

# **FY 2017 Comprehensive Federal Annual Monitoring Evaluation (FAME) Report**

## **Virginia Occupational Safety and Health (VOSH)**



**Evaluation Period: October 1, 2016 – September 30, 2017**

Initial Approval Date: September 28, 1976  
State Plan Certification Date: August 21, 1984  
Final Approval Date: November 30, 1988

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## I. Executive Summary

The purpose of this comprehensive Federal Annual Monitoring Evaluation (FAME) report is to assess the Virginia Occupational Safety and Health (VOSH) Program's performance during Fiscal Year (FY) 2017, and its progress in resolving the one finding that was identified in last year's follow-up FAME report. The evaluation for the FY 2017 reporting period included a comprehensive review of safety and health inspection case files randomly selected and obtained from the OSHA Information System (OIS). In addition to these case files, whistleblower case files obtained from the Web Integrated Management Information System (WebIMIS) were also reviewed.

VOSH is the agency responsible for protecting 3.8 million Virginia workers from workplace safety and health hazards and covering 258,000 employers. VOSH's efforts continue to be very effective in safeguarding workers – the data speaks for itself. Recent data reflects an overall Total Recordable Case Rate (TRCR) of nonfatal occupational injuries and illnesses of 2.8 for Virginia (13.3% lower than the national TRCR). Virginia's TRCRs in private industry, manufacturing, and government are also below the national average. Similarly, Virginia's total Days Away Restricted Transfer (DART) case rate was 12.5% lower than the national rate.

VOSH continues to have significant enforcement presence as evidenced by the 2,342 inspections it conducted in the private workplaces and state and local government workplaces. These inspections resulted in VOSH issuing 4,819 violations and identifying and correcting 18,565 instances of workplace hazards. VOSH investigated 31 fatalities in FY 2017 – eight less than in FY 2016.

Early in FY 2017, VOSH announced a joint comprehensive settlement agreement with the 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. This joint settlement agreement requires the company to correct and abate all identified hazards at a worksite. The settlement agreement also allows for VOSH to conduct periodic follow-up inspections.

On June 2nd, 2015, the Commissioner of Labor and Industry announced a new policy to address Worker Misclassification in VOSH cases. This policy improves protections for workers because misclassification can result in payroll fraud, reduced workers' compensation and unemployment insurance protections and violations of the tax code and other laws designed to protect workers. OSHA showcased VOSH's initiative on its public webpage. During FY 2017, 56 referrals were made to the Department of Professional and Occupational Regulations for potential misclassification issues.

VOSH consistently seeks to improve its program and actively engages with OSHA by sharing ideas, considering suggestions, and implementing recommendations when appropriate. Even though VOSH is responsive to OSHA's FAME findings and continuously works to improve the program, there were some measures with outliers from the Further Review Level (FRL) or negotiated standards. Outliers, where they exist, are frequently the result of unique procedures

which are not captured by the algorithms used to calculate the State Plan data. VOSH's prompt corrective action to address last year's finding was verified as completed by OSHA during the comprehensive case file review. There were no new findings identified during this FAME. Two of three previously identified open observations were properly addressed by VOSH and closed. In summary, VOSH had no findings and one continued observation as a result of the FY 2017 FAME. Appendix B of this report describes the one observation and the related federal monitoring plan. Appendix C describes the status of the previous finding with the associated completed corrective actions.

## II. State Plan Background

### A. Background

Virginia operates a State Plan occupational safety and health program under Section 18 of the Occupational Safety and Health (OSH) Act of 1970. The VOSH Program is administered by the Virginia Department of Labor and Industry (DOLI). VOSH operates within DOLI and is headquartered in Richmond, Virginia with field offices located in Abingdon, Lynchburg, Manassas, Norfolk, Richmond, Roanoke, and Verona. In FY 2017, 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 agency directors for Safety, Health, and Consultation Services, as well as DLS, Office of Research and Analysis (ORA), which handles Bureau of Labor Statistics (BLS) surveys and Voluntary Protection Programs (VPP), 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. VOSH also conducts randomly scheduled inspections of high-hazard industries. In addition to enforcement efforts, VOSH provides compliance assistance through targeted outreach, education, and training to emphasize increased awareness on the part of both employers and workers of the importance of a safety and health culture.

VOSH operates a private sector on-site consultation project under Section 21(d) and a state and local government consultation project under Section 23(g) of the OSH Act of 1970. The consultation services unit provides assistance to Virginia's state and local government employers and private employers to voluntarily comply with applicable requirements without issuing 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.

The role of the VOSH Program is to enforce safety and health regulations for general industry, construction, agricultural, and state and local government maritime employers. All standards adopted by the Safety and Health Codes Board apply to all employers who have workers working within the jurisdiction of the Commonwealth of Virginia. The VOSH Program covers both state and local government employers and workers and private sector employers and workers in Virginia, with the exception of: federal workers, the United States Postal Service, private sector maritime, federal military facilities, and other federal enclaves where the state has ceded coverage to the federal government.

The VOSH Program mirrors the federal program as closely as possible while recognizing the autonomy and unique characteristics of the state. The majority of VOSH standards are identical to OSHA standards. However, VOSH has enacted unique regulations covering confined space hazards in telecommunication industries; overhead high voltage line safety; fall protection in steel erection; reverse signal operation of vehicles, machinery and equipment in construction and general industry; compliance with manufacturer's instructions for vehicles, machinery, tools and equipment in general industry, construction, maritime (state and local government only), and agriculture; and tree trimming operations. 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 Administrative Regulations Manual (ARM), 16 VAC 25-60-270, et seq., sets forth rules defining the applicability of occupational safety and health standards in Virginia. Virginia has 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.

DOLI offers three voluntary programs to promote and recognize exceptional safety and health efforts. Virginia's 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. Virginia's Building Excellence in Safety, Health, and Training (BEST) is a strategic partnership designed to encourage and recognize Associated General Contractors of Virginia (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.

## **B. Major New Issues**

On February 10, 2017, VOSH announced a joint comprehensive settlement agreement with the Goodyear Tire & Rubber Company (Goodyear) and the USW with respect to VOSH's investigations of four worker fatalities that occurred at Goodyear's Danville plant over a one-year period. The settlement agreement required Goodyear to correct all identified hazards. Goodyear also agreed to complete a successful application to the Virginia VPP. The settlement agreement also provides for periodic follow-up inspections by VOSH. VOSH has since

conducted three follow-up inspections and continues to work with Goodyear to resolve issues found during the follow-up inspections.

On June 3, 2015, Governor Terry McAuliffe signed a bill for the VPP Act in Virginia. The bill codifies VPP, encouraging companies to take safety and health management systems above and beyond the OSHA and VOSH requirements. The Virginia VPP regulation (16VAC25-200-10 to -110) became effective on January 25, 2018.

In FY 2017, OSHA completed its inquiry into an agriculture-related Complaint About State Plan Administration (CASPA). In summary, the complaint alleged that VOSH was not adequately addressing farm-related hazards, including field sanitation, through the enforcement and compliance assistance procedures available to the state program. It was concluded that VOSH's presence on farms is limited and primarily reactive. OSHA recommended that VOSH create and implement a combined compliance assistance and enforcement strategy to increase proactive interactions with the farming community. VOSH promptly developed and shared a listing of initiatives and actions designed to address farming hazards. OSHA and VOSH continue to work together to address agricultural safety and health concerns, and OSHA will continue to monitor VOSH's activity addressing farming hazards.

### **III. Assessment of State Plan Progress and Performance**

#### **A. Data and Methodology**

OSHA established a two-year cycle for the FAME process. FY 2017 is a comprehensive year and as such, OSHA was required to conduct an on-site evaluation and case file review. A seven-person OSHA team, including a whistleblower supervisor and an investigator, was assembled to conduct a full on-site case file review. The case file review was conducted at the VOSH Tidewater Regional Office located in Norfolk, Virginia from December 10, 2017 to December 16, 2017. A total of 174 safety, health, and whistleblower inspection case files were reviewed. The safety and health inspection files were randomly selected from closed inspections conducted during the evaluation period (October 1, 2015 through September 30, 2017). The selected population included:

- Twenty-nine (29) fatality case files
- Sixty-one (61) complaint case files
- Twenty-five (25) incident case files
- Forty (40) contested case files
- Twenty-two (22) whistleblower case files

The analyses and conclusions described in this report are based on information obtained from a variety of monitoring sources, including the:

- State Activity Mandated Measures (SAMM) Report (Appendix D)
- State Information Report (SIR)

- Mandated Activities Report for Consultation
- State OSHA Annual Report (Appendix E)
- State Plan Annual Performance Plan
- State Plan Grant Application
- Quarterly monitoring meetings between OSHA and the State Plan
- Case file review

Each SAMM report has an agreed-upon FRL which can be either a single number or a range of numbers above and below the national average. State Plan SAMM data that falls outside the FRL triggers a closer look at the underlying performance of the mandatory activity. Appendix D presents the State Plan’s FY 2017 State Activity Mandated Measures Report and includes the FRL for each measure. Throughout the evaluation process VOSH was cooperative, shared information, and ensured staff was available to discuss cases, policies and procedures, and answer questions.

## **B. Review of State Plan Performance**

### **1. PROGRAM ADMINISTRATION**

#### **a) Training**

VOSH established a registered apprenticeship program to train safety and health compliance officers in 2005. To date, 63 compliance safety and health officers (CSHOs) and consultant apprentices have graduated from the VOSH Registered Apprenticeship Program. VOSH gained approval through the United States Department of Veterans’ Affairs and the Virginia Department of Veterans’ Services for its Registered Apprenticeship Program as an authorizing agency for benefits under the Montgomery and Webb General/Government Issue (GI) bills.

Under the guidance of senior compliance staff, apprentices perform inspections and other related activities in accordance with the VOSH Field Operations Manual (FOM). Additionally, VOSH has developed and implemented a directive which transmits a professional development training program for VOSH compliance and consultation personnel. The training program provides a progression of training requirements for personnel and includes informal training such self-study and on-the-job training (OJT) as well as formal training at the OSHA Training Institute (OTI). The training program also provides for maintenance of knowledge and skills of compliance personnel beyond the developmental period.

#### **b) OSHA Information System (OIS)**

VOSH began using OIS to capture inspection and consultation data in FY 2014. Since that time, VOSH personnel has demonstrated overall proficiency at entering data and running reports within OIS to evaluate and manage the VOSH Program; however, during the on-site review, OSHA found one area where VOSH’s data entry

could be enhanced OSHA found that regional directors have been inconsistent in the method by which they enter case settlement information into OIS. OIS was designed to capture data based on OSHA settlement procedures rather than VOSH's unique settlement policies. Similar to OSHA, VOSH requires employers to file a contest within 15 working days of receipt of citations. However, VOSH may continue negotiating informally even though a notice of contest has been filed. Therefore, cases settled at the regional or central office are considered informal settlements even though they may fall outside of the 15-working day period. Even though all of the necessary data was entered into OIS, VOSH has agreed to assess the inconsistency and take action to rectify this issue as appropriate. Since all of the necessary data was appropriately entered into OIS, this was deemed an administrative error and did not rise to the level of an observation.

c) State Internal Evaluation Program (SIEP) Report

VOSH does not develop an annual formal written SIEP report for the comprehensive evaluation of its internal operations. However, VOSH periodically conducts reviews of its activities, focusing on key issues and any areas of concern. For example, fatality and/or catastrophe cases are typically reviewed by a very experienced lead CSHO and one or both regional directors before being submitted to the appropriate program director in DLS for a final review prior to issuance.

After review in the Richmond headquarters, any comments or suggestions are reviewed by the lead CSHO or regional director with the CSHO before final citations are issued. Cases involving proposed willful citations or the use of the General Duty Clause undergo a similar review process.

Similarly, in relation to closed Observation #FY 2016-OB-03 (penalty retention), VOSH conducted an internal special study of its settlement procedures, working closely with OSHA throughout the entire process. VOSH reevaluated its procedures and trained the regional directors to ensure settlement consistency throughout the state. VOSH has also conducted specific studies into how its unique inspection procedures affect in-compliance rates. VOSH, in good faith, openly shares the results of the internal special studies with OSHA.

d) Staffing

The VOSH Program continues to experience vacancies in both safety and health compliance staff positions. Based on the FY 2017 grant application, VOSH filled 82% of the safety benchmarks and 71% of the health benchmarks. Thirteen benchmark positions were not filled. VOSH plans to fill vacant positions as soon as federal and state funding is made available.



## 2. ENFORCEMENT

### a) Complaints

The VOSH Program's performance in this area is impressive. The SAMM report indicates that VOSH received a total of 871 valid complaints in FY 2017, 427 of those valid complaints were inspected. The inspections were initiated within an average of 3.01 days – less than the agreed-upon FRL of five days. VOSH received 444 complaints (non-formal “phone” and “fax” process) for which investigations were also determined to be warranted. The investigations were initiated within an average of 0.79 days – less than the agreed upon FRL of three days. VOSH responded to 100% of the imminent danger complaints within one day and obtained entry at all sites where inspections were assigned.

### b) Fatalities

Virginia Code § 40.1-51.1.D requires all employers – regardless of how many individuals they employ – to report any work-related incident resulting in a fatality within eight hours to the Virginia DOLI. If an employer fails to notify VOSH, a citation is issued for failure to report such an occurrence. VOSH also receives fatality notifications from the media and local emergency management services.

A regional director in each Regional Office notifies the program director of all work-related fatalities and catastrophes. Other regional personnel who receive reports of work-related fatalities and catastrophes, which may result in high media attention or have statewide implications, immediately notify their respective regional director. The program director informs the commissioner of all fatalities and catastrophes and provides pertinent information.

OSHA did not review any fatality cases where VOSH did not have jurisdiction or did not conduct an investigation. However, VOSH consistently and promptly notifies the Norfolk Area OSHA office of any and all occupational fatalities by providing an email summary of the circumstances. This notification allows OSHA to evaluate whether jurisdictional issues may arise and request follow-up on actions taken in response to specific fatalities.

In FY 2017, VOSH responded to all but one of the 31 reported fatalities within one day of notification. VOSH encountered a delay in responding to one fatality because it was not able to locate/contact the employer. It was initially surmised that the individual who fell was a sole proprietor but it was later determined that individual was employed in a limited liability corporation. VOSH responded to all other workplace fatalities within one day.

The on-site case file review revealed that contact with the next-of-kin (NOK) was made in all but three of 29 reviewed fatality cases. In one of the three cases, VOSH was only able to obtain an email address and contacted the NOK by email but did not

receive a response. In another case, VOSH was unable to obtain the NOK of information as the victim did not speak English and the police report did not identify a NOK point of contact. The majority of case files reviewed also revealed that the NOK was sent correspondence addressing the final outcome of the inspection, where appropriate. However, it was noted in five of 29 (17%) of the fatality case files reviewed, that the case file did not contain supporting documentation of the final outcome or indicate if copies of any issued citations were provided to the NOK. VOSH was later able to provide documentation that a copy of the case file was provided through a Freedom of Information Act (FOIA) request to the NOK in two of the five remaining cases. These issues resulted in Observation #FY 2016-OB-02 being continued.

VOSH evaluated each reviewed fatality for potential violations. Fatality case files reviewed either cited violative conditions or discussed why citations were inappropriate. Fatality case files contained documentation of case evaluation by the program director and attorneys.

VOSH Program Directive 09-002 sets out criteria for statistical reporting of the incidence and circumstances of occupational injuries and illnesses. VOSH's Office of Cooperative Programs includes the research and analysis and BLS programs. The Survey of Occupational Injuries and Illnesses is conducted in cooperation with BLS, U.S. Department of Labor. Survey results produce estimated injury and illness rates by industry. The annual Census of Fatal Occupational Injuries, also conducted through BLS, provides a detailed report on all workplace fatalities.

c) Targeting and Programmed Inspection

VOSH's programmed inspections are primarily inspections of high-hazard worksites which have been scheduled based upon objective or random selection criteria. High-hazard safety worksite lists are generated by industries with a North American Industry Classification System (NAICS) code with an excessive lost workday injury rate. High-hazard health worksite lists are generated by industries with a NAICS code with a previous history of VOSH or OSHA violations.

VOSH's enforcement presence continues to be significant as evidenced by the 2,342 inspections conducted in the private workplaces and state and local government workplaces. VOSH surpassed its projected inspection goal of 2,265 by 77 inspections. VOSH issued over 4,800 violations and identified and abated over 18,500 workplace hazards.

Local Emphasis Programs (LEPs)

VOSH Program Directive 01-010 defines the internal policy and procedures for the development and adoption of LEPs. VOSH may develop LEPs based on knowledge of local or statewide lost workday rates, frequency, or probability of an event occurrence that VOSH seeks to reduce and for high-hazard industries and tasks.

VOSH has implemented LEPs for standards unique to the state as well as OSHA's strategic area of emphasis. Examples of LEPs that VOSH adopted include:

- First Report of Injuries and Illnesses
- Fall Hazards
- Scaffolding
- State and Local Government Public Workshops
- Logging and Sawmill Industries
- Reverse Signal Operations of Vehicles, Machinery, and Equipment, and Heavy Equipment
- Overhead High Voltage Line Safety for General Industry and Construction
- Asbestos
- Wastewater and Water Treatment Facilities

VOSH also targets industries through NEPs developed by OSHA. Examples of some NEPs that have been adopted by VOSH include:

- Injury and Illness Recordkeeping
- Primary Metals Industries
- Amputations
- Combustible Dust
- Process Safety Management (PSM) Covered Chemical Facilities
- Occupational Exposure to Isocyanates
- Lead
- Facilities that Manufacture Food Flavorings Containing Diacetyl
- Hexavalent Chromium
- Trenching and Excavation

VOSH participates in the OSHA exempted SIC/NAICS industry list as provided in the current Appropriations Act. The Federal Appropriations Act contains limits for OSHA activities where 23(g) grant funds are used on a year-by-year basis. Since these 23(g) grant funds are passed through from OSHA to the State Plan, VOSH is held to the same restrictions and limits imposed on OSHA for the use of federal funds. The Appropriations Act limitations do not apply to 100% State Plan funds.

VOSH Program Directive, 02-003R, describes the limitations or prohibitions of the use of federal funds for certain VOSH activities. VOSH reserves the right to

conduct activities limited or prohibited under this directive by paying for these activities with 100% State Plan funds. For example, VOSH will conduct and pay for, with 100% State Plan funds, fatality investigations on farms with 10 or fewer workers, and no temporary labor camp activity within the previous 12 months.

VOSH's in-compliance rate for safety cases was 45.27% and 52.56% for health cases in FY 2017 – both rates exceeded the FRL. The FRL for percent in-compliance for safety inspections is +/- 20% of the one-year national average of 29.33% which equals a range of 23.62% to 35.44%. The FRL for percent in-compliance for health inspections is +/- 20% of the one-year national average of 35.47% which equals a range of 28.62% to 42.94%.

These higher than normal rates are largely due to two unique policies in Virginia. For safety, Virginia's policy for conducting multi-employer inspections in the construction industry is different from that of OSHA. Virginia's policy is to open an inspection and assign an inspection number to all employers covered by the scope of the inspection, regardless of whether violations are documented or issued to the employer. VOSH conducts a full inspection with each subcontractor.

For health, Virginia conducts a much higher percentage of asbestos inspections than OSHA because of a longstanding policy that requires all complaints alleging worker exposure to asbestos be inspected and a statutory requirement to inspect certain asbestos contractors – resulting in a large number of planned asbestos inspections. These planned and complaint-based inspections often result in no citations being issued because Virginia has an Asbestos and Lead Contractors and Workers statute (VA Code §54.1-500.1, et. seq.) that requires all asbestos contractors, supervisors, and workers to be fully trained and licensed by the Virginia Board for Asbestos, Lead, and Home Inspectors.

VOSH conducted a state internal special study to determine how these unique policies have impacted the in-compliance rate. OSHA reviewed and evaluated VOSH's study. While OSHA determined the evaluation accurately reflected VOSH inspection activity, OSHA will continue to work with VOSH to better assess how VOSH's policies affect the in-compliance rates, limiting the need to make assumptions about inspection activity.

If VOSH followed OSHA's multi-employer construction policy, it would have conducted 306 fewer inspections and had 306 fewer in-compliance inspections. When the VOSH safety in-compliance rate is recalculated by adjusting for 306 in-compliance construction inspections, the in-compliance rate falls to 32.41%. This is within the safety in-compliance FRL range. The VOSH health in-compliance rate was recalculated by adjusting for 174 total and 135 in-compliance asbestos LEP inspections, resulting in a rate of 42.46%. This is within the health in-compliance FRL range. During the on-site evaluation, the case files reviewed did not indicate any significant areas where hazards were not appropriately identified.

VOSH issued 4,819 violations with 64% classified as serious and 17 violations classified as willful. VOSH averaged 1.89 serious, willful, or repeat violations and 0.66 other than serious violations per inspection. While the average number of other than serious violations was slightly less than the FRL range, the average serious, willful, or repeat violations per inspection was greater than the FRL and national average.

VOSH continued to work with Goodyear Tire & Rubber throughout FY 2017. Between September 1, 2015 and December 4, 2017, VOSH initiated 16 inspections at the site, four of which were fatality related. Two comprehensive inspections during this time alone resulted in over \$996,000 in penalties. In accordance with the settlement agreement, at least three monitoring inspections have been conducted at the site.

Virginia significant cases include all fatalities, catastrophes, proposed willful citations, repeat violations third instance or higher, ergonomics violations, egregious penalty cases, criminal willful cases, cases with interest at a national level identified by OSHA, and cases with significant interest by the media, public officials, or other interest groups. VOSH has a significant case review process that includes review by the appropriate compliance director and DLS prior to citation issuance or the decision to not issue citations.

#### d) Citations and Penalties

The case file review revealed significant improvement for evidence supporting the violations. Finding #FY 2016-01 indicated that at least 43% of the cases reviewed during the FY 2015 on-site evaluation did not meet the VOSH interview criteria described in the VOSH FOM. VOSH policy requires that at least one worker and one supervisory interview be documented in each case file. This evaluation determined that 12 out of 151 (8%) of the cases reviewed did not have any documented worker interviews. In at least four of the 12 cases without interviews, it was noted that workers refused to be interviewed or that the worker was the sole owner.

Considering these circumstances, in only eight out of 151 (5%) of the cases, the VOSH interview criteria was not met. Two of the eight case files indicated that the workers did not speak English. OSHA also considered that FY 2016 cases were included in the review, meaning that VOSH may not yet have had the opportunity to implement its corrective action plan (CAP). OSHA noted that OIS documented some interviews as being conducted with workers when the interview form indicated that the individual actually held a leadership role (such as a foreman), and could be considered an employer representative. However, compliance staff may use professional judgement and identify the individual as a worker based on the person's role and authority at the site instead of the job title. Overall, substantially more documented interviews were located in the case files.

OSHA noted that some VOSH case files did not contain fully developed hazard descriptions and continued to lack useful employer knowledge. However, OSHA noticed a general improvement when compared to the previous comprehensive FAME conducted in FY 2015. Based on the information and documentation contained in the reviewed case files, citations that were issued for apparent violations were appropriate.

The VOSH FOM indicates that the gravity of the violation primarily determines penalty amounts. It is the basis for calculating the basic penalty for both serious and other-than-serious violations. To determine the gravity of a violation, VOSH determines the severity of the injury or illness which could result from the alleged violation, as well as probability that an injury or illness could occur as a result of the alleged violation. VOSH grouped citations where appropriate and in accordance with its FOM.

Based on OIS reports, VOSH issued one or more willful violations in 21 cases between FY 2016 and FY 2017. Of those 21 cases, three (14%) separate inspections included a good faith reduction for medium and low gravity serious violations in contradiction with the VOSH FOM. OSHA determined that this was not statistically significant and that it was likely due to a clerical error. It was noted that VOSH provided good faith penalty reductions to serious violations in cases where one or more willful violation was cited.

VOSH Program managers and VOSH DLS engage in pre-citation consultation in order to determine if additional investigative work needs to be performed prior to the issuance of citations. Case files contained notes with discussion and recommendations from these reviews. The average serious penalty in the private sector in FY 2017 was \$2,118.66. A breakdown based on the number of workers is located in the table below:

Average Penalty	
Number of Workers	Average Serious Penalty
1 – 25	\$1,490.87
26 – 100	\$1,877.63
101 – 250	\$2,574.67
Greater than 250	\$5,008.18

In March 2017, Virginia passed the legislative change to require the catch-up increase and an annual increase linked to the CPI in response to the Bipartisan Budget Bill adopted by OSHA. The new maximum penalty levels and penalty calculation procedures were applied to VOSH inspections opened on or after July 1, 2017. Penalties for inspections opened June 30, 2017 or earlier were issued under the former maximum penalty levels. The statute also required the Commissioner of Labor and Industry to annually increase the maximum civil penalty amounts, starting in 2018, by an amount that reflects the percentage increase, if any, in the Consumer Price Index – Urban (CPI-U) from the previous calendar year. VOSH statutory

maximums will fall approximately one year behind OSHA's maximum penalties because the OSHA increase occurred after DOLI legislation had already been submitted.

e) Abatement

VOSH follows its FOM policy and established the appropriate abatement periods. Of the case files reviewed, it was determined that the CSHO and the regional safety or health director used professional judgment while keeping the best interest of the workers in mind to justify reasonable abatement dates. A specific date for final abatement was included with the citations in all cases when the violation was not corrected during the inspection.

VOSH continues to implement the Abatement Verification Regulation, (16VAC25-60-307) of the ARM. The results of the case file review show that VOSH is effectively verifying abatement of hazards and required employers to submit abatement documentation in the form of photographs, evidence of purchase or repair, bills from services, training records, and copies of program documents. VOSH may also request other forms of documentation when necessary or appropriate. In FY 2017, VOSH conducted 32 follow-up inspections and issued failure to abate violations under five separate inspections. There were no deviations from current VOSH policy.

f) Worker and Union Involvement

Worker involvement is addressed in the VOSH FOM and clearly describes the procedures for union and worker involvement. The VOSH ARM provides additional guidance. VOSH procedures require 100% worker participation. Documented worker interviews contained information pertinent to the inspection and proposed violations. SAMM #13 indicated that in 99.91% of inspections, VOSH included worker representation. It was determined that the one identified outlier was an OIS data entry error. Finding #FY 2016-01 was completed.

### 3. REVIEW PROCEDURES

a) Informal Conferences

VOSH follows the FOM guidance when determining penalty reductions during the informal conference. The regional safety or health director negotiates the amount of penalty reduction or a penalty installment payment plan, depending on the circumstances of the case, the financial condition of the employer and what improvements in worker safety and health can be obtained in return.

The procedures outlined in the FOM provide an adequate means to reduce the penalties in an informal agreement to obtain safety improvements from the employer. During FY 2017, VOSH provided effective consideration to the gravity

and severity of violations, the size of the business being inspected, good faith of the employer, the employer's previous inspection history, and the type of violation when initially assessing penalty adjustment factors. Regional safety or health directors may contact the DLS to request assistance in drafting settlement agreements containing safety and health improvements. Overall, there was no indication that regional directors did not follow the established procedures.

The VOSH FOM outlines procedures for vacating and reclassifying citations for settlement purposes. For routine cases, the regional directors are authorized to reclassify violations and to modify or withdraw a penalty, a citation, or a citation item. In 49 of the 69 cases reviewed where informal settlement conferences were held, some violations were vacated and/or reclassified. However, the FY 2017 end-of-year (EOY) SIR indicated that only 3.70% of total violations pre-contest and 26.38% of total violations after a contest had been filed were vacated. Similarly, the SIR shows that only 5.51% of total violations pre-contest and 22.18% of total violations after a contest had been filed were reclassified. The data indicates that VOSH effectively implements its settlement procedures, vacating and/or reclassifying only specific and appropriate violations in each case.

Regional directors attempt to settle cases on a local level rather than have employers contest. SAMM #12 indicates that VOSH retained 63.03% of penalties which was within the FRL range of 57.32% to 77.56%. Because VOSH initiated an internal special study and developed enhanced guidance for case settlement, increasing penalty retention to within the FRL range, Observation #FY 2016-OB-03 was closed.

OSHA noted that some regional directors provided detailed descriptions justifying penalty reductions while others provided minimal explanation. In at least three of 69 (4%) cases with informal conferences, the informal settlement notes did not fully justify the penalty reduction provided. Overall, changes made were in agreement with the procedures outlined in the VOSH FOM and did not significantly deviate from OSHA settlement practice. VOSH may occasionally combine cases with the same company for settlement purposes even though VOSH has not established specific guidance for this practice.

VOSH attributes the majority of its modifications to the larger percentage of small employers within its jurisdiction. VOSH makes every effort to assure that violations at such establishments are identified, cited, appropriately penalized, and corrected. Penalty reductions at informal conferences are provided to acknowledge the costs of abatement and to encourage future compliance. VOSH recently increased its penalties and consistently evaluates the penalty structure and penalty reduction factors to ensure that penalties are fairly assessed for all employers.

The on-site review revealed that VOSH is fairly consistent when settling cases. The on-site review revealed that of 71 cases with an initial penalty, 17 (24%) were settled by reducing the penalty to less than half of the original penalty while the full penalty was maintained in 16 (23%) of the cases.



## b) Formal Review of Citations

The VOSH ARM outlines the contest process for employers. Section 16 VAC 25-270 provides regulatory guidelines to an employer to whom a citation or proposed penalty was issued as the result of a VOSH inspection or investigation. The notice of contest must be mailed or delivered by hand within 15 days from the receipt of the citation or proposed penalty. Upon receipt of a notice of contest, the commissioner will attempt to resolve the matter by settlement, either by participation in an informal conference or through a formal settlement process.

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 an administrative law judge and review commission system to handle litigated cases. VOSH is unique among State Plans in using local circuit courts and prosecutors (Commonwealth attorneys) to litigate contested cases. Attorneys assigned to Virginia's DLS have been approved by the Office of the Attorney General to represent VOSH in litigation when they are appointed by the local commonwealth's attorney and the circuit court judge on a case-by-case basis.

DLS conducts formal reviews of all contested cases and provides guidance to all regional offices for significant cases that involve any of the following conditions: willful/criminal, willful violations, willful cases suitable for an egregious penalty consideration, fatality/catastrophe, interest at the national level identified by OSHA, interest by media, public officials, or other interest groups identified as significant by the commissioner, repeat violations (third instance or higher), and ergonomic violations.

The FY 2017 EOY SIR indicates that 26.38% of total contested violations are vacated while the national average is recorded at 14.56%. Similarly, the SIR reports that 22.18% of total contested violations are reclassified. The national average is recorded at 12.62%. The SIR may reflect a greater percentage of vacated and reclassified violations for VOSH due to the unique policy whereby an employer may submit a notice of contest but still settle the case informally.

VOSH is working on defining a clear policy with the regional directors to guarantee that the settlement information is consistently entered into OIS among all regional directors, ensuring that all reports accurately reflect the settlement agreement. Because VOSH considers cases settled at the regional director's level an informal settlement even though the employer may have contested a case that was settled beyond 15 working days from receipt of the citation, reports that provide pre- and post-contest data may never seamlessly coincide with OSHA data. However, a consistent method within VOSH will ensure that VOSH data accurately reflects actions taken within the state.

The FY 2017 EOY SIR indicates that 59.34% of penalties are retained after a contest has been filed (the national average was 62.98%). VOSH developed new settlement guidelines and made significant improvement in retaining penalties. VOSH displayed a strong commitment to retaining penalties considering that the state adopted a penalty increase in FY 2017. Once the case settlement data entry procedures are fully implemented, it is expected that the penalty retention rates will shift only minimally because that data indicates less than a 10% difference between the pre- and post-contest penalty rates.

OSHA had no concerns with VOSH's originally issued citations. In general, VOSH may amend or administratively vacate a citation when the citation was issued with an administrative or technical error, when previously unknown additional facts are presented, or when citations are issued to the wrong employer. The FOM also clearly defines the circumstances when citation amendment or administrative vacating is not justified.

According to the VOSH FOM, after each trial, the staff attorney, in consultation with other VOSH personnel in attendance, will prepare a memorandum outlining the results of the trial. The memorandum will discuss the strengths and weaknesses of the case and its result, and include a recommendation regarding any appeal of an adverse decision. The case file review did not reveal any review of adverse decisions by VOSH. All public records are handled according to the procedures for a FOIA request. Of the contested cases reviewed, there were no discrepancies associated with federal precedence or concerns with the quality of decisions.

#### **4. STANDARDS AND FEDERAL PROGRAM CHANGE (FPC) ADOPTION**

##### **a) Standards Adoption**

State Plans are required to respond within 60 days of initial notification to declare whether they intend to adopt an OSHA change. According to 29 CFR 1953, when a federal change is identified as having the potential to impact the effectiveness of the State Plan, State Plans are required to either adopt the change identically, or submit an alternative approach with a State Plan supplement that is at least as effective as the federal change. During FY 2017, VOSH has regularly maintained contact with the Regional Office concerning the status of any necessary legislative and regulatory actions.

In FY 2017, VOSH identically adopted the Final Rule on Walking-Working Surfaces and Personal Protective Equipment (1910) and the Final Rule on Exposure to Beryllium (1910, 1915, 1926) within six months of promulgation. VOSH stayed enforcement of the Beryllium regulations for the Construction Industry and for any state and local government shipyards until August 1, 2018.

VOSH also adopted the Interim Final Rule on Maximum Penalty Increases (1902, 1904) on July 1, 2017. The interim final was not adopted identically. The adopted statute required the commissioner of Labor and Industry to annually increase the maximum civil penalty amounts, starting in 2018, by an amount that reflects the percentage increase, if any, in the Consumer Price Index – Urban (CPI-U) from the previous calendar year. VOSH statutory maximums will fall approximately one year behind federal OSHA’s maximum penalties because the OSHA increase occurred after DOLI legislation had already been submitted.

VOSH adopted all standards in a timely manner with the exception of the Interim Final Rule on Maximum Penalty Increases. Penalty amounts for the VOSH Program are specified in statute at §40.1-49.4 of the Code of Virginia. Modification of these amounts required approval by the Virginia General Assembly. Legislation could not be presented until the next available legislative session. VOSH promptly provided OSHA with a link to the bill. VOSH did not adopt any unique enforcement standards in FY 2017 and does not have standards pending.

b) Federal Program Change (FPC) Adoption

On November 1, 2017 VOSH issued an update the FOM, incorporating the most recent OSHA FOM changes (CPL 02-00-159 and CPL 02-00-160). VOSH is not required to and has not adopted the Enforcement Procedures and Scheduling for Occupational Exposure to Workplace Violence Directive (CPL 02-01-058). VOSH is not delinquent on any previously issued FPCs. VOSH consistently and promptly provides comparison documents for all FPCs. VOSH experienced a delay in updating the FOM in part due to the legislative penalty increase matter but promptly, after adoption of the maximum penalty increases, was able to incorporate all pending updates.

## **5. VARIANCES**

In accordance with the VOSH ARM, any employer or group of employers may file an application with the commissioner for a temporary or a permanent variance from a standard or regulation pertaining to occupational safety and health. There were no variances requested during the evaluation period.

## **6. STATE AND LOCAL GOVERNMENT WORKER PROGRAM**

VOSH conducted 160 safety and health inspection in state and local government workplaces or 6.83% of its total inspection activity for FY 2017. Serious violations were observed and citations issued. Although no penalties are assessed against state and local government employers, VOSH has worked successfully with these agencies to bring them into compliance with current safety and health standards. Abatement information is required from state and local government entities and is reviewed and evaluated in the same manner as private sector abatement documentation.

## **7. WHISTLEBLOWER PROGRAM**

All determinations were based on sound investigations, relevant evidence and appropriate witness interviews. All investigative files were reviewed by the VOSH Legal Director who wrote the legal analysis and final letters to complainants. Settlements are handled by the legal department (not the investigator).

VOSH policies are at least as effective as OSHA's although somewhat different in some areas. For instance, there are no closing conferences held and the investigator does not make any entries into WebIMIS regarding the status of any case. Otherwise, procedures and policies mirror OSHA's. Of the 22 reviewed cases, three were settled, one was withdrawn, and 18 were dismissed. Cases were investigated timely and all case dispositions were appropriate.

## **8. COMPLAINT ABOUT STATE PROGRAM ADMINISTRATION (CASPA)**

OSHA received one CASPA in FY 2017. OSHA determined that VOSH handled the inspection referenced in the CASPA in accordance with policies and procedures which were determined to be at least as effective as OSHA's. OSHA deemed the VOSH investigation as appropriate. VOSH provided a timely written response and promptly provided requested documentation for the CASPA received in FY 2017. VOSH made their staff available for interviews throughout the inquiry. The CASPA did not result in any findings or recommendations; therefore, it was not necessary for VOSH to take any other action.

## **9. VOLUNTARY COMPLIANCE PROGRAM**

The Virginia VPP and SHARP are designed to recognize and promote exceptional safety and health management programs. VOSH's VPP is designed to recognize establishments that achieve an exceptional program through a cooperative relationship with management and labor in general industry or state and local government workplace. VOSH has developed and implemented a comprehensive VPP Policies and Procedures Manual. The manual describes the policies in detail and provides adequate guidance for the administration of VPP in the state.

VOSH's VPP policies and procedures closely mirror that of OSHA VPP. Exemptions for enforcement activities are discussed in the VOSH VPP manual and provide appropriate context for the administration of VPP within the state. VOSH VPP policy enables the Agency to remove participating sites from programmed inspection lists, allowing VOSH to focus its inspection resources on establishments in greater need of agency oversight and intervention. However, VOSH continues to investigate valid worker safety and health complaints, fatalities, catastrophes, and other significant events at VPP participant sites.

VOSH's SHARP was developed to provide incentives and support to smaller (less than 250 workers), high-hazard employers to work with workers to develop, implement, and continuously improve safety and health programs. SHARP is implemented through VOSH's private sector consultation 21(d) grant; therefore, a review of SHARP activity is included in VOSH's Regional Annual Consultation Evaluation Report (RACER). These programs are

an integral component of VOSH's Cooperative Program.

Virginia hosted its 21st Annual Safety and Health Conference in October of 2016. The conference was presented by the DOLI in cooperation with the Virginia State Association of Occupational Health Nurses (VSAOHN), a VOSH alliance partner. The conference hosted 296 attendees and 34 vendors. Representatives from the National Institute for Occupational Safety and Health (NIOSH) and the American Industrial Hygiene Association (AIHA) were among the highlighted speakers. Governor Terry McAuliffe was the first sitting Virginia governor to attend and speak at the conference. At least 30 sessions addressing wide ranging occupational safety and health topics along with multiple pre-conference workshops were made available to conference attendees.

#### **10. STATE AND LOCAL GOVERNMENT 23(g) ON-SITE CONSULTATION PROGRAM**

According to the FY 2017 Mandated Activities Report for Consultation (MARC), the VOSH Consultation Program conducted six on-site consultation visits at state and local government workplaces. All were reported as initial visits. All hazards were abated within the required timeframe. In its grant application, VOSH had originally projected that 25 total visits would be conducted in state and local government workplaces; however, VOSH only achieved 24% of this goal. Meeting the goal is dependent upon receiving voluntary requests for visits and only six were received for the year. VOSH responded to all voluntary requests.

VOSH actively markets 23(g) consultation services to state and local government agencies in various ways. Some methods include during on-site consultation visits, compliance inspections and informal conferences, and the annual Virginia safety and health conference. Additional marketing tools include VOSH's website, informational brochures, and VPP press releases.

**Appendix A – New and Continued Findings and Recommendations**  
FY 2017 Virginia Occupational Safety and Health Program Comprehensive FAME Report

There were no new or continued findings in FY 2017.

## Appendix B – Observations and Federal Monitoring Plans

### FY 2017 Virginia Occupational Safety and Health Program Comprehensive FAME Report

Observation # FY 20XX- OB-#	Observation# FY 20XX-OB-#	Observation	Federal Monitoring Plan	Current Status
	FY 2016-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.	Closed
FY 2017-OB-01	FY 2016-OB-01	<i>Case File Documentation</i> In five of the 29 fatality case files (17%) reviewed, the case file did not contain documentation that the final NOK 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.	Closed

## Appendix C - Status of FY 2017 Findings and Recommendations

### FY 2017 Virginia Occupational Safety and Health Comprehensive FAME Report

FY 20XX-#	Finding	Recommendation	State Plan Corrective Action	Completion Date	Current Status
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>Three training sessions on the VOSH FOM interview documentation requirements were provided to VOSH staff on February 24-25, 2016; April 13, 2016; and August 22, 2017. In addition, VOSH safety and health compliance directors conducted periodic reviews to ensure case files adhered to VOSH FOM requirements to support violations and maintain associated penalties.</p>	August 22, 2017	Completed



## Appendix D - FY 2017 State Activity Mandated Measures (SAMM) Report

FY 2017 Virginia Occupational Safety and Health Program Comprehensive FAME Report

U.S. Department of Labor				
Occupational Safety and Health Administration State Plan Activity Mandated Measures (SAMMs)				
State Plan: Virginia - <b>VOSH</b>			FY 2017	
SAMM Number	SAMM Name	State Plan Data	Further Review Level	Notes
<b>1a</b>	Average number of work days to initiate complaint inspections (state formula)	3.01	5	The further review level is negotiated by OSHA and the State Plan.
<b>1b</b>	Average number of work days to initiate complaint inspections (federal formula)	1.29	N/A	This measure is for informational purposes only and is not a mandated measure.
<b>2a</b>	Average number of work days to initiate complaint investigations (state formula)	0.79	3	The further review level is negotiated by OSHA and the State Plan.
<b>2b</b>	Average number of work days to initiate complaint investigations (federal formula)	0.29	N/A	This measure is for informational purposes only and is not a mandated measure.
<b>3</b>	Percent of complaints and referrals responded to within one workday (imminent danger)	100%	100%	The further review level is fixed for all State Plans.
<b>4</b>	Number of denials where entry not obtained	0	0	The further review level is fixed for all State Plans.
<b>5</b>	Average number of violations per inspection with violations by violation type	SWRU: 1.89	+/- 20% of SWRU: 1.83	The further review level is based on a two-year national average. The range of acceptable data not requiring further review is from 1.46 to 2.20 for SWRU and from 0.79 to 1.19 for OTS.
		Other: 0.66	+/- 20% of Other: 0.99	

## Appendix D - FY 2017 State Activity Mandated Measures (SAMM) Report

### FY 2017 Virginia Occupational Safety and Health Program Comprehensive FAME Report

SAMM Number	SAMM Name	State Plan Data	Further Review Level	Notes
<b>6</b>	Percent of total inspections in state and local government workplaces	6.83%	+/- 5% of 5.87%	The further review level is based on a number negotiated by OSHA and the State Plan through the grant application. The range of acceptable data not requiring further review is from 5.58% to 6.17%.
<b>7</b>	Planned v. actual inspections – safety/health	S: 1,710	+/- 5% of S: 1,896	The further review level is based on a number negotiated by OSHA and the State Plan through the grant application. The range of acceptable data not requiring further review is from 1,801.20 to 1,990.80 for safety and from 350.55 to 387.45 for health.
		H: 632	+/- 5% of H: 369	
<b>8</b>	Average current serious penalty in private sector - total (1 to greater than 250 workers)	\$2,118.66	+/- 25% of \$2,516.80	The further review level is based on a two-year national average. The range of acceptable data not requiring further review is from \$1,887.60 to \$3,146.00.
	a. Average current serious penalty in private sector (1-25 workers)	\$1,490.87	+/- 25% of \$1,706.10	The further review level is based on a two-year national average. The range of acceptable data not requiring further review is from \$1,279.58 to \$2,132.63.
	b. Average current serious penalty in private sector (26-100 workers)	\$1,877.63	+/- 25% of \$2,867.94	The further review level is based on a two-year national average. The range of acceptable data not requiring further review is from \$2,150.96 to \$3,584.93.
	c. Average current serious penalty in private sector (101-250 workers)	\$2,574.67	+/- 25% of \$3,952.26	The further review level is based on a two-year national average. The range of acceptable data not requiring further review is from \$2,964.20 to \$4,940.33.
	d. Average current serious penalty in private sector (greater than 250 workers)	\$5,000.18	+/- 25% of \$5,063.48	The further review level is based on a two-year national average. The range of acceptable data not requiring further review is from \$3,797.61 to \$6,329.35.
<b>9</b>	Percent in compliance	S: 45.27%	+/- 20% of S: 29.53%	The further review level is based on a two-year national average. The range of acceptable data not requiring further review is from 23.62% to 35.44% for safety and from 28.62% to 42.94% for health.
		H: 52.56%	+/- 20% of H: 35.78%	
<b>10</b>	Percent of work-related fatalities responded to in one workday	96.77%	100%	The further review level is fixed for all State Plans.

## Appendix D - FY 2017 State Activity Mandated Measures (SAMM) Report

### FY 2017 Virginia Occupational Safety and Health Program Comprehensive FAME Report

SAMM Number	SAMM Name	State Plan Data	Further Review Level	Notes
11	Average lapse time	S: 42.09	+/- 20% of S: 45.29	The further review level is based on a two-year national average. The range of acceptable data not requiring further review is from 36.23 to 54.35 for safety and from 44.82 to 67.24 for health.
		H: 44.80	+/- 20% of H: 56.03	
12	Percent penalty retained	63.03%	+/- 15% of 67.44%	The further review level is based on a two-year national average. The range of acceptable data not requiring further review is from 57.32% to 77.56%.
13	Percent of initial inspections with worker walk around representation or worker interview	99.91%	100%	The further review level is fixed for all State Plans.
14	Percent of 11(c) investigations completed within 90 days	21%	100%	The further review level is fixed for all State Plans.
15	Percent of 11(c) complaints that are meritorious	18%	+/- 20% of 25%	The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from 20% to 30%.
16	Average number of calendar days to complete an 11(c) investigation	219	90	The further review level is fixed for all State Plans.
17	Percent of enforcement presence	1.59%	+/- 25% of 1.26%	The further review level is based on a two-year national average. The range of acceptable data not requiring further review is from 0.95% to 1.58%.

NOTE: Fiscal Year 2017 is the second 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). As such, the further review levels for SAMMs typically referencing a three-year rolling average will instead rely on a two-year average this year. Unless otherwise noted, the data contained in this Appendix D is pulled from the State Activity Mandated Measures (SAMM) Report in OIS and the State Plan WebIMIS report run on November 13, 2017, as part of OSHA's official end-of-year data runs.

2017

Virginia Department of Labor and Industry



State OSHA Annual Report

# Appendix E - FY 2017 State OSHA Annual Report (SOAR)

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### I. Executive Summary

The Virginia Occupational Safety and Health (VOSH) Program is administered by the Virginia Department of Labor and Industry (DOLI). Virginia operates a “state plan” occupational safety and health program under Section 18 of the federal Occupational Safety and Health Act of 1970. The mission of the VOSH Program is to “Improve and protect Virginia's workplaces through education and enforcement, reducing fatalities and injuries at work”. This mission is embodied in the statutory mandate for the Virginia Safety and Health Codes Board, Va. Code §40.1-1, which states in part: “...The Department shall be responsible for administering and enforcing occupational safety and occupational health activities as required by the Federal Occupational Safety and Health Act of 1970 (P.L. 91-596), in accordance with the state plan for enforcement of that act; ...”

The role of the VOSH Program is to enforce safety and health regulations for general industry, construction, and agricultural employers. VOSH Program covers both public and private sector employers and employees in Virginia. In addition to enforcement efforts, VOSH provides compliance assistance through targeted outreach, education and training to emphasize increased awareness on the part of both employers and employees of the importance of a safety and health culture. VOSH conducts safety and health inspections in response to accidents, complaints, referrals, and randomly scheduled inspections of high hazard industries. The VOSH Program mirrors the federal program as closely as possible while recognizing the autonomy and unique characteristics of the state.

The long-term approach for achieving both workplace safety and health is to identify significant high hazard problems and related trends, and then determine the most effective way to address them, using the best mix of available tools and other resources and then measuring and monitoring the results.

The Virginia Occupational Safety and Health 5 Year Strategic Plan for FFY 2013-2017 established two strategic goals:

VOSH Compliance Strategic Goals
Goal 1: Reduce Occupational Injuries, Illnesses and Fatalities through Direct Intervention
Goal 2: Promote a safe and healthful workplace culture through worker involvement in all aspects of safety and health

This SOAR presents a review of the strategies used and results achieved in FFY 2017. Two goals requiring continued monitoring include the percent of inspections of fatalities and catastrophes initiated within one working day of notification, and worker involvement through interviews, informal conferences and walk-around inspections. One outlier case did not have an inspection initiated within one working day due to issues with reaching an employer representative. The other case involved a workplace accident that was inspected as an accident, that 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, and as such this is a clerical error. The other goal requiring continued monitoring is worker involvement through interviews, informal conferences and walk-around

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inspections. 99.91% of cases involved employees. The one outlier is a fatality case in which the only employee was the victim, who was also the company owner. It should be noted that all other goals were met despite factors including vacant positions due to budget uncertainty, and turnover resulting in the loss of experienced compliance safety and health officers (CSHOs). Special accomplishments as well as mandated activity metrics are also discussed.

### II. Summary of Annual Performance Plan Results

#### Goal 1.1A

<b>Strategic Goal</b>	1	<b>Reduce Occupational Injuries, Illnesses and Fatalities through Direct Intervention</b>		
Performance Goal	1.1	Reduce the rate of workplace injuries and illnesses.		
	1.1A	By 2017, decrease injuries and illnesses per 100 workers in the workplace by 5.00%.		
Strategy	<ul style="list-style-type: none"> <li>• Analyze data to better identify establishments for inspections.</li> <li>• Research new sources for information to identify best targets.</li> <li>• Inspect worksites in non-programmed areas through rapid response to complaints, referrals and utilizing multi-employer policy.</li> <li>• Inspect 5% of total inspections as public-sector worksites.</li> <li>• Analyze results and effectiveness of compliance inspections to determine their impact on fatalities, injury and illness rates.</li> <li>• Identify and implement adjustments that will increase the impact of compliance inspections.</li> <li>• Analyze the effectiveness of guidance and standards and identify needed changes.</li> </ul>			
Performance Indicator	2006 Total Recordable Injury and Illness Baseline.			
FFY 2017 Results	The Total Recordable Injury and illness rate for CY16 is 2.8 per 100 workers. <a href="https://www.bls.gov/iif/oshstate.htm#VA">https://www.bls.gov/iif/oshstate.htm#VA</a>			
Conclusion		Baseline	2016 Target	2016 Result
		2006 TRII	3.9	2.8
	<b>VOSH met this goal.</b>			

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### Goal 1.1B

<b>Strategic Goal</b>	1	<b>Reduce Occupational Injuries, Illnesses and Fatalities through Direct Intervention</b>		
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 days.		
Strategy		<ul style="list-style-type: none"> <li>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.</li> </ul>		
Performance Indicator		Percent of worker complaints that have an investigation initiated within one working day or an on-site inspection initiated within five working days.		
FFY 2017 Results		100% of worker complaints had an investigation initiated within one working day or an on-site inspection initiated within five working days.		
Conclusion		Baseline	2017 Target	2017 Result
		NA	100%	100%
	<b>VOSH met this goal.</b>			
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.		



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### Goal 1.2A

<b>Strategic Goal</b>	1	<b>Reduce Occupational Injuries, Illnesses and Fatalities through Direct Intervention</b>		
Performance Goal	1.2	Reduce the rate of workplace fatalities.		
	1.2A	By 2017 decrease fatalities in the workplace per 100,000 workers by 5%.		
Strategy	<ul style="list-style-type: none"> <li>• Analyze data to better identify establishments for inspections.</li> <li>• Research new sources for information to identify best targets.</li> <li>• Inspect worksites in non-programmed areas.</li> <li>• Inspect identified public-sector worksites.</li> <li>• Analyze results and effectiveness of compliance inspections to determine their impact on fatalities, injury and illness rates.</li> <li>• Identify and implement adjustments that will increase the impact of compliance inspections.</li> <li>• Analyze the effectiveness of guidance and standards and identify needed changes.</li> </ul>			
Performance Indicator	Workplace fatality rate in Virginia per 100,000 workers. The performance data for this measure for CY2017 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.			
FFY 2017 Results	The number of total fatal injuries in Virginia has not yet been released for CY2016.  2016 CFOI: <a href="http://www.bls.gov/iif/oshwc/cfoi/tgs/2015/iiffw51.htm">http://www.bls.gov/iif/oshwc/cfoi/tgs/2015/iiffw51.htm</a>			
Conclusion		Baseline	2017 Target	2017 Result
		4.2	3.7	Pending BLS data
	<b>VOSH met this goal.</b>			
Comments				

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### Goal 1.2B

<b>Strategic Goal</b>	1	<b>Reduce Occupational Injuries, Illnesses and Fatalities through Direct Intervention</b>		
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	<ul style="list-style-type: none"> <li>Promptly initiate fatality and catastrophe investigations within one workday.</li> </ul>			
Performance Indicator	Percent of inspections of fatalities and catastrophes initiated within one working day of notification.			
FFY 2017 Results	100% of inspections of fatalities and catastrophes were initiated within one working day of notification.			
Conclusion		Baseline	2017 Target	2017 Result
		NA	100%	96.77%
<b>VOSH met this goal</b>				
Comments	One outlier case did not have an inspection initiated within one working day due to issues with reaching an employer representative. The other outlier case involved a workplace accident that was inspected as an accident, that 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, and as such this is a clerical error.			

### Goal 1.3A

<b>Strategic Goal</b>	1	<b>Reduce Occupational Injuries, Illnesses and Fatalities through Direct Intervention</b>		
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 the VPP Programs.		
Strategy	<ul style="list-style-type: none"> <li>Increase the number of employers participating in the VPP.</li> </ul>			
Performance Indicator	Reduce the rate of workplace injuries and illnesses in work sites through participation in the VPP Programs. National averages show that VPP sites are routinely 50% below normal workplace injuries and illnesses for their respective industry sectors.			
FFY 2017 Results	The average Virginia VPP worksite had a Total Case Incident Rate (TCIR) 59.64% below the BLS national average for its industry (3 year rolling national average, 2013-2015).			
Conclusion		Baseline	2017 Target	2017 Result
		NA	50% below	58.83% below
<b>VOSH met this goal</b>				
Comments	There are 41 active VPP sites in Virginia.			

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### Goal 2.1A

<b>Strategic Goal</b>	2	<b>Promote a safe and healthful workplace culture through worker involvement in all aspects of safety and health</b>		
Performance Goal	2.1	Enhance worker involvement in all aspects of safety and health.		
	2.1 A	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	<ul style="list-style-type: none"> <li>• Ongoing monitoring of inspection data.</li> </ul>			
Performance Indicator	Observed data in OIS/IMIS review.			
FFY 2017 Results	Worker involvement through interviews, informal conferences and walk-around inspections as reviewed by region Safety and Health Directors at 100%.			
Conclusion	Baseline	2017 Target	2017 Result	
		100%	99.9%	
	<b>VOSH met this goal.</b>			
Comments	The only outlier is a fatality case in which the only employee was the victim, who was also the company owner.			

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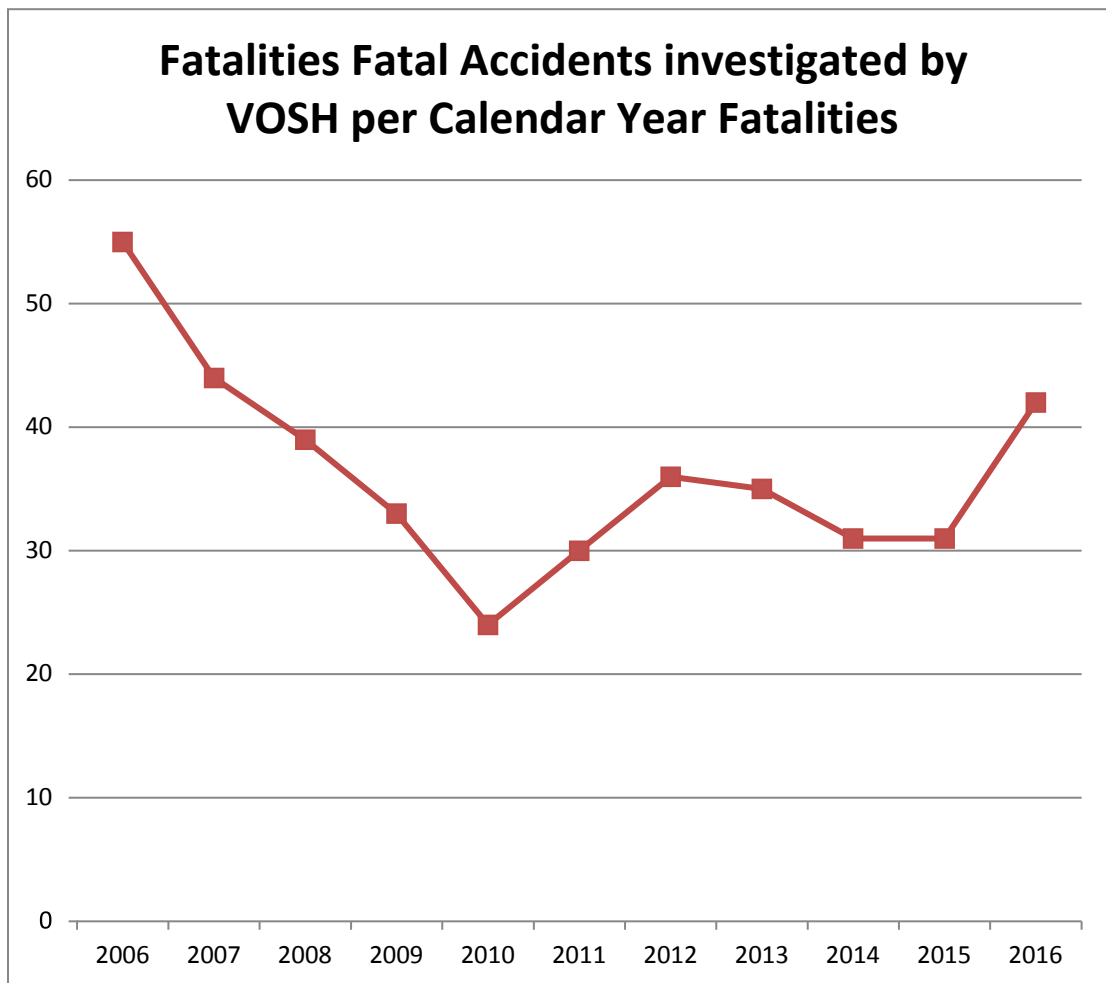
### III. FFY 2017 Accomplishments

#### Metrics

The VOSH Program achievements which positively affect both employees and employers in the Commonwealth include:

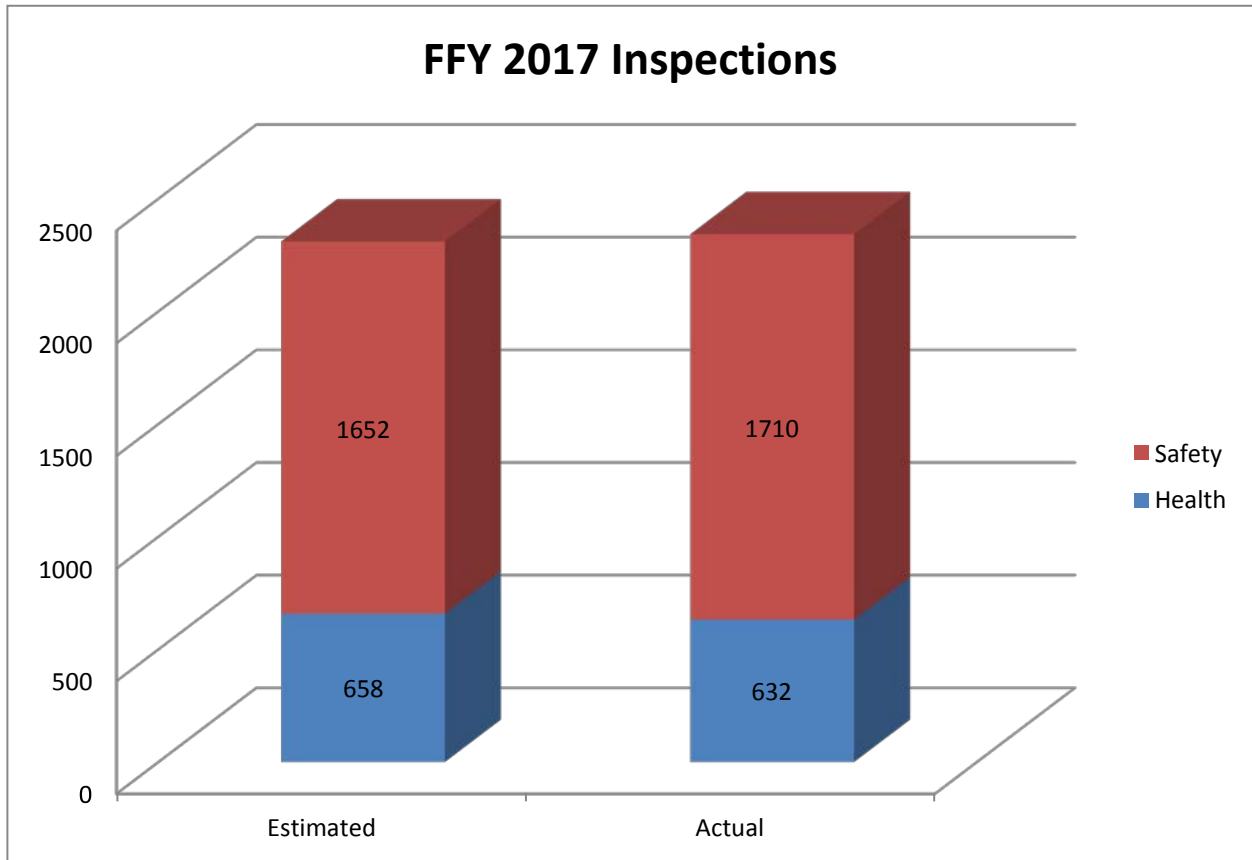
The Virginia rate of nonfatal occupational injury and illness cases requiring days away from work to recuperate is 1.45 cases per 100 full-time workers in CY16. This rate is below the National rate of 1.6 cases per 100 full-time workers in CY16.

Fatal accidents investigated by VOSH stands at 42 for calendar year 2016.

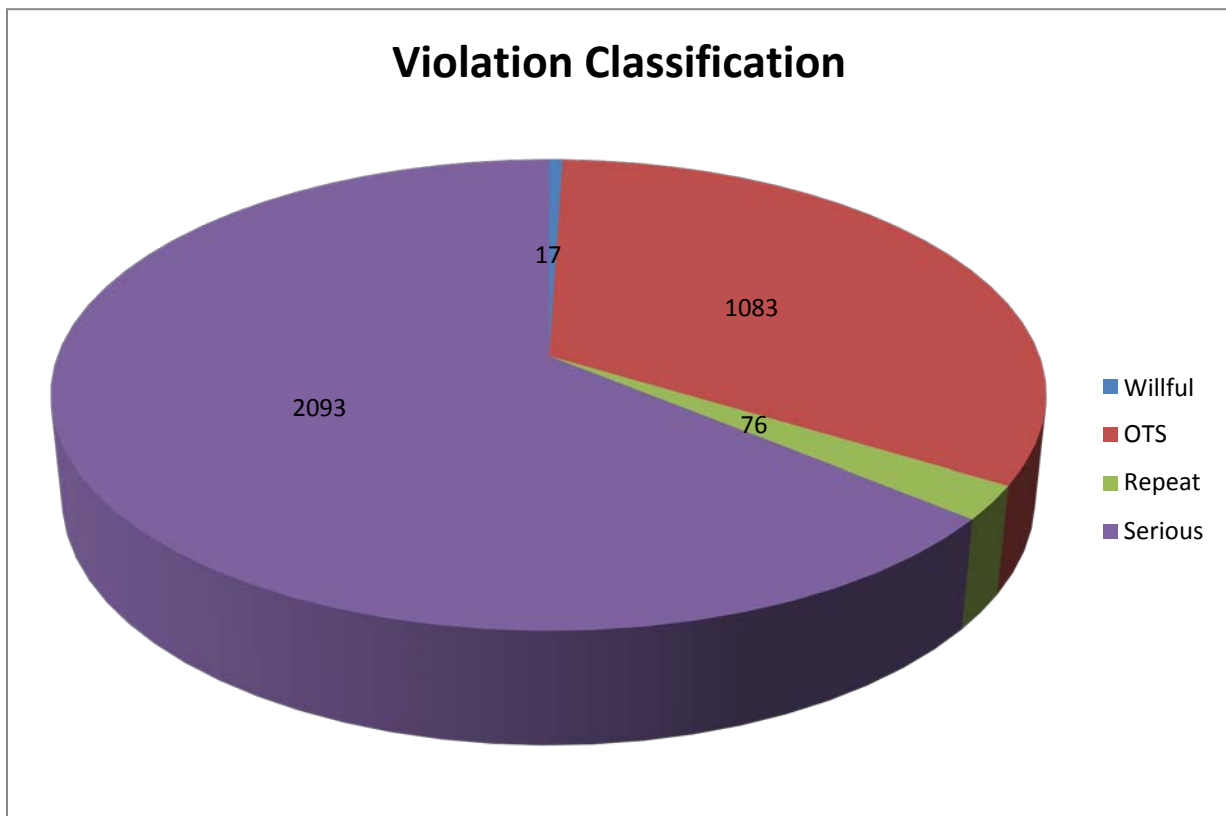


In FFY2017, VOSH Safety and Health Compliance Officers performed 2,342 inspections and were directly responsible for the identification and correction of 18,565 instances of workplace hazards. The total number of inspections performed surpasses the projected totals for FFY 2017.

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In FFY17, VOSH issued 4,819 violations. The majority of these, 64% were classified as Serious. 17 violations were issued as Willful.



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### Emphasis Programs

VOSH has implemented emphasis programs to target exceptionally problematic areas, such as one special emphasis program that uses Worker's Compensation First Reports of Injury to investigate falls, struck-by, amputations, and other serious accidents. Other special emphasis programs include scaffolding, heavy equipment, and trenching, all of which have resulted in increased awareness of safety in the ever dangerous construction industry. Emphasis programs covering asbestos, lead, silica and hazardous chemical processes focus on health hazards encountered in the work environment.

### Non-English Speaking Outreach

VOSH recognizes that English is not the primary language of some of our customers. In the construction trades, landscaping, and service industries, Non-English speaking employees make up a significant portion of the workforce. Language barriers affect not only job quality and understanding of employee rights but perhaps most importantly, can result in misunderstanding safety communications and requirements that can lead to serious and sometimes fatal work accidents. In an effort to better communicate with this segment of the workforce, VOSH has participated in a number of outreach events sponsored by the Embassy of Mexico and other Latino and Hispanic groups. Additionally, several multilingual VOSH staff has been utilized to translate documents and participate in translation services when dealing with Non-English speaking employees.

### Compliance Safety and Health Officers (CSHO) Apprenticeship

To date 63 CSHO and Consultant apprentices have graduated from the unique VOSH Apprenticeship Program.

### Annual Safety and Health Conference

Virginia hosted its 21st Annual Safety and Health Conference in Hampton, Virginia in October of 2016. The conference was a success. The 296 attendees and 34 vendors, which included employees and safety and health professionals, received affordable and extremely beneficial safety and health training. Governor Terry McAuliffe was the first sitting Virginia governor to attend and speak at the conference.



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### Significant Cases

Throughout the 2017 fiscal year, VOSH continued working with Goodyear Tire and Rubber in Danville, VA. Over the course of 18 months, VOSH conducted more than 8 inspections at the facility. Four of these inspections were conducted as a result of fatalities at the facility. VOSH also conducted 2 comprehensive inspections addressing all safety and health aspects of the facility. Eight of the inspections resulted in citations being issued by the agency. The two comprehensive inspections alone resulted in penalties over \$996,000. Several hundreds of citations were issued as a result of the 8 inspections. Goodyear, VOSH, and the Union at the facility entered into a settlement agreement to resolve these citations. As part of the agreement, Goodyear must correct all identified hazards, implement several required safety and health programs, and work towards eventual participation in our agency's Voluntary Protection Program (VPP). VPP recognizes companies with exemplary safety and health programs. Participation in VPP requires a stringent application process, requiring management leadership and employee involvement in developing, implementing, and sustaining a stellar safety and health management system. The settlement agreement also provides for periodic follow-up inspections performed by VOSH. Three follow-up inspections have since occurred. Our agency continues to work with Goodyear Tire and Rubber to resolve issues found during the inspections.

### Regulations

VOSH continues its efforts related to the hazards associated with Reverse Signal Operations and the Tree Trimming industry. Virginia has state specific standards related to these two issues, and continues to enforce these unique standards.

During FFY17 Virginia issued 17 new program directives and has 50 under development. The Virginia Safety and Health Codes Board has also adopted 4 standards:

<b>Standard</b>	<b>Reference</b>	<b>Actions Taken</b>
Walking-Working Surfaces and Personal Protective Equipment (Fall Protection Systems)	1910.21-30, 1910.66-1910.68, 1910.132, 1910.139 -1910.140, 1910.178-1910.179, 1910.261-1910.262, 1910.265, 1910.268-1910.269	Adopted federal OSHA's new Final Rule
Occupational Exposure to Respirable Crystalline Silica, and Other Related Standards	1910.1000, 1915.1000 and 1926.55	Correction to Final Rule
Occupational Exposure to Beryllium	1910.1024, 1915.1024, 1926.1124, 1910.1000, 1915.1000 and 1926.55	Adopted Federal OSHA's amendment
Clarification of Employer's Continuing Obligation to Make and Maintain an Accurate Record of Each Recordable Injury and Illness	1904.0, 1904.4, 1904.29, 1904.32-1904.35, and 1904.40	Adopted Federal OSHA's amendment

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### Worker Misclassification

On June 2nd, 2015, the Commissioner of Labor and Industry announced a new policy to address Worker Misclassification in Virginia Occupational Safety and Health (VOSH) Cases. Misclassification occurs when an employer improperly classifies a worker as an independent contractor who should in fact be an employee.

This policy is intended to improve protections for workers because misclassification can result in payroll fraud, reduced workers' compensation and unemployment insurance protections and violations of the tax code and other laws designed to protect workers. Employers who are willing to commit payroll fraud and cut corners when it comes to providing employee protections such as workers' compensation and unemployment insurance may be willing to cut corners when it comes to providing a safe and healthy workplace. This policy is intended to level the playing field for employers who currently provide all legal protections for their workers against those who misclassify workers. Employers who properly classify workers incur higher payroll costs because they pay costs avoided by employers who misclassify. Employers who misclassify can undercut the bids of those honest contractors who follow the law. Assuring that all employers are playing by the same rules when it comes to classifying employees will help to assure that the construction bid process is fair for all and improve safety and health and other legal protections for workers.

VOSH continues to enforce the Worker Misclassification policy. During FFY17, 56 referrals have been made to the Department of Professional and Occupational Regulations for potential misclassification issues.



Commissioner of Labor and Industry, C. Ray Davenport:

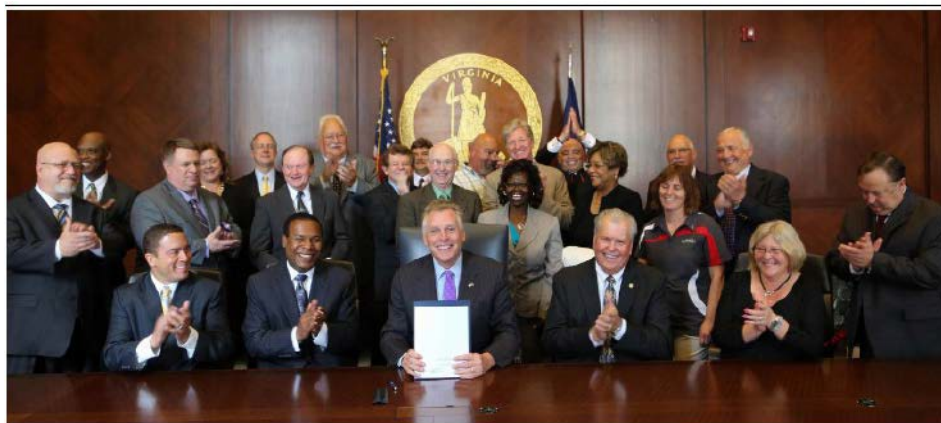
“Misclassification stifles competition and directly harms honest Virginia companies by allowing unscrupulous employers to undercut their bids on construction projects and in other procurement scenarios.”



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### VPP

Virginia's Voluntary Protection Program (VPP) continues to thrive. Growth for FFY17 is projected to be 10%. On June 3, 2015, Governor Terry McAuliffe signed a bill for the historic Voluntary Protection Programs (VPP) Act in Virginia. The bill codifies the VPP system, which encourages companies to take safety and health management systems above and beyond the OSHA and VOSH requirements. The U.S. Department of Labor (DOL) estimates that tens of millions of taxpayer dollars are saved annually through the national and state VPP initiatives, calculating government savings to be more than \$59 million a year. The Virginia Safety and Health Codes Board has adopted a final regulation in accordance with Va. Code 40.1-49.13. The regulation is currently under review in the Office of the Governor before publication in the Virginia Register of Regulations.



VVPP has implemented a strategic partnership with the Associated General Contractors of Virginia (AGCVA) for the construction industry. Known as Virginia BEST (Building Excellence in Safety, Health and Training), this new recognition program is based on OSHA Challenge concepts and allows for recognition of construction contractors as they progress through three levels of safety and health management system development. Finally, VVPP is pursuing a strategic partnership with the Virginia Department of Corrections (VDOC) based on OSHA Challenge concepts. Virginia is the only VPP program in the country that has two public sector correctional facility members (Augusta and Lunenburg Correctional Facilities). The goal of the new strategic partnership will be to work with and encourage more VDOC worksites to become members of VVPP.

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### IV. FFY 2017 SAMM 9, Percent in Compliance for Safety and Health State Initiated Special Study

Safety in Compliance Rate: FY 2017 Virginia FAME

Evaluation Period: October 1, 2016 to September 30,

2017 Issue: In Compliance Rate for Safety

SAMM Measure 9: Percent in Compliance  
(Further Review Level +/- 20% of National Rate)

<b>In Compliance Rate (Virginia Safety)</b>	<b>OSHA Rate</b>	<b>Nat. Rate</b>	<b>Difference From Nat. Rate</b>
45.27%	25.87%	29.33%	+54.35%

Safety Analysis:

It is federal OSHA policy (and a number of state plans) on multi-employer construction job sites to open an inspection and assign an inspection number to only those employers that are going to be issued citations. Virginia's policy in such situations is to open an inspection and assign an inspection number to all employers covered by the scope of the inspection, regardless of whether citations are going to be issued to the employer or not.

Based on the above policy differences, VOSH is supplying a recalculated Safety in Compliance Rate.

OIS Report:

Related Activity

Report Report Criteria:

Construction safety inspections for the evaluation

period Report Results:

The original report resulted in 1,207 construction inspections. After sorting for those inspections that were "Related Multi-Employer", 672 inspections remained. Of the 672 Related Multi-Employer inspections, 306 were In Compliance.

If VOSH followed OSHA's multi-employer construction policy, it would have conducted 306 fewer inspections and had 306 fewer In Compliance inspections. Recalculating the Virginia Safety In Compliance rate by adjusting for those 306 In Compliance construction inspections results in a rate of 32.41%, outside of the +/-20% Further Review Level of OSHA's rate of 25.87%, a difference of +25.28%.

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**However, the recalculated Virginia in Compliance rate of 32.41% is within the +/-20% Further Review Level of the National rate of 29.33% (the SAMM Reference Level), a difference of +10.50% (see below for recalculation details).**

Relevant statistics for recalculating the Virginia Safety in Compliance Rate:

Total Safety Inspections for the period: 1,608

Total Safety in Compliance inspections for the period: 728 (45.27% of 1,608) Total Safety in

Compliance multi-employer construction inspections: 306

Adjusted Numerator and Denominator for Safety in Compliance rate:

In Compliance Inspections: 422 (728-306)

Total Inspections: 1,302 (1,608 – 306) Recalculated

In Compliance Rate: 32.41% (422/1,302)

Summary of Recalculated Measure:

SAMM Measure 9: Percent in Compliance (Further Review Level +/- 20%)

<b>Comparison of Recalculated In Compliance Rate (Virginia Safety)</b>	<b>OSHA Rate</b>	<b>Nat. Rate</b>	<b>Difference from Nat. Rate</b>
32.41%	25.87%	29.33%	+10.50%

Health in Compliance Rate: FY 2017 Virginia

FAME Evaluation Period: October 1, 2016 to September

30, 2017 Issue: In Compliance Rate for Health

SAMM Measure 9: Percent In-Compliance (Further Review Level +/- 20% of National Rate)

<b>In Compliance Rate (Virginia Health)</b>	<b>OSHA Rate</b>	<b>Nat. Rate</b>	<b>Difference From Nat. Rate</b>
52.56%	37.41%	35.47%	+48.18%

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### Health Analysis:

Virginia's conducts a much higher percentage of asbestos inspections than OSHA (174 of 605 inspections or 28.76%) because of a longstanding policy that requires all formal and non-formal asbestos complaints alleging employee exposure be inspected, and a statutory requirement in Va. Code §40.1-51.21 to inspect certain asbestos contractors that results in a large number of planned asbestos inspections.

These planned and complaint-based inspections often result in no citations being issued because Virginia has an Asbestos and Lead Contractors and Workers statute (Va. Code §54.1-500.1, et. seq.) that requires all asbestos contractors, supervisors and workers to be fully trained and licensed by the Virginia Board for Asbestos, Lead and Home Inspectors.

Based on the above policy differences, VOSH is supplying a recalculated Health in Compliance Rate.

### OIS Report:

Inspection One Liner

### Report Report Criteria:

Asbestos LEP Health inspections for the evaluation

### period Report Results:

The report resulted in 174 Health asbestos LEP inspections. Of the 174 inspections, 135 were In Compliance, which is an In Compliance rate on asbestos inspections of 77.59% (135/174).

Although VOSH does not have access to the number of asbestos inspections OSHA conducts, nor its' In Compliance rate for its asbestos inspections, if we assume that OSHA's asbestos In Compliance rate is at least comparable to its overall In Compliance rate, it is reasonable to conclude that VOSH's Health rate should be adjusted to achieve a more realistic comparison rate.

**Recalculating the Virginia Health In Compliance rate by adjusting for the 174 total and 135 In Compliance asbestos LEP inspections results in a rate of 42.46%, within the +/-20% Further Review Level of the National rate of 35.47%(the SAMM Reference Level) (see below for recalculation details).**

### Relevant statistics for recalculating the Virginia Health in Compliance Rate:

Total Health Inspections for the period: 605

Total Health in Compliance inspections for the period: 318 (52.56% of 605) Total

Health Asbestos inspections for the period: 174

Total Health in Compliance asbestos inspections: 135

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Adjusted Numerator and Denominator for Health in Compliance Rate:

In Compliance Inspections: 183 (318 - 135)

Total Inspections: 431 (605 – 174)

Recalculated In Compliance Rate: 42.46% (183/431) SAMM

Measure 9: Percent in Compliance (Further Review Level +/- 20%)

<b>Comparison of Recalculated In Compliance Rate (Virginia Health)</b>	<b>Nat. Rate</b>	<b>Difference</b>
42.46%	35.47%	+19.71%

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### V. Mandated Activities

SAMM Number	SAMM Name	Virginia Data	Further Review Level	Comments/Notes
<b>1a</b>	Average number of work days to initiate complaint inspections (state formula)	3.04	5	State Plan data is pulled only from OIS.  Further review level is negotiated by OSHA and the State Plan.
<b>1b</b>	Average number of work days to initiate complaint inspections (federal formula)	1.29	N/A	State Plan data is pulled only from OIS.  This measure is for informational purposes only and is not a mandated measure.
<b>2a</b>	Average number of work days to initiate complaint investigations (state formula)	0.78	3	State Plan data is pulled only from OIS.  Further review level is negotiated by OSHA and the State Plan.
<b>2b</b>	Average number of work days to initiate complaint investigations (federal formula)	.29	N/A	State Plan data is pulled only from OIS.  This measure is for informational purposes only and is not a mandated measure.
<b>3</b>	Percent of complaints and referrals responded to within one workday (imminent danger)	100%	100%	State Plan data is pulled only from OIS. One imminent danger complaints were received Further review level is fixed for every State Plan.
<b>4</b>	Number of denials where entry not obtained	0	0	State Plan data is pulled only from OIS.  Further review level is fixed for every State Plan.

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<b>5</b>	Average number of violations per inspection with violations by violation type	SWRU: 1.89	+/-20% of SWRU: 1.87	Further Review – VOSH performance of .66 other violations per inspection fell outside of the lower review level of .784 other violations per inspection. VOSH will monitor this measure during FFY 2018.  State Plan data is pulled only from OIS.  Further review level is based on a one-year national rate, pulled only from OIS.
		Other: .66	+/-20% of Other: .98	
<b>6</b>	Percent of total inspections in state and local government workplaces	6.84%	+/-5% of 5.99%	State Plan data is pulled only from OIS. VOSH is looking into creating a General Schedule Planned targeting list for Public Sector employers Further review level is based on a number negotiated by OSHA and the State Plan through the grant application.
<b>7</b>	Planned v. actual inspections – safety/health	S: 1701	+/-5% of S: 1896	State Plan data is pulled only from OIS.  Further review level is based on a number negotiated by OSHA and the State Plan through the grant application.
		H: 623	+/-5% of H: 369	
<b>8</b>	Average current serious penalty in private sector - total (1 to greater than 250 workers)	2223.53	+/-25% of 2,977.91	Further review –VOSH increased its maximum penalties by statute effective July 1, 2017. The large majority of penalties issued during the evaluation period were under the old statutory maximums.  State Plan data is pulled only from OIS.  Further review level is based on a one-year national rate, pulled only from OIS.
	a. Average current serious penalty in private sector (1-25 workers)	1498.99	+/-25% of 1,957.26	
	b. Average current serious penalty in private sector (26-100 workers)	1886.69	+/-25% of 3466.50	
	c. Average current serious penalty in private sector (101-250 workers)	2574.67	+/-25% of 4793.03	

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	d. Average current serious penalty in private sector (greater than 250 workers)	5742.11	+/-25% of 6062.76	
9	Percent in compliance	S: 45.48%	+/-20% of S: 28.87%	<p>Further Review – See State Initiated Special Study in section IV above. For Safety Enforcement, 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, and a number of other state plans, 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.</p> <p>For Health Enforcement, VOSH also responds to most asbestos and lead complaints with an on-site inspection and is required by statute to conduct a significant number of planned asbestos inspections on an annual basis. These planned and complaint-based inspections often result in no citations being issued because Virginia has an Asbestos and Lead Contractors and Workers statute (Va. Code §54.1-500.1, et. seq.) that requires all asbestos contractors, supervisors and workers to be fully trained and licensed by the Virginia Board for Asbestos, Lead and Home Inspectors.</p> <p>State Plan data is pulled only from OIS.</p> <p>Further review level is based on a one-year national rate, pulled only from OIS.</p>
		H: 52.68%	+/-20% of H: 35.75%	
10	Percent of work-related fatalities responded to in one workday	96.77%	100%	<p>State Plan data is pulled only from OIS.</p> <p>2 fatality cases had extenuating circumstances detailed in the Strategic Goal 1.2B section of this report.</p> <p>Further review level is fixed for every State Plan.</p>
11	Average lapse time	S: 42.09	+/-20% of S: 45.15	<p>State Plan data is pulled only from OIS.</p> <p>Further review level is based on a one-year national rate, pulled only from</p>



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		H: 44.72	+/-20% of H: 57.3	OIS.
<b>12</b>	Percent penalty retained	65.44%	+/-15% of 67.92%	State Plan data is pulled only from OIS.  Further review level is based on a one-year national rate, pulled only from OIS.
<b>13</b>	Percent of initial inspections with worker walk around representation or worker interview	99.91%	100%	Further review – VOSH procedures require 100% employee participation. VOSH reviewed OIS records and determined that the one identified outlier was an OIS data entry error.  State Plan data is pulled only from OIS.  Further review level is fixed for every State Plan.
<b>14</b>	Percent of 11(c) investigations completed within 90 days	21%	100%	Further review – while VOSH strives to complete 11c investigations within 90 days, it also strives to assure that legally sufficient investigations are conducted. Before completion, each investigation file receives a legal review by either the Director of Legal Support or a staff attorney, which can cause some investigations to exceed the 90 day measure.  State Plan data is pulled from WebIMIS.  Further review level is fixed for every State Plan.

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<b>14</b>	Percent of 11(c) investigations completed within 90 days	21%	100%	<p>Further review – while VOSH strives to complete 11c investigations within 90 days, it also strives to assure that legally sufficient investigations are conducted. Before completion, each investigation file receives a legal review by either the Director of Legal Support or a staff attorney, which can cause some investigations to exceed the 90 day measure.</p> <p>State Plan data is pulled from WebIMIS.</p> <p>Further review level is fixed for every State Plan.</p>
<b>15</b>	Percent of 11(c) complaints that are meritorious	18%	+/-20% of 24%	<p>Further review – Virginia’s 17% meritorious rate is below the further review level. However, the sample size in Virginia of 23 total cases, 4 of which were meritorious, is not large enough to consider the difference statistically significant.</p> <p>State Plan data is pulled from WebIMIS.</p> <p>Further review level is based on a three-year national average pulled from WebIMIS.</p>
<b>16</b>	Average number of calendar days to complete an 11(c) investigation	219	90	<p>Further review – while VOSH strives to complete 11c investigations within 90 days, it also strives to assure that legally sufficient investigations are conducted. Before completion, each investigation file receives a legal review by either the Director of Legal Support or a staff attorney, which can cause some investigations to exceed the 90 day measure. VOSH performance continues to be considerably better than the average for completion of OSHA 11c investigations.</p> <p>State Plan data is pulled from WebIMIS.</p> <p>Further review level is fixed for every State Plan.</p>
<b>17</b>	Percent of enforcement presence	Data Not Available	+/-25% of 1.35%	<p>State Plan data is pulled only from OIS.</p> <p>Further review level is fixed for every State Plan.</p>