

**FY 2018**  
**Follow-up Federal Annual Monitoring Evaluation (FAME) Report**

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



**Evaluation Period: October 1, 2017 – September 30, 2018**

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## Table of Contents

I. Executive Summary.....	3
II. State Plan Background .....	3
III. Assessment of State Plan Progress and Performance .....	7
A. Data and Methodology .....	7
B. Findings and Observations.....	7
C. State Activity Mandated Measures (SAMM) Highlights.....	8

## Appendices

Appendix A – New and Continued Findings and Recommendations.....	A-1
Appendix B – Observations and Federal Monitoring Plans.....	B-1
Appendix C – Status of FY 2017 Findings and Recommendations.....	C-1
Appendix D – FY 2018 State Activity Mandated Measures (SAMM) Report.....	D-1
Appendix E – FY 2018 State OSHA Annual Report (SOAR).....	E-1

## **I. Executive Summary**

The purpose of this Federal Annual Monitoring Evaluation (FAME) report is to assess the Virginia Occupational Safety and Health (VOSH) program's progress in Fiscal Year (FY) 2018. VOSH continues to be effective in accomplishing its mission. Recent data reflects an overall Total Recordable Case Rate (TRCR) of nonfatal occupational injuries and illnesses of 2.6 for Virginia (16.1% lower than the national TRCR). Virginia's TRCRs in private industry, manufacturing, and government remain below the national average. Virginia's total Days Away Restricted Transfer (DART) case rate continues to trend lower than the national rate by 12.5%.

VOSH maintains a significant enforcement presence in the Commonwealth of Virginia. The FY 2018 State Activity Mandated Measures (SAMM) Report indicates that VOSH conducted 2,065 safety and health inspections in private sector and state and local government workplaces. Based on an OSHA Information System (OIS) violation data report, VOSH was responsible for the identification and correction of 13,746 instances of workplace hazards in inspections initiated in FY 2018. VOSH investigated 34 fatalities in FY 2018.

The Virginia General Assembly passed Senate Bill 607 directing the Virginia Safety and Health Codes Board to adopt regulations for the issuance of proposed penalties when VOSH issues violations to state and local government entities. The Virginia Safety and Health Codes Board adopted a proposed state and local government penalty regulation that would allow issuance of penalties to state and local government employers under specific circumstances. The final regulation applies to inspections opened on or after December 1, 2018.

VOSH proactively and consistently takes initiative to improve its program, including implementing new policies and procedures independently from OSHA. VOSH not only considers recommendations and suggestions from OSHA, but also consistently conducts its own internal evaluation to determine the best course of action to continuously improve its program. Even though VOSH regularly seeks to improve its 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 not captured by the algorithms used by OIS to calculate State Plan data.

OSHA did not identify new findings during this follow-up FAME. There were no new or continued findings during the FY 2017 FAME as well. VOSH has one continued observation described in Appendix B which will be reevaluated during the next comprehensive on-site case file review.

## **II. State Plan 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) and is responsible for protecting 3.8 million

Virginia workers from workplace safety and health hazards in over 266,000 covered establishments. 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 2018, 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, Voluntary Protection Programs (VPP), Office of Policy and Planning (OPP), and Office of Whistleblower Protection (OWP), 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 table below presents VOSH’s funding levels for FY 2018:

<b>VOSH Program FY 2018 Funding Levels</b>					
<b>Fiscal Year</b>	<b>Federal Award (\$)</b>	<b>State Plan Match (\$)</b>	<b>100% State Plan Funds (\$)</b>	<b>Total Funding (\$)</b>	<b>% of State Plan Contribution</b>
2018	\$3,921,300	\$3,921,300	\$350,000	\$8,192,600	52%

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 five voluntary programs to promote and recognize exceptional workplace safety and health efforts:

- **Virginia Safety and Health Achievement Recognition Program (SHARP)** – administered by the VOSH Consultation Program, this program recognizes small employers who develop and implement exemplary safety and health management systems.
- **Virginia STAR** – administered by VOSH VPP, this program recognizes primarily larger employers who develop and implement exemplary safety and health management systems and meet the rigorous qualification requirements for STAR status.
- **Virginia Building Excellence in Safety, Health, and Training (Virginia BEST)** – 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.
- **Virginia Challenge Program** – implemented on June 15, 2018 and consisting of three stages that provide employers a step-by-step process to dramatically improve safety and health management systems to reduce or eliminate injuries, illnesses, and fatalities and the substantial costs associated with them. When a company completes Virginia Challenge, it will have an exemplary safety and health management system (SHMS) that will also prepare it to apply for Virginia STAR recognition.
- **VADOC (Virginia Department of Corrections) Challenge** – designed to recognize safety and health excellence at correctional facilities around the Commonwealth. The partnership is designed to encourage and recognize VADOC facilities that voluntarily implement highly

effective safety and health management systems to benefit VADOC workers and reduce or eliminate injuries, illnesses and fatalities at VADOC sites in Virginia. The VADOC Challenge Program will provide a three-stage process to prepare correctional facilities to apply for Virginia STAR recognition.

## **New Issues**

The Virginia General Assembly passed Senate Bill 607 directing the Virginia Safety and Health Codes Board to adopt regulations for the issuance of proposed penalties to the Commonwealth, its agencies, political subdivisions, or any public body when VOSH issues violations to state and local government entities. The Bill, signed into law by Governor Terry McAuliffe, became effective on July 1, 2016. The Virginia Safety and Health Codes Board adopted a proposed state and local government penalty regulation on February 16, 2017, amending the VOSH Administrative Regulations Manual (ARM), 16VAC25-60. The proposed regulation would allow issuance of penalties to state and local government employers for willful, repeat, and failure-to-abate violations, as well as serious violations that cause a fatal accident or are classified as “high gravity.” The final regulation was published in the Virginia Register of Regulations on October 1, 2018 with a 30-day comment period. The final regulation took effect on November 1, 2018, and applies to inspections opened on or after December 1, 2018.

In August 2018, VOSH issued three willful and two serious violations and \$304,130 in penalties to a construction company for exposing workers to respirable crystalline silica hazards while using jackhammers to remove concrete from bridge piers. The work was being conducted under a contract with the Virginia Department of Transportation (VDOT). VOSH determined that the company did not provide adequate eye and respiratory protection, failed to assess each worker for exposure to respirable crystalline silica, and permitted workers to use jackhammers and concrete saws without proper control methods.

A Psittacosis outbreak in September 2018 at a poultry processing facility in VOSH jurisdiction resulted in the hospitalization of 10 workers. During the outbreak, VOSH worked closely with the OSHA and state agencies to monitor, assess, and respond to the situation as appropriate. The outbreak resulted in a Health Hazard Evaluation by the National Institute for Occupational Safety and Health (NIOSH).

On December 19, 2017, the VOSH Reverse Signal regulation was recognized and discussed in a National Safety Council magazine – *Safety+Health*. The article touted VOSH for adopting a regulation, which since its adoption has seen a significant reduction in backover fatalities. VOSH adopted this unique standard to address accidents involving vehicles or equipment that were not previously covered by existing standards.

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

#### A. Data and Methodology

OSHA established a two-year cycle for the FAME process. This is the follow-up year and as such, OSHA did not perform an on-site evaluation and case file review. This strategy allows the State Plan to focus on correcting deficiencies identified in the most recent comprehensive FAME. The analyses and conclusions described in this report are based on information obtained from a variety of monitoring sources, including:

- State Activity Mandated Measures Report (Appendix D)
- State Information Report
- 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 VOSH Program

#### B. Findings and Observations

There were no new or continued findings identified during the FY 2018 FAME. VOSH has one continued observation described in Appendix B which, according to the federal monitoring plan, will be reevaluated during next year's comprehensive on-site case file review. There were no new observations identified in FY 2018. VOSH did not have any new or continued findings identified during the FY 2017 FAME to discuss in this report.

##### Completed Findings

There were no findings in FY 2017 and therefore no completed findings to report in FY 2018.

##### Continued Findings

There were no findings in FY 2017 and therefore no completed findings to report in FY 2018.

##### New FY 2018 Findings

There were no new findings identified in FY 2018.

##### Closed FY 2017 Observations

No observations were closed in FY 2018.

##### Continued FY 2017 Observations

##### **Observation FY 2018-OB-01 (FY 2017-OB-01): Case File Documentation**

In FY 2017, in five of the 29 fatality cases (17%) reviewed, the case file did not contain

documentation that the final next-of-kin (NOK) letter with the inspection results was sent.

**Status:** An on-site case file review is necessary to gather the facts needed to evaluate this observation. This observation is continued and will be a focus during the next on-site case file review.

### New FY 2018 Observations

There were no new observations identified in FY 2018.

### **C. State Activity Mandated Measures (SAMM) Highlights**

Each SAMM 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 VOSH Program's FY 2018 State Activity Mandated Measures (SAMM) Report and includes the FRLs for each measure. The VOSH Program was outside the FRL on the following SAMMs:

#### **SAMM #3 – Percent of complaints and referrals responded to within one workday (imminent danger):**

Discussion of State Plan data and FRL: The FRL for the percent of complaints and referrals responded to within one workday is fixed at 100%. The SAMM report indicates that VOSH did not respond to any imminent danger complaints and referrals within one workday.

Explanation: VOSH coded one unprogrammed activity as imminent danger during FY 2018. It was determined that the safety compliance inspection coded as an imminent danger was an internal referral from a VOSH health inspection. The original health inspection, opened on May 10, 2018, was in response to a complaint alleging lead exposure. The health inspection uncovered significant lead contamination of the work areas. A closing conference for the health inspection was held on July 17, 2018. A safety referral for electrical hazards was made on July 18, 2018 to VOSH safety compliance and was coded as imminent danger to ensure that the VOSH safety compliance officer wore the appropriate personal protective equipment (PPE). The inspection was delayed beyond one day to ensure that the safety compliance officer initiating the referral inspection was properly fitted for a respirator, had the appropriate PPE, and was sufficiently trained on the hazards that were expected to be encountered.

#### **SAMM#5 – Average number of violations per inspection with violations by violation type:**

Discussion of State Plan data and FRL: The FRL for the average number of violations per inspection with violations by violation type is +/- 20% of the three-year national average of 1.82 for serious/willful/repeat (S/W/R) violations which equals a range of 1.46 to 2.18. VOSH's S/W/R average is 2.05 violations. The FRL for other-than-serious (OTS) violations is +/- 20% of the three-year national average of 0.98 which equals a range of 0.78 to 1.18. VOSH's OTS average is 0.69.

Explanation: Although VOSH is below the FRL for the average number of OTS violations issued per inspection, VOSH is within the FRL and above the national average for the number of S/W/R violations issued per inspection. The data also indicates that VOSH issues more violations as



S/W/R.

**SAMM#7 – Planned vs. actual inspections (safety/health):**

Discussion of State Plan data and FRL: The FRL for planned v. actual inspections is +/- 5% of the negotiated number of 1,685 safety inspections which equals a range of 1,600 to 1,769.25 inspections, and 553 health inspections which equals a range of 525.35 to 580.65 inspections. VOSH conducted 1,553 safety inspections in FY 2018 – falling just below the FRL. VOSH also did not meet its goal for health inspections with staff only conducting 512 inspections in FY 2018. However, VOSH significantly surpassed its goal for total inspections (8.91%) in state and local government workplaces (SAMM#6).

Explanation: VOSH attributes their lower than expected total inspection numbers primarily due to recent staff turnovers and vacancies in the program, as well as the number of new compliance officers working their way through the VOSH apprenticeship program.

**SAMM #9 – Percent in-compliance:**

Discussion of State Plan data and FRL: The FRL for percent in-compliance is +/-20% of the three-year national average of 29.90% for safety, which equals a range of 23.92% to 35.88%, and 36.10% for health, which equals a range of 28.88% to 43.32%. The 2018 data shows that VOSH's in-compliance rate for safety was 45.02% and 52.12% for health – both higher than the acceptable range.

Explanation: Historically, VOSH safety and health percent in-compliance rate has frequently exceeded the FRL. The outliers can be explained by policies and procedures unique to VOSH. For example, it is VOSH's policy on multi-employer jobsites 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. Adjusting inspection counts to account for this policy would have placed the VOSH safety in-compliance rate within the FRL. Similarly, unique VOSH health inspection policies require VOSH to inspect all formal and non-formal asbestos complaints alleging worker exposure. According to a statutory requirement, VOSH also inspects certain asbestos contractors resulting in a large number of planned asbestos inspections. VOSH's in-compliance rate for health inspections has been consistent, indicating that the unique policies drive a higher in-compliance rate, but that it is not necessarily cause for concern.

**SAMM #13 - Percent of initial inspections with worker walk around representation or worker interview:**

Discussion of State Plan data and FRL: The FRL for percent of initial inspections with worker walk around representation or worker interview is a fixed total of 100%. The SAMM indicates that VOSH included workers on 99.95% of the inspections conducted.

Explanation: The outlier is the result of a fatality case in which the only worker on-site was the victim who was also the sole registered company official and owner; therefore, interviewing others was not applicable in this case. VOSH had an in-depth internal discussion about this. Due to data entry integrity being such a critical component of the VOSH Program, the decision was made decided to keep as is rather than change the coding in OIS.

## **Appendix A – New and Continued Findings and Recommendations**

FY 2018 Virginia Occupational Safety and Health Follow-Up FAME Report

There were no new or continued findings in FY 2018.

## Appendix B – Observations and Federal Monitoring Plans

FY 2018 Virginia Occupational Safety and Health Follow-up FAME Report

Observation # FY 2018-OB-#	Observation# FY 2017-OB-#	Observation	Federal Monitoring Plan	Current Status
FY 2018-OB-01	FY 2017-OB-01	<i>Case File Documentation</i> In FY 2017, in five of the 29 fatality case files (17%) reviewed, the case file did not contain documentation that the final next-of-kin (NOK) letter with the inspection results was sent.*	In FY 2018, fatality case files will be randomly selected and reviewed to determine if this item was addressed.	Continued

\*Note: An on-site case file review is necessary to evaluate progress on this observation. This observation will be a focus during the next comprehensive on-site case file review.

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

FY 2018 Virginia Occupational Safety and Health Follow-up FAME Report

There were no new or continued findings in FY 2018.

## Appendix D – FY 2018 State Activity Mandated Measures (SAMM) Report

FY 2018 Virginia Occupational Safety and Health Follow-up FAME Report

<b>U.S. Department of Labor Occupational Safety and Health Administration State Plan Activity Mandated Measures (SAMMs)</b>				
State Plan: Virginia – VOSH			FY 2018	
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)	2.85	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)	1.36	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)	1.43	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)	0.95	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)	0%	100%	The further review level is fixed for all State Plans.

## Appendix D – FY 2018 State Activity Mandated Measures (SAMM) Report

### FY 2018 Virginia Occupational Safety and Health Follow-up FAME Report

SAMM Number	SAMM Name	State Plan Data	Further Review Level	Notes
4	Number of denials where entry not obtained	0	0	The further review level is fixed for all State Plans.
5	Average number of violations per inspection with violations by violation type	SWRU: 2.05	+/- 20% of SWRU: 1.82	The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from 1.46 to 2.18 for SWRU and from 0.78 to 1.18 for OTS.
		Other: 0.69	+/- 20% of Other: 0.98	
6	Percent of total inspections in state and local government workplaces	8.91%	+/- 5% of 5.50%	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 5.22% to 5.77%.
7	Planned v. actual inspections – safety/health	S: 1,553	+/- 5% of S: 1,685	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 1,600.75 to 1,769.25 for safety and from 525.35 to 580.65 for health.
		H: 512	+/- 5% of H: 553	
8	Average current serious penalty in private sector - total (1 to greater than 250 workers)	\$2,395.25	+/- 25% of \$2,603.32	The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from \$1,952.49 to \$3,254.15.
	a. Average current serious penalty in private sector (1-25 workers)	\$1,275.55	+/- 25% of \$1,765.19	The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from \$1,323.89 to \$2,206.49.

## Appendix D – FY 2018 State Activity Mandated Measures (SAMM) Report

### FY 2018 Virginia Occupational Safety and Health Follow-up FAME Report

SAMM Number	SAMM Name	State Plan Data	Further Review Level	Notes
	b. Average current serious penalty in private sector (26-100 workers)	\$2,975.16	+/- 25% of \$3,005.17	The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from \$2,253.88 to \$3,756.46.
	c. Average current serious penalty in private sector (101-250 workers)	\$5,162.37	+/- 25% of \$4,203.40	The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from \$3,152.55 to \$5,254.25.
	d. Average current serious penalty in private sector (greater than 250 workers)	\$6,611.89	+/- 25% of \$5,272.40	The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from \$3,954.30 to \$6,590.50.
9	Percent in compliance	S: 45.02%	+/- 20% of S: 29.90%	The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from 23.92% to 35.88% for safety and from 28.88% to 43.32% for health.
		H: 52.12%	+/- 20% of H: 36.10%	
10	Percent of work-related fatalities responded to in one workday	100%	100%	The further review level is fixed for all State Plans.
11	Average lapse time	S: 44.09	+/- 20% of S: 46.20	The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from 36.96 to 55.44 for safety and from 45.25 to 67.87 for health.
		H: 44.60	+/- 20% of H: 56.56	
12	Percent penalty retained	58.85%	+/- 15% of 66.81%	The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from 56.79% to 76.83%.

## Appendix D – FY 2018 State Activity Mandated Measures (SAMM) Report

### FY 2018 Virginia Occupational Safety and Health Follow-up FAME Report

SAMM Number	SAMM Name	State Plan Data	Further Review Level	Notes
<b>13</b>	Percent of initial inspections with worker walk around representation or worker interview	99.95%	100%	The further review level is fixed for all State Plans.
<b>14</b>	Percent of 11(c) investigations completed within 90 days	44%	100%	The further review level is fixed for all State Plans.
<b>15</b>	Percent of 11(c) complaints that are meritorious	44%	+/- 20% of 24%	The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from 19.20% to 28.80%.
<b>16</b>	Average number of calendar days to complete an 11(c) investigation	135	90	The further review level is fixed for all State Plans.
<b>17</b>	Percent of enforcement presence	1.39%	+/- 25% of 1.24%	The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from 0.93% to 1.55%.

NOTE: Fiscal Year 2018 is the third 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). Therefore, the national averages on this report are three-year rolling averages. 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, 2018, as part of OSHA’s official end-of-year data run.



2018

Virginia Department of Labor and Industry



Virginia State Plan OSHA Annual Report

**Appendix E – FY 2018 State OSHA Annual Report (SOAR)**  
FY 2018 VOSH Follow-up FAME Report

**Table of Contents**

I. Executive Summary .....	2
II. Summary of Annual Performance Plan Results .....	6
Goal 1.1A .....	6
Goal 1.1B.....	6
Goal 1.2A .....	8
Goal 1.2B.....	9
Goal 1.3A .....	9
Goal 2.1A .....	10
III. FFY 2018 Accomplishments .....	11
Metrics .....	11
Emphasis Programs .....	13
Non-English Speaking Outreach.....	13
Compliance Safety and Health Officers (CSHO) Apprenticeship .....	13
Annual Safety and Health Conference.....	14
Significant Cases .....	14
Regulations .....	15
Worker Misclassification.....	16
VPP.....	17
IV.    FFY 2018 SAMM 9, Percent In Compliance for Safety and Health .....	20
State Initiated Special Study .....	20
V. Mandated Activities.....	24

## **Appendix E – FY 2018 State OSHA Annual Report (SOAR)**

### **FY 2018 VOSH Follow-up FAME Report**

#### **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, agricultural, and state and local government employers. The VOSH Program covers both public and private sector employers and employees in Virginia. VOSH conducts safety and health inspections in response to accidents, complaints, referrals, and 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 employees of the importance of a safety and health culture.

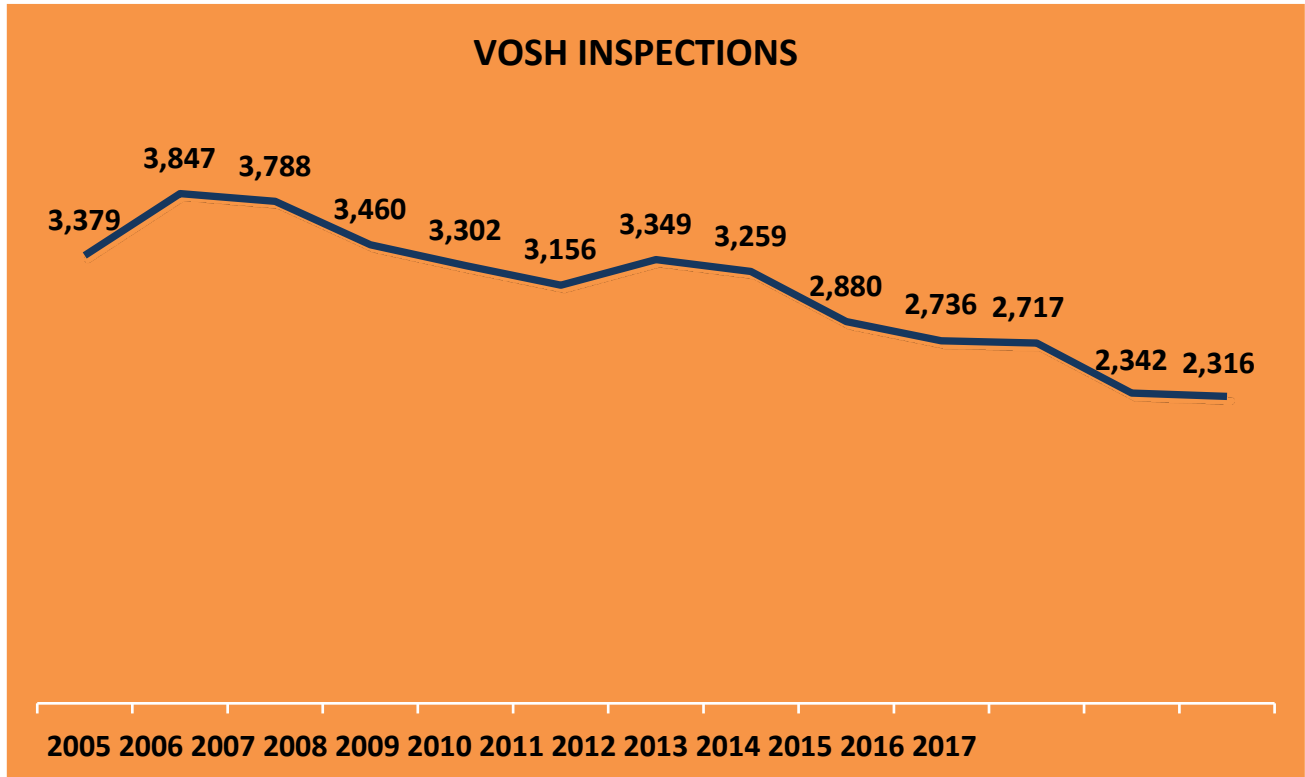
The VOSH Program mirrors the federal program as closely as possible while recognizing the autonomy and unique characteristics of the state.

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.

Fifty-nine (59) Compliance Safety and Health Officer positions, twelve (12) of which are unfunded (20% of available staff), are responsible for addressing safety and health issues for over 266,000 Virginia businesses and 3.87 million employees.

A continuous lack of funding for CSHO positions has resulted in thousands of inspections not occurring and tens of thousands of serious workplace hazards not being identified and corrected. During the three (3) year period of 2012-2014 (calendar year), the average number of VOSH inspections was 2,950. During the most recent three (3) year period of 2015 to 2017, the average number of inspections was 2,458, a difference of 500 inspections per year or a decline of 16.9%.

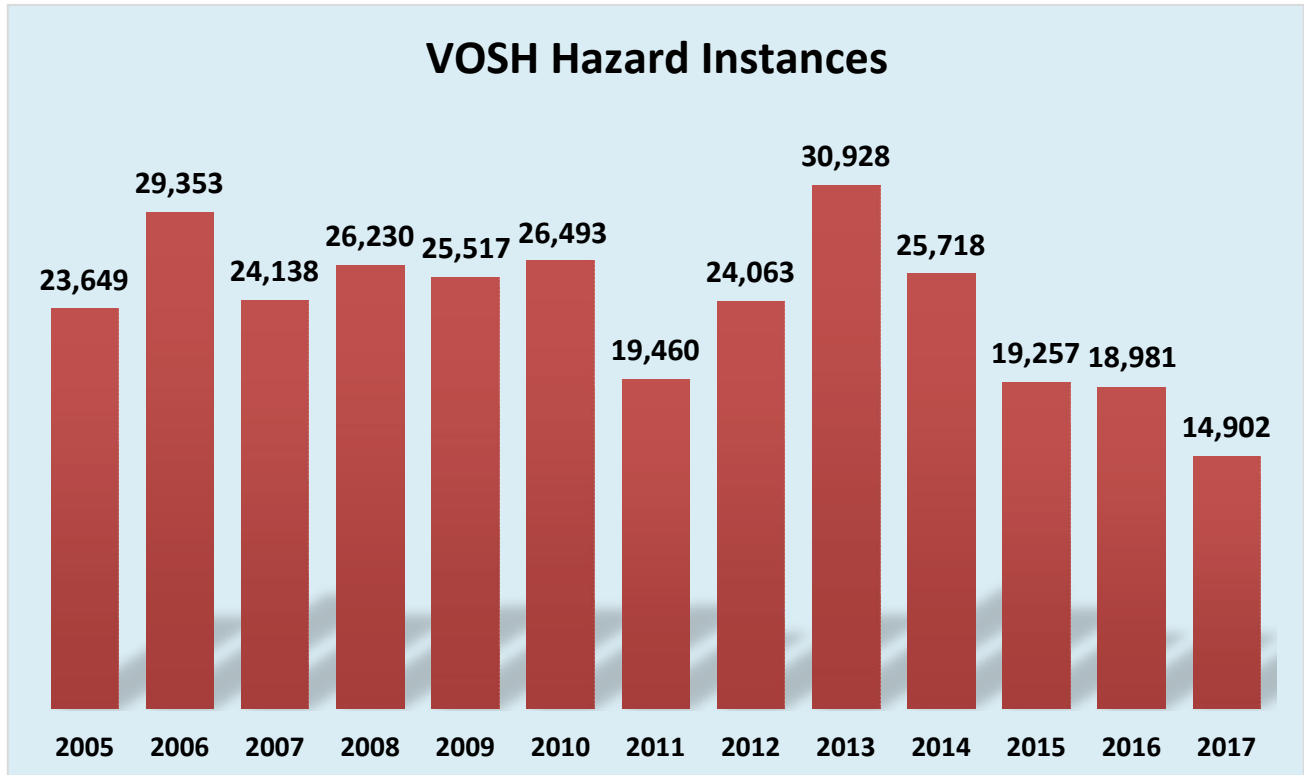
**Appendix E – FY 2018 State OSHA Annual Report (SOAR)**  
FY 2018 VOSH Follow-up FAME Report



In viewing the impact of the unfunded CSHO positions through the lens of VOSH hazard instances (i.e., each hazard instance corrected represents an occupational hazard that was corrected and from which employees were protected), there has also been a steady decline over the last several calendar years which represents increased risk for Virginia employees and employers. The average number of instances (17,713) for the most recent three (3) years of 2014 to 2017 is 31.0% below that for the period 2015 to 2017 (25,689).

## Appendix E – FY 2018 State OSHA Annual Report (SOAR)

FY 2018 VOSH Follow-up FAME Report



Staffing is currently at a critical level based on the benchmarks that were established for the VOSH Program. In 1984, three years after the VOSH Program achieved operational status, there were 109,238 employers and 2,098,046 employees in the Commonwealth. More recently, the Virginia Employment Commission, Quarterly Employment and Wages Report for 2017 indicates that VOSH has jurisdiction over approximately 3,876,600 workers in 266,488 establishments – a 143.9% increase in establishments and a 84.7% increase in employees.

### Strategic Plan

The Virginia Occupational Safety and Health 5 Year Strategic Plan for FFY 2013-2017 (extended by VOSH for one year to 2018) 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 2018.

Two metrics require continued monitoring. First, VOSH’s goal for initiating complaint investigations is one working day (SAMM 2 contains a negotiated three day period to initiate investigations). For FFY 2018, VOSH took an average of 1.43 days to initiate complaint investigations.

## **Appendix E – FY 2018 State OSHA Annual Report (SOAR)**

### **FY 2018 VOSH Follow-up FAME Report**

The second goal requiring continued monitoring is the percent of inspections with employee involvement through walk-around representation or employee interview. The goal is 100% and VOSH performance was 99.95% representing one inspection where employee involvement did not occur. The one outlier is a fatality case in which the only employee on site was the victim, who was also the sole registered company official and owner.

Special accomplishments as well as mandated activity metrics are also discussed.

**Appendix E – FY 2018 State OSHA Annual Report (SOAR)**  
 FY 2018 VOSH Follow-up FAME Report

**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 2018 Results		The Total Recordable Injury and illness rate for CY17 is 2.6 per 100 workers. Source: <a href="https://www.bls.gov/-17summ1_51.xlsx">https://www.bls.gov/-17summ1_51.xlsx</a>		
Conclusion		Baseline	2017 Target	2017 Result
		2006 TRII	3.9	2.6
		<b>VOSH met this goal.</b>		

**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.		

## Appendix E – FY 2018 State OSHA Annual Report (SOAR)

### FY 2018 VOSH Follow-up FAME Report

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	The average response for complaint investigations was 1.43 days. The average response for initiating complaint inspections was 2.85 days		
FFY 2018 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	2018 Target	2018 Result
	NA	100%	<p>Goal partially met.</p> <p>The average response for complaint investigations was 1.43 days – GOAL NOT MET, but SAMM 2 negotiated goal is three days and National Average was 3.80 days.</p> <p>The average response for initiating complaint inspections was 2.85 days – GOAL MET.</p>
<b>VOSH partially met this goal.</b>			
Comments	VOSH offers workers 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.		



## Appendix E – FY 2018 State OSHA Annual Report (SOAR)

FY 2018 VOSH Follow-up FAME Report

### 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. The performance data for CY2016 indicates a rate of 4.0 fatalities per 100,000 workers. Baseline rate of 4.2 fatalities per 100,000 workers in 2006. CY2016 rate of 4.0 represents a 5% reduction from the 4.2 baseline rate from CY 2006.			
FFY 2018 Results	<p>The number of total fatal injuries in Virginia has not yet been released for CY2017.</p> <p>2016 CFOI: <a href="https://www.bls.gov/iif/oshwc/cfoi/staterate2016.htm">https://www.bls.gov/iif/oshwc/cfoi/staterate2016.htm</a></p>			
Conclusion		Baseline	2018 Target	2018 Result
		4.2	4.0	Pending BLS data
	<b>VOSH met this goal.</b>			
Comments				

## Appendix E – FY 2018 State OSHA Annual Report (SOAR)

FY 2018 VOSH Follow-up FAME Report

### 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 2018 Results	100% of inspections of fatalities and catastrophes were initiated within one working day of notification.			
Conclusion		Baseline	2018 Target	2018 Result
		NA	100%	100%
	<b>VOSH met this goal.</b>			
Comments				

### 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 2018 Results	<p>2018 Data Not Available</p> <p>The average Virginia VPP worksite had a Total Case Incident Rate (TCIR) for 2017 of 46.47% below the BLS national average for its industry (3 year rolling national average, 2015-2017).</p>			
Conclusion		Baseline	2018 Target	2018 Result
		NA	50% below	2018 Data Not Available
	<b>VOSH did not meet this goal</b>			
Comments	There are 39 active VPP sites in Virginia.			

## Appendix E – FY 2018 State OSHA Annual Report (SOAR)

### FY 2018 VOSH Follow-up FAME Report

#### 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 2018 Results	Worker involvement through interviews, informal conferences and walk-around inspections as reviewed by region Safety and Health Directors at 100%.			
Conclusion		Baseline	2018 Target	2018 Result
			100%	99.95%
	<b>VOSH did not meet this goal.</b>			
Comments	The one outlier is a fatality case in which the only employee on site was the victim, who was also the sole registered company official and owner.			

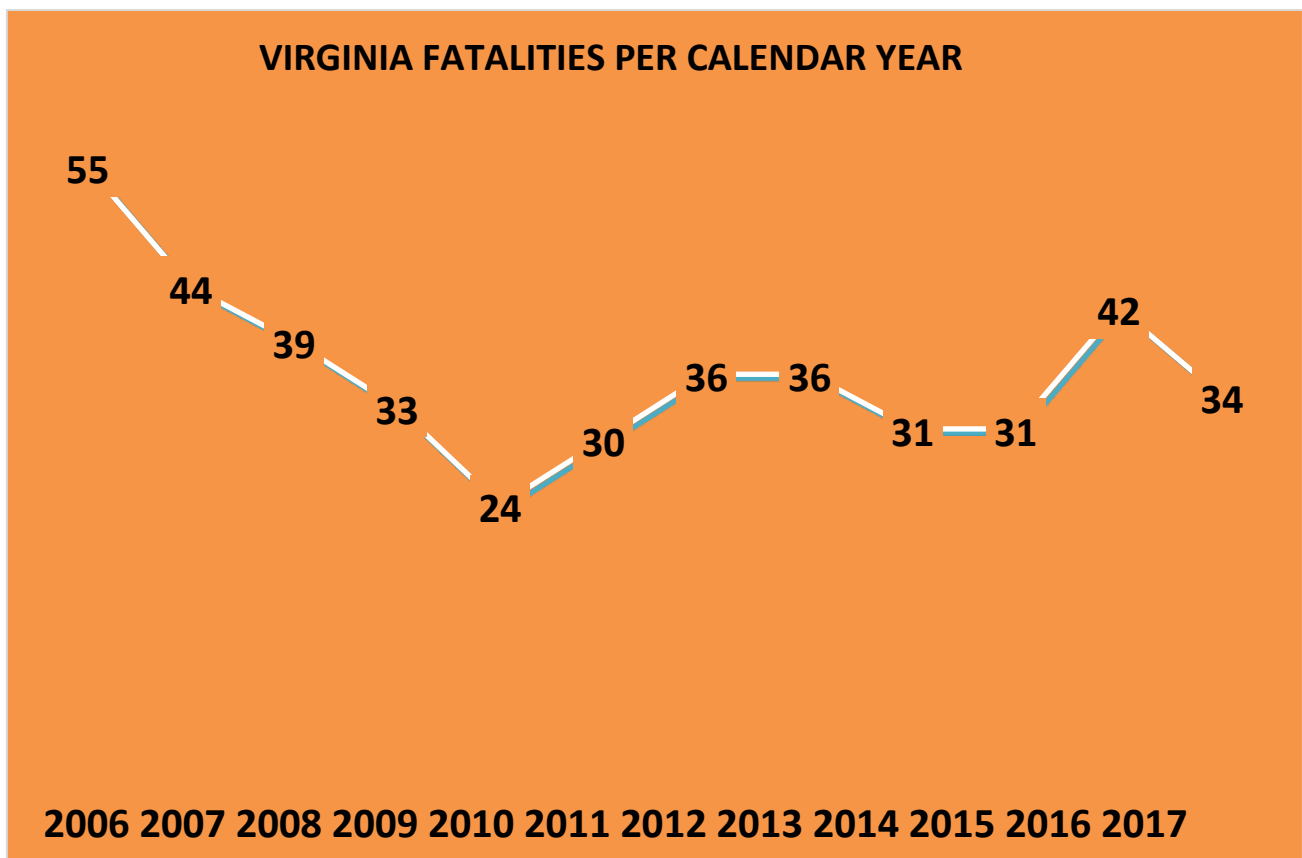
### III. FFY 2018 Accomplishments

#### 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 .8 cases per 100 full-time workers in CY17. This rate is below the National rate of 1.0 cases per 100 full-time workers in CY17.

Fatal accidents investigated by VOSH stands at 34 for calendar year 2018.

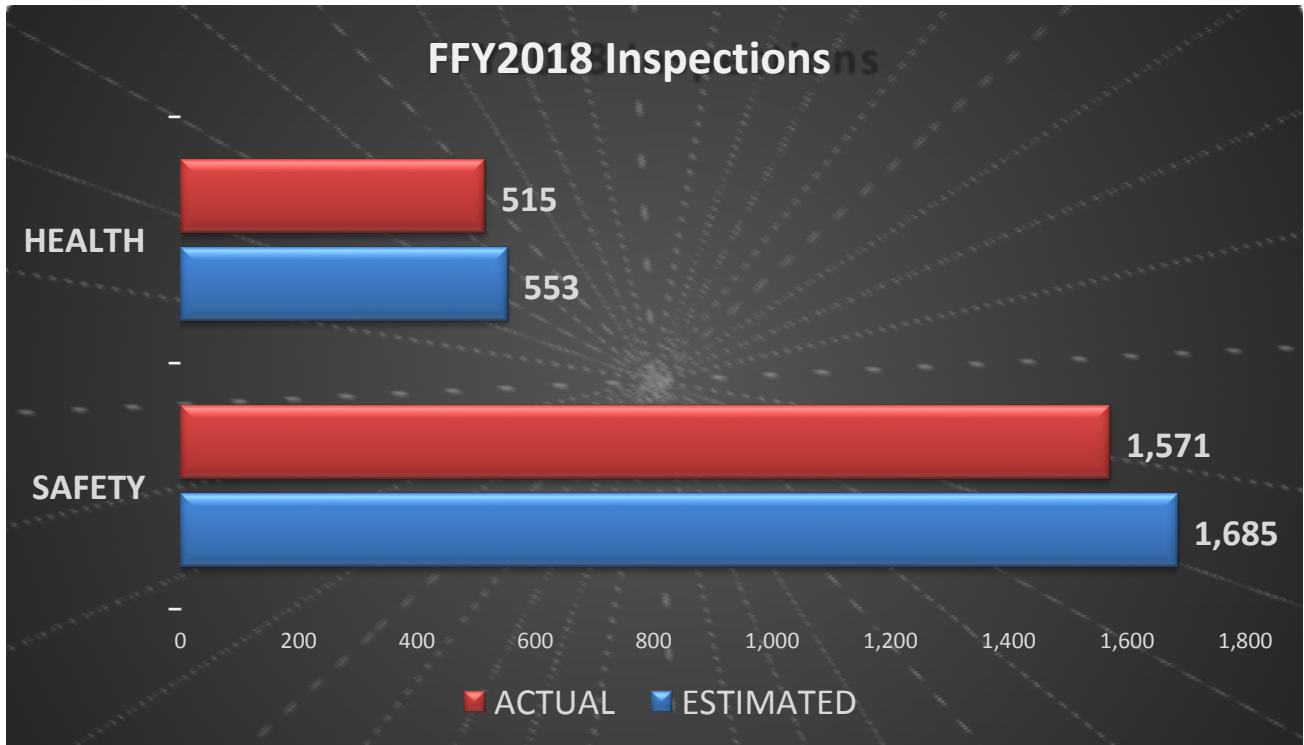


In FFY2018, VOSH Safety and Health Compliance Officers performed 1,571 safety inspections and 515 health inspections (total of 2,086)<sup>1</sup> and were directly responsible for the identification and correction of 15,128 instances of workplace hazards.<sup>2</sup> The total number of safety and health inspections performed fell short of the projected totals for FFY 2018 (1,685 Safety and 553 Health) by 6.8% and 6.9% respectively. The shortfall was primarily due to turnover/vacancy issues and a number of new CSHOs working their way through the VOSH registered apprenticeship program.

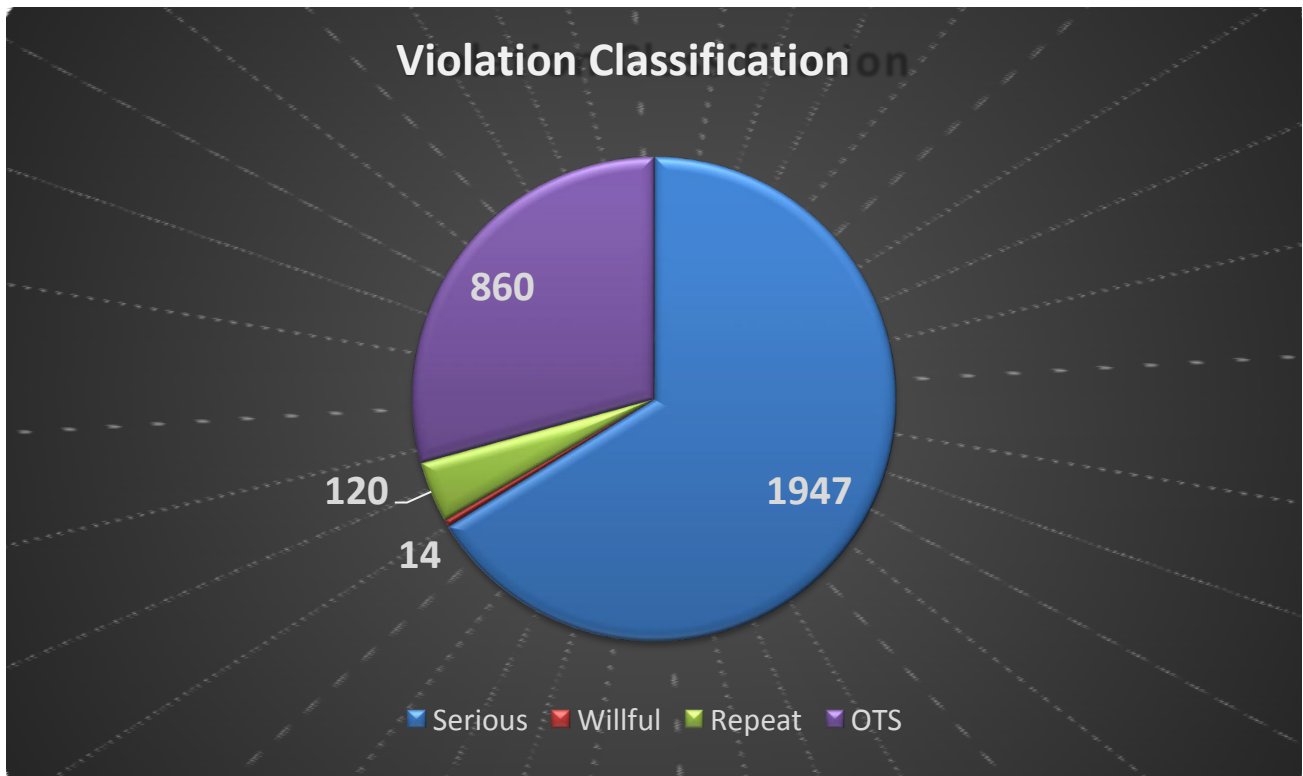
<sup>1</sup> Scan Summary Report Virginia FFY 2018 12 13 18.xls

<sup>2</sup> Violation Detail Data Report Virginia FFY 2018 12 13 18.xls

**Appendix E – FY 2018 State OSHA Annual Report (SOAR)**  
 FY 2018 VOSH Follow-up FAME Report



In FFY18, VOSH issued 2,941 violations. The majority of these, 71% were classified as Serious (1,947), willful (14) or repeat (120). In addition, 860 violations were classified as other-than-serious.<sup>3</sup>



<sup>3</sup>Scan Summary Report Virginia FFY 2018 12 13 18.xls  
 Violation Detail Data Report Virginia FFY 2018 12 13 18.xls

## Appendix E – FY 2018 State OSHA Annual Report (SOAR)

FY 2018 VOSH Follow-up FAME Report

### State and Local Government Penalty Legislation and Regulation

Senate Bill 607 was passed by the Virginia General Assembly and signed into law by Governor Terry McAuliffe to direct the Virginia Safety and Health Codes Board to adopt regulations for the issuance of proposed penalties to the Commonwealth, its agencies, political subdivisions, or any public body. The law became effective July 1, 2016. Information can be found at:

<https://lis.virginia.gov/cgi-bin/legp604.exe?ses=161&typ=bil&val=sb607>

The Virginia Safety and Health Codes Board adopted a proposed regulation on February 16, 2017, on public sector penalties amending the VOSH Administrative Regulations Manual (ARM), 16VAC25-60. The proposed regulation would allow issuance of penalties to public sector employers for willful, repeat and failure-to-abate violations, as well as serious violations that cause a fatal accident or are classified as “high gravity”.

The final regulation was published in the Virginia Register of Regulations on October 1, 2018 with a 30 day comment period. Progress on the final regulation can be tracked on the Virginia Regulatory Town Hall at:

<http://townhall.virginia.gov/L/ViewAction.cfm?actionid=4681>

The final regulation took effect on November 1, 2018, and applies to inspections opened on or after December 1, 2018.

### 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 67 CSHO and Consultant apprentices have graduated from the unique VOSH Apprenticeship Program.



## Appendix E – FY 2018 State OSHA Annual Report (SOAR) FY 2018 VOSH Follow-up FAME Report

### Annual Safety and Health Conference

Virginia hosted its 22nd Annual Safety and Health Conference at the Virginia Beach Convention Center in October of 2017. The conference was a success. Over 300 attendees and 48 vendors, which included employees and safety and health professionals, received affordable and extremely beneficial safety and health training.



22nd Annual Safety and Health Conference at the Virginia Beach Convention Center

### Significant Cases

#### VOSH Issues \$304,130 in Citations and Penalties in Silica Construction Case

VOSH Southwest Regional Office issued for three willful and two serious violations and \$304,130 in penalties to a construction company for exposing workers to respirable crystalline silica hazards while using jackhammers to remove concrete from bridge piers. The work was being done under a contract with the Virginia Department of Transportation.

Inspectors determined that the company did not provide adequate eye and respiratory protection, failed to assess each worker for exposure to respirable crystalline silica and permitted workers to use jackhammers and concrete saws without proper control methods.

## Appendix E – FY 2018 State OSHA Annual Report (SOAR)

### FY 2018 VOSH Follow-up FAME Report

#### NIOSH Opens Health Hazard Evaluation after Psittacosis Outbreak at Virginia Poultry Facility

At the request of the U.S. Department of Agriculture’s Food Safety and Inspection Service (FSIS), the National Institute for Occupational Safety and Health (NIOSH) opened a Health Hazard Evaluation (HHE) at a Virginia Poultry Processing facility, in response to an outbreak of Psittacosis resulting in the hospitalization of over ten people.

Chlamydia psittaci is a type of bacteria that often infects birds. Less commonly, these bacteria can infect people and cause a disease called psittacosis. Psittacosis causes a wide range of symptoms, including fever, headache, and a dry cough. This illness can also cause pneumonia (a lung infection) that may require treatment or care in a hospital. Rarely, psittacosis can be deadly.

<https://www.cdc.gov/pneumonia/atypical/psittacosis/index.html>

#### **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. Information on Virginia unique standards can be found at: <https://www.doli.virginia.gov/vosh-programs/regulations-standards/>

During FFY 18 Virginia issued 40 new program directives and has 50 under development. The Virginia Safety and Health Codes Board adopted 7 federal-identical standards:

<b>Standard</b>	<b>Reference</b>	<b>Actions Taken</b>
Occupational Exposure to Beryllium for the Shipyard (Part 1915) and the Construction Industry (Part 1926); Delay of Compliance Date	1915.1024, 1926.1124	Adopted federal OSHA’s Delay of Compliance Date
Improve Tracking of Workplace Injuries and Illnesses; Delay of Electronic Filing	1904.41	Adopted federal OSHA’s Final Rule
Cranes and Derricks in Construction: Operator Certification Extension of Deadline	1926.1427	Adopted federal OSHA’s Final Rule
Occupational Exposure to Beryllium for General Industry, Stay of Certain Compliance Dates; Adoption of Certain Compliance Dates	1910.1024	Adopted federal OSHA’s Stay of Certain Dates and Adoption of Certain Compliance Dates
Vinyl Chloride	1910.1017	Adopted CFR Correction
Methylenedianiline	1926.60	Adopted CFR Correction



## Appendix E – FY 2018 State OSHA Annual Report (SOAR)

FY 2018 VOSH Follow-up FAME Report

### 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 FFY18, 69 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.”

## Appendix E – FY 2018 State OSHA Annual Report (SOAR) FY 2018 VOSH Follow-up FAME Report

### VPP

Voluntary Protection Programs (Virginia VPP) was instituted in 1996 and has a long track record of exemplary success and unquestioned integrity; and enjoys strident support in Virginia's business community and from labor organizations.

Virginia VPP continues to thrive. There are currently 39 Virginia STAR participants and 3 Virginia BEST level one participants. Growth for FFY19 is projected to be 10%.

### Virginia STAR Sites



Virginia's Voluntary Protection Program (VPP) is the quintessential example of a government program that has established a highly effective and productive cooperative relationship with the business community, workers and state and local government agencies.

Virginia VPP acknowledges and fosters a state of the art approach to implementing safety and health management systems that prevent serious injuries, illnesses and fatal accidents to employees; while also providing a demonstrative return on investment to businesses that allows them to be more productive, more competitive and more economically viable in a very challenging economy.

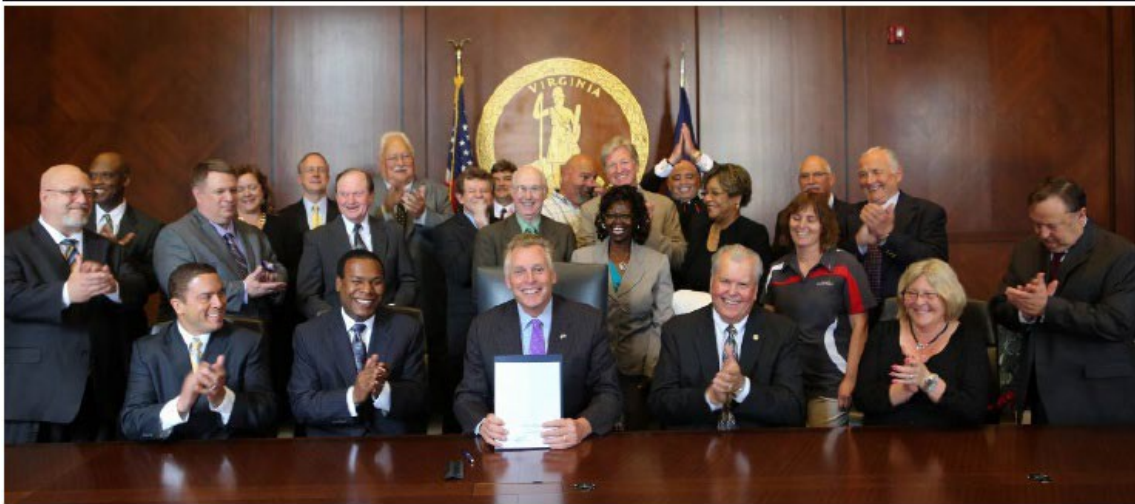
The U.S. Department of Labor (DOL) estimates that tens of millions of taxpayer dollars are saved annually through the national and state VPP initiatives, calculating government savings to be more than \$59 million a year.

VPP assists businesses and state and local government agencies in substantially improving occupational safety and health protections for thousands of employees through voluntary and cooperative efforts that can result in reduced insurance premiums, Workers' Compensation costs and absenteeism, while increasing productivity and competitiveness.

## Appendix E – FY 2018 State OSHA Annual Report (SOAR) FY 2018 VOSH Follow-up FAME Report

### Virginia VPP Legislation

On June 3, 2015, Governor Terry McAuliffe signed a bill for the historic Voluntary Protection Programs 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 Virginia Safety and Health Codes Board has adopted a final regulation in accordance with Va. Code 40.1-49.13. at 16VAC25-60-200,  
<http://leg1.state.va.us/cgi-bin/legp504.exe?000+reg+16VAC25-200-10>

### Virginia BEST

Virginia VPP 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.



Virginia BEST has recognized its first three level one participants:

W. M. Jordan Company  
R.E.Lee & Son, Inc.  
Piedmont Concrete Contractors

## Appendix E – FY 2018 State OSHA Annual Report (SOAR) FY 2018 VOSH Follow-up FAME Report

### VOSH – VDOC Challenge

VVPP has also signed 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).



Commissioner C. Ray Davenport, DOLI and Harold W. Clarke, Director of Corrections

The goal of the new strategic partnership is to work with and encourage more VDOC worksites to become members of VVPP. Two correctional facilities have been identified and are currently in the application phase for step one participation in VADOC Challenge.



### Potential VOSH Strategic Partnership with the Associated Builders and Contractors of Virginia (ABCVA)

VOSH is exploring a possible Strategic Partnership with ABCVA to combine Challenge concepts with the ABCVA's STEP (Safety Evaluation and Training Process) program to recognize commercial construction contractors that develop and implement exemplary safety and health management systems.



## Appendix E – FY 2018 State OSHA Annual Report (SOAR)

FY 2018 VOSH Follow-up FAME Report

### IV. FFY 2018 SAMM 9, Percent in Compliance for Safety and Health State Initiated Special Study

#### Safety in Compliance Rate: FY 2018 Virginia FAME

Evaluation Period: October 1, 2017 to September 30, 2018

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>
45.02%	27.07%	29.56%	+52.30%

#### 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 Related Activity Report resulted in 951 construction inspections<sup>4</sup>. After sorting for those inspections that were "Related Multi-Employer", 619 inspections remained. Of the 619 Related Multi-Employer inspections, 310 were In Compliance<sup>5</sup>.

<sup>4</sup> Source: "Related Activities Report Multi-Employer Construction FFY 2018 run 12 12 18". "No Inspections" were not included in any counts.

<sup>5</sup> Column O in the "Related Activities Report Safety Multi-Employer Inspections 12 12 18.xls".

## Appendix E – FY 2018 State OSHA Annual Report (SOAR)

### FY 2018 VOSH Follow-up FAME Report

If VOSH followed OSHA's multi-employer construction policy, it would have conducted 310 fewer construction Related Multi-Employer inspections and had 310 fewer In Compliance inspections. Recalculating the Virginia Safety In Compliance rate by adjusting for those 310 In Compliance construction inspections results in a rate of 30.42%, within +/-20% of OSHA's rate of 27.07%, a difference of +12.37%.

**The recalculated Virginia in Compliance rate of 30.21% is within the +/-20% Further Review Level of the National rate of 29.56% (the SAMM Reference Level), a difference of +2.91% (see below for recalculation details).**

Relevant statistics for recalculating the Virginia Safety in Compliance Rate:

Total Safety Inspections for the period:	1,477 <sup>6</sup>
Total Safety in Compliance inspections for the period:	665 (45.02% of 1,477)
Total Safety in Compliance multi-employer construction inspections:	310
Adjusted Numerator and Denominator for Safety in Compliance rate:	
In Compliance Inspections:	355 (665-310)
Total Inspections:	1,167 (1,477 – 310)
Recalculated In Compliance Rate:	30.42% (355/1,167)

Summary of Recalculated Measure:

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

Comparison of Recalculated In Compliance Rate (Virginia Safety)	OSHA Rate	Nat. Rate	Difference from Nat. Rate
30.42%	27.07%	29.56%	+2.91%

**Health in Compliance Rate: FY 2018 Virginia FAME**

Evaluation Period: October 1, 2017 to September 30, 2018

Issue: In Compliance Rate for Health

SAMM Measure 9: Percent In compliance

<sup>6</sup> Source: VA EOY SAMM Report 2018.xls run on 11 13 18

## Appendix E – FY 2018 State OSHA Annual Report (SOAR)

### FY 2018 VOSH Follow-up FAME Report

(Further Review Level +/- 20% of National Rate)

<b>In Compliance Rate (Virginia Health)</b>	<b>Nat. Rate</b>	<b>Difference From Nat. Rate</b>
52.12%	35.56%	+46.57%

#### Health Analysis:

Virginia's conducts a much higher percentage of asbestos inspections than OSHA (191<sup>7</sup> of 495 inspections or 38.59%) 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 Inspection One Liner Report resulted in 191 Health asbestos LEP inspections<sup>8</sup>. Of the 191 inspections, 143 were In Compliance<sup>9</sup>, which is an In Compliance rate on asbestos inspections of 74.87% (143/191).

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

<sup>7</sup> Source: Inspection One-Liner Asbestos Inspections FFY 2018 12 12 18.xls

<sup>8</sup> See "Inspection One-Line Asbestos Inspections FFY 2018 12 02 18". "No Inspections" were not included in any counts.

<sup>9</sup> See "Inspection One-Line Asbestos Inspections FFY 2018 12 02 18", Column O.

## Appendix E – FY 2018 State OSHA Annual Report (SOAR)

### FY 2018 VOSH Follow-up FAME Report

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 258 total and 143 In Compliance asbestos LEP inspections results in a rate of 37.83%, within the +/-20% Further Review Level of the National rate of 35.56%(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:	495
Total Health in Compliance inspections for the period:	258 (52.12% of 495)
Total Health Asbestos inspections for the period:	191
Total Health in Compliance asbestos inspections:	143

#### Adjusted Numerator and Denominator for Health in Compliance rate:

In Compliance Inspections:	115	(258 - 143)
Total Inspections:	304	(495 – 191)
Recalculated In Compliance Rate:	37.83%	(115/304)

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>
37.83%	35.56%	+6.38%



## Appendix E – FY 2018 State OSHA Annual Report (SOAR)

FY 2018 VOSH Follow-up FAME Report

### 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)	2.85	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)	1.36	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)	1.43	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)	.95	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 day (imminent danger)	0%	100%	State Plan data is pulled only from OIS. One imminent danger complaint was received and not responded to within one day.  Further Review - This Safety Compliance inspection (1332296) was a referral from VOSH Health Compliance. The original health inspection (1314951) was in response to a complaint alleging lead exposure and was opened on May 10, 2018. The health inspection uncovered significant lead contamination of the work areas. The employer was notified during the pendency of the Health Compliance inspection of the lead hazards noted. Full shift sampling was conducted and the results relayed at the closing conference on July 17, 2018. A referral for electrical hazards was then made to Safety Compliance. The referral was made on July 18, 2018 and classified as imminent danger to assure that the VOSH Safety CSHO wore appropriate respiratory and personal protective equipment (PPE - full Tyvek suit). The delay beyond one day to open the referral inspection on July 23, 2018, was to verify that the Safety CSHO was properly fitted for a respirator, proper PPE was available and worn, and training on use of the respirator and PPP provided.  Further review level is fixed for every State Plan.

## Appendix E – FY 2018 State OSHA Annual Report (SOAR)

### FY 2018 VOSH Follow-up FAME Report

#### V. Mandated Activities

<b>4</b>	Number of denials where entry not obtained	0	0	<p>State Plan data is pulled only from OIS.</p> <p>Further review level is fixed for every State Plan.</p>
<b>5</b>	Average number of violations per inspection with violations by violation type	SWRU: 2.05	+/-20% of SWRU: 1.87	<p>Further Review – VOSH performance of .69 <u>Other</u> violations per inspection fell outside of the lower review level of .77 other violations per inspection. VOSH will monitor this measure during FFY 2019.</p>
		Other: .69	+/-20% of Other: .98	<p>Further review level is based on a one-year national rate, pulled only from OIS.</p>
<b>6</b>	Percent of total inspections in state and local government workplaces	8.91%	+/-5% of 5.99%	<p>State Plan data is pulled only from OIS.</p> <p>VOSH increased its inspection presence in state and local government workplaces in anticipation of its new regulation providing for the issuance of penalties in the public sector which took effect on November 1, 2018 for inspections opened on or after December 1, 2018.</p> <p>Further review level is based on a number negotiated by OSHA and the State Plan through the grant application.</p>
<b>7</b>	Planned v. actual inspections – safety/health	S: 1553	+/-5% of S: 1685	<p>State Plan data is pulled only from OIS.</p> <p>Actual safety inspections (1,553) were 7.83% below planned, slightly outside the Further Review Level of +/- 5% of planned safety inspection (1,685).</p>
		H: 512	+/-5% of H: 553	<p>Actual health inspections (512) were 7.41% below planned, slightly outside the Further Review Level of +/- 5% of planned health inspection (553).</p> <p>The difference was primarily due to turnover/vacancy issues and a number of new CSHOs working their way through the VOSH registered apprenticeship program.</p> <p>Further review level is based on a number negotiated by OSHA and the State Plan through the grant application.</p>
<b>8</b>	Average current serious penalty in private sector - total (1 to greater than 250 workers)	2395.25	+/-25% of 3066.48	<p>Further review –VOSH increased its maximum penalties by statute effective July 1, 2017. Some penalties issued during the evaluation period were under the old statutory maximums.</p>
	a. Average current serious penalty in private sector (1-25 workers)	1275.55	+/-25% of 1985.90	<p>State Plan data is pulled only from OIS.</p>

## Appendix E – FY 2018 State OSHA Annual Report (SOAR)

### FY 2018 VOSH Follow-up FAME Report

#### V. Mandated Activities

	<b>b.</b> Average current serious penalty in private sector (26-100 workers)	2975.16	+/-25% of 3661.48	Further review level is based on a one-year national rate, pulled only from OIS.
	<b>c.</b> Average current serious penalty in private sector (101-250 workers)	5162.37	+/-25% of 5291.28	
	<b>d.</b> Average current serious penalty in private sector (greater than 250 workers)	6611.89	+/-25% of 6337.56	
<b>9</b>	Percent in compliance	S: 45.02%	+/-20% of S: 29.56%	<p>Further Review – See State Initiated Special Study in section IV. above.</p> <p>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: 52.12%	+/-20% of H: 35.56%	
<b>10</b>	Percent of work-related fatalities responded to in one workday	100%	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>
<b>11</b>	Average lapse time	S:44.09	+/-20% of S: 48.03	<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: 44.60	+/-20% of H: 57.63	

## Appendix E – FY 2018 State OSHA Annual Report (SOAR)

### FY 2018 VOSH Follow-up FAME Report

#### V. Mandated Activities

<b>12</b>	Percent penalty retained	58.85%	+/-15% of 67.77%	<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>
<b>13</b>	Percent of initial inspections with worker walk around representation or worker interview	99.95%	100%	<p>Further review – VOSH procedures require 100% employee participation. The one outlier is a fatality case in which the only employee on site was the victim, who was also the sole registered company official and owner.</p> <p>State Plan data is pulled only from OIS.</p> <p>Further review level is fixed for every State Plan.</p>
<b>14</b>	Percent of 11(c) investigations completed within 90 days	44%	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>The 44% rate for FFY 2018 represents a significant improvement over the 21% rate for FFY 2017, and is also above the average rate for all state plans of 36%.</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	44%	+/-20% of Data Not Available	<p>Virginia settled a record number of meritorious cases in FFY 2018: 7 cases with damages totaling \$44,443.84.</p> <p>Further Review Level data not available from National Office as of 12.18.18.</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>

## Appendix E – FY 2018 State OSHA Annual Report (SOAR)

### FY 2018 VOSH Follow-up FAME Report

#### V. Mandated Activities

<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.</p> <p>Virginia’s FFY 2018 average number of calendar days to complete of 135 days is a significant improvement over the 219 days for FFY 2017.</p> <p>VOSH performance continues to be considerably better than the average for completion of OSHA 11c investigations, and the 285 day average for all State Plans.</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 Data Not Available	<p>State Plan data is pulled only from OIS.</p> <p>Virginia data and Further Review Level data not available from National Office as of 12.18.18.</p> <p>Further review level is fixed for every State Plan.</p>