

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

DEPARTMENT OF TATE

No. 6379
Date: December 5, 2001

Approved: Ferdinand Mercado
Secretary of State

By: 
Giselle Romero García
Assistant Secretary for Services

RESOLUTION

I, Víctor Rivera Hernández, Puerto Rico Secretary of Labor and Human Resources, pursuant to the authority conferred by Sections 2(a)(5), (6) and (7) and 7(a)(5) 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
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16.1 PURPOSE AND SCOPE

- (a) The Department of Labor and Human Resources recognizes that compliance with occupational safety and health standards alone cannot accomplish all the goals of the Act. The standards, no matter how carefully conceived and developed, will never cover all unsafe and unhealthful activities and conditions. Furthermore, limited resources will never permit regular or exhaustive inspections of all workplaces. But most importantly, no amount of standard setting and enforcement can 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 and to reward positive action, places employers in a unique position to improve workplace safety and health in ways simply not available to the Occupational Safety and Health Office (OSHO). Further, OSHO's valuable experience with site-based safety and health programs 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 OSHO, to promote safety and health programs tailored to the needs of particular worksites.

The purpose of the Voluntary Protection Programs (VPP) is to emphasize the importance of, encourage the improvement of, and recognize excellence in employer-provided, employee-participative, generally site-specific occupational safety and health programs. These programs are comprised of management systems for preventing or controlling occupational hazards. Sites employing these systems are not only working to remain compliant with OSHO'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 programs in their industries while reducing employee injuries and illnesses below industry averages. VPP participants enter into a new relationship with OSHO. 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 OSHO 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 programs; conduct safety and health training and outreach seminars; and hold safety and health conferences that focus on leading-edge safety and health issues.

Worksites in the VPP are removed from programmed inspection lists for the duration of their participation, unless they choose to remain on the lists. This helps OSHO to focus its inspection resources for visits to establishments that are less likely to meet the requirements of the OSH Act. However, OSHO continues to investigate valid employee safety and health complaints, fatalities and catastrophes, and other significant events at the VPP sites according to established OSHO procedures.

Participation in any of the programs does not diminish existing employer and employee rights and responsibilities under the Act. In particular, OSHO does not intend to increase the liability of any party in an approved VPP site. Employees or any representative of employees taking part in an OSHO-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 OSHO requirements and applicable laws remains mandatory. Achievement and maintenance of the requirements of the programs are continuing 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) **OSHO Contact Person** means the person designated by the Assistant Secretary, after approval for participation in any of the VPP, that will be available to assist the assigned VPP participant upon request. The OSHO Contact Person's onsite role will depend upon the program involved and the agreements between OSHO and the VPP participant.
- (e) **BLS** means the Bureau of Labor Statistics of the U.S. Department of Labor.
- (f) 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 excellence; through cooperation among government, labor, and management to resolve safety and health problems; and through official recognition of excellent safety and health programs. 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 programs.

The VPP consist of two major programs, *Guanín* and *Cemí*, plus a *Taino* 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 programs. In addition, within the *Guanín* and *Cemí* Programs there are some variations between general industry and construction industry requirements. The *Guanín* Program is for worksites that are able to function independently of OSHO and are self-sufficient in their ability to control hazards at the worksite. The *Cemí* Program

recognizes worksites that have good safety and health programs but must take additional steps to reach *Guanín* quality.

- (b) **Recognition.** By approving an applicant for participation in the VPP, OSHO 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 programs through such means as presentations before meetings of safety and health organizations. Each approved site shall have a designated OSHO 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 make application to VPP for that site.
 - (2) **Corporate Management.** The management of a corporation may submit to the VPP, in application format, those elements of the company's safety and health program 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 notification, self-inspections, an OSHO onsite review, accident investigations, process hazard reviews, annual evaluations, or any other means of report, investigation, or analysis.
- (4) If employees are given health and safety duties as part of the applicant's safety and health program, the applicant shall ensure that those employees will be protected from discriminatory actions resulting from their carrying out such duties, just as Section 29(a) of the Act protects employees for the exercise of rights under the Act.
- (5) Employees shall have access to the results of self-inspections, accident investigations and other safety and health program data upon request (in construction, this requirement may be met through employee representative access to these results).
- (6) Site deficiencies related to compliance with OSHO requirements and identified during the OSHO pre-approval onsite review will be corrected within 90 days.
- (7) The information listed below shall be maintained and available for OSHO review. It shall be retained until OSHO communicates its decision concerning VPP participation. If a site is approved, the site shall continue to maintain the same information for OSHO evaluation purposes for the time period covered by the evaluation until OSHO communicates its decision regarding continued approval for VPP participation.

 - i. Written safety and health program, and all applicable documentation relating to its implementation on the site (see Section 16.9(b)(4) for detail);
 - ii. Copies of the log of injuries and illnesses and the OSHO-101 or its equivalent;

- iii. Copies of any logs of applicable contractors' site injuries and illnesses and OSHO-101's or their equivalents 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 program evaluation reports for the past three years, if available [described below in Section 16.5(e)(1)viii].
- (8) Applicants for the *Cemi* or *Taino* Program must provide assurance that any data necessary to evaluate achievement of individual goals not listed above shall be made available to OSHO for evaluation purposes.
- (9) Each year by February 15, each participating site shall send to its designated OSHO Contact Person [described under Section 16.13(a)]:
- i. The site's total recordable case incidence rate for injuries and illnesses combined for the previous calendar year, and
 - ii. The site's incidence rate for cases involving days away from work and restricted work activity.

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 evaluation of the site's safety and health program.

- (10) At the same time, each participating general industry site will send to its designated OSHO Contact Person the following site data on each applicable contractor's employees:
- 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.
 - ii. The data will consist of the site's total recordable case incidence rate and the incidence rate for cases involving days away from work and restricted work activity 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.

- (11) Whenever significant changes are made in ownership or organizational structure, the site will provide OSHO 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 OSHO 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 VPP participation. Without such concurrence from all such authorized agents, OSHO shall not accept the application.
- (d) **Inspection/Interaction History.** If the applicant has been inspected by OSHO in the last 36 months, the inspection, abatement, and/or any other history of interaction with OSHO must indicate good faith attempts to improve safety and health. An applicant's history must include no open investigation 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 who are successfully protecting workers from death, injury, and illness by implementing comprehensive and effective safety and health programs. *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 program as evidenced by favorable evaluation by OSHO following frequency established in 16.14; and

- (2) Submits the annual information required, e.g., annual rates data and program evaluation [see 16.4(b)(7)v.; (9) and (10)]. In the construction industry, participation ends with the completion of construction work at the site.
- (c) **Experience.** All elements of the safety and health program must be in place and must have been implemented 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 site employees and for each applicable contractor's employees -- Two rates reflecting the experience of the most recent 3 calendar years must be below the most recent specific industry national averages for nonfatal injuries and illnesses (at the most precise level available, either three or four digits) published by the Bureau of Labor Statistics (BLS). These rates are:
- (a) The 3- year total recordable case incidence rate (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 and restricted work activity (previously referred to as the lost workday case incidence rate). Both rates shall be calculated using the instructions and formulas in the *Application Guidelines for Voluntary Protection Programs* provided by OSHO.
- 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 for the employer assuming that the employer had two cases during the year;

- * Compare that hypothetical rate to the most recently published BLS combined injury/illness total recordable case incidence rate 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, 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) above] 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 total recordable case incidence rate and its incidence rate for cases involving days away from work and restricted work activity, 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 SIC code. The site's SIC code is determined by the type of construction project, not individual trades.

When BLS changes from the SIC classification system to the North American Industry Classification System (NAICS) and begins publishing data under the new system, VPP applicant/participant site rates will be compared with the rates generated under NAICS.

(e) **Safety and Health Program Qualifications for the *Guanln* 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 program. Management systems for comprehensive planning must address protection

of worker safety and health. Employees must be meaningfully involved in the safety and health program.

- 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 program 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.
- ii. **Commitment to VPP Participation.** Management must also clearly demonstrate commitment to meeting and maintaining the requirements of the VPP for which application is made.
- 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 program, 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 program must be appropriate to the size of the worksite and the type of industry. Some formal requirements, such as written procedures or documentation, may be waived for small businesses where the effectiveness of the systems has been evaluated and verified. Waivers shall be decided on a case-by-case basis.
- v. **Management Leadership.** Managers must provide visible leadership in implementing the program. 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 responsibility for safety and health;
- (f) assigning commensurate 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 entails evaluating managers and supervisors annually, and operating a documented system for and 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 program 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 programs 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 programs 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 and restricted work activity as described in Section 16.4(b)(7)iii. and (10)ii.
- (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. Safety and Health Program Evaluation. The applicant must have a system for evaluating the operation of the safety and health program 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 program.
- (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.
- (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 program at other sites. If a construction company does not provide this final evaluation, OSHO will not consider subsequent VPP applications for other sites operated by that company.

- (2) **Worksite Analysis.** Management of safety and health programs must begin with a thorough understanding of all potentially 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) A baseline survey of health hazards accomplished through initial comprehensive industrial hygiene surveying, or other comprehensive means of assessment such as complete industrial hygiene and/or engineering studies, before equipment or process installation in general industry or in the pre-job planning for construction;
 - (b) A survey of safety hazards accomplished through initial comprehensive worksite surveying and subsequent surveying as needed; and
 - (c) The use of nationally recognized procedures for all sampling, testing, and analysis with written records of results;
 - ii. Analysis of all new and newly acquired or altered facilities, processes, materials, equipment, or phases before use begins, to determine potential hazards and to plan 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 process hazard review. In construction, the emphasis must be on special safety and health hazards of each craft and each phase of construction;

- iv. A system for conducting, as appropriate, routine self-inspections that follows written procedures or guidance and that results in written reports of findings and tracking of hazard corrections to completion;
 - (a) In general industry, these inspections must occur no less frequently than monthly and cover the whole worksite at least quarterly;
 - (b) In construction, these inspections must cover the entire worksite at least weekly;
- 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 corrections to completion;
- vi. An accident/incident investigation system that includes written procedures or guidance, with written reports of findings and hazard correction tracking to 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 injury and illness trends over time through a review of injury/illness experience and hazards identified through inspections, employee reports, accident investigations and/or other means, so that patterns of injuries and illnesses with common causes can be identified and the causes eliminated or controlled.

(3) Hazard Prevention and Control. Based on the results of hazard assessment, identified hazards and potential hazards 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 potentially 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) Personal protective equipment;
- (d) Safety and health rules, including safe and healthful work practices and procedures for specific operations, that
 - (1) are understood and followed by all affected parties,
 - (2) are appropriate to the potential hazards of the site,
 - (3) result in training, positive reinforcement, and correction of unsafe performance,
 - (4) are equitably enforced through a clearly communicated written disciplinary system that includes procedures for disciplinary action or reorientation of managers, supervisors, and employees who break or disregard safety rules, safe work practices, proper materials handling, or emergency procedures, and
 - (5) are written, implemented, and updated by management as needed and used by employees;

- iii. Documented ongoing monitoring and maintenance of workplace equipment, such as preventive and/or predictive maintenance, to prevent equipment from becoming hazardous;
 - iv. A system for initiating and tracking hazard correction in a timely manner;
 - v. A medical program that uses occupational health professionals to analyze hazards as appropriate for early recognition and treatment of illness and injury and for limiting the severity of harm; and that provides, at a minimum, certified first aid and cardiopulmonary resuscitation (CPR) providers onsite and physician and emergency medical care nearby, so that harm can be minimized; 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, so that they will 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 will effectively carry out those responsibilities. Those responsibilities include analyzing the work under their supervision to identify unrecognized potential hazards, maintaining physical protections in their work areas, and reinforcing employee training about potential 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 procedures 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 OSHO Requirements.** All *Guanín* sites are expected to comply with OSHO requirements. Any deficiencies related to compliance that are discovered through an OSHO onsite review, an internal inspection, an employee report, or other means must be corrected promptly.

16.6 THE *CEMI* PROGRAM

- (a) **Purpose.** The *Cemi* 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 program and who want to work toward *Guanín* Program participation. If OSHO determines that an employer has demonstrated the commitment and possesses the resources to achieve the *Guanín* requirements within 3 years, *Cemi* is used to set goals that, when achieved, shall qualify the site for *Guanín* participation.
- (b) **Eligibility.** OSHO's expectation of large companies that have many sites applying to the VPP is that their applicant sites shall be of *Guanín* quality. If OSHO determines that any such company has the resources to develop *Guanín* quality worksites, OSHO, at its discretion, may limit the number of *Cemi* sites approved in the VPP 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.** *Cemi* 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 to take 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 *Cemi* Program shall not exceed 3 years.

(d) **Qualifications for *Cemi*.**

(1) **Safety and Health Program Requirements.** An eligible applicant to the *Cemi* Program must have a written safety and health program 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 *Cemi* is an opportunity for employers and their employees to work with OSHO to improve the quality of their safety and health programs and, if necessary, reduce their injury and illness rates to meet the requirements for *Guanín*. The site's safety and health program 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 and restricted work activity, 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 the most recently published BLS national average for the industry (at the three or four digit level). The total recordable case incidence rate and the incidence rate for cases involving days away from work and restricted work activity 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 SIC. The applicant may use island-wide employment or OSHO may designate an appropriate geographical area that includes the site for which application is made.

- (3) **Goals/Annual Evaluation.** In consultation with the applicant, OSHO will set goals to bring *Cemí* sites up to *Guanín* level. Site deficiencies related to compliance with OSHO rules will be listed as 90-day items 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 program [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 *Taino* 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 OSHO in the development and/or improvement of a comprehensive safety and health program tailored to the size and type of business at their site that will fulfill the *Guanín* Program requirements. If OSHO determines that an employer has demonstrated the commitment and the resources to achieve the *Guanín* requirements, *Taino* 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.** *Taino* 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 *Taino* Program shall not exceed two years.
- (d) **Qualifications for *Taino*.**
- (1) **Safety and Health Program Requirements.** An eligible applicant to the *Taino* Program must have an elemental safety and health program that at least covers some of the essential elements described in Section 16.5(e) for *Guanín*.
- l. 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 OSHO to improve the quality of their safety and health programs 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 and restricted work activity 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 three or four-digit 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 three or four digit level). The total recordable case incidence rate and the incidence rate for cases involving days away from work and restricted work activity 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 SIC. The applicant may use island-wide employment or OSHO 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 *Taino* 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 *Taino* Program.

16.8 APPLICATION REQUIREMENTS FOR ALL VPP

- (a) **Application Instructions.** OSHO shall prepare, keep current, and make available to all interested parties application guidelines that explain the type of information to be submitted for OSHO 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 program 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.
- (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 OSHO of its withdrawal, the original applications shall be returned to the applicant.

OSHO 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 site. The site may resubmit the application when it is complete.

- (e) **Public Access.** The following documents shall be maintained in OSHO'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 OSHO staff on the site for which participation has been requested, is a management review of the site safety and health program. It is conducted to:
 - 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 site safety and health program;
- iii. Determine the adequacy of the safety and health program to address the potential hazards of the site and to ensure compliance with all OSHO requirements; and
- iv. Obtain information to assist the Assistant Secretary for making the VPP recommendation for approval.

- (2) **Preparation.** The review shall be arranged at the mutual convenience of OSHO 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 reviews follow a three-pronged strategy that assesses a site's safety and health program by means of document review, site walkthrough and employee interviews. The onsite review shall include a review of injury, illness, and fatality records, recalculation and verification of the total recordable injury and illness case incidence rate and the injury and illness incidence rate for cases involving days away from work and restricted work activity (the two rates submitted with the application); verification that the safety and health program described in the application has been implemented effectively; a general assessment of safety and health conditions to determine if the safety and health program adequately protects workers from the hazards at the site; and verification of compliance with OSHO 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 shall include the following records (or samples of them) if they exist and are relevant to the application or the safety and health program:

- i. Written safety and health program,

- ii. Management statement of commitment to safety and health,**
- iii. The OSHO-200 log 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 program 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),**
- 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) Deferred Approval.** If, at the conclusion of the pre-approval review, the applicant needs to take actions to meet one or more of the requirements for approval, reasonable time --up to 90 days-- shall be allowed for those actions to be taken before a recommendation is made to the Assistant Secretary. Where necessary an onsite visit shall be made to verify the actions taken after the pre-approval review visit.
- (b) Application Approval.** If, in the opinion of the pre-approval review team, the applicant has met the qualifications requirements of the VPP applied for or 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.

16.11 APPLICATION DENIAL

- (a) Application Withdrawal.** If it is determined that the applicant cannot meet the requirements for participation in one of the VPP or for any reason does not wish to continue the approval process, reasonable time [not to exceed 30 calendar days] shall be allowed for application withdrawal before a denial recommendation is made by the Director of Voluntary Programs to the Director of Technical Assistance for concurrence and transmittal 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. Should the Assistant Secretary for any reason reject the recommendation to approve made by the Director of Voluntary Programs Division and the concurrence of the Director of the Bureau of Technical Assistance, a letter from the Assistant Secretary denying

approval and explaining the rejection will be sent to the applicant. The denial will occur as of the date of the letter.

(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. Participating work sites shall be removed from OSHO'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.

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 those lists until final determination of approval is made.

(b) Other Inspections.

- (1)** Workplace complaints to OSHO, significant chemical leaks or spills, and all fatalities and catastrophes shall be handled by enforcement personnel in accordance with normal OSHO enforcement procedures.
- (2)** Significant Accidents and Incidents. OSHO may also choose to investigate other significant accidents or incidents that come to its attention.
- (3)** Referrals. The history of other VPP indicates that safety and health problems discovered during contact with worksites for VPP purposes are resolved cooperatively. Nevertheless, OSHO 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 in advance that a referral will be made to the Assistant Secretary and that enforcement action may result.
- ii. Because companies with excellent safety and health programs that are interested in participating in the VPP are not likely to refuse to address a serious problem in a cooperative spirit, a situation of this type is unlikely to occur. It is important, however, for interested employers and employees to be aware of and understand OSHO's obligation in the event that such a situation should occur.
- iii. When a cooperative spirit does not exist between OSHO 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.

16.13 POST-APPROVAL ASSISTANCE

- (a) **OSHO Contact Person.** A OSHO staff member shall be assigned to each VPP participating worksite as Contact Person. This person shall be available to assist the participant, as needed, to assure smooth interaction with OSHO and to provide expertise.
- (b) **Problem Solving.** If a problem comes to the attention of the OSHO Contact Person, either through evaluation efforts, review of injuries and illnesses rates, records of OSHO 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.** In some cases, such as in the *Talno* Program, at construction sites, or when needed for the *Cemf* 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 *Talno*.
 - (1) Whenever a 3-year rate (either the total recordable case incidence rate or the incidence rate for cases involving days away from work and restricted work activity) of a Guanín Program participant exceeds the latest national average published by BLS, at the discretion of the Director of Voluntary Programs

Division, the participant may be required to develop an agreed upon 2-year rate reduction plan. If appropriate, OSHO may make an onsite assistance visit to help the site develop the plan.

- (2) During the first three years after the approval of this regulation, for those VPP sites approved before December 31, 2000, the Director of Voluntary Programs Division will consider the date of approval for the VPP participation of each site to develop an agreed upon 3-year period for compliance with the rate reduction plan. If appropriate OSHO may make an onsite assistance visit to help the site develop the plan.
- (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 EVALUATION

- (a) The *Guanín* Program.
 - (1) **Purpose of Evaluation.**
 - i. To determine continued qualification for the *Guanín* Program;
 - ii. To document results of program participation in terms of the evaluation criteria and other striking aspects of the site program and its results; and
 - iii. To identify any problems that have the potential to adversely affect continued *Guanín* Program qualification and to determine if those problems require additional evaluations.
 - (2) **Frequency.** The first post-approval evaluation will be within 30 to 42 months of the initial *Guanín* approval. Subsequently, all *Guanín* participants will be evaluated at intervals between 30 to 60 months (except when the identification of potential serious safety and health problems creates the need for an earlier evaluation).
 - (3) **Measures of Effectiveness.** The following factors shall be used in the evaluation of *Guanín* Program participants:

- i. Continued compliance with the program requirements and continuous improvement in the safety and health program;
 - ii. Satisfaction and continuing demonstrated commitment of employees and management;
 - iii. Nature and validity of any complaints received by OSHO;
 - iv. Nature and resolution of problems that may have come to OSHO's attention since approval or the last evaluation; and
 - v. The effectiveness of employee participation programs.
- (2) **Description of Evaluation.** OSHO's evaluation of *Guanín* Program participants shall consist mainly of an onsite visit similar in duration and scope to the pre-approval program review described in Section 16.9(b). Documentation of program 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 OSHO's evaluation of the effectiveness of the site's contractor oversight and management system.
- (5) **Evaluation Recommendations.** One of two possible recommendations may follow a *Guanín* evaluation visit:
- i. Recommendation for continued participation in the *Guanín* Program; or
 - ii. 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 program 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 Evaluation.**

- i. To determine continued qualification for *Cemí* Program, or to determine whether the applicant may be approved for the *Guanín* Program;
- ii. To determine whether adequate progress has been made toward the agreed upon *Cemí* Program goals;

- iii. To identify any problems in the safety and health program 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 *Cemf* Programs shall be evaluated 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 *Guanin* qualifications have been met.
- (3) **Measures of Effectiveness.** The following factors shall be measured in the evaluation of *Cemf* Programs:
- i. Continued adequacy of the safety and health program to address the potential 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 OSHO;
 - v. Resolution of problems that have come to OSHO'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) **Description of Evaluation.** OSHO's evaluation shall consist mainly of an onsite visit of duration and content similar to the pre-approval review described in Section 16.9(b). OSHO will review documentation of program implementation since the pre-approval review or the previous evaluation. The evaluation will include a review of total recordable case incidence rates and incidence rates for cases involving days away from work and restricted work activity, for both the site and its applicable contractor employees as described at 16.4(b)(9) and (10).
- (5) **Evaluation Recommendations.** One of three possible recommendations may follow a *Cemf* evaluation visit:
- i. Recommendation for continued participation in the *Cemf* Program;

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

(c) The *Taino* Program.

(1) Purpose of Evaluation.

- i. To determine continued qualification for *Taino* Program, or to determine whether the applicant may be approved for the *Cemi* 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 program 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 *Taino* Programs shall be evaluated 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 *Cemi* or *Guanín* qualifications have been met.

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

- i. Continued adequacy of the safety and health program to address the potential 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 OSHO;
- v. Resolution of problems that have come to OSHO'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) Description of Evaluation. OSHO's evaluation shall consist mainly of an onsite visit of duration and content similar to the pre-approval review described in Section

16.9(b). OSHO will review documentation of program implementation since the pre-approval review or the previous evaluation. The evaluation will include a review of total recordable case incidence rates and incidence rates for cases involving days away from work and restricted work activity, for both the site and its applicable contractor employees as described at 16.4(b)(9) and (10).

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

- i. Recommendation for continued participation in the *Talno* Program;
- ii. Recommendation for advancement to the *Ceml* or *Guanln* Program; or
- iii. Recommendation for termination.

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 program.
- (3) The participating site management or the duly authorized collective bargaining agent, where applicable, withdraws support for VPP participation.
- (4) OSHO may terminate participation for just cause.

(b) **Cause for OSHO Termination.**

- (1) ***Guanln* Program.** Termination by OSHO shall occur when a significant failure to maintain the safety and health program in accordance with the program requirements has been identified.
- (2) ***Ceml* Program.** Termination by OSHO shall occur when:
 - i. A significant failure to maintain the safety and health program 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) **Tafno Program.** Termination by OSHO 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.** OSHO 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 OSHO, 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 it 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 an OSHO 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.

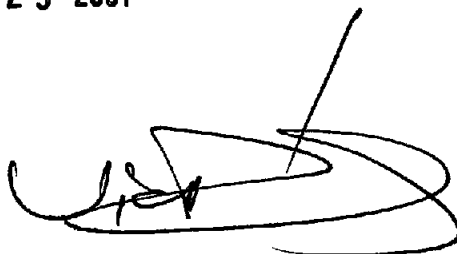
16.17 DEROGATORY CLAUSE

This regulation, as amended, derogates the Regulation Number Sixteen, Voluntary Protection Programs, approved on April 17, 1997.

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 **OCT 29 2001**



Víctor Rivera Hernández
Secretary of Labor and Human Resources