

**FY 2016 Follow-up Federal Annual Monitoring and
Evaluation (FAME) Report**

Virginia Occupational Safety and Health (VOSH)



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**Prepared by:
U. S. Department of Labor
Occupational Safety and Health Administration
Region III
Philadelphia, Pennsylvania**



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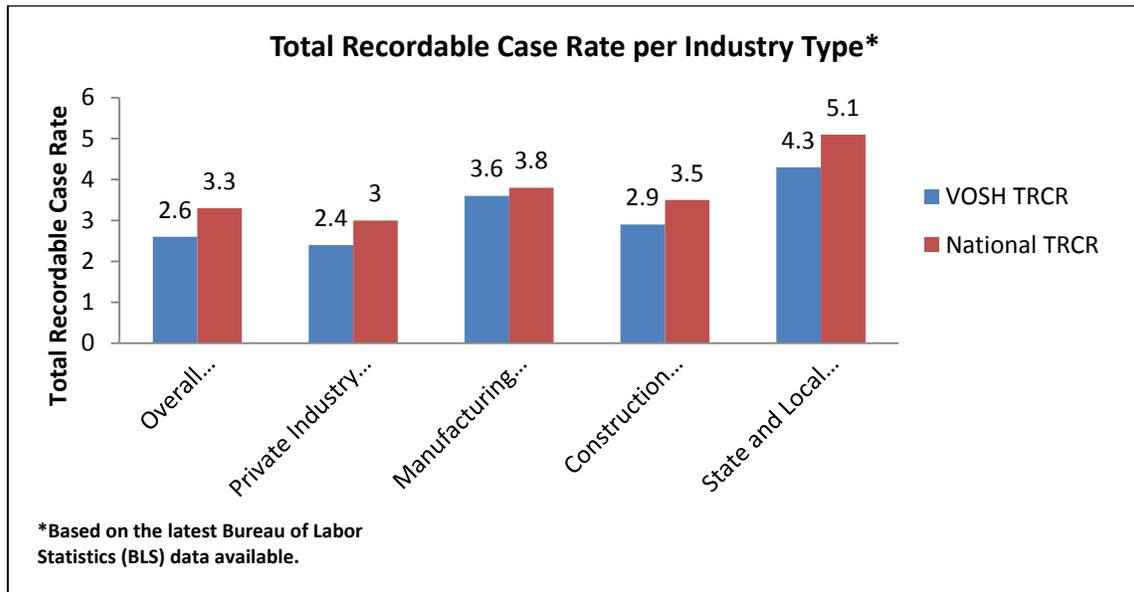
I. Executive Summary

A. State Plan Activities, Themes, and Progress

The purpose of this follow-up Federal Annual Monitoring Evaluation (FAME) report is to assess the Virginia Occupational Safety and Health (VOSH) State Plan’s activities for Fiscal Year (FY) 2016, and its progress in resolving outstanding findings and recommendations from previous FAME reports.

VOSH continues to be effective in its effort to protect Virginia’s workers. The most recent data, obtained from the latest Bureau of Labor Statistics (BLS) available, reflects an overall Total Recordable Case Rate (TRCR) of non-fatal occupational injuries and illnesses of 2.6 for Virginia. When compared to the national rate of 3.3, there is a difference of -24 percent. This rate represents all industries, including state and local government workplaces. Furthermore, VOSH’s TRCRs in private industry, manufacturing, construction, and state and local government all follow the same trend and are consistently below the national average.

The chart below depicts the TRCR per industry for Virginia in comparison to the national rate. The percentage listed below each industry displays the percent difference between VOSH and the national TRCR.



VOSH investigated 31 work-related fatalities in FY 2016 – one less than the 32 reported in FY 2015. Virginia retains its high ranking in the national rate of occupational safety and health inspections per number of employers. During this evaluation period, VOSH conducted 2,391 inspections in the private sector and state and local government workplaces. VOSH was directly responsible for identification and correction of 16,087 instances of workplace hazards. The majority of violations (69%) were issued as serious. Twelve (12) violations were issued as willful.

Early in FY 2017, VOSH announced a joint comprehensive settlement agreement with Goodyear Tire & Rubber Company and the United Steelworkers (USW) with respect to VOSH's investigations of four worker fatalities that occurred at Goodyear's Danville, VA plant over a one year period. In the settlement agreement, Goodyear agreed to abate hazards identified during the 11 VOSH inspections conducted over the last 18 months and made a commitment to submit an application to Virginia's Voluntary Protection Program (VPP).

In FY 2016, VOSH and the Associated General Contractors of Virginia (AGCVA) established a strategic partnership entitled "Virginia BEST" (Building Excellence in Safety, Health and Training) to improve practices, compliance efforts, and accident prevention on construction worksites by recognizing exemplary construction employers. This was showcased on OSHA's public webpage.

Even though VOSH is responsive to OSHA's FAME report findings and continuously works to improve the program, there are some measures that fell outside the further review level or negotiated standards.

B. State Plan Introduction

The Virginia Department of Labor & Industry (DOLI) is the state agency designated by the governor to administer the VOSH State Plan. The VOSH State Plan was initially approved on September 28, 1976 pursuant to Section 18 of the Occupational Safety and Health Act. The State Plan achieved operational status on October 1, 1981. On August 21, 1984, a notice was published in the Federal Register certifying that the state had completed all developmental commitments contained in the Plan. Final approval of the Virginia State Plan was published in the Federal Register on November 30, 1988.

VOSH operates within DOLI and is headquartered in Richmond, Virginia with field offices located in Abingdon, Lynchburg, Manassas, Norfolk, Richmond, Roanoke, Verona, and Winchester. In FY 2016, VOSH operated under C. Ray Davenport, Commissioner of DOLI, and William Burge, Assistant Commissioner. Ronald Graham is VOSH's health director, Jennifer Rose is VOSH's safety director, and Jay Withrow is VOSH's director of the Division of Legal Support (DLS). The Safety, Health, and Consultation Services, as well as DLS, Office of Research and Analysis (ORA), which handles BLS surveys, and VPP directors are under the direction of the Assistant Commissioner who, in turn, reports to the Commissioner.

VOSH consists of two major units: compliance and consultation services. The compliance unit inspects places of work; issues citations and penalties for violations of established occupational standards; and responds to fatalities, incidents, and worker complaints about workplace safety and health hazards. The consultation services unit provides assistance to Virginia's state and local government employers and private sector employers to voluntarily comply with applicable requirements without the issuance of citations and penalties. The VOSH consultation program provides free on-site surveys and technical assistance to Virginia businesses, especially small businesses in high-hazard industries and to state and local government employers under the State Plan grant. VOSH also provides free educational and training programs for employers and workers to assist them in achieving voluntary compliance.

DOLI offers three voluntary programs to promote and recognize exceptional safety and health efforts. The Virginia Safety and Health Achievement Recognition Program (SHARP) recognizes small employers who develop and implement exemplary safety and health management systems. Virginia's VPP recognizes primarily larger employers who develop and implement exemplary safety and health management systems. As mentioned above, Virginia's Building Excellence in Safety, Health and Training (BEST), is a strategic partnership designed to encourage and recognize AGCVA members who voluntarily implement highly effective safety and health management systems to benefit construction workers and reduce or eliminate injuries, illnesses, and fatalities on construction sites in Virginia.

The Virginia State Plan covers 3.8 million workers and 258,288 employers in the state of Virginia. It applies to all state and local government worksites and private sector places of employment in Virginia, with the exception of federal workers, the United States Postal Service, and private sector maritime. In addition, it does not cover federal military facilities and other federal territories where the state has ceded jurisdiction to the federal government.

The majority of VOSH standards are identical to OSHA standards. However, VOSH has enacted unique regulations covering tree trimming, telecommunication industries, overhead high voltage line safety, and fall protection in steel erection. It also has unique regulations in reverse signal operation in construction and general industry; compliance with manufacturer's instruction for vehicles; machinery, tools and equipment in general industry; construction; maritime; and agriculture.

The VOSH Administrative Regulations Manual (ARM), 16 VAC 25-60-270, et seq., set forth rules defining the applicability of occupational safety and health standards in Virginia. Virginia has also codified in regulation the Multi-Employer Worksite policy and Multi-Employer Worksite defense. The regulation provides that general contractors and prime subcontractors can be cited for certain hazards as "controlling employers." Virginia has also codified the Employee Misconduct Defense but provides that the defense does not apply to supervisory personnel having control of the worksite. In these instances, OSHA either does not have a comparable standard addressing the specific hazard or condition, or if it does, the federal standard differs substantially.

The VOSH ARM outlines the contest process for employers. Section 16 VAC 25-60-270 provides regulatory guidelines to an employer to whom a citation or proposed penalty was issued as the result of a VOSH inspection or investigation. Upon receipt of a notice of contest, the Commissioner will attempt to resolve the matter by settlement. If the matter is not settled or it is determined a settlement is not probable, the Commissioner will initiate judicial proceedings by referring the contested issues to the appropriate Commonwealth Attorney. Virginia does not use administrative law judges or the review commission system to handle litigated cases. Virginia is unique among the State Plans by using local circuit courts and prosecutors (Commonwealth Attorneys) to litigate contested cases. Department attorneys may, on a case by case basis, be appointed by the circuit court to represent VOSH in contested cases as Special Assistant Commonwealth's Attorneys.

The final determination on whether to appeal an adverse judicial decision will be made by the Commissioner after consultation with the Office of the State Attorney General and/or the applicable Commonwealth Attorney. Appeals from Circuit Court may be heard by the Virginia Court of Appeals. The Department has 30 days to file an appeal with the Virginia Court of Appeals.

The table below shows VOSH’s funding levels over the past five years (from FY 2012 through FY 2016):

VOSH’s FY 2012-2016 Funding History					
Fiscal Year	Federal Award (\$)	State Plan Match (\$)	100% State Funds (\$)	Total Funding (\$)	% of State Plan Contribution
2016	\$3,921,300	\$3,921,300	\$0	\$7,842,600	50%
2015	\$3,903,800	\$3,903,800	\$0	\$7,807,600	50%
2014	\$3,903,800	\$3,903,800	\$0	\$7,807,600	50%
2013	\$3,881,500	\$3,881,500	\$0	\$7,763,000	50%
2012	\$3,319,800	\$3,319,800	\$0	\$6,639,600	50%

In their FY 2016 grant application, VOSH allocated for 57.88 enforcement staff and had 45.99 on board; they allocated for 1.5 safety and health consultants and had .5 on board. They had one whistleblower investigator on board and two compliance assistance specialists.

C. Data and Methodology

OSHA established a two-year cycle for the FAME process. This is the follow-up year and as such, OSHA did not perform an on-site evaluation and case file review. This strategy allows the State Plan to focus on correcting deficiencies identified in the most recent comprehensive FAME. As well as through the FAME, OSHA continues to monitor VOSH’s activity and progress through quarterly meetings with the Norfolk Area Director, SAMM reports, evaluation of the SOAR, and during other interactions when the need arises.

D. Findings and Observations

This follow-up FAME report contains one finding and three observations. There was one observation identified in FY 2016. The FY 2016 State Activity Mandated Measure (SAMM) data reflected that VOSH maintained only 53.25% of issued penalty during case settlement (27% difference from the further review level). VOSH is currently conducting an internal evaluation and has been sharing their results with OSHA. A voluntary corrective action strategy initiated by VOSH, independent of the formal corrective action plan required for FAME findings, will be completed in FY 2017. OSHA will follow-up on the status during the comprehensive FAME in FY 2017.

There was one finding and two observations discussed in the FY 2015 FAME. The finding indicated that VOSH case files did not contain worker interviews in accordance with the VOSH

Field Operations Manual (FOM). In response, VOSH promptly provided retraining to regional directors and compliance officers. The finding will remain open until case file review during the FY 2017 comprehensive FAME. The two observations from FY 2015 were also associated with case file documentation. In FY 2015, in less than half of the cases reviewed, VOSH did not maintain the OSHA 300 logs in the case file, and in less than quarter of the cases reviewed, VOSH did not maintain documentation of the final next-of-kin (NOK) letter. Since an on-site case file review was not conducted in FY 2016, OSHA will continue to monitor these two issues regarding case file documentation during the FY 2017 comprehensive FAME.

Detailed information and SAMM data related to this new observation, as well as VOSH's plan to address this issue, may be found in *Section II.C: Highlights from the State Activity Mandated Measures (SAMMs)*.

A complete summary of the FY 2015 findings and observations and VOSH's progress in addressing the findings and observations may be found in *Section III: Assessment of State Plan Corrective Actions*. A list of the observations may be found in *Appendix B: Observations Subject to New and Continued Monitoring*. A list of previous findings and recommendations may be found in *Appendix C: Status of FY 2013 Findings and Recommendations*.

II. Assessment of State Plan Performance

A. Major New Issues

Maximum Penalty Increase

With the passage of the Bipartisan Budget Bill on November 2, 2015, OSHA raised its maximum penalties effective August of 2016 and again increased penalties according to the Consumer Price Index (CPI) in January of 2017. As required by law, OSHA will continue to raise maximum penalties each year according to the CPI. State Plans are required to adopt both the catch-up increase and annual increase.

In March 2017, Virginia passed the legislative change to require the catch-up increase and an annual increase linked to the CPI. VOSH is anticipating adoption of the increased penalties on July 1, 2017. The new Virginia bill states:

“Beginning in 2018, the Commissioner annually shall adjust the maximum civil penalties stated in subsections G through J each year by the percentage increase, if any, in the United States Average Consumer Price Index for all Urban Consumers (CPI-U), as published by the Bureau of Labor Statistics of the United States Department of Labor, from its monthly average for the previous calendar year. The amount of each adjustment to the maximum civil penalties shall be rounded to the nearest whole dollar. The adjustments to the maximum civil penalties shall be effective on each August 1. If the CPI-U is discontinued or revised, such other historical index or computation approved by the Commissioner shall be used for purposes of this section that would obtain substantially the same result as would have been obtained if the CPI-U had not been discontinued or revised.”

The first federal OSHA CPI adjustment to the Bipartisan Budget Bill, enacted on January 13, 2017 and becoming effective for those states under OSHA direct enforcement on January 15, 2017, was not adopted in Virginia. At the time, the 2017 Virginia Legislature was currently in session when this federal CPI change was made; therefore, it was not possible to alter Virginia's legislative bill. VOSH's first CPI adjustment will become effective on August 1, 2018, but will not include the first federal OSHA CPI adjustment. Federal OSHA's second CPI adjustment to the Bipartisan Budget Bill will be adopted by OSHA in January 2018.

Therefore, between OSHA's adoption of the second CPI adjustment in January 2018 and July 31, 2018, VOSH maximum penalties will be below OSHA maximum penalties by the CPI adjustment factor (1.01636) adopted by OSHA in January 2017, and the adjustment factor which will be adopted by OSHA in January 2018. By August 1, 2018 – when the first VOSH CPI adjustment will be adopted – the maximum penalty will differ only by the 2017 adjustment factor as it was not adopted by VOSH. The third federal adjustment (adopted by OSHA in January 2019) will become effective on August 1, 2019 in Virginia. Each following year the adjustment will be increased in this manner. Consequently, VOSH maximum penalties will always be less than OSHA's by the 2017 CPI adjustment factor and the most recently adopted CPI adjustment factor for approximately 6.5 months of the year, as well as by the 2017 adjustment factor for the remainder of the year.

Goodyear Tire Settlement

On February 10, 2017, VOSH announced a joint comprehensive settlement agreement with Goodyear Tire & Rubber Company and the United Steelworkers (USW) with respect to VOSH's investigations of four worker fatalities that occurred at Goodyear's Danville plant over a one year period. Goodyear's Danville facility manufactures aviation and specialty tires, covers 56 acres and employs approximately 2,200 workers. Over an 18 month period, VOSH conducted four fatality investigations, two non-fatal accident investigations, three worker complaint inspections, and comprehensive safety and health inspections at the site. The comprehensive settlement entered into by all parties resolved all of the open VOSH cases and investigations conducted by VOSH during the 18 month period. Goodyear has agreed to abate hazards identified during each of the inspections and has made a commitment to submit an application to Virginia's VPP.

Virginia BEST Program

VOSH and the AGCVA signed a strategic partnership agreement on October 13, 2016, encouraging and recognizing AGCVA members who voluntarily implement highly effective safety and health management systems to benefit construction workers and reduce or eliminate injuries, illnesses, and fatalities on construction sites in Virginia. The core elements of the Virginia BEST Program reflect VPP requirements.

Virginia BEST provides three levels of participation. The basic achievement level (Level One) is provided to applicants that develop and implement an effective safety and health management system that meets VOSH regulatory requirements. The intermediate achievement level (Level Two) is provided to applicants having an established safety and health management system that

exceeds VOSH regulatory requirements and the highest achievement level (Level Three) is for applicants having an exceptional safety and health management system that serves as a model for other construction employers. Participants that achieve Level Three recognition receive an exemption from planned construction inspections, allowing VOSH to focus its resources on high injury and illness rate employers.

B. Assessment of State Plan Progress in Achieving Annual Performance Goals

This section provides an assessment of VOSH’s progress in achieving its annual performance goals. FY 2016 was the fourth year of VOSH’s five-year strategic plan which encompasses FY 2013-2017. The following tables summarize VOSH’s strategic goals, the outcome and performance goals, the strategies for achieving these goals, the performance indicators, the latest results available, and the conclusions, including whether VOSH met the goal.

Goal 1.1A

Strategic Goal	1	Reduce Occupational Injuries, Illnesses and Fatalities through Direct Intervention		
Outcome Goal and Performance Goal	1.1	Reduce the rate of workplace injuries and illnesses.		
	1.1A	By 2016, decrease injuries and illnesses per 100 workers in the workplace by 5.00%.		
Strategy	<ul style="list-style-type: none"> Analyze data to better identify establishments for inspections. Research new sources for information to identify best targets. Inspect worksites in non-programmed areas through rapid response to complaints, referrals and utilizing multi-employer policy. Inspect 5% of total inspections as state and local government worksites. Analyze results and effectiveness of compliance inspections to determine their impact on fatalities, injury and illness rates. Identify and implement adjustments that will increase the impact of compliance inspections. Analyze the effectiveness of guidance and standards and identify needed changes. 			
Performance Indicator	2006 Total Recordable Injury and Illness Baseline. The performance data for this measure for 2016 has not been released by BLS yet, so the most recent data was utilized for 2015.			
FY 2015 Results	The Total Recordable Injury and illness rate for CY15 is 2.6 per 100 workers. http://www.bls.gov/iif/oshwc/osh/os/pr156va.pdf			
Conclusion	Baseline	2015 Target		2015 Result
	2006 TRII	4.0		2.6
	VOSH met this goal.			

Goal 1.1B

Strategic Goal	1	Reduce Occupational Injuries, Illnesses and Fatalities through Direct Intervention	
Outcome Goal and Performance Goal	1.1	Reduce the rate of workplace injuries and illnesses.	
	1.1B	Annually initiate investigations of 100% of worker complaints within one working day or conduct an on-site inspection within five working	
Strategy	Promptly and accurately investigate a workplace complaint within one workday or conduct an inspection within five workdays in an effort to reduce injuries and illnesses.		
Performance Indicator	Percent of worker complaints that have an investigation initiated within one working day or an on-site inspection initiated within five working		
FY 2015 Results	100% of worker complaints had an investigation initiated within one working day or an on-site inspection initiated within five working days.		
Conclusion	2016 Target		2016 Result
	100%		100%
	VOSH met this goal.		
Comments	VOSH offers workers the choice between two approaches to handle their complaints: either VOSH will conduct an investigation by contacting the employer via phone/fax to inform them of the complaint, with a response required back from the employer within five work days; or VOSH will conduct an on-site inspection.		

Goal 1.2A

Strategic Goal	1	Reduce Occupational Injuries, Illnesses and Fatalities through Direct Intervention	
Outcome Goal and Performance Goal	1.2	Reduce the rate of workplace fatalities.	
	1.2A	By 2016 decrease fatalities in the workplace per 100,000 workers 5%.	
Strategy	<ul style="list-style-type: none"> Analyze data to better identify establishments for inspections. Research new sources for information to identify best targets. Inspect worksites in non-programmed areas. Inspect identified state and local government worksites. Analyze results and effectiveness of compliance inspections to determine their impact on fatalities, injury and illness rates. Identify and implement adjustments that will increase the impact of compliance inspections. Analyze the effectiveness of guidance and standards and identify needed changes. 		

Performance Indicator	Workplace fatality rate in Virginia per 100,000 workers The performance data for this measure for CY2016 has not been released by BLS yet, but fatality counts are provided in the meantime. Baseline rate of 4.2 fatalities per 100,000 workers in 2006.		
FY 2015 Results	The number of total fatal injuries in Virginia decreased in CY2015, to 106 from 116 in CY 2014. 2014 CFOI: http://www.bls.gov/iif/oshwc/foi/tgs/2014/iiffw51.htm 2015 CFOI: https://www.bls.gov/iif/oshwc/foi/tgs/2015/iiffw51.htm		
Conclusion	Baseline	2016 Target	2016 Result
	4.2	3.8	2.8
	VOSH met this goal.		

Goal 1.2B

Strategic Goal	1	Reduce Occupational Injuries, Illnesses and Fatalities through Direct Intervention
Outcome Goal and Performance Goal	1.2	Reduce the rate of workplace fatalities.
	1.2B	Annually initiate inspections of 100% of fatalities and catastrophes within one working day of notification.
Strategy	Promptly initiate fatality and catastrophe investigations within one workday.	
Performance Indicator	Percent of inspections of fatalities and catastrophes initiated within one working day of notification.	
FY 2015 Results	100% of inspections of fatalities and catastrophes were initiated within one working day of notification.	
Conclusion	2016 Target	2016 Result
	100%	94.12%
	VOSH did not meet this goal due to extenuating circumstances. The two cases where an inspection was not initiated within one-day included one where the fatality site was a personal residence and making contact with the employer was difficult. The second involved a non-fatal workplace incident that was inspected which later turned into a fatality investigation. The inspection was opened several days prior to the victim's death. There is no way to indicate this in OIS (this is a known coding issue which has been addressed by OSHA and should not be an issue next year).	

Goal 1.3A

Strategic Goal	1	Reduce Occupational Injuries, Illnesses and Fatalities through Direct Intervention	
Outcome Goal and Performance Goal	1.3	Reduce the rate of workplace injuries and illness in worksites.	
	1.3A	Reduce the rate of workplace injuries and illnesses in work sites through participation in VPP.	
Strategy	Increase the number of employers participating in VPP.		
Performance Indicator	Reduce the rate of workplace injuries and illnesses in work sites through participation in VPP. National averages show that VPP sites are routinely 50% below normal workplace injuries and illnesses for their respective industry sectors.		
FY 2015 Results	The average Virginia VPP worksite had a Total Case Incident Rate (TCIR) 54.64% below the BLS national average for its industry (three-year rolling national average, 2012-2014).		
Conclusion	2015 Target		2015 Result
	50% Below		54.64% Below
	VOSH met this goal.		
Comments	There are 44 active VPP sites in Virginia: 43 STAR sites and one Merit site.		

Goal 2.1A

Strategic Goal	2	Promote a safe and healthful workplace culture through worker involvement in all aspects of safety and health	
Outcome Goal and Performance Goal	2.1	Enhance worker involvement in all aspects of safety and health.	
		One hundred percent (100%) of VOSH on-site activities (e.g., inspections) will include a worker involvement component annually, such as interviews, informal conferences, and walk-around inspections.	
Strategy	Ongoing monitoring of inspection data.		
Performance Indicator	Observed data in OIS/IMIS review.		
FY 2015 Results	Worker involvement through interviews, informal conferences and walk-around inspections as reviewed by regional safety and health directors at 100%.		
Conclusion	2016 Target		2016 Result
	100%		100%
	VOSH met this goal.		

C. Highlights from the State Activity Mandated Measures (SAMMs)

The SAMM report consists of performance indicators, the expected performance reference or standard, and the State Plan’s performance data. The State Plan’s performance is compared to the agreed upon criteria established by regulation, grant agreement, negotiation with OSHA, or national data.

VOSH's average current penalty per serious violation in private sector (SAMM 8: 1-250+ workers) was \$1,503.40 in FY 2016. The Further Review Level is -25% of the national average (\$2,279.03) which equals \$1,709.27. Penalties are one component of effective enforcement, and State Plans are required to adopt penalty policies and procedures that are "at least as effective" (ALAE) as those contained in OSHA's FOM, which was revised on August 2, 2016, to include changes to the penalty structure in Chapter 6 – Penalty and Debt Collection. OSHA will continue to explore ALAE analysis of State Plan penalty structures to include evaluation of average current penalty per serious violation data.

The FY 2016 SAMM data reflected that VOSH maintained only 53.25% of issued penalty during case settlement, which is below the further review level of 59.38% (-15% of the national average of 69.56%)(SAMM 12). VOSH attributes some of this discrepancy to the larger percentage of small employers within its jurisdiction. VOSH often acknowledges and considers the costs of abatement to encourage future compliance at settlement conferences and has implemented a particularly rigorous abatement verification process to ensure that employers have complied with the settlement agreement. VOSH often strives to develop innovative settlement agreements with employers in exchange for penalty reductions. VOSH has a litigation arrangement which differs from OSHA. Contested cases in Virginia are assigned to the Commonwealth Attorney, as opposed to going to a dedicated review tribunal. This system introduces additional uncertainty and inconsistency in the disposition of contested cases.

VOSH is currently conducting an internal evaluation of penalty retention and has been providing the results to OSHA. A final corrective action strategy, a separate effort than the one OSHA uses to track the status and progress of FAME findings each year, will be completed and collaboratively reviewed with OSHA in FY 2017. OSHA will conduct a preliminary case file review during the comprehensive FY 2017 FAME. A final review and evaluation, allowing for at least one full year of case files under the newly developed corrective action strategy, will be conducted. However, it is expected that VOSH may encounter new settlement challenges due to new legislation adopting OSHA's interim final rule on maximum penalty increases which is expected to become effective July 1, 2017. It is anticipated that the newly developed settlement plan may need to be adjusted as VOSH tracks and analyzes the impact of the maximum penalty increase in the future.

VOSH consistently meets or exceeds a majority of the mandated measures. Noteworthy measures are listed below:

- **SAMM 1a - Average number of work days to initiate complaint inspections:** VOSH initiated complaint inspections within 2.30 days versus the further review level of five days.
- **SAMM 2a – Average number of work days to initiate complaint investigations:** VOSH initiated complaint investigations within 1.02 days versus the further review level of three days.

- **SAMM 11 – Average lapse time for safety cases:** VOSH initiated and completed safety inspections within an average of 44.12 days – approximately one day faster than the national rate of 45.16 days, and far exceeding the further review level of 36.13 days.
- **SAMM 11 – Average lapse time for health cases:** VOSH initiated and completed health inspections within an average of 37.38 days – approximately 20 days faster than the national rate of 57.28 days and far exceeding the further review level of 68.74 days.

The complete FY 2016 SAMM is located in Appendix D of this report.

III. Assessment of State Plan Corrective Actions

There was one finding documented in the FY 2015 FAME report. The finding indicated that VOSH case files did not contain worker interviews in accordance with the VOSH Field Operations Manual (VOSH). In response, VOSH promptly provided retraining to regional directors and compliance officers. VOSH safety and health compliance directors have been conducting periodic reviews to ensure worker interview documentation in the case files adheres to the procedures outlined in the FOM. VOSH is awaiting verification of corrective action through case file review during the FY 2017 comprehensive FAME.

FY 2015 Finding:

Finding FY 2015-01: Case files were lacking the appropriate documentation in the form of worker interviews. Documentation did not meet VOSH interview requirements in at least 57 of 132 (43%) of the cases reviewed. VOSH retained 29% of the penalty in cases which did not meet the VOSH interview documentation requirements. Adequate evidence is lacking in the case files to support violations and maintain associated penalties.

Recommendation: VOSH should ensure that all case files (where possible) include documentation in the form of worker interviews to meet the interview documentation requirements in the VOSH FOM, and to provide adequate evidence to support violations and maintain associated penalties.

Current Status: VOSH promptly provided retraining to regional directors and compliance officers. VOSH safety and health compliance directors have been conducting periodic reviews to ensure worker interview documentation in the case files adheres to the procedures outlined in the FOM. VOSH is awaiting verification of corrective action through case file review during the FY 2017 comprehensive FAME.

FY 2015 Observations:

There were two observations documented in the FY 2015 FAME report. The two observations were also associated with documentation in case files. In FY 2015, in less than half of the cases reviewed, VOSH did not maintain the OSHA 300 logs in the case file, and in less than a quarter of the cases reviewed, VOSH did not maintain documentation of the final next-of-kin letter. Since a case file review was not conducted in FY 2016 due to this being a follow-up year, OSHA

will verify that the two issues regarding case file documentation showed improvement during the FY 2017 comprehensive FAME.

Observation FY 2015-OB-01: In 48% of case files reviewed, where the employer employed 10 or more workers, the OSHA 300 logs were not maintained in the case file.

Federal Monitoring Plan: In FY 2017, case files will be selected randomly and reviewed to determine if this item was addressed.

Current Status: Continued – OSHA will continue to evaluate this issue in the case file review for the FY 2017 comprehensive FAME.

Observation FY 2015-OB-02: In 23% of the fatality case files reviewed, the case file did not contain documentation that the final next-of-kin letter with the inspection results was sent.

Federal Monitoring Plan: In FY 2017, case files will be selected randomly and reviewed to determine if this item was addressed.

Current Status: Continued – OSHA will continue to evaluate this issue in the case file review for the FY 2017 comprehensive FAME.

New FY 2016 Observation:

In addition, OSHA identified one new observation in FY 2016.

Observation FY 2016-OB-03: VOSH maintained 53.25% of issued penalty during case settlement while the one-year national was maintained at 69.86%.

Federal Monitoring Plan: VOSH should complete the current internal evaluation of settlement procedures and consider implementation of settlement guidance for VOSH staff.

Current Status: New

Appendix A – New and Continued Findings and Recommendations
FY 2016 Virginia State Plan Follow-up FAME Report

New and Continued Findings and Recommendations			
FY 2016 Virginia State Plan Follow-up FAME Report			
FY 2016-#	Finding	Recommendation	FY 2015-#
FY 2016-01	<p><i>Case File Documentation/Worker Interviews</i></p> <p>Case files were lacking the appropriate documentation in the form of worker interviews. Documentation did not meet VOSH interview requirements in at least 57 of 132 (43%) of the cases reviewed. VOSH retained 29% of the penalty in cases which did not meet the VOSH interview documentation requirements. Adequate evidence is lacking in the case files to support violations and maintain associated penalties.</p>	<p>VOSH should ensure that all case files (where possible) include documentation in the form of worker interviews to meet the interview documentation requirements in the VOSH FOM, and to provide adequate evidence to support violations and maintain associated penalties.</p> <p><i>Corrective action complete, awaiting verification.</i></p>	FY 2015-01

Appendix B – Observations Subject to New and Continued Monitoring
FY 2016 Virginia State Plan Follow-up FAME Report

Observations Subject to New and Continued Monitoring FY 2016 Virginia State Plan Follow-Up FAME Report				
Observation # FY 2016-OB-#	Observation# FY 20XX-OB-#	Observation	Federal Monitoring Plan	Current Status
FY 2016-OB-01	FY 2015-OB-01	<i>Case File Documentation</i> In 48% of case files reviewed, where the employer employed 10 or more workers, the OSHA 300 logs were not maintained in the case file.	In FY 2017, case files will be randomly selected and reviewed to determine if this item was addressed.	Continued
FY 2016-OB-02	FY 2015-OB-02	<i>Case File Documentation</i> In 23% of the fatality case files reviewed, the case file did not contain documentation that the final next-of-kin letter with the inspection results was sent.	In FY 2017, case files will be randomly selected and reviewed to determine if this item was addressed.	Continued
FY 2016-OB-03		<i>Penalty Retention</i> VOSH maintained 53.25% of issued penalty during case settlement while the one-year national was maintained at 69.86%.	VOSH should complete the current internal evaluation of penalty settlement procedures and consider implementation of settlement guidance for VOSH staff.	New

Appendix C - Status of FY 2015 Findings and Recommendations
FY 2016 Virginia State Plan Follow-up FAME Report

Status of FY 2015 Findings and Recommendations FY 2016 Virginia State Plan Follow-up FAME Report					
FY 2015-#	Finding	Recommendation	State Plan Response/Corrective Action	Completion Date	Current Status and Date
FY 2015-01	<p>Case files were lacking the appropriate documentation in the form of worker interviews. Documentation did not meet VOSH interview requirements in at least 57 of 132 (43%) of the cases reviewed. VOSH retained 29% of the penalty in cases which did not meet the VOSH interview documentation requirements. Adequate evidence is lacking in the case files to support violations and maintain associated penalties.</p>	<p>VOSH should ensure that all case files (where possible) include documentation in the form of worker interviews to meet the interview documentation requirements in the VOSH FOM, and to provide adequate evidence to support violations and maintain associated penalties.</p>	<p>VOSH provided two training sessions on the VOSH FOM interview documentation requirements to VOSH staff on February 24-25, 2016 and April 13, 2016. In addition, VOSH safety and health compliance directors are conducting periodic reviews to ensure case files adhere to VOSH FOM requirements to support violations and maintain associated penalties.</p>	Not Applicable	<p>Awaiting Verification</p> <p>September 30, 2016</p>

Appendix D - FY 2016 State Activity Mandated Measures (SAMM) Report
FY 2016 Virginia State Plan Follow-up FAME Report

Fiscal Year 2016 is the first year since the transition from the NCR (OSHA’s legacy data system) began that all State Plan enforcement data has been captured in OSHA’s Information System (OIS). All State Plan and federal whistleblower data continues to be captured in OSHA’s WebIMIS System. Unless otherwise noted, the data contained in this Appendix D is pulled from the State Activity Mandated Measures (SAMM) report and State Plan WebIMIS report run on November 14, 2016, as part of OSHA’s official end-of-year data runs. The further review levels for SAMMs 5, 8, 9, 11, 12, 15, and 17 have been negotiated to rely on a three-year national average. However, due to the recent transition to OIS, the further review levels for these SAMMs will rely on a one-year national average for one more year.

U.S. Department of Labor				
Occupational Safety and Health Administration				
State Plan Activity Mandated Measures (SAMMs)				
State Plan: Virginia			FY 2016	
SAMM Number	SAMM Name	State Plan Data	Further Review Level	Notes
1a	Average number of work days to initiate complaint inspections (state formula)	2.30	5	Further review level is negotiated by OSHA and the State Plan.
1b	Average number of work days to initiate complaint inspections (federal formula)	1.07	N/A	This measure is for informational purposes only and is not a mandated measure.
2a	Average number of work days to initiate complaint investigations (state formula)	1.02	3	Further review level is negotiated by OSHA and the State Plan.
2b	Average number of work days to initiate complaint investigations (federal formula)	0.26	N/A	This measure is for informational purposes only and is not a mandated measure.
3*	Percent of complaints and referrals responded to within one workday (imminent danger)	0%	100%	Further review level is fixed for all State Plans.

Appendix D - FY 2016 State Activity Mandated Measures (SAMM) Report
FY 2016 Virginia State Plan Follow-up FAME Report

SAMM Number	SAMM Name	State Plan Data	Further Review Level	Notes
4	Number of denials where entry not obtained	0	0	Further review level is fixed for all State Plans.
5	Average number of violations per inspection with violations by violation type	SWRU: 1.62	+/- 20% of SWRU: 1.87	Further review level is based on a one-year national rate.
		Other: 0.63	+/- 20% of Other: .99	
6	Percent of total inspections in state and local government workplaces	5.40%	+/- 5% of 4.99%	Further review level is based on a number negotiated by OSHA and the State Plan through the grant application.
7	Planned v. actual inspections – safety/health	S: 1,787	+/- 5% of S: 2,048	Further review level is based on a number negotiated by OSHA and the State Plan through the grant application.
		H: 583	+/- 5% of H: 557	
8	Average current serious penalty in private sector - total (1 to greater than 250 workers)	\$1,503.40	+/- 25% of \$2,279.03	Further review level is based on a one-year national rate.
	a. Average current serious penalty in private sector (1-25 workers)	\$970.47	+/- 25% of \$1,558.96	Further review level is based on a one-year national rate.
	b. Average current serious penalty in private sector (26-100 workers)	\$1,626.64	+/- 25% of \$2,549.14	Further review level is based on a one-year national rate.
	c. Average current serious penalty in private sector (101-250 workers)	\$2,396.47	+/- 25% of \$3,494.20	Further review level is based on a one-year national rate.
	d. Average current serious penalty in private sector (greater than 250 workers)	\$3,444.61	+/- 25% of \$4,436.04	Further review level is based on a one-year national rate.
9**	Percent in compliance	S: 43.35%	+/- 20% of S: 28.85%	Further review level is based on a one-year national rate.
		H: 54.15%	+/- 20% of H: 35.68%	

Appendix D - FY 2016 State Activity Mandated Measures (SAMM) Report
FY 2016 Virginia State Plan Follow-up FAME Report

SAMM Number	SAMM Name	State Plan Data	Further Review Level	Notes
10	Percent of work-related fatalities responded to in one workday	92.31%	100%	Further review level is fixed for all State Plans.
11	Average lapse time	S: 44.12	+/- 20% of S: 45.16	Further review level is based on a one-year national rate.
		H: 37.38	+/- 20% of H: 57.28	
12	Percent penalty retained	53.25%	+/- 15% of 69.86%	Further review level is based on a one-year national rate.
13	Percent of initial inspections with worker walk around representation or worker interview	99.75%	100%	Further review level is fixed for all State Plans.
14	Percent of 11(c) investigations completed within 90 days	33%	100%	Further review level is fixed for all State Plans.
15	Percent of 11(c) complaints that are meritorious	21%	+/- 20% of 24%	Further review level is based on a three-year national average.
16	Average number of calendar days to complete an 11(c) investigation	145	90	Further review level is fixed for all State Plans.
17	Percent of enforcement presence	1.63%	+/- 25% of 1.26%	Further review level is based on a one-year national rate.

*SAMM Number 3 – VOSH received an anonymous complaint which was initially deemed as too vague and unsubstantiated to process. The complaint was entered and coded as “invalid.” Late the following day, the complainant sent a YouTube video of the operation. Upon review of the video, the alleged violation description was rewritten, the complaint was coded as imminent danger and both a safety and health inspection were initiated early the next morning as the business closed at 5 pm the previous day.

**SAMM Number 9 – Historically, VOSH’s in-compliance rates for both safety and health inspections typically fall above the national rate. VOSH has several Local Emphasis Programs (LEPs) which instruct CSHOs to initiate an on-site inspection when certain inherently dangerous hazards, such as but not limited to: falls, trenching and excavation, and work around overhead high voltage lines – regardless of whether or not a violation is observed. Unlike OSHA, VOSH normally opens inspections with all contractors and subcontractors on a multi-employer worksite planned inspection – regardless of whether a violation is noted during the walk-around inspection or not. VOSH also responds to most asbestos and lead complaints with an on-site inspection. When accounting for these procedural differences, VOSH’s in-compliance rates fall within 20% of the national rate.