This memorandum supplements the August 3, 2009 memorandum, "Improving the Administration of the Voluntary Protection Programs (VPP)," and subsequent VPP policy memoranda and clarifies Agency efforts to improve the administration of the VPP. This instruction provides policy and procedures for National Office notification of a fatality/catastrophe at a VPP site or a Mobile Workforce (MWF) site and details policy and procedures for a Region following a work-related fatality or a violation as a result of any OSHA enforcement action at a VPP/MWF site. The instruction defines a new "status" of VPP/MWF participation during the OSHA inspection and enforcement action following a fatality/catastrophe at a VPP/MWF site. This instruction is effective immediately.

Reporting a Fatality/Catastrophe at a VPP/MWF Site to the National Office

Notification of a Fatality to National Office. Upon being informed of a fatality/catastrophe at a VPP/MWF site, including a contractor working at the site, the Region will notify the Office of the Assistant Secretary (OAS) and the Directorate of Cooperative and State Programs (DCSP) of the fatality and use the Significant Incident Report in the OSHA Instruction CSP-03-01-03 VPP Policies and Procedures Manual Appendix B to provide, to the extent possible, the following information:

a. Participant Name
b. Current VPP status
c. Number of years in VPP
d. Last evaluation date
e. Last approval date  
f. Date of fatality/catastrophe  
g. Involved parties (employee, contractor, or both)  
h. Nature of fatality/catastrophe, if known  
i. OIS inspection number

During the course of the inspection, the Region will keep DCSP advised of the facts and findings in the case. The Region will also coordinate with the Directorate of Enforcement Programs as appropriate.

Status of VPP/MWF Participant During an Enforcement Inspection Following a Fatality/Catastrophe at the VPPIMWF Site

Change in VPP Status. If the fatality/catastrophe triggers an enforcement inspection (see OSHA Instruction CPL 02-00-150, Field Operations Manual (FOM), Chapter 11, Section II, part B1), the status of the VPP/MWF participant will be changed to "Inactive Pending Fatality/Catastrophe Inspection." Within 10 days of the initiation of the enforcement inspection, the following will occur:

- The change in a VPP/MWF participant's status will be made and reflected in all print and electronic materials, including the OSHA Web site, and tracking systems;
- The Region will notify the VPP/MWF participant in writing of the change in status, request that they do not display the VPP flag, plaque, and/or certificates, and inform any Special Government Employees (SGE) that they may not act as SGEs while in "Inactive Pending Fatality/Catastrophe Inspection" status.

Action Following Completion of any Enforcement Inspection

When the enforcement inspection is completed, the Region will adhere to the following procedures to determine the participant's continued eligibility for VPP participation. An enforcement inspection is completed when a citation(s) is issued or it is determined no citation will be issued.

1. Termination. When a fatality is deemed work-related, or when a site is placed in the
Severe Violator Enforcement Program, or when a willful violation(s) is issued to the VPP/MWF participant regardless of the genesis of the enforcement inspection, the Region will issue a "Notice of Intent to Terminate" within 10 days of the completion of the enforcement inspection. The Region will follow the instructions in the CSP-03-01-003, VPP Policies and Procedures Manual, Chapter VII, Section VIII. (See references at end of memorandum.)

2. Violation other than Willful or No Violation issued. When the enforcement inspection is completed and OSHA issues a Serious violation, a Repeat violation, a Failure-to-Abate violation, an Other than Serious violation, or no violation, the Region will follow the instructions in the CSP-03-01-003, VPP Policies and Procedures Manual, Chapter VIII, Section VI, parts A-B, and Section VII. (See references at end of memorandum.)

Within 90 days from the date the enforcement inspection is completed, the Region must notify DCSP via a memorandum of the proposed recommendation regarding the participant's termination or continued participation. The Region and DCSP will brief the OAS on the Region's intended course of action and follow the procedures in Chapter VIII, Section VIII, parts B1-2. (See references at end of memorandum.)

The VPP Policy and Procedures Manual will be revised to reflect the changes included in this memorandum. If you have any questions, please contact Elizabeth Way, Director, Office of Partnerships and Recognition, DCSP.

CSP-03-01-003, VPP Policies and Procedures Manual References:

Chapter VII, Section VIII

VIII. Termination. OSHA may terminate a participant from the VPP for failure to maintain the requirements of the program. Except where employees appear to be at serious risk, termination by OSHA must occur only when all efforts for assistance have been exhausted. An example is when OSHA has identified one or more serious problems and recommended technologically feasible solutions, but the participant has refused.

Termination may also occur when evidence exists that the trust and cooperation among labor,
management, and OSHA, upon which approval was based, no longer exist, or when OSHA requests a participant to withdraw and it does not.

Other possible reasons for VPP participation ending include: a Merit term of approval has expired without a recommendation or approval for a second term; construction work has been completed; or resident contractor participation is no longer possible because the host no longer participates in VPP. If a resident contractor leaves the hosting VPP participant's worksite, the resident contractor will no longer be in the VPP.

OSHA must handle the termination of a VPP participant as follows:

A. **Notice of Intent to Terminate.** The Regional Administrator, through the VPP Manager, must notify DCSP, the participant, and union representative(s) in writing of OSHA's intent to terminate participation in the VPP.

B. **Appeal Process.** The participant has 30 days from the receipt of the notice to appeal the intent to terminate. It must provide to the Assistant Secretary, through the Regional Administrator, in writing, the reasons why it should not be removed from the VPP. Upon review of the participant's justifications for continued participation, the Assistant Secretary in consultation with the Regional Administrator and DCSP must make the final decision.

1. If the Assistant Secretary decides to terminate:

   a. **Termination Package.** The Regional Administrator through the VPP Manager must send all of the following to DCSP for concurrence:

      - A memorandum explaining the reason(s) for termination of participation.

      - Any documents supporting the decision that have not already been reviewed by DCSP staff.

   b. **DCSP Concurrence.** The Director of Cooperative and State Programs and the VPP staff must review the package and, after concurrence, transmit it to the Assistant Secretary along with a letter to the participant for the Assistant Secretary's signature. The letter must inform the participant of the termination decision and its consequences [as per VII.C.1., above] and the requirements for reinstatement.

   c. **Notification of Termination.** Once the Assistant Secretary has signed the termination letter:

      - DCSP must notify the VPP Manager immediately by telephone.
DCSP must notify the Regional Administrator by memorandum that the former participant must be returned to the programmed inspection list, if applicable, 30 days following the date of the termination letter.

The Regional Administrator must notify the Area Office immediately.

2. If the Assistant Secretary finds the participant's appeal valid, the participant may continue in VPP.

Chapter VIII, Section VI, parts A-B, and Section VII

VI. Inspection Results. When enforcement activity is complete:

A. The Area Office must send the VPP Manager a copy of all reports resulting from enforcement activity.

B. The VPP Manager must review any reports of investigations triggered by referrals, formal or non-formal complaints, or letters written by the Area Office concerning conditions at the VPP worksite, fatalities/catastrophes, and other accidents or incidents requiring enforcement or involving publicity.

VII. Documentation and Submission of Assessment. The VPP Manager must prepare a report of findings as follows:

A. If a telephone interview or onsite visit was conducted in the case of VI.C.I. or 2., respectively, above, the VPP Manager must prepare and submit a simplified report to the RA detailing the findings and recommendation for participation, withdrawal, or termination.

B. If an onsite evaluation was conducted in the case of VI.C.3., above:
   1. The VPP Manager must prepare and submit a full onsite evaluation report to the RA detailing the findings and recommendation for participation, withdrawal, or termination.
   2. The VPP Manager must also submit a Significant Event Report (see Appendix B) to DCSP within 30 calendar days from the completion of the visit or a 90-day items period. (If a FATCAT report has been submitted, attach it and complete non-duplicative entries on Significant Event Report.)

Chapter VIII, Section VIII, parts Bl-2

VIII. Decision to Continue Participation or Recommend Withdrawal or Termination.
B. In the case of VI.C.3., above, the Regional Administrator must make a recommendation regarding the participant's continued participation. The RA must forward a memorandum describing his/her recommendation to DCSP. DCSP must forward the Regional Administrator's memorandum to the Assistant Secretary.

1. If the Assistant Secretary decides that termination is required, the procedures in Chapter 7 must be followed.

2. If the Assistant Secretary decides that the participant may continue its participation, the RA will be notified. After being notified of the Assistant Secretary's decision, the RA must:

   a. Notify the participant of the Assistant Secretary's decision, and no further action is necessary, or

   b. Reapprove the participant according to procedures in Chapter 7, if the purpose of the onsite was also to determine reapproval.