DEPARTAMENTO DE ESTADO

Número: 7762
Fecha: 22 de octubre de 2009
Aprobado: Hon. Kenneth D. McClintock
Secretario de Estado

Por: Eduardo Arosemena Muñoz
Secretario Auxiliar de Servicios

Commonwealth of Puerto Rico
DEPARTMENT OF LABOR AND HUMAN RESOURCES
OFFICE OF THE SECRETARY
San Juan, Puerto Rico

RESOLUTION

I, Miguel Romero, Puerto Rico Secretary of Labor and Human Resources, pursuant to the authority conferred by Sections 2(a)(5), (6) and (7); 7(a)(5); 8(a); and 28 of Act Number 16 of August 5, 1975, as amended (29 LPRA 361 et seq.), hereby approve the Puerto Rico Occupational Safety and Health Regulation Number Sixteen, *Voluntary Protection Programs*, as amended, which shall read as follows:

REGULATION NUMBER SIXTEEN

VOLUNTARY PROTECTION PROGRAMS

16.1 Purpose and Scope

16.2 Definitions

16.3 Program Description

16.4 Aspects Common to all VPP

16.5 The *Guanín* Program

16.6 The *Cemí* Program

16.7 The *Taíno* Program

16.8 Application Requirements for all VPP

16.9 Qualification Verification

16.10 Application Approval

16.11 Application Denial

16.12 Inspection Requirements

16.13 Post-Approval Assistance

16.14 Periodic Reevaluation

16.15 Termination or Post-Approval Withdrawal

16.16 Reinstatement

16.17 Derogatory Clause

16.18 Effective Date

(68 FR Num 235)
Part 16 OSH 16. Enmendada

16.1 PURPOSE AND SCOPE

(a) The Department of Labor and Human Resources and the Puerto Rico Occupational Safety and Health Administration (PR OSHA) have long recognized that a multifaceted approach is the best way to accomplish all the goals of the PR OSH Act. Employer compliance with the occupational safety and health standards, PR OSHA regulations, and the general duty clause – all the requirements of the PR OSH Act – is essential. Regulations and enforcement cannot replace the understanding of work processes, materials, and hazards that come with employers' and employees' day to day, on the job experience. This knowledge, combined with the ability to evaluate and address hazards rapidly, enables employers and employees to take responsibility for their own safety and health in ways not available to PR OSHA. Further, PR OSHA's valuable experience with site-based safety and health management systems has shown the value of a comprehensive, systematic approach to worker protection. It is the Department of Labor and Human Resources policy, as implemented by PR OSHA, to promote safety and health management systems tailored to the needs of particular worksites and situations.

The purpose of the Voluntary Protection Programs (VPP) is to emphasize the importance of, encourage the improvement of, and recognize excellence in comprehensive employer-provided, employee-participative occupational safety and health management systems. These systems provide the structures and strategies for preventing or controlling occupational hazards. Sites employing these systems are not only working to remain compliant with PR OSHA's rules, but are also striving to excel by using flexible and creative strategies that go beyond the requirements to provide the best feasible protection for their workers. In the process, these worksites serve as models for effective safety and health management systems in their industries while reducing employee injuries and illnesses below industry averages. Other performance measures, plus anecdotal evidence and participant testimonials, reveal significant cost savings, including workers' compensation cost reduction; reduced employee turnover; improvements in the quality of participants' products and services; and other benefits. Participants speak often of the "cultural transformation" that can occur during the process of preparing for application to VPP. These experiences are helping to convince skeptics that productivity, quality, profitability, and safety and health are complimentary goals.

VPP participants enter into a new relationship with PR OSHA. In this innovative public/private partnership, cooperation and trust nourish improvements in safety and health, not just at VPP sites, but also beyond the worksite boundaries. VPP companies have frequent opportunity to provide PR OSHA with input on safety and health matters. At the same time, the recognition and status gained by their participation in VPP, and their commitment to improving their industries and communities, enable them to accomplish a broad range of safety and health objectives. VPP participants may mentor other worksites interested in improving their safety and health management systems; conduct safety and health training and outreach seminars; and hold safety and health conferences that focus on leading-edge safety and health issues.

One way PR OSHA recognizes VPP participant' safety and health excellence is by removing them from programmed inspection lists for the duration of their participation, unless they choose to remain on the lists. This helps PR OSHA to focus its inspection resources for visits to establishments that are less likely to meet the requirements of the PR OSH Act. However, PR OSHA continues to investigate valid employee safety and health complaints, fatalities and catastrophes, and other significant events at the VPP sites according to established PR OSHA procedures.

Participation in any of the programs does not diminish existing employer and employee rights and responsibilities under the PR OSH Act. In particular, PR OSHA does not intend to increase the liability of any party in an approved VPP site. Employees or any representative of employees taking part in a PR OSHA-approved VPP safety and health program do not assume the employer's statutory or common law responsibilities for providing safe and healthful workplaces; nor are employees or their representatives expected to guarantee a safe and healthful work environment.

The programs included in the VPP are voluntary in the sense that no employer is required to participate and any employer may choose to apply to one of the VPP. Compliance with PR OSHA requirements and applicable laws remains mandatory. Achievement and continuing maintenance of the requirements of the VPP are conditions of participation.

Approval for participation and termination from the VPP is determined by the Secretary of Labor and Human Resources with the recommendation of the Assistant Secretary for Occupational Safety and Health.

(b) This regulation describes the rigorous criteria for approval to the Voluntary Protection Programs (VPP); the conditions of participation, termination, or withdrawal; and means of reinstatement.

16.2 DEFINITIONS

(a) **Act** means the Occupational Safety and Health Act of Puerto Rico of 1975 (Act Number 16 of August 5, 1975), as amended.

(b) **Secretary** means the Secretary of Labor and Human Resources of the Commonwealth of Puerto Rico.

(c) **Assistant Secretary** means the Assistant Secretary for Occupational Safety and Health of the Department of Labor and Human Resources.

(d) **PR OSHA Contact Person** means the person designated by the Director of the Division of Voluntary Programs, after approval for participation in any of the VPP, which will be available to assist the assigned VPP participant upon request. The PR OSHA Contact Person's onsite role will depend upon the program involved and the agreements between PR OSHA and the VPP participant.

(e) **BLS** means the Bureau of Labor Statistics of the U.S. Department of Labor.

(f) **NAICS** means North American Industry Classification System.

(g) The definitions and interpretations contained in Section 3 of the Act shall be applicable to such terms when used in this regulation.

16.3 PROGRAM DESCRIPTION

(a) **General.** The VPP are voluntary programs that provide recognition to qualified employers and remove these "recognized employers" from programmed inspection lists. The VPP emphasize the importance of worksite safety and health management systems in meeting the goal of the Act "to guarantee so far as possible to each employee in the Commonwealth of Puerto Rico safe and healthful working conditions....". This emphasis is demonstrated through assistance to employers in their efforts to reach the VPP level of systems and performance excellence; through cooperation among government, labor, and management to resolve safety and health problems; and through official recognition of employers and employees who together have developed and implemented excellent safety and health management systems. VPP sites are not expected to be perfect, but they are expected to effectively protect their workers from the hazards of the workplace through their safety and health management systems.

The VPP consist of two major programs, *Guanín* and *Cemí*, plus a *Taíno* Program to assist small employers who wish to participate in any of the two established programs but do not yet meet their qualifications, do not have the expertise nor have technical resources available and require special guidance and assistance to reach at least *Cemí* quality in their safety and health management systems. In addition, within the *Guanín* and *Cemí* Programs there are some variations between general industry and construction industry requirements. The *Guanín* Program recognizes employers and employees who demonstrate exemplary achievement in the prevention and control of occupational hazards through the development, implementation, and continuous improvement of their safety and health management systems. The *Cemí* Program recognizes worksites that have good safety and health management systems but must take additional steps to reach *Guanín* quality.

(b) **Recognition.** By approving an applicant for participation in the VPP, PR OSHA recognizes that the applicant is providing, at a minimum, the basic elements of ongoing, systematic protection of workers at the site in accordance with rigorous criteria. This makes routine enforcement efforts unnecessary. The VPP symbols of recognition are certificates and plaques of approval and flags identifying the program in which the site is participating. The participant may also choose to use program logos on such items as letter-head or awards for employee contests.

(c) **Cooperative Relationship.** In addition to removing approved worksites from programmed inspection lists, VPP participants work in cooperation with the agency, both in the resolution of safety and health problems and in the promotion of effective safety and health management systems through such means as presentations before meetings of safety and health organizations. Each approved site shall have a designated PR OSHA Contact Person to handle information and assistance requests.

16.4 ASPECTS COMMON TO ALL VPP

(a) **The Eligible Applicant.**

(1) **Site Management.** Management at a site that is either independent or part of a corporation **may apply** to VPP for that site.

(2) **Corporate Management.** The management of a corporation may submit, **using the** application format, those elements of the company's safety and health management systems that are common to all its sites. Individual applications must be submitted

for each site, but may reference the common corporate elements cited in the corporate application rather than repeating the elements.

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

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

(1) All the VPP elements are in place, and the requirements of the elements shall be met and maintained.

(2) All employees, including newly hired employees and contract employees when they reach the site, shall have the VPP explained to them, specifically including employee rights under the program and under the Act.

(3) The applicant will comply with the Act and shall correct in a timely manner, with interim protection provided as necessary, all hazards discovered through employee notifications, self-inspections, PR OSHA onsite reviews, accident investigations, process hazard reviews, annual self-evaluations, or any other means of report, investigation, or analysis.

(4) All employees engaged in safety and health activities, including those specifically given safety and health duties as part of the applicant's safety and health management system, will be protected from discriminatory actions resulting from their carrying out such activities/duties, just as Section 29(a) of the Act protects employees for **exercising their** rights under the Act.

(5) Employees shall have access to the results of self-inspections, accident investigations and other safety and health management system data upon request. In construction and unionized sites, this requirement may be met through employee representative access to these results.

(6) Applicant will correct any site deficiencies related to compliance with PR OSHA requirements and identified during the PR OSHA pre-approval onsite review. The correction period will be determined by the VPP team leader and will not exceed 90 days.

(7) The information listed below shall be maintained and available for PR OSHA review. It shall be retained until PR OSHA communicates its decision concerning VPP participation. If a site is approved, the site shall continue to maintain the same information for PR OSHA evaluation purposes for the time period covered by the evaluation until PR OSHA communicates its decision regarding continued approval for VPP participation.

i. Written safety and health management system, and all applicable documentation relating to its implementation on the site (see Section 16.9(b)(4) for detail);

ii. **Copies of the injury and illness log, PR OSHA 300 form (or a successor PR OSHA 300 form), for the site;**

iii. Copies of any logs of applicable contractors' site injuries and illnesses**, PR OSHA 300 form's or its successor**, along with the total hours applicable contract employees worked on the site;

iv. Agreement between management and the collective bargaining agent(s) concerning safety and health;

v. Annual internal safety and health management system evaluation reports for the past three years, if available [described below in Section 16.5(e)(1)viii.].

vi. The VPP Application Supplement for Sites Subject to the Process Safety Management (PSM) Standard, where applicable.

(8) Applicants for the *Cemí* or *Taíno* Program must provide assurance that any data necessary to evaluate achievement of individual goals not listed above shall be made available to PR OSHA for evaluation purposes.

(9) Each year by February 15, each participating site shall send to its designated PR OSHA Contact Person [described under Section 16.13(a)]:

i. The site's total recordable case incidence rate (TCIR) for injuries and illnesses of all employees including temporary employees for the previous calendar year, and

ii. The site's incidence rate for cases involving days away from work, restricted work activity, and job transfer (DART rate) of all employees including temporary employees for the previous calendar year.

Each site will also submit the total number of cases for each of the above two rates; hours worked; estimated average employment for the past full calendar year's and a copy of the most recent annual self-evaluation of the site's safety and health management system; and a description of any worksite success stories, e.g., reductions in workers' compensation rates, increases in employee involvement in the program, etc.

The VPP Supplement for Sites Subject to the Process Safety Management (PSM) Standard shall be reviewed by each applicable participant and be included with its annual self-evaluation.

(10) At the same time, each participating general industry site will send to its designated PR OSHA Contact Person the data of the site's TCIR and DART rate for each applicable contractor's employees; total number of cases from which these two rates were derived; hours worked; and estimated average employment for the past full calendar year on each applicable contractor's employees in the establishment.

i. Applicable contractors are those employers who have contracted with the site to perform certain jobs and whose employees worked a total of 1,000 or more hours in at least 1 calendar quarter at the worksite.

(11) Whenever significant changes are made in ownership or organizational structure, the site will provide PR OSHA within 60 days a new Statement of Commitment signed by management or, when there is an organized bargaining unit, by both management and any authorized collective bargaining agents.

(12) Whenever a change occurs in the authorized collective bargaining agent, the site will provide PR OSHA within 60 days a new signed statement indicating that the new representative supports VPP participation.

(13) Site employees support the VPP application.

(c) **Unionized Sites.** At sites with employees organized into one or more collective bargaining units, the authorized representative for each collective bargaining unit must either sign the application or submit a signed statement indicating that the collective bargaining agent(s) support or is not opposed to VPP participation. Without such concurrence from all such authorized agents, PR OSHA shall not accept the application.

(d) **Inspection/Interaction History.** If the applicant has been inspected by PR OSHA in the last 36 months, the inspection, abatement, and/or any other history of interaction with PR OSHA

must indicate good faith attempts to improve safety and health. An applicant's history must include no open investigations and no pending or open contested citations or notices under appeal at the time of application, and no affirmed willful violations during those prior 36 months.

16.5 THE *GUANÍN* PROGRAM

(a) Purpose. The *Guanín* Program recognizes leaders in occupational safety and health that are successfully protecting workers from death, injury, and illness by implementing comprehensive and effective safety and health management systems. *Guanín* participants willingly share their experience and expertise, and they encourage others to work toward comparable success.

(b) Term of Participation. The term for participation in an approved *Guanín* Program is open-ended so long as the participating site:

(1) Continues to maintain its excellent safety and health management system as evidenced by favorable re-evaluation by PR OSHA, following frequency established in 16.14,; and

(2) Submits the annual information required, e.g., annual rates data and management system self-evaluation [see 16.4(b)(7) v.; (9) and (10)].

(3) In the construction industry, participation ends with the completion of construction work at the site.

(c) Experience. All elements of a successful safety and health management systems must be operating for a period of not less than 12 months before *Guanín* approval at both general industry and construction sites.

(d) Injury/Illness Rates.

(1) The general industry applicant, at the time of approval, must meet the following criteria:

i. For employees of the site and of each applicable contractor – The two rates reflecting the experience of the most recent 3 calendar years must be below the specific industry national averages for nonfatal injuries and illnesses in at least 1 of the 3 most recent years at the most precise level published by the Bureau of Labor Statistics (BLS). PR OSHA will compare the two site rates

against the single year that is most advantageous to the site out of the last 3 published years. The two site rates referenced here are:

(a) The 3- year total recordable case incidence rate (TCIR), a single rate that reflects 3 years of total recordable injuries and illnesses, and

(b) The 3-year incidence rate for cases involving days away from work, restricted work activity, and job transfer (DART rate).

ii. Some applicants, usually smaller worksites with limited numbers of employees and/or hours worked, may use an alternative method for calculating incidence rates. The alternative method allows the employer to use the best 3 out of the most recent 4 years' injury/illness experience.

(a) To determine whether the employer qualifies for alternative calculation method, do the following:

* Using the most recent employment statistics (hours worked in the most recent calendar year), calculate a hypothetical total recordable case incidence rate (TCIR) for the employer assuming that the employer had two cases during the year;
* Compare that hypothetical rate to the 3 most recently published years of BLS combined injury/illness total recordable case incidence rates for the industry; and
* If the hypothetical rate (based on two cases) is equal to or higher than the national average for the firm's industry in at least 1 of the 3 years, the employer qualifies for the alternative calculation method.

(b) If the employer qualifies for the alternative calculation method, the best 3 of the last 4 calendar years may be used to calculate both 3-year rates [as specified in 16.5(d)(1) i. (a) and (b)] for the employer.

(c) The alternative calculation method, at the discretion of the Director of the Voluntary Programs Division, could be used with smaller contractors at the site.

(2) The construction applicant, at the time of approval, must meet the following criteria:

i. The site for which VPP application is being made must have been in operation for at least 12 months.

ii. The applicant's TCIR and DART rate from site inception until time of application must include all workers of all subcontractors and must be below the national average for the type of construction at the site according to the most appropriate and representative NAICS code. The site's NAICS code is determined by the type of construction project, not individual trades.

(e) **Safety and Health Management System Qualifications for the *Guanín* Program.**

(1) **Management Leadership and Employee Participation.** Each applicant must be able to demonstrate top level management leadership in the site's safety and health management system. Management systems for comprehensive planning must address protection of worker safety and health. Employees must be meaningfully involved in the safety and health management system.

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

(a) **Policy.** Clearly established policies for worker safety and health protection that have been communicated to and understood by all employees; and

(b) **Goal and objectives.** Established and communicated goal for the safety and health management system and results-oriented objectives for meeting that goal, so that all members of the organization understand the results desired and the measure planned for achieving them, especially those factors that directly apply to them.

ii. **Commitment to VPP Participation.** Management must also clearly demonstrate commitment to meeting and maintaining the VPP requirements to which they applied to.

iii. **Planning.** Planning for safety and health must be a part of the overall management planning process. In construction, this includes pre-job planning and preparation for different phases of construction as the project progresses.

iv. **Written Safety and Health Program.** All critical elements of a basic safety and health management system, which include management leadership and

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

v. **Management Leadership.** Managers must provide visible leadership in implementing the safety and health management system. This shall include:

(a) establishing clear lines of communication with employees;

(b) setting an example of safe and healthful behavior;

(c) creating an environment that allows for good employee access to top site management;

(d) ensuring that all workers at the site, including contract workers, are provided equally high quality safety and health protection;

(e) clearly defining responsibility in writing, with no unassigned areas. Each employee, at any level, must be able to describe his/her safety and health responsibility;

(f) assigning corresponding authority to those who have responsibility for safety and health;

(g) affording adequate resources to those who have responsibility and authority for safety and health. This includes such resources as time, training, personnel, equipment, budget, and access to information and experts, including appropriate use of certified safety professionals (CSP), certified industrial hygienists (CIH), other licensed health care professionals, and other experts as needed, based on the risks at the site; and

(h) holding managers, supervisors, and non-supervisory employees accountable for meeting their safety and health responsibilities. In addition to clearly defining and implementing authority and responsibility for safety and health protection, management leadership

must review managers and supervisors on an annual basis, and must operate a documented system for correcting deficient performance.

vi. **Employee Participation.** The site culture must enable and encourage effective employee involvement in the planning and operation of the safety and health management system and in decisions that affect employees' safety and health. The requirement for employee participation may be met in a variety of ways, as long as employees have at least three active and meaningful ways to participate in safety and health problem identification and resolution. This participation is in addition to the individual right to notify appropriate managers of hazardous conditions and practices and to have issues addressed. Examples of acceptable employee participation include but are not limited to the following:

< Serving on safety and health committees constituted in conformance to the National Labor Relations Act,

< Acting as safety observers,

< Participating in ad hoc safety and health problem solving groups,

< Training other employees in safety and health,

< Analyzing job/process hazards,

< Developing and/or participating in employee improvement suggestion programs,

< Participating in accident and incident investigations,

< Participating in audits and/or worksite inspections.

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

(a) In addition to ensuring that contractors follow site safety and health rules, VPP participants must demonstrate that they have considered the safety and health management systems and performance of contractors during the evaluation and selection of these contractors.

(b) VPP participants shall document that all contractors and subcontractors operating at the site maintain effective safety and health management systems and comply with applicable safety and health rules and regulations.

(1) Such documentation must describe the authority for the oversight, coordination, and enforcement of those programs by the applicant, and there must be documentary evidence of the exercise of this authority at the site.

(2) Such documentation must describe the means for prompt correction and control of hazards, however detected, by the applicant in the event that contractors or individuals fail to correct or control such hazards.

(3) Such documentation must describe how the contractor submits, for his employees working at the site, the total recordable case incidence rate for injuries and illnesses and the incidence rate for cases involving days away from work, restricted work activity and job transfer as described in Section 16.4(b)(7) iii. and (10).

(4) Such documentation must describe the penalties, including contractor correction and/or dismissal from the worksite, for willful or repeated non-compliance by contractors, subcontractors, or individuals.

viii. **Self-Evaluation of the Safety and Health Management System.** The applicant must have a system for evaluating the operation of the safety and health management system annually to judge success in meeting the goal and objectives, so that those responsible can determine and implement changes needed to improve worker safety and health protection.

(a) The system must provide for an annual written narrative report with recommendations for timely improvements, assignment of responsibility for those improvements, and documentation of timely follow-up action or the reason no action was taken.

(b) The evaluation must assess the effectiveness of all elements described in Section 16.5(e) of this regulation and any other elements of the site's safety and health management system.

(c) The evaluation may be conducted by competent corporate or site personnel or by a competent private sector third party who are trained and/or experienced in performing such evaluations. The evaluation should follow any format recommended by PR OSHA.

(d) In construction, the evaluation shall be conducted annually and immediately prior to completion of construction to determine what has been learned about safety and health activities that can be used to improve the contractor's safety and health management system at other sites. If a construction company does not provide this final evaluation, PR OSHA will not consider subsequent VPP applications for other sites operated by that company.

(2) **Worksite Analysis.** The successful management of workplace hazards must begin with a thorough understanding of all hazardous situations to which employees may be exposed and the ability to recognize and correct all existing hazards as they arise. This requires:

i. Comprehensive safety and health surveys at intervals appropriate for the nature of workplace operations, which include:

(a) Identification of health hazards and employee exposure levels accomplished through an industrial hygiene sampling rationale and strategy. Sampling rationale should be based on data including reviews of work processes, material safety data sheets, employee complaints, exposure incidents, medical records, and previous monitoring results. The sampling strategy should include baseline and subsequent surveys that assess employees' exposure through screening and full-shift sampling when necessary;

(b) Identification of safety hazards accomplished by an initial comprehensive baseline survey and then subsequent surveys as needed; and

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

ii. Procedures to ensure analysis of all newly acquired or altered facilities, processes, materials, equipment, and/or phases before use begins, to identify hazards and the means for their prevention or control;

iii. Routine examination and analysis of safety and health hazards associated with individual jobs, processes, or phases and inclusion of the results in training and hazard control programs. This includes job safety analysis and/or process hazard review. In construction, the emphasis must be on special safety and health hazards of each craft and each work phase;

iv. A system for conducting, as appropriate, routine self-inspections that follows written procedures or guidelines which results in written reports of findings and tracking of hazard elimination or control up to its completion;

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

(b) In construction, these inspections must cover the entire worksite at least weekly and must involve trained employees;

v. A reliable system for employees, without fear of reprisal, to notify appropriate management personnel in writing about conditions that appear hazardous and to receive timely and appropriate responses. The system must include tracking of responses and hazard elimination or control up to completion;

vi. An accident/incident investigation system that includes written procedures or guidelines which results in written reports of findings and tracking of hazard elimination or control up to its completion. Investigations are expected to seek out root causes of the accident or event and to cover "near miss" incidents;

vii. A system to analyze trends through a review of injury/illness experience and hazards identified through inspections, employee reports, accident investigations, PR OSHA logs, and/or other means, so that patterns with common causes can be identified and the causes eliminated or controlled.

(3) **Hazard Prevention and Control.** Based on the results of hazard assessment, all hazards identified must be eliminated or controlled by the following methods;

i. Reasonable site access to certified or recognized industrial hygienists and certified or recognized safety professionals as needed, based on the significant risks of the site;

ii. Means for eliminating or controlling hazards, with (a) being the most desirable:

(a) **Engineering controls** are the most reliable and effective type of controls. These are design changes that directly eliminate (ideally) or limit the severity and/or likelihood of the hazard, e.g. reduction in pressure/amount of hazardous material, substitution of less hazardous material, reduction of noise produced, fail-safe design, leak before burst, fault tolerance/redundancy, ergonomics, etc. Although not as reliable as true engineering controls, this category also includes protective safety devices such as guards, barriers, interlocks, grounding and bonding systems, pressure relief valves to keep pressure within a safe limit, etc. These items typically seek to reduce indirectly the likelihood of the hazard. These controls are often linked with caution and warning devices like detectors and alarms that are either automatic (do not require a human response) or manual (require a human response);

(b) **Administrative controls** that significantly limit daily exposure to hazard by control or manipulation of the work schedule or manner in which work is performed, e.g., job rotation;

(c) **Work Practice controls,** a type of administrative control that includes workplace rules, safe and healthful work practices, and procedures for specific operations. Work Practice controls modify the manner in which an employee performs assigned work. This modification may result in a reduction of exposure through such methods as changing work habits, improving sanitation and hygiene practices, or making other changes in the way the employee performs the job. The Work Practice controls chosen must be:

(1) understood and followed by all affected parties,

(2) appropriate to the hazards of the site,

(3) incorporated in training, positive reinforcement, and correction of unsafe performance,

(4) equitably enforced through a clearly communicated written disciplinary system that includes procedures for disciplinary action or reorientation of managers, supervisors, and non-supervisory employees who break or disregard safety rules, safe work practices, proper materials handling, or emergency procedures, and

(5) written, implemented, and updated by management as needed and must be used by employees;

(d) Personal protective equipment;

iii. A written system for and ongoing documentation of, the monitoring and maintenance of workplace equipment, such as preventive and predictive maintenance, to prevent equipment from becoming hazardous;

iv. A system for initiating and tracking hazard elimination or control in a timely manner;

v. An occupational health care program that uses licensed health care professionals to assess employee health status for prevention, early recognition, and treatment of illness and injury; and that provides, at a minimum, access to certified first aid and cardiopulmonary resuscitation (CPR) providers, physician care, and emergency medical care for all shifts within a reasonable time and distance. Occupational health care professionals should be used as appropriate to accomplish these functions; and

vi. Procedures for response to emergencies on all shifts. These procedures must be written and communicated to all employees, must list requirements for personal protective equipment, first aid, medical care, and emergency egress and must include provisions for emergency telephone numbers, exit routes, and training drills including annual evacuation drills.

(4) **Safety and Health Training.** Training is necessary to implement and reinforce management's commitment to prevent exposure to hazards. All employees must understand the hazards to which they may be exposed and how to prevent harm to themselves and others from exposure to these hazards. Effective training enables employees to accept and follow established safety and health procedures. Training for safety and health must ensure that:

i. Managers and supervisors understand their safety and health responsibilities as described under Section 16.5(e)(1), "Management Leadership and Employee Participation", and are able to carry out those responsibilities effectively. Those responsibilities include analyzing the work under their supervision to identify unrecognized hazards, maintaining physical protections in their work areas, and reinforcing employee training about hazards and needed protection measures through continual performance review and, if necessary, through enforcement of safe work practices;

ii. Managers, supervisors and employees (including contract employees) are made aware of hazards, and are taught how to recognize hazardous conditions and the signs and symptoms of workplace-related illnesses;

iii. Managers, supervisors and employees (including contractor employees), learn the safe work practices to follow in order to protect themselves from the hazards, through training provided at the same time they are taught to do a job and through reinforcement;

iv. Managers, supervisors, employees (including contractor employees), and visitors on the site understand what to do in emergency situations; and

v. Where personal protective equipment is required, employees understand that it is required, why it is required, its limitations, how to use it, and how to maintain it; and employees use it properly.

(f) Compliance with PR OSHA Requirements. All *Guanín* sites are expected to comply with PR OSHA requirements. Any deficiencies related to compliance that are discovered through an PR OSHA onsite review, an internal inspection, an employee report, or other means must be corrected promptly.

16.6 THE *CEMÍ* PROGRAM

(a) **Purpose.** The *Cemí* Program is aimed at employers in any industry who do not yet meet the qualifications for the *Guanín* Program but who have implemented a safety and health management system and who want to work toward *Guanín* Program participation. If PR OSHA determines that an employer has demonstrated the commitment and possesses the resources to achieve the *Guanín* requirements within 3 years, *Cemí* is used to set goals that, when achieved, shall qualify the site for *Guanín* participation.

(b) **Eligibility.** PR OSHA's expectation of large companies that have many sites applying to the VPP is that their applicant sites shall be of *Guanín* quality. If PR OSHA determines that any such company has the resources to develop *Guanín* quality worksites, PR OSHA, at its discretion, may limit the number of sites approved for *Cemí* Program at any one time from that company. In situations where this limit has been imposed and reached, and where a VPP team determines that an additional site is not at *Guanín* quality, the team shall give the site a list of goals to be met and documented before a team will return to the site for further review.

(c) **Term of Participation.** *Cemí* Programs shall be approved for a period of time agreed upon in advance of approval but not to exceed 3 years. The term shall depend upon how long it is expected for the applicant to accomplish the goals for *Guanín* participation. Participation is canceled at the end of the term unless approval for a second term is approved by the Secretary with the recommendation of the Assistant Secretary. Approval for a second term shall be recommended only when unanticipated circumstances slow the participant's progress toward accomplishing the goals. Even where an additional term is approved, the total time allowed for participation in the *Cemí* Program shall not exceed 3 years.

(d) **Qualifications for *Cemí*.**

(1) **Safety and Health Management System Requirements.** An eligible applicant to the *Cemí* Program must have a written safety and health management system that covers the essential elements described in Section 16.5(e) for *Guanín*.

i. The basic elements (management leadership and employee participation; worksite analysis; hazard prevention and control; and safety and health training) must all be operational or, at a minimum, in place and ready for implementation by the date of approval. For the construction industry, each site must have in place before approval an active program that provides for safety and health inspections involving trained employees.

ii. The elements are not expected to be at *Guanín* quality of completeness. The eligible applicant is not expected to meet each of the specific *Guanín* requirements in each element. Participation in *Cemí* is an opportunity for employers and their employees to work with PR OSHA to improve the quality of their safety and health management systems and, if necessary, reduce their injury and illness rates to meet the requirements for *Guanín*. The site's safety and health management system must be at *Guanín* quality within 3 years.

(2) Combined Injury and Illness Rates.

i. For general industry, if the applicant's 3-year total recordable case incidence rate reflecting all recordable injuries and illnesses and/or the applicant's 3-year incidence rate for cases involving days away from work, restricted work activity and job transfer, for the last 3 calendar years prior to approval, does not meet the *Guanín* rate requirements [16.5(d)(1)], the applicant must have a plan to achieve *Guanín* rate requirements within 2 years. It must be statistically possible to achieve this goal.

For contractors working at the site, if one or both of the rates are not below the national average, the site must indicate and demonstrate what action shall be taken to reduce these rates so they are below the contractors' industry averages for the work being performed at the site.

ii. For the *Cemí* Program in construction, if the incidence rates for the applicant site are not below the industry averages for the preceding 12 months as required for *Guanín*, the applicant company must demonstrate that the company-wide 3-year rates are below at least 1 of the 3 most recently published years of BLS rates for the industry, at the most precise published level. PR OSHA will compare the two company-wide rates against the single year that is most advantageous to the applicant out of the last 3 published years. The total recordable case incidence rate and the incidence rate for cases involving days away from work, restricted work activity and job transfer must each be calculated over the last 3 complete calendar years. The rates must include all the applicant's employees who are actually employed at construction sites in that NAICS. The applicant may use island-wide

employment or PR OSHA may designate an appropriate geographical area that includes the site for which application is made.

(3) **Goals/Annual Evaluation.** In consultation with the applicant, PR OSHA will set goals to bring *Cemí* sites up to *Guanín* level. Site deficiencies related to compliance with PR OSHA rules will be items listed up to 90 days, and will not be included in longer-term *Cemí* goals. How a site is working toward or has achieved its *Cemí* Program goals must be discussed in the site's annual evaluation of its safety and health management system [16.5(e)(1)viii.].

(e) **Approval to *Guanín*.**

(1) Approval to *Guanín* is contingent upon:

i. Successful demonstration that all aspects of the program have been fulfilled, and

ii. A decision by the Secretary that inclusion of the site in the *Guanín* Program is desirable.

(2) When the decision of the Secretary has become effective, the *Cemí* site may be approved to *Guanín* without submitting a new application or undergoing further onsite review, provided that the approval occurs no later than 3 months following the last evaluation under the *Cemí* Program.

16.7 THE *TAÍNO* PROGRAM

(a) **Purpose.** The *Taíno* Program provides the opportunity for small employers willing to participate in either the *Guanín* or *Cemí* Program but do not yet meet their qualifications, do not have the expertise nor have technical resources available and require special guidance and assistance to reach at least *Cemí* quality, to work closely with PR OSHA in the development and/or improvement of a comprehensive safety and health management system tailored to the size and type of business at their site that will fulfill the *Guanín* Program requirements. If PR OSHA determines that an employer has demonstrated the commitment and the resources to achieve the *Guanín* requirements, *Taíno* is used to set goals that, when achieved, shall qualify the site for *Cemí* or *Guanín* participation.

(b) **Eligibility.** This program is available only to employers controlling no more than 100 employees, including those employees controlled by their parent company, if any.

(c) **Term of Participation.** *Taíno* Programs shall be approved for a period of time agreed upon in advance of approval but not to exceed two years. The term shall depend upon how long it

is expected to take the applicant to accomplish the goals for *Cemí* or *Guanín* participation. Participation is canceled at the end of the term unless approval for a second term is recommended. Approval for a second term shall be recommended only when unanticipated circumstances slow the participant's progress toward accomplishing the goals. Even where an additional term is approved, the total time allowed for participation in the *Taíno* Program shall not exceed two years.

(d) Qualifications for *Taíno*.

(1) Safety and Health Management System Requirements. An eligible applicant to the *Taíno* Program must have an elemental safety and health management system that at least covers some of the essential elements described in Section 16.5(e) for *Guanín*.

i. The elements management leadership and employee participation; and safety and health training must be in place and ready for implementation by the date of approval.

ii. The elements are not expected to be at *Guanín* quality of completeness. The eligible applicant is not expected to meet each of the specific *Guanín* requirements in each element. Participation in the *Taíno* Program is an opportunity for small employers to work with PR OSHA to improve the quality of their safety and health management systems and, if necessary, reduce their injuries and illnesses rates to meet the requirements for *Guanín*.

(2) Combined Injury and Illness Rates.

i. For general industry, the applicant must indicate goals for the reduction of the site's 3 year total recordable case incidence rate reflecting all recordable injuries and illnesses and/or the applicant's 3-year incidence rate for cases involving days away from work, restricted work activity and job transfer for the last 3 calendar years prior to approval by the Secretary with the recommendation of the Assistant Secretary if one or both rates are not below the national average for the specific industry average (at the most precise level) as most recently published by BLS.

For contractors working at the site, if one or both of the rates are not below the national average, the site must indicate and demonstrate what action shall

be taken to reduce these rates so they are below the contractors' industry averages for the work being performed at the site.

ii. For the *Taíno* Program in construction, if the injuries and illnesses rates for the applicant site are not below the industry averages for the preceding 12 months, the applicant company must be able to demonstrate that the company's 3-year rates are below the most recently published BLS national average for the industry (at the most precise level). The total recordable case incidence rate and the incidence rate for cases involving days away from work, restricted work activity and job transfer must each be calculated over the last 3 complete calendar years. The rates must include all the applicant's employees who are actually employed at construction sites in that NAICS. The applicant may use island-wide employment or PR OSHA may designate an appropriate geographical area that includes the site for which application is made.

(3) Goals. Any system required for *Guanín* participation that is not in place or not yet of *Guanín* quality at the time of approval must be set as a goal along with any rate reduction goals.

(e) Approval to *Cemí* or *Guanín*.

(1) Approval to *Cemí* or *Guanín* is contingent upon:

i. Successful demonstration that all aspects of the program have been fulfilled, and

ii. A decision by the Secretary with the recommendation of the Assistant Secretary that inclusion of the site in the *Cemí* or *Guanín* Program is desirable.

(2) When the decision of the Secretary has become effective, the *Taíno* site may be approved to *Cemí* or *Guanín* without submitting a new application or undergoing further onsite review, provided that the approval occurs no later than 3 months following the last evaluation under the *Taíno* Program.

16.8 APPLICATION REQUIREMENTS FOR ALL VPP

(a) Application Instructions. PR OSHA shall prepare, keep current, and make available to all interested parties application guidelines that explain the type of information to be submitted for PR OSHA review.

(b) Application Content. Eligible applicants shall be required to provide all information described in the most current version of the relevant application instructions.

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

Materials needed to document the safety and health management system that may involve invasion of employee privacy or a trade secret shall not be included in the application. Instead, such materials shall be described in the application and provided for viewing only at the site during an application assistance visit and/or during the Pre-Approval Onsite Review.

(c) Application Submission. Two copies of each application shall be submitted to the Office of the Assistant Secretary. The application, also, may be submitted electronically (CD, USB or a similar media).

(d) Application Withdrawal. Any applicant may withdraw a submitted application at any time after formal acceptance and before approval or denial. When the applicant notifies PR OSHA of its withdrawal, the original applications shall be returned to the applicant.

PR OSHA may keep the assigned Program Manager's marked working copy of an accepted application for a year before discarding it, in order to knowledgeably respond should the applicant raise questions concerning the handling of the application. Once an application has been withdrawn, a new submission of application is required to begin application review again. If the application is substantially incomplete, and if after notification the applicant has not responded within 90 days to the request for more information, the application shall be considered unacceptable and shall be returned to the applicant. The applicant may resubmit the application when it is complete.

(e) Public Access. The following documents shall be maintained in PR OSHA's Central and applicable Area Offices for public access beginning on the day the applicant is approved and for so long as VPP participation is active:

(1) VPP application and amendments,

(2) Pre-approval report and subsequent evaluation reports,

(3) Transmittal memoranda to the Secretary,

(4) Secretary's approval letter,

(5) Notification memoranda to Assistant Secretary, and

(6) In the Central Office only, the memorandum to the appropriate Area Director removing the approved site from the general inspection list.

16.9 QUALIFICATION VERIFICATION

(a) **Initial Review.** The initial review of the application is made to determine whether those qualifications that can be documented by paper submission have been met. The applicant shall be given the opportunity to amend the application with additional or substitute materials for the purpose of improving the application.

(b) **Pre-Approval Onsite Reviews.**

(1) **Purpose.** The pre-approval review, which is conducted by a team of non-enforcement PR OSHA staff on the site for which participation has been requested, is a review of the site's safety and health management system. It is conducted to:

i. Verify the information supplied in the application concerning qualification for the VPP for which application was made;

ii. Identify the strengths and weaknesses of the applicant's safety and health management system;

iii. Evaluate the adequacy of the safety and health management system to address the hazards of the site and to ensure compliance with all PR OSHA regulations;

iv. Determine whether the applicant's safety and health management system meets the requirements for Guanín, Cemí or Taíno approval;

v. Determine how effectively the applicant has implemented its safety and health management system;

vi. Identify any deficiencies in the applicant's safety and health management system that must be satisfactorily addressed before PR OSHA will approve the applicant; and

vii. Obtain information to assist the Assistant Secretary for making the VPP approval decision.

(2) **Preparation.** The review shall be arranged at the mutual convenience of PR OSHA and the applicant. The review team shall consist of a team leader, a back-up team

leader (optional for smaller sites), and health, safety and other specialists as required by the size of the site and the complexity of its operations.

(3) **Duration of the Review.** The time required for the pre-approval review shall depend upon the size of the site, the complexity of its operations and the program to which the applicant has applied. Reviews shall usually average 4 days onsite, unless the site has complicating factors.

(4) **Content.** All pre-approval on-site reviews follow a three-pronged strategy that assesses a site's safety and health management system by means of document review, site walkthrough and employee and management interviews. The onsite review shall include a review of injury, illness, and fatality records, recalculation and verification of the TCIR and the DART rate (the two rates submitted with the application); verification that the safety and health management system described in the application has been implemented effectively; a general assessment of safety and health conditions to determine if the safety and health management system adequately protects workers from the hazards at the site; and verification of compliance with PR OSHA and VPP requirements.

The review shall also include random formal and informal interviews with relevant individuals such as members of any safety and health committees, management personnel, randomly selected employees, union representatives, and contract workers. Onsite document review will entail examination of the following records (or samples of them) if they exist and are relevant to the application or the safety and health management system:

i. Written safety and health management system,

ii. Management statement of commitment to safety and health and union statement of support, if applicable,

iii. The PR OSHA-300 log or its equivalent form for the site and for all applicable contractor employees on the site,

iv. Safety and health manual(s),

v. Safety rules, emergency procedures, and examples of safe work procedures,

vi. The system for enforcing safety rules,

vii. Reports from employees of safety and health problems and documentation of management's response,

viii. Self-inspection procedures, reports, and correction tracking,

ix. Accident investigation reports and analyses,

x. Safety and health committee minutes,

xi. Employee orientation and safety training programs and attendance records,

xii. Baseline safety and industrial hygiene exposure assessments and updates,

xiii. Industrial hygiene monitoring records, results, exposure calculations, analyses and summary reports,

xiv. Annual safety and health management system self-evaluations and site and/or corporate audits, including the documented follow-up activities, for at least the last 3 years,

xv. Preventive maintenance program and records,

xvi. Accountability and responsibility documentation, e.g., performance standards and appraisals,

xvii. Contractor safety and health program(s), including applicable contractor injury and illness data

xviii. Occupational health care programs and records,

xix. Available resources devoted to safety and health,

xx. Hazard and process analyses,

xxi. Process Safety Management (PSM) documentation, if applicable,

xxii. Employee involvement activities, and

xxiii. Other records that provide relevant documentation of VPP qualifications.

16.10 APPLICATION APPROVAL

(a) **Application Approval.** If, in the opinion of the PR OSHA pre-approval onsite review team, the applicant has met the qualifications requirements of the VPP applied for or of an alternative VPP acceptable to the applicant, the team's recommendation shall be made to the Director of Voluntary Programs, who, on concurrence, shall recommend approval to the Director of Technical Assistance. The Director of Technical Assistance shall review the report for consistent application of the qualification requirements and, on concurrence, shall forward the recommendation to the Assistant Secretary who, on concurrence, shall request approval from the Secretary. Approval shall occur on the day that the Secretary signs a letter informing the applicant of approval.

(b) **Deferred Approval.** If the pre-approval review determines that the applicant needs to take actions to meet one or more of the approval requirements or to come in compliance with PR OSHA rules, reasonable time --up to 90 days-- shall be allowed to the applicant before a recommendation is made to the Assistant Secretary. When necessary an onsite visit shall be made to verify the actions taken after the pre-approval review visit.

(c) **Rejection of the Recommendation to Approve.** Should the Assistant Secretary or the Secretary for any reason reject the recommendation to approve made by the Director of Voluntary Programs and the concurrence of the Director of the Bureau of Technical Assistance, a letter from the Assistant Secretary or from the Secretary denying approval and explaining the rejection will be sent to the applicant. The denial will occur as of the date of the Assistant Secretary or Secretary's letter.

16.11 APPLICATION DENIAL

(a) **Application Withdrawal.** If it is determined that the applicant cannot meet the requirements for participation in one of the VPPs or for any reason does not wish to continue the approval process, reasonable time [not to exceed 30 calendar days] shall be allowed for application withdrawal or submit an appeal prior to a denial recommendation by the Director of Voluntary Programs is forwarded to the Director of Technical Assistance and in concurrence submitted to the Assistant Secretary.

(b) Should an applicant appeal to the Assistant Secretary a finding that qualifications have not been met, the Assistant Secretary will forward the appeal to the Director of Technical Assistance for review. The Director of Technical Assistance shall submit his own recommendation to the Assistant Secretary along with the team's recommendation of denial. If the Assistant Secretary accepts the recommendation to deny approval, the denial shall occur as of the date the Assistant Secretary signs a letter informing the applicant of the decision.

(c) **Re-application Following Application Withdrawal or Denial.** Re-application from withdrawn or denied sites shall not be considered for a period of:

(1) one year from the date of withdrawal or denial, if it occurs before the onsite review; or

(2) three years from the date of withdrawal or denial, if it occurs after the onsite review; or

(3) five years from the date of withdrawal or denial, if it occurs for a second time.

16.12 INSPECTION REQUIREMENTS

(a) Programmed Inspections. VPP applicants and participants, unless they choose otherwise, shall be removed from PR OSHA's programmed inspection lists, including any list of sites based upon information that is industry-based rather than based upon information from that specific site, for the duration of approved participation in the VPP.

(1) The applicant work site shall be removed from the programmed inspection lists discussed above no more than 75 calendar days prior to the commencement of their scheduled pre-approval onsite evaluation and shall remain off these lists until official denial of the application, applicant withdrawal of its application, or subsequent cessation of active participation, if the applicant is approved to the VPP.

(2) Upon approval, VPP participants will continue to be removed from PR OSHA inspection lists for the duration of approved participation.

(b) Unprogrammed Inspections.

(1) Workplace complaints to PR OSHA, all fatalities and catastrophes, significant chemical leaks or spills, and other significant events shall be handled by enforcement personnel in accordance with normal PR OSHA enforcement procedures.

(2) Referrals. The history of the VPP indicates that safety and health problems discovered during contact with worksites for VPP purposes are resolved cooperatively. Nevertheless, PR OSHA must reserve the right, where employees' safety and health are seriously endangered and site management refuses to correct the situation, to refer the situation to the Assistant Secretary for review and enforcement action.

i. The employer shall be informed that a referral will be made to the Assistant Secretary which may result in an enforcement action.

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

iii. When a cooperative spirit does not exist between PR OSHA and a company, VPP participation is not appropriate. Therefore, if a company in this situation does not choose to withdraw from VPP consideration or participation, the Assistant Secretary will deny or terminate VPP participation effective on the date the Assistant Secretary declares the cooperative spirit not to exist.

(3) **Additional VPP Investigations.**

i. Following significant events, e.g., fatalities, chemical spills or leaks, or other accidents, PR OSHA may choose to use VPP personnel to conduct an onsite review to determine a participant's continued eligibility for VPP.

ii. PR OSHA also may choose to investigate other significant accidents or events that come to its attention and that are not required to be handled with normal PR OSHA enforcement procedures, whether or not injury/illness is involved. PR OSHA will use VPP personnel to determine whether the accident or incident reflects a serious deficiency in the participant's safety and health management system that warrants reevaluation of the participant's VPP qualification.

16.13 POST-APPROVAL ASSISTANCE

(a) **PR OSHA Contact Person.** A PR OSHA staff member shall be assigned to each VPP participating worksite as Contact Person. This person shall be available to assist the participant, as needed.

(b) **Problem Solving.** If a problem comes to the attention of the PR OSHA Contact Person, either through evaluation efforts, review of injuries and illnesses rates, records of PR OSHA complaint inspections, chemical leak/spills, or accident/incident investigations, or by request of the VPP participant, the Contact Person shall attempt to assist the participant in resolving the problem, including, if necessary, arranging with the participant for an onsite visit to assess the problem and its possible causes.

(c) **Scheduled Onsite Assistance.**

(1) In some cases, such as in the *Taíno* Program, at construction sites, or when needed for the *Cemí* Program, a schedule of onsite assistance visits shall have to be agreed upon before approval, e.g., to respond to employer technical inquiries or to ensure the efficacy of a *Taíno*.

(2) Whenever a 3-year rate (either the TCIR or the DART rate) of a Guanín Program participant exceeds the 3 most recent years' national average published by BLS, at the discretion of the Director of Voluntary Programs Division or other appropriate PR OSHA official, the participant may be required to develop an agreed upon 2-year rate reduction plan.

i. If appropriate, PR OSHA may make an onsite assistance visit to help the participant develop the plan.

ii. The plan may be developed in conjunction with needed corrections to deficiencies within the safety and health management system that have resulted in PR OSHA placing the participant on 1-year conditional status. (See 16.14(a)(5)ii.)

(a) PR OSHA may lift a participant's conditional status before completion of the rate reduction plan.

(b) If, after 2 years, a participant's rates have not returned to acceptable levels, the participant will be asked to withdraw from VPP. Failure to withdraw will result in termination.

(d) **Significant Organizational or Ownership Changes.** Whenever significant changes are made in ownership or organizational structure or the authorized collective bargaining agent changes at a VPP site, the Contact Person shall make an onsite assistance visit if needed to determine the impact of the changes on VPP participation. In the event of such changes, the Director of Voluntary Programs Division shall be notified of the change within 60 days, and a new signed Statement of Commitment will be required. The Statement shall be signed by management and appropriate bargaining representatives, if any.

16.14 PERIODIC REEVALUATION

(a) **The *Guanín* Program.**

(1) **Purpose of Reevaluation.** PR OSHA periodically conducts onsite reevaluations of *Guanín* participants to:

i. determine continued qualification for the *Guanín* Program;

ii. document results of program participation in terms of the evaluation criteria and other noteworthy aspects of the site's safety and health management system; and

iii. identify any problem that has the potential to adversely affect continued qualification and to determine appropriate follow-up actions.

(2) **Frequency.** PR OSHA will conduct the first reevaluation within 30 to 42 months of the initial *Guanín* approval. Subsequently, all *Guanín* participants will be reevaluated at intervals between 30 to 60 months. The identification of potential serious safety and health problems may create the need for an earlier evaluation.

(3) **Measures of Effectiveness.** The following factors shall be used in the reevaluation of *Guanín* Program participants:

i. Continued compliance with the program requirements and continuous improvement in the safety and health management system;

ii. Satisfaction and continuing demonstrated commitment of employees and management;

iii. Nature and validity of any complaints received by PR OSHA;

iv. Nature and resolution of problems that may have come to PR OSHA's attention since approval or the last evaluation; and

v. The effectiveness of employee participation programs within the safety and health management system.

(4) **Scope.** PR OSHA's reevaluation of *Guanín* Program participants shall consist mainly of an onsite visit similar in duration and scope to the pre-approval review described in Section 16.9(b). Documentation of management system implementation since pre-approval review or the previous evaluation shall be reviewed. The evaluation will include a review of incidence rates and supporting data [specified in 16.4(b)(9) and (10)] for the site and for its applicable contractor employees for the latest 3 complete calendar years. The review of applicable contractor data will be part of PR OSHA's evaluation of the effectiveness of the site's contractor oversight and management system.

(5) **Reevaluation Recommendations.** One of the following recommendations may follow a *Guanín* reevaluation visit:

i. Recommendation for continued participation in the *Guanín* Program;

ii. Recommendation to allow a 1-year conditional participation in the *Guanín* Program. The VPP onsite review team may recommend this alternative if it finds that the participant has allowed one or more safety and health

management system elements to slip below *Guanín* quality. Before a participant can be placed on 1-year conditional status, the participant first must return its safety and health management system to *Guanín* quality within 90 calendar days of the evaluation visit and must demonstrate a commitment to maintain that level of quality; or

iii. Recommendation for termination. The VPP onsite review team shall recommend this action if it finds the site has significantly failed to maintain its safety and health management system at *Guanín* quality. A request to the site to withdraw from the VPP shall precede a recommendation for termination to the Assistant Secretary.

(b) The *Cemí* Program.

(1) Purpose of Reevaluation. PR OSHA periodically conducts onsite reevaluations of *Cemí* participants to:

i. determine continued qualification for *Cemí* Program, or to determine whether the participant may be approved to the *Guanín* Program;

ii determine whether adequate progress has been made toward the agreed upon *Cemí* Program goals;

iii. identify any problems in the safety and health management system or its implementation that need resolution in order to continue qualification or meet agreed upon goals;

iv. document management system improvements and/or improved results; and

v. provide advice and suggestions for needed improvements.

(2) Frequency. All *Cemí* Programs shall be reevaluated within 12 to 16 months for the duration of the period of approval, except where the participant requests an evaluation before the annual evaluation is due for the purpose of determining whether the *Guanín* qualifications have been met.

(3) Measures of Effectiveness. The following factors shall be measured in the reevaluation of *Cemí* Programs participants:

i. Continued adequacy of the safety and health management system to address the hazards of the workplace;

ii Comparison of employer and contractor rates to the industry average;

iii. Satisfaction and continuing demonstrated commitment of employees and management;

iv. Nature and validity of any complaints received by PR OSHA;

v. Nature and resolution of problems that have come to PR OSHA's attention since approval or the last evaluation;

vi. Effectiveness of the employee participation program within the safety and health management system; and

vii. Progress made toward goals specified in the pre-approval or previous evaluation report.

(4) **Scope.** PR OSHA's reevaluation shall consist mainly of an onsite visit of duration and scope similar to the pre-approval review described in Section 16.9(b). PR OSHA will review documentation of management system implementation since the pre-approval review or the previous evaluation. The reevaluation will include a review of TCIR and DART rates for both the site and its applicable contractor employees as described at 16.4(b)(9) and (10).

(5) **Reevaluation Recommendations.** One of three possible recommendations may follow a *Cemí* evaluation visit:

i. Recommendation for continued participation in the *Cemí* Program;

ii. Recommendation for advancement to the *Guanín* Program; or

iii. Recommendation for termination. A request to the site to withdraw from the VPP shall precede a recommendation for termination to the Assistant Secretary.

(c) **The *Taíno* Program.**

(1) **Purpose of Reevaluation.**

i. To determine continued qualification for *Taíno* Program, or to determine whether the applicant may be approved for the *Cemí* or *Guanín* Program;

ii To determine whether adequate progress has been made toward the agreed upon goals;

iii. To identify any problems in the safety and health management system or its implementation that need resolution in order to continue qualification or meet agreed upon goals;

iv. To document program improvements and/or improved results; and

v. To provide advice and suggestions for needed improvements.

(2) **Frequency.** All *Taíno* Programs shall be reevaluated at least annually for the duration of the period of approval, except where the participant requests an evaluation before the annual evaluation is due for the purpose of determining whether the *Cemí* or *Guanín* qualifications have been met.

(3) **Measures of Effectiveness.** The following factors shall be measured in the evaluation of *Taíno* Programs:

i. Continued adequacy of the safety and health management system to address the hazards of the workplace;

ii. Comparison of employer and contractor rates to the industry average;

iii. Satisfaction and continuing demonstrated commitment of employees and management;

iv. Nature and validity of any complaints received by PR OSHA;

v. Resolution of problems that have come to PR OSHA's attention;

vi. Effectiveness of the employee participation program, and

vii. Progress made toward goals specified in the pre-approval or previous evaluation report.

(4) **Scope.** PR OSHA's evaluation shall consist mainly of an onsite visit of duration and scope similar to the pre-approval review described in Section 16.9(b). PR OSHA will review documentation of program implementation since the pre-approval review or the previous evaluation. The evaluation will include a review of TCIR and DART rates for both the site and its applicable contractor employees as described at 16.4(b)(9) and (10).

(5) **Reevaluation Recommendation.** One of three possible recommendations may follow a *Taíno* evaluation visit:

i. Recommendation for continued participation in the *Taíno* Program;

ii. Recommendation for advancement to the *Cemí* or *Guanín* Program; or

iii. Recommendation for termination. A request to the site to withdraw from the VPP shall precede a recommendation for termination to the Assistant Secretary.

iii. Recommendation for termination. A request to the site to withdraw from the VPP shall precede a recommendation for termination to the Assistant Secretary.

16.15 TERMINATION OR POST-APPROVAL WITHDRAWAL

(a) Reason for Termination.

(1) Completion of construction work at the site shall terminate a construction industry approval.

(2) Sale of a VPP site to another company or any management change that eradicates or significantly weakens the safety and health management system.

(3) The participating site management or the duly authorized collective bargaining agent, where applicable, withdraws support for VPP participation.

(4) PR OSHA may terminate participation for just cause.

(b) Cause for PR OSHA Termination.

(1) ***Guanín* Program.** Termination by PR OSHA shall occur when a significant failure to maintain the safety and health management system in accordance with the program requirements has been identified.

(2) ***Cemí* Program.** Termination by PR OSHA shall occur when:

i. A significant failure to maintain the safety and health management system in accordance with the program requirements has been identified; or

ii. No significant progress has been made toward the goals, or

iii. The term of approval has expired, and no recommendation has been made for a second term.

(3) ***Taíno* Program.** Termination by PR OSHA shall occur when:

i. No significant progress has been made toward the goals, or

ii. The term of approval has expired, and no recommendation has been made for a second term.

(c) Notification. PR OSHA shall provide the participant and other relevant parties 30 days notice of intent to terminate a site's participation in the VPP, unless;

(1) Other terms for termination were agreed upon before approval;

(2) A set period for approval is expiring or construction has been completed; or

(3) Evidence is presented that the trust and cooperation among labor, management, and PR OSHA, upon which the approval was based, no longer exists.

During a 30-day period, the participant is entitled to appeal in writing to the Secretary and to provide reasons why he believes the site should not be removed from the VPP.

(d) **Re-application Following Termination.** Re-application from terminated sites shall not be considered for a period of five years from the date of termination.

(e) **Post-Approval Withdrawal.** Upon receipt of a PR OSHA notice of intent to terminate, or for any reason, a participant may withdraw from the VPP by submitting written notification to the assigned Contact Person.

16.16 REINSTATEMENT

Reinstatement requires re-application.

16.17 DEROGATORY CLAUSE

This regulation, as amended, derogates Regulation Number Sixteen, Voluntary Protection Programs, File # 6379, approved on October 29, 2001.

16.18 EFFECTIVE DATE

This regulation will be effective 30 days after filing with the Department of State.

Signed at San Juan, Puerto Rico this

JUL - 1 2009

Miguel Romero

Secretary of Labor and Human Resources

COMMONWEALTH OF PUERTO RICO
DEPARTMENT OF LABOR AND HUMAN RESOURCES
Office of the Secretary
Hato Rey, Puerto Rico

RESOLUTION

I, Miguel Romero Lugo, Secretary of Labor and Human Resources, pursuant to the authority conferred by Section 8 of the Puerto Rico Occupational Safety and Health Act, Number 16 of August 5, 1975 as amended (29 LPRA 361 et. seq.), hereby amend the *Voluntary Protection Programs Regulation*, Number *Sixteen*, Part *Sixteen*, by adopting the following amendments of the federal regulation:

PART 16 OSH 16:

Revision to the Voluntary Protection Programs

68 FR, No. 235, (68475-68479), December 8, 2003

This rule is an amendment and was adopted on May 13, 1997, under file number 6379, from the office of the Department of State of the government of Puerto Rico.

PART 16 OSH 16:

Revision to the Voluntary Protection Programs

74 FR, No. 6, (927-952), January 9, 2009

This rule is an amendment and was adopted on May 13, 1997, under file number 6379, from the office of the Department of State of the government of Puerto Rico.

Upon review and evaluation, we recommend the adoption into the existing regulation of the following amendments of the federal *Voluntary Protection Programs Regulation*:

1. To qualify for the Guanín Program, the occupational injury and disease rate of the applicants and participants must be in or under the rates for the industry, as published bay the Federal Bureau of Labor Statistics (BLS), for at least one of the three published years. This change only applies to applicants for the construction industry in the Guanín Program.

2. The traditional focus is reviewed, although the basic philosophy and requirements for the Voluntary Protection Programs of PR OSHA are maintained.

We are also adding a change to the amendment of the regulation incorporated to the Policies and Procedures Manual of the VPPs related to the Process Safety Management of hazardous Chemicals (PSM). Requirements for compliance by the

applicants and participants are established, subject to the PSM standard. The requirements are the following:

a. In addition to the application, the applicant must include the Supplement for Establishments subject to a PSM.

b. The participants shall review the Supplement for Establishments subject to a PSM, and include it with the annual self-evaluation they must file to this Office.

We use the amendment to correct the name of this Office and to establish the meaning of the acronym NAICS."

Please provide this information in the adopting resolution.

Given at San Juan, Puerto Rico on this **July 1st, 2009**

MIGUEL ROMERO
Secretary
DEPARTMENT OF LABOR AND
HUMAN RESOURCES