs to groups of small businesses.

##### *Simplification*

Many commentators expressed the view that the programs should be simplified and criteria for participation expressed in performance-oriented terms. In an



effort to keep the programs simple and uncluttered, the six previously announced programs have been condensed to three.

The agency has combined the concepts of STAR, "Build" and PRIME into one program, retained the "Star" title and aimed the program at the best workplaces which can form a nucleus of cooperative activity with OSHA. There will be two types of "Star" workplaces: "Star" employee participation and "Star" management initiative. "Try" will be retained and expanded to include management initiative programs so that OSHA can evaluate alternative internal systems for the prevention of workplace injuries and illnesses and so that firms who have good safety records or are anxious to improve them may participate. "Praise" remains a recognition program for companies in low-hazard industries which have good safety records and active safety programs. The agency has simplified qualifications for the programs so that companies with different safety and health systems, with quantifiable results, may be eligible for participation.

#### *Applicant Eligibility*

The question of whether programs should be approved by individual site or for multiple sites prompted a variety of responses. Those favoring approval on an individual site basis pointed out that the conditions, as well as the severity of hazards, vary from one site to another within a corporation and that the normal management structure is organized by site. Those favoring multi-site approval maintained that a corporate-wide program is managed by the same executive, that a good corporate safety and health program could only be effective if implemented corporate-wide, and that a small facility could utilize corporate resources. Other commentators expressed the view that companies should be allowed to choose which form of participation would be most effective for them based on the structure of their safety and health programs. One commentator observed that control of the safety and health program is the central issue, and where control can be demonstrated, participation should be permitted on a corporate-wide basis. To provide flexibility and meet the needs of potential applicants, the agency has decided to allow participation for companies either by site or by multiple sites. Each participating site will, at OSHA's discretion, receive an individual evaluation.

The agency has concluded that a good way to provide for small businesses that cannot qualify on their own for participation in "Star" or "Try" is to

allow the participation of organizations representing groups of small businesses. Since this is a new concept, the agency does not expect many small business groups to meet the qualifications for "Star," although OSHA will accept applications from any which think they do. Such groups, more likely, will be eligible for "Try." If, in reviewing initial applications, the agency finds that organizations of small businesses do not fit well into either the Star or Try Programs as designed, the agency will make the necessary changes and announce them in the *Federal Register*.

#### *Incentives*

The record confirms OSHA's suggestion that exemption from general schedule inspections should serve as an incentive for participation in Voluntary Protection programs.

Several commentators suggested that OSHA provide expedited procedures for granting variances to standards for participants. Recognizing that a variance will be granted only where an employer can demonstrate that the conditions are as safe and healthful as those required by the standards, OSHA will work with participants to ensure that variances, where warranted, are authorized in a timely fashion. As with all variances, employees would have to be notified of the variance application, when submitted, and an interim order, if granted.

#### *Complaints*

As indicated in the January *Federal Register* notice, accidents, fatalities and complaints of imminent danger will be handled through standard OSHA procedures.

The question of complaint handling received much attention. Some commentators recommended that all complaints should be referred to the participating organizations. Others recommended that all complaints be handled in accordance with OSHA procedures. We now recognize that the complaint procedure suggested in the former *Federal Register* notice added to the complexity of the programs. Therefore, we have reached what we feel is the appropriate middle ground by, on one hand, requiring that all participants in the "Star" or "Try" voluntary programs have some means whereby employees can notify their employers of hazardous conditions that they believe are present in their workplaces. On the other hand, OSHA will handle employee complaints in accordance with its current system. We think that we ought to recognize, however, the fact that there may always be some well-intentioned individuals

who simply may not be aware of the existence of an internal system at their workplaces. Therefore, when an employee whose employer is participating in a voluntary program calls an OSHA office to register a complaint, the individual will be queried regarding his or her knowledge and use of the internal system. This will give us a means, admittedly imprecise, to measure a participant's communications with employees and employees' reactions to the internal system.

#### *Resource Liaison*

In discussing the role of the Resource Liaison (RL), a wide variety of commentators, representing unions, trade associations, businesses, and academics, expressed concern that the previously described role of the RL would be a strain on OSHA's limited resources and would detract from OSHA's enforcement efforts. Others pointed out that companies with superior programs do not need more intensive oversight from OSHA than they are currently receiving in order for them to provide safe and healthful workplaces.

These are valid considerations, and accordingly, OSHA has concluded that instead of an RL there will be a contact person designated for each program. This individual will be available to provide assistance on request but will not have a specific on-site monitoring role. There are two exceptions. Where a labor-management committee is newly organized for participation in the Star Program in construction, there will be some oversight required to be agreed upon by the parties. Each Try program also will require more supervision to be negotiated on a case-by-case basis.

#### *Pre-Approval Program Review*

The comments confirm the need for pre-approval program review to verify the information submitted by the applicant. OSHA will conduct an on-site program review of each program for which verification information does not exist from a recent (within 18 months) inspection. On-site review, where necessary, will take no more than two days at each site and will be conducted by OSHA staff from the national office and field. The review will include a records check, talks with relevant parties and a general evaluation of safety and health conditions. A review will be conducted only after the agency is satisfied that, on paper, the applicant meets the requirements for participation. The review will be arranged at the convenience of the applicant, and



information gathered will not be made available to enforcement personnel.

#### *Evaluation*

The record also substantiates the need for periodic evaluation. Each "Star" program will be evaluated after three years' operation, unless serious problems are identified earlier. "Star" management initiative programs will also be required to conduct at least annual self-evaluations. "Try" programs will continue to be evaluated annually by OSHA, although a successful "Try" program may eventually move into the "Star" category and thereby modify the evaluation requirements.

Most commentors agreed that a specification requiring that a company maintain evaluation data for OSHA review should be included in the voluntary programs. Commentors recommended several kinds of records that OSHA might review including: internal complaint records; accident investigation reports; self-audit or evaluation reports; worksite inspection reports; health monitoring and sampling records, where applicable; labor-management committee records, where applicable; and the injury-illness log. The parties to voluntary programs will have to make a good faith effort to evaluate the needs and accomplishments of each individual program. There is no universal yardstick to measure every aspect of a voluntary program. Thus, the particular data needed for each evaluation will be tailored to a certain extent to the individual safety (and health) program.

#### *Experience Rates*

Many commentors expressed concern that OSHA might base program evaluation solely on experience rates such as injury incidence rates, lost workday injury case rates or experience modification factors assigned by insurance companies. Our position is that experience rates must be considered as an indicator, not a conclusive measure, of performance. The Voluntary Protection Programs are designed to verify our belief that a comprehensive prevention program will provide a safe workplace.

A few commentors suggested that falsification of records could be a potential problem. Some commentors suggested having the responsible person sign the record. The OSHA 101 form and the OSHA 200 summary require signatures now. Since OSHA will use experience rates in conjunction with other measures, the agency does not consider that falsification will be a major concern. In addition, as many commentors noted, the criminal

penalties for records falsification that OSHA already has in place are a considerable deterrent.

Some commentors questioned the use of workers' compensation data since that data may be affected by various factors unrelated to safety and health. OSHA is aware that, even under the best of circumstances, workers' compensation data will not provide a "match" to the OSHA log; however, we believe that first reports of injury (workers' compensation information) can provide some useful data. Another objection raised to the use of workers' compensation data was that it was an intrusion into an area beyond our jurisdiction. Under current OSHA regulations, employers may use workers' compensation reports instead of the OSHA form 101 to supplement the information on the OSHA 200 log. OSHA will only use workers' compensation reports in Voluntary Protection Programs when the employer has chosen to substitute them in this manner.

The use of experience rating modification factors was suggested as the sole measure of performance by one commentor. While OSHA recognizes that experience rating has worked well for the insurance industry, experience modifiers have limitations that preclude the agency's using them as the single criteria for participation. This notice has already addressed the question of basing these programs on experience rates alone. In addition, experience modifiers are not universally available and may be skewed if a firm pays the injured worker's compensation costs rather than submitting a claim. Where the employer makes the experience modifier available and its use is valid, OSHA will accept it as one indicator of a firm's safety performance.

In responding to the question concerning what experience rates OSHA should use in its criteria, commentors strongly favored using both lost workday injury case rates and injury incidence rates averaged over three years and compared to the national average for the specific industry. As one commentor stated, "Qualification based on a combination of lost workday cases and incidence rates will give a better picture of the recent effectiveness of an employer's accident prevention program than qualification based on lost workday cases alone." The agency has adapted that recommendation to each Voluntary Protection Program, giving consideration to the other qualifications for participation in each. The individual program descriptions elaborate upon the requirements.

#### *Committee Responsibilities*

A number of comments were received regarding the responsibilities of labor-management committees in those programs where they are used. Most commentors thought that the responsibilities suggested by OSHA were reasonable and proper. Many commentors did, however, express concern that committee members might be held liable for workplace injuries and illnesses. This is not our intent, and it is important to guard against such liability. The committees, any organizations represented on them, and any individuals serving on them are not assuming the employer's statutory or common law responsibilities for providing safe and healthful workplaces, and the committees are in no way undertaking to guarantee a safe and healthful work environment. Instead, the committees are an additional tool to be used with those provided for in the law. Thus, the firm will continue to assure that any hazard in violation of OSHA standards noted by the committee will be abated in a timely fashion.

Many commentors expressed the view that requiring a specific frequency for labor-management committee meetings and inspections was unnecessarily rigid and that the optimum frequency should be determined on an individual basis by the participants. OSHA agrees that this is an area where more achievement-oriented criteria should be applied. Although OSHA prefers monthly meetings and inspections, the agency would consider less frequent arrangements depending on the size of the firm and the hazards in the workplaces if the arrangements are agreed to by all parties. In all cases, OSHA would expect that, at a minimum, the entire worksite would be inspected once each year.

The agency requested comment on training of new hires and of labor-management committee members. The record in regard to training new hires on the existence of the Voluntary Protection Program and the use of the labor-management committee clearly recognizes the need to include these topics in the new hire's initial orientation, and that is what OSHA will expect. Commentors suggested various alternatives for committee training, including OSHA's 10-hour course, use of the OSHA-funded consultation service, private consultants and insurance companies. The agency believes this is another area where achievement-oriented language is appropriate. OSHA's major concern is that committee members are able to



recognize hazards. The applicant must be able to demonstrate this to OSHA's satisfaction.

#### Construction

Since the structure for establishing and monitoring construction programs is not substantively dissimilar to "Star," the agency concluded that a separate program is not needed. OSHA has addressed this issue in the integration of the construction voluntary protection program into "Star." In integrating the proposed "Build" program into "Star," OSHA has also transferred the elements drawn up by the Construction Advisory Committee to apply to construction sites only. These include construction site eligibility for employee participation programs only, the acceptance of new labor-management committees for "Star" and a stronger role for the OSHA contact person.

The restriction of construction applicants to employee participation programs is a reflection of the seriousness of the hazards in the construction industry and the need for cooperation between employees and management to alleviate those hazards. Since management initiative programs will not be open to construction sites and since employee participation is relatively new in the construction industry, committees will not be required to have one year's experience as they are in other industries with long histories of effective cooperative problem solving. In these cases, the OSHA contact person assigned to assist the site program will have an expanded role as agreed upon before approval.

In addition, based upon the comments received, we have decided, that for a particular site to be eligible for participation in "Star," all subcontractors at the site must be covered by a participatory arrangement with the general contractor. Since the agency is offering participation to organizations of small businesses, OSHA will consider applications from associations of contractors which provide a system of protection to the participating worksites. Even in this case, however, the agency expects that all the subcontractors on each site will be included in the general contractor's program. The size of these group programs, the duration of the general contractor's involvement at a particular worksite, or the stage of construction at any site will not be relevant criteria for choosing group programs, but they are important considerations for a program at a single site.

#### Consultation

While OSHA-funded consultation services can be useful resources for businesses needing help in establishing good health and safety programs, the consultation services cannot be used to provide routine services or run a firm's safety and health program. The agency expects that companies which apply for participation in the Star Program will already have established superior health and safety programs and probably have no need for OSHA-financed consultation services. Those companies and small businesses which need help in improving their programs would find the Try Program more appropriate for them.

#### State Plans

The agency, in an effort to obtain the views of those potentially affected, requested comment on how State participation in any of these voluntary programs should be implemented. Most commentors favored encouraging some type of State participation.

OSHA will provide States with information from the voluntary programs and will work with them to develop an equitable method for handling employers under their jurisdiction who wish to participate in any of the Voluntary Protection Programs. Indeed, many States already have programs similar to "Praise". The agency expects that other States may choose to develop voluntary programs similar to "Star" and "Try".

#### Termination

Two questions were posed by OSHA concerning termination of individual Voluntary Protection Programs. The first addressed what changes in experience rates, if any, should cause termination. Many commentors expressed the view that participants should be allowed a range of acceptable performance and that deviation above the range should be investigated. Since experience rates are only one consideration that OSHA will use, the agency may examine rate increases to determine why they have occurred.

The second question addressed the need for immediate termination. Our conclusion is that the question of continuing approval should depend on whether or not a program is constituted properly to respond to situations as they develop. OSHA has the authority to cancel a program, or to take other appropriate action, as well as the obligation to investigate fatalities or accidents and to issue necessary citations. Even when good faith is shown, however, we realize that some situations will not yield dramatic

changes quickly. We recognize, nevertheless, that situations may arise where one of the parties may want to withdraw from the program, and we feel it is equitable, in most cases, to establish a 30-day notice period prior to termination.

#### IV. Decision

After carefully reviewing all the submissions in the record and having made every effort to be responsive to the concerns raised, the Assistant Secretary has decided to implement the Voluntary Protection Programs as revised herein.

#### V. Effective Date

July 6, 1982.

#### VI. Authority

This document was prepared under the direction of Thorne G. Auchter, Assistant Secretary of Labor for Occupational Safety and Health, United States Department of Labor, 200 Constitution Avenue, NW., Washington, D.C. 20210.

Signed at Washington, D.C., this twenty-ninth day of June, 1982.

Thorne G. Auchter,  
Assistant Secretary of Labor.

[FR Doc. 82-18014 Filed 7-1-82; 8:45 am]

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#### Office of Pension and Welfare Benefit Programs

[Prohibited Transaction Exemption 82-105; Exemption Application No. D-3186]

#### Exemption From the Prohibitions for Certain Transactions Involving the Anderson's Employees Profit Sharing Trust Located in Newport, Minnesota

**AGENCY:** Office of Pension and Welfare Benefit Programs, Labor.

**ACTION:** Grant of Individual Exemption.

**SUMMARY:** This exemption will permit the sale of an unimproved parcel of real property (the Property) by the Anderson's Employees Profit-Sharing Trust (the Trust) to Mr. Dale G. Anderson (Mr. Anderson), a disqualified person with respect to the Trust. Because Mr. Anderson is the sole owner of Dale G. Anderson Construction, Inc., the sponsor of the Trust, and is the only participant in the Trust, there is no jurisdiction under Title I of the Employee Retirement Income Security Act of 1974 (the Act) pursuant to 29 CFR 2510.3-3(b). However, there is jurisdiction under Title II of the Act pursuant to section 4975 of the Internal Revenue Code of 1954 (the Code).