

FY 2019 Comprehensive Federal Annual Monitoring Evaluation (FAME) Report

Virginia Occupational Safety and Health (VOSH) Program



Evaluation Period: October 1, 2018 – September 30, 2019

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 Program's (VOSH) performance during Fiscal Year (FY) 2019. The evaluation for the FY 2019 reporting period included a comprehensive on-site review of safety and health inspection case files randomly selected 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. OSHA did not identify new findings or observations during this year's FAME.

VOSH continues to accomplish its mission of protecting 3.9 million Virginians from workplace safety and health hazards effectively. VOSH covers over 271,000 employers. The U.S. Bureau of Labor Statistics' (BLS) 2018 data reflects an overall Total Recordable Case Rate (TRCR) of nonfatal occupational injuries and illnesses of 2.8 for Virginia (10.2% lower than the national TRCR). Virginia's TRCRs in private industry, construction, 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 2,094 inspections it conducted in private workplaces and state and local government (SLG) workplaces. These inspections resulted in VOSH issuing 2,886 violations. VOSH identified and corrected at least 13,157 instances of workplace hazards. Since its inception in 2015, VOSH's Worker Misclassification policy resulted in over 175 referrals to the Department of Professional and Occupational Regulations for potential misclassification issues.

Virginia General Assembly Senate Bill 607 directs the Virginia Safety and Health Codes Board to adopt regulations for the issuance of proposed penalties to SLG employers. The bill became effective on November 1, 2018 and applies to VOSH inspections opened on or after December 1, 2018. This regulation permits penalties to be issued for willful, repeat and failure-to-abate violations, as well as serious violations that cause a fatal accident or are classified as "high gravity."

VOSH consistently strives to improve its program and actively engages with OSHA by sharing ideas, considering suggestions, and implementing recommendations when appropriate. Though VOSH is very 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 not captured by the algorithms used to calculate the State Plan data.

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. VOSH 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 2019, VOSH operated under C. Ray Davenport, Commissioner of DOLI, and William Burge, Assistant 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 an SLG consultation project under Section 23(g) of the OSH Act of 1970. The consultation services unit assists Virginia's SLG 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 SLG 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 VOSH is to enforce safety and health regulations for general industry, construction, agricultural, and SLG 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. VOSH covers both SLG 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.

VOSH 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 (SLG 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. VOSH's 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 four 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, and is operated by VOSH Consultation. Virginia’s VPP STAR program 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. Virginia’s strategic partnership with the Virginia Department of Corrections (VADOC) is designed to encourage and recognize Virginia Correctional Facilities who voluntarily implement highly effective safety and health management systems.

B. New Issues

None.

III. Assessment of State Plan Progress and Performance

A. Data and Methodology

OSHA established a two-year cycle for the FAME process. FY 2019 is a comprehensive year and as such, OSHA was required to conduct an on-site evaluation and case file review. A six-person OSHA team, including a whistleblower investigator, was assembled to conduct a full on-site case file review. The whistleblower case review was conducted on December 4, 2019 to December 5, 2019. The case file review was conducted at the VOSH Tidewater Regional Office located in Norfolk, Virginia from December 16, 2019 to December 18, 2019.

A total of 132 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, 2017 through September 30, 2019). The selected population included:

- Ten (10) fatality case files
- Thirty-five (35) unprogrammed activity case files
- Fifty-three (53) programmed safety case files
- Seventeen (17) programmed health case files

- Eight (8) health sampling case files
- Nine (9) 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 2019 State Activity Mandated Measures Report and includes the FRL for each measure. Throughout the evaluation process VOSH was cooperative, shared information, and ensured that 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, 71 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 providing 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 developmental training program for VOSH compliance and consultation personnel. The training program provides a progression of training requirements for personnel and includes informal training such as 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 VOSH. During the FY 2017 FAME comprehensive on-site review, OSHA noted that VOSH's data entry could be enhanced by ensuring that case settlement information is uniformly entered 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. VOSH assessed the inconsistency and took action to rectify the matter, ensuring case settlement data entry consistency. During the FY 2019 FAME comprehensive on-site review, OSHA noted consistent settlement data entry in OIS.

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 and DLS for a final legal 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.

VOSH often proactively conducts an internal special study when reports indicate a potential concern. The FY 2019 SAMM report indicates that the VOSH in-compliance rate for safety and health fell outside the FRL. VOSH conducted a special study and, in good faith, openly shared the results. OSHA evaluated the method, reviewed the results, and agreed that the VOSH multi-employer policy requiring VOSH to assign an inspection number to all employers covered by the scope of the inspection at construction sites is responsible for increasing safety in-compliance rates for safety inspections. Similarly, due to a VOSH policy requiring an on-site inspection for all complaints alleging employee exposure to asbestos, the VOSH health in-compliance rate falls outside the further review level. The SAMM report was not designed to capture VOSH's unique policies.

d) Staffing

VOSH continues to experience vacancies in both safety and health compliance staff positions due to funding deficiencies at the federal level. Based on the FY 2019 grant application, VOSH filled 76% of the safety compliance officer benchmarks and 72% of the health compliance officer benchmarks. Fifteen benchmark positions were not filled. VOSH plans to fill vacant positions as soon as federal and state funding is available.

2. ENFORCEMENT

a) Complaints

VOSH's performance continues to excel in the area of enforcement. The SAMM report indicates that VOSH received a total of 847 valid complaints in FY 2019 – 373 of those valid complaints were inspected. VOSH initiated inspections within an average of 2.31 days – considerably less than the agreed-upon FRL of five days. VOSH received 474 complaints (non-formal “phone” and “fax” process) for which investigations were also determined to be warranted. The investigations were initiated within an average of 1.43 days – considerably 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 (100% where inspections were assigned. The FRL is fixed at 100% for both one day for response to imminent danger complaints. The FRL is fixed at zero for number of site denials where entry is not obtained.

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 prominent 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.

VOSH consistently and promptly notifies the Norfolk Area OSHA office of 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 2019, VOSH responded to all but one of the 36 reported fatalities within one day of notification. The FRL for one workday fatality response is fixed at 100%. VOSH encountered a delay in responding to one fatality because the accident was initially reported as a serious injury. The fatality was reported the next day after the incident. VOSH responded on the third day because the incident occurred on a public roadway and traffic control arrangements had to be coordinated for safe access on the accident site.

The on-site case file review revealed that contact with the next-of-kin (NOK) was made in all but three of the 10 reviewed fatality cases. Two of these cases involved “Workplace Death” inspections (non-occupationally-related fatality cases where the individual died from a medical event such as a heart attack). It is VOSH policy to conduct inspections of Workplace Deaths because the occasional situation arises where a death initially classified as a heart attack turns out to be the result of an electrocution, heat stress, or other occupational related hazard. VOSH does not send out a NOK letter in Workplace Death cases as VOSH’s NOK policy only applies to fatal accident investigations resulting from occupational hazards. The two Workplace Deaths were improperly classified in OIS as fatal accidents. VOSH has updated OIS to clarify that these two cases were not occupationally-related fatalities.

The third case is one where the regional director indicates that an NOK letter was sent. The case originally was identified by the employer as a Workplace Death, but after contact with NOK, it was determined to be a “fatality” and the NOK letter was then sent and was included in the case file.

OSHA closed the associated observation (FY 2018-OB-01).

Observation FY 2018-OB-01

In five of the 29 (17%) fatality case files reviewed, the case file did not contain documentation that the final NOK letter with the inspection results was sent.

Federal Monitoring Plan FY 2018-OB-01

In FY 2019, case files will be randomly selected and reviewed to determine if this item was addressed.

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 DLS.

The 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 conducted 2,094 inspections— falling short of its projected by goal by only 35 inspections. Although Appendix D indicates that VOSH conducted 2,080 inspections, OIS reports run at a later date provided an updated count. VOSH conducted 1592 safety inspections, falling below the FRL of +/- 5% of 1696 (1611 to 1781) safety inspections by only 19 inspections. VOSH conducted 488 health inspections, exceeding the FRL of +/- 5% of 435 (413 to 456) health inspections by 32 inspections. OIS reports also indicate that VOSH issued nearly 2,900 violations and identified and required abatement for over 13,000 workplace hazards.

State Emphasis Programs (SEPs)

The VOSH Program Directive 01-019 defines the internal policy and procedures for the development and adoption of SEPs. VOSH may develop SEPs 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 SEPs for standards unique to the state as well as OSHA's strategic area of emphasis. Examples of SEPs that VOSH adopted include:

- First Report of Injuries and Illnesses
- Fall Hazards
- Scaffolding
- State and Local Government 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
- Tree Trimming Operations
- Wastewater and Water Treatment Facilities

VOSH also targets industries through National Emphasis Programs (NEP) developed by OSHA. Examples of some NEPs that have been adopted by VOSH include:

- Primary Metals Industries
- Amputations
- Combustible Dust
- Process Safety Management (PSM) Covered Chemical Facilities

- Lead
- 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.

The VOSH Program Directive 02-003S 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 43.14% and 48.35% for health cases in FY 2019 – both rates exceeded the FRL. The FRL for percent in-compliance for safety inspections is +/- 20% of the three-year national average of 30.30% which equals a range of 24.24% to 36.36%. The FRL for percent in-compliance for health inspections is +/- 20% of the three-year national average of 36.12% which equals a range of 28.90% to 43.35%. VOSH in-compliance rates have been consistent over the past five years.

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 annually 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 affected 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 unique policies affect the in-compliance rates.

If VOSH followed OSHA's multi-employer construction policy, it would have conducted 292 fewer inspections and had 292 fewer in-compliance inspections. When the VOSH safety in-compliance rate is recalculated by adjusting for 292 in-compliance construction inspections on multi-employer sites, the in-compliance rate falls to 29.42%. This is within the safety in-compliance FRL range. The VOSH health in-compliance rate was recalculated by adjusting for 155 total and 117 in-compliance asbestos SEP inspections, resulting in a rate of 34.33%. 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 2,886 violations with 65% classified as serious and 12 violations classified as willful. VOSH averaged 1.81 serious, willful, or repeat (SWR) violations and 0.67 other than serious violations per inspection. The FRL for SWR violations is +/- 20% of the three-year national average of 1.79 or 1.43 to 2.15. The average number of other-than-serious (OTS) violations was 0.67 which was less than the FRL range of +/- 2-% of the three-year national average of 0.97 or 0.78 to 1.16 OTS violations per inspection. While the OTS violation rate fell below the national average, the SWR violation rate fell within the FRL range.

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.

Based on OSHA criteria for a significant case, VOSH issued citations for at least two significant case inspections in FY 2019 and one in early FY 2020. In one instance, VOSH issued three willful violations totaling \$381,762 and in the other issued four willful, seven serious, and one other-than-serious violation totaling \$528,692. Early in FY 2020, VOSH issued violations to one company totaling \$272,169 for two willful and four serious violations.

d) Citations and Penalties

The case file review revealed that case files contain sufficient evidence for supporting recommended and proposed violations. VOSH continues to improve the development of hazard descriptions and useful employer knowledge. Based on the information and documentation contained in the reviewed case files, citations that were issued for apparent violations were appropriate.

In FY 2019, VOSH’s average safety lapse time was within the FRL (+/-20% of the three-year national average of 47.61 days or 38.08 to 57.13 days) at 38.96 days. VOSH health lapse time continues to fall below the FRL (+/-20% of the three-year national average of 57.23 days or 45.78 to 68.68 days) at 40.89 days. The on-site review determined that VOSH completes inspections promptly without undue delay.

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.

In FY 2017, OSHA noted that three of 21 (14%) cases opened in FY 2016 and FY 2017 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. Based on OIS reports, VOSH issued one or more willful violations in 14 cases opened between FY 2018 and FY 2019. OSHA confirmed that a good faith reduction was not provided for any of the medium and low gravity serious violations for cases opened in FY 2018 and FY 2019.

VOSH’s 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 2019 was \$2,415.49. A breakdown based on the number of workers is located in the table below:

Average Penalty	
Number of Workers	Average Serious Penalty
1 – 25	\$1,343.12
26 – 100	\$3,205.71
101 – 250	\$4,917.45
Greater than 250	\$6,796.94

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. 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. Between FY 2018 and FY 2019, VOSH conducted 42 follow-up inspections and issued 10 failure to abate violations for one case. 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 99.90% of inspections, VOSH included worker representation. The FRL is fixed at 100%. It was determined that the two identified outliers were due to an OIS data entry error. At one worksite, no worker interviews were conducted because no worker exposure was identified on-site. At the second worksite, the employer was in the process of ceasing site operations and relocating. Worker interviews were conducted. Both data entry errors were corrected.

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 2019, 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 21 of the 24 cases reviewed where informal settlement conferences were held, some violations were vacated and/or reclassified. However, the FY 2019 end-of-year (EOY) SIR indicated that only 2.95% of total violations pre-contest and 19% of total violations after a contest had been filed were vacated. Similarly, the SIR shows that only 3.34% of total violations pre-contest and 23.46% 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 64.41% of penalties. The FRL for FY 2019 is set at +/-15% of the three-year national average of 66.38% or 56.42% to 76.33%.

OSHA noted that some regional directors provided very detailed descriptions justifying penalty reductions, violation reclassification, and vacating violations. Overall, OSHA continues to see improvement for written settlement justification in case files. Overall, changes made aligned 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 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 consistently evaluates the penalty structure and penalty reduction factors to ensure that penalties are fairly assessed for all employers.

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 2019 EOY SIR indicates that 19% of total contested violations are vacated while the national average is recorded at 13.98%. Similarly, the SIR reports that 23.46% of total contested violations are reclassified. The national average is recorded at 12.17%. 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 defined 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.

The FY 2019 EOY SIR indicates that 64.96% of penalties are retained after a contest has been filed (the national average was 62.54%). VOSH displayed a strong commitment to retaining penalties considering that the state adopted a penalty increase in FY 2017.

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 2019, VOSH regularly maintained contact with the Regional Office concerning the status of any necessary legislative and regulatory actions.

In FY 2019, VOSH identically adopted the Final Rule on Crane Operator Certification Requirements (1926), the Final Rule on the Standards Improvement Project – Phase IV (1904, 1910, 1915, 1926), and the Final Rule on the Tracking of Workplace Injuries and Illnesses.

VOSH adopted all standards in a timely manner with the exception of the Final Rule on the Implementation of the 2019 Annual Adjustment to Civil Penalties for Inflation. VOSH adopted the Interim Final Rule on Maximum Penalty Increases (1902, 1904) on July 1, 2017. The interim final rule 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 continue to fall approximately one year behind federal OSHA’s maximum penalties because the OSHA increase occurred after DOLI legislation had already been submitted.

The status of FY 2019 federal standard adoptions is presented in the table below:

Status of FY 2019 and Previously Delinquent Federal Standards Adoption						
Standard	Response Due Date	State Plan Response Date	Intent to Adopt	Adopt Identical	Adoption Due Date	State Plan Adoption Date
Final Rule on the Standards Improvement Project - Phase IV 1904,1910,1915,1926 (5/14/2019)	7/13/2019	7/12/2019	Yes	Yes	11/14/2019	9/17/2019
Final Rule on the Implementation of the 2019 Annual Adjustment to Civil Penalties for Inflation 29 CFR 1902,1903 (1/23/2019)	3/23/2019	1/28/2019	Yes	No	7/23/2019	8/1/2019
Final Rule on Crane Operator Certification Requirements 29 CFR Part 1926 (11/9/2018)	1/9/2019	1/3/2019	Yes	Yes	5/9/2019	3/19/2019

VOSH did not adopt any unique enforcement standards in FY 2019 and does not have any unique standards pending.

b) Federal Program Change (FPC) Adoption

VOSH adopted an equivalent to the Confined and Enclosed Space and Other Dangerous Atmospheres in Shipyard Employment (CPL 02-01-061), the Enforcement Guidance for Personal Protective Equipment in Shipyard Employment (CPL 02-01-060), and the Shipyard Employment “Tool Bag” Directive (CPL 02-00-162).

VOSH plans to adopt the National Emphasis Program on Trenching and Excavation (CPL 02-00-161) once specific state edits are completed. Although VOSH is technically delinquent in the adoption of this specific directive, it continues to conduct trenching and excavation inspections in accordance with its Special (National) Emphasis Program: Trenching and Excavation directive (14-203) in the interim.

VOSH is not required to and has not adopted the Alternative Dispute Resolution Processes for Whistleblower Protection Programs (CPL 02-03-008).

VOSH has not yet adopted the Site-Specific Targeting 2016 (SST-16).

The status of FY 2019 federal directive adoptions is presented in the table below:

Status of FY 2019 and Previously Delinquent Federal Program Change (FPC) Adoption						
FPC Directive/Subject	Response Due Date	State Plan Response Date	Intent to Adopt	Adopt Identical	Adoption Due Date	State Plan Adoption Date
<i>Adoption Required</i>						
National Emphasis Program on Trenching and Excavation CPL 02-00-161 (10/1/2018)	11/30/2018	10/26/2018	Yes	No	4/1/2019	
<i>Equivalency Required</i>						
Confined and Enclosed Spaces and Other Dangerous Atmospheres in Shipyard Employment CPL 02-01-061 (5/22/2019)	7/21/2019	6/5/2019	Yes	No	11/22/2019	1/9/2020
Shipyard Employment "Tool Bag" Directive CPL 02-00-162 (5/22/2019)	7/21/2019	5/24/2019	Yes	No	11/22/2019	1/9/2020
Enforcement Guidance for Personal Protective Equipment (PPE) in Shipyard Employment CPL 02-01-060 (5/22/2019)	7/21/2019	7/21/2019	Yes	No	11/22/2019	1/9/2020
Site-Specific Targeting 2016 (SST-16) CPL 02-18-01 (10/16/2018)	12/15/2018				4/16/2019	
<i>Adoption Encouraged</i>						
Alternative Dispute Resolution (ADR) Processes for Whistleblower Protection Programs CPL 02-03-008 (2/4/2019)	4/5/2019	4/5/2019	No	N/A	N/A (Adoption Not Required)	N/A

VOSH consistently and promptly provides comparison documents for all FPCs.

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. In FY 2017, OSHA received four applications involving construction of a new tunnel beneath the Chesapeake Bay. When the applications were received, a contractor or the project was not identified and the file was put

on hold until employer-specific information was received. The employer was identified on May 14, 2019. It was determined that the scope of the work fell within VOSH jurisdiction and the variance request was transferred to VOSH. The variance request is currently under review by VOSH.

6. STATE AND LOCAL GOVERNMENT (SLG) WORKER PROGRAM

VOSH conducted 160 safety and health inspection in SLG workplaces or 6.83% of its total inspection activity for FY 2019. VOSH SLG inspections fell below the FRL of +/- 5% of the 7.65% of total inspections negotiated in the FY 2019 grant application (7.27% to 8.03%). VOSH increased its SLG inspection goal by 33% from 5.50% in FY 2018 to 7.65% in FY 2019. Although VOSH missed its FY 2019 goal by 17 inspections, it significantly surpassed its goal from the prior year.

Serious violations were observed and citations issued. VOSH began issuing penalties to SLG employers for willful, repeat and failure-to-abate violations, as well as serious violations that cause a fatal accident or that are classified as “high gravity” on December 1, 2018 (16VAC25060). Abatement information is required from state and local government entities and is reviewed and evaluated in the same manner as private sector abatement documentation.

In FY 2019, VOSH issued one willful violation and \$127,254 in penalties to a local government department of utilities for exposing workers to trenching and excavation cave-in hazards while repairing a ruptured water main. Inspectors determined that the employer directed workers to enter an approximately eight foot deep trench with vertical walls and water in the base of the trench, without the protection of either shoring or sloped/benched walls. The case was settled with the willful violation affirmed and a penalty of \$100,000.

7. WHISTLEBLOWER (WB) PROGRAM

All determinations were based on sound investigations, relevant evidence, and appropriate witness interviews. All investigative files were reviewed by the VOSH DLS director who wrote the legal analysis and final letters to complainants. Settlements are handled by DLS with assistance from the investigator as needed.

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. VOSH does not participate in the Expedited Case Processing (ECP) pilot and does not prepare electronic case files. Otherwise, procedures and policies mirror OSHA’s. Cases were investigated timely and all case dispositions were appropriate.

8. COMPLAINT ABOUT STATE PROGRAM ADMINISTRATION (CASPA)

OSHA did not receive any VOSH CASPAs in FY 2019.

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. There are 37 active VPP sites in Virginia.

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 two annual safety and health conferences in FY 2019. The conferences were presented by the DOLI in cooperation with the Virginia State Association of Occupational Health Nurses (VSAOHN), a VOSH alliance partner. The 23rd annual VOSH conference was held in October and November of 2018. The conference hosted 333 attendees and 33 vendors. The 24th annual VOSH conference was held in September of 2019. This conference hosted 400 attendees and 27 vendors.

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

According to the FY 2019 Mandated Activities Report for Consultation (MARC), the VOSH Consultation Program conducted 15 on-site consultation visits at SLG workplaces. All were reported as initial visits. All hazards were abated within the required timeframe. In its grant application, VOSH had originally projected that eight total visits would be conducted in SLG workplaces; however, VOSH conducted 61% more than it anticipated. The amount of SLG consultation visits depends upon receiving voluntary requests for visits which is why the actual number of visits can vary significantly from the goal. 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 2019 Virginia Occupational Safety and Health Program Comprehensive FAME Report

There were no new or continued findings in FY 2019.

Appendix B – Observations and Federal Monitoring Plans

FY 2019 Virginia Occupational Safety and Health Program Comprehensive FAME Report

Observation # FY 2019- OB-#	Observation# FY 2018-OB-#	Observation	Federal Monitoring Plan	Current Status
	FY 2018-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 2019, case files will be randomly selected and reviewed to determine if this item was addressed.	Closed

Appendix C - Status of FY 2018 Findings and Recommendations
FY 2019 Virginia Occupational Safety and Health Comprehensive FAME Report

There were no new or continued findings in FY 2019.

Appendix D - FY 2019 State Activity Mandated Measures (SAMM) Report

FY 2019 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 – VOSH			FY 2019	
SAMM Number	SAMM Name	State Plan Data	Further Review Level	Notes
1a	Average number of work days to initiate complaint inspections (state formula)	2.31	5	The further review level is negotiated by OSHA and the State Plan.
1b	Average number of work days to initiate complaint inspections (federal formula)	1.43	N/A	This measure is for informational purposes only and is not a mandated measure.
2a	Average number of work days to initiate complaint investigations (state formula)	1.11	3	The further review level is negotiated by OSHA and the State Plan.
2b	Average number of work days to initiate complaint investigations (federal formula)	0.65	N/A	This measure is for informational purposes only and is not a mandated measure.
3	Percent of complaints and referrals responded to within one workday (imminent danger)	100%	100%	The further review level is fixed for all State Plans.
4	Number of denials where entry not obtained	0	0	The further review level is fixed for all State Plans.

Appendix D - FY 2019 State Activity Mandated Measures (SAMM) Report

FY 2019 Virginia Occupational Safety and Health Program Comprehensive FAME Report

SAMM Number	SAMM Name	State Plan Data	Further Review Level	Notes
5	Average number of violations per inspection with violations by violation type	SWRU: 1.81	+/- 20% of SWRU: 1.79	The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from 1.43 to 2.15 for SWRU and from 0.78 to 1.16 for OTS.
		Other: 0.67	+/- 20% of Other: 0.97	
6	Percent of total inspections in state and local government workplaces	6.83%	+/- 5% of 7.65%	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 7.27% to 8.03%.
7	Planned v. actual inspections – safety/health	S: 1,592	+/- 5% of S: 1,696	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 1,611.20 to 1,780.80 for safety and from 413.25 to 456.75 for health.
		H: 488	+/- 5% of H: 435	
8	Average current serious penalty in private sector - total (1 to greater than 250 workers)	\$2,415.49	+/- 25% of \$2,871.96	The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from \$2,153.97 to \$3,589.95.
	a. Average current serious penalty in private sector (1-25 workers)	\$1,343.12	+/- 25% of \$1,915.86	The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from \$1,436.89 to \$2,394.82.
	b. Average current serious penalty in private sector (26-100 workers)	\$3,205.71	+/- 25% of \$3,390.30	The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from \$2,542.73 to \$4,237.88.
	c. Average current serious penalty in private sector (101-250 workers)	\$4,917.45	+/- 25% of \$4,803.09	The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from \$3,602.31 to \$6,003.86.
	d. Average current serious penalty in private sector (greater than 250 workers)	\$6,796.94	+/- 25% of \$5,938.59	The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from \$4,453.94 to \$7,423.23.

Appendix D - FY 2019 State Activity Mandated Measures (SAMM) Report

FY 2019 Virginia Occupational Safety and Health Program Comprehensive FAME Report

SAMM Number	SAMM Name	State Plan Data	Further Review Level	Notes
9	Percent in compliance	S: 43.14%	+/- 20% of S: 30.30%	The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from 24.24% to 36.36% for safety and from 28.90% to 43.35% for health.
		H: 48.35%	+/- 20% of H: 36.12%	
10	Percent of work-related fatalities responded to in one workday	97.22%	100%	The further review level is fixed for all State Plans.
11	Average lapse time	S: 38.96	+/- 20% of S: 47.61	The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from 38.08 to 57.13 for safety and from 45.78 to 68.68 for health.
		H: 40.89	+/- 20% of H: 57.23	
12	Percent penalty retained	64.41%	+/- 15% of 66.38%	The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from 56.42% to 76.33%.
13	Percent of initial inspections with worker walk around representation or worker interview	99.90%	100%	The further review level is fixed for all State Plans.
14	Percent of 11(c) investigations completed within 90 days	17%	100%	The further review level is fixed for all State Plans.
15	Percent of 11(c) complaints that are meritorious	22%	+/- 20% of 23%	The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from 18.40% to 27.60%.
16	Average number of calendar days to complete an 11(c) investigation	223	90	The further review level is fixed for all State Plans.
17	Percent of enforcement presence	1.38%	+/- 25% of 1.23%	The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from 0.92% to 1.54%.

NOTE: The national averages in 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 12, 2019, as part of OSHA's official end-of-year data run.

2019

Virginia Department of Labor and Industry



Virginia State Plan OSHA Annual Report

Appendix E - FY 2019 State OSHA Annual Report (SOAR)

FY 2019 Virginia Occupational Safety and Health Program Comprehensive FAME Report

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Appendix E - FY 2019 State OSHA Annual Report (SOAR)

FY 2019 Virginia Occupational Safety and Health Program Comprehensive 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 of the importance of a safety and health culture for both employers and employees.

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; 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.

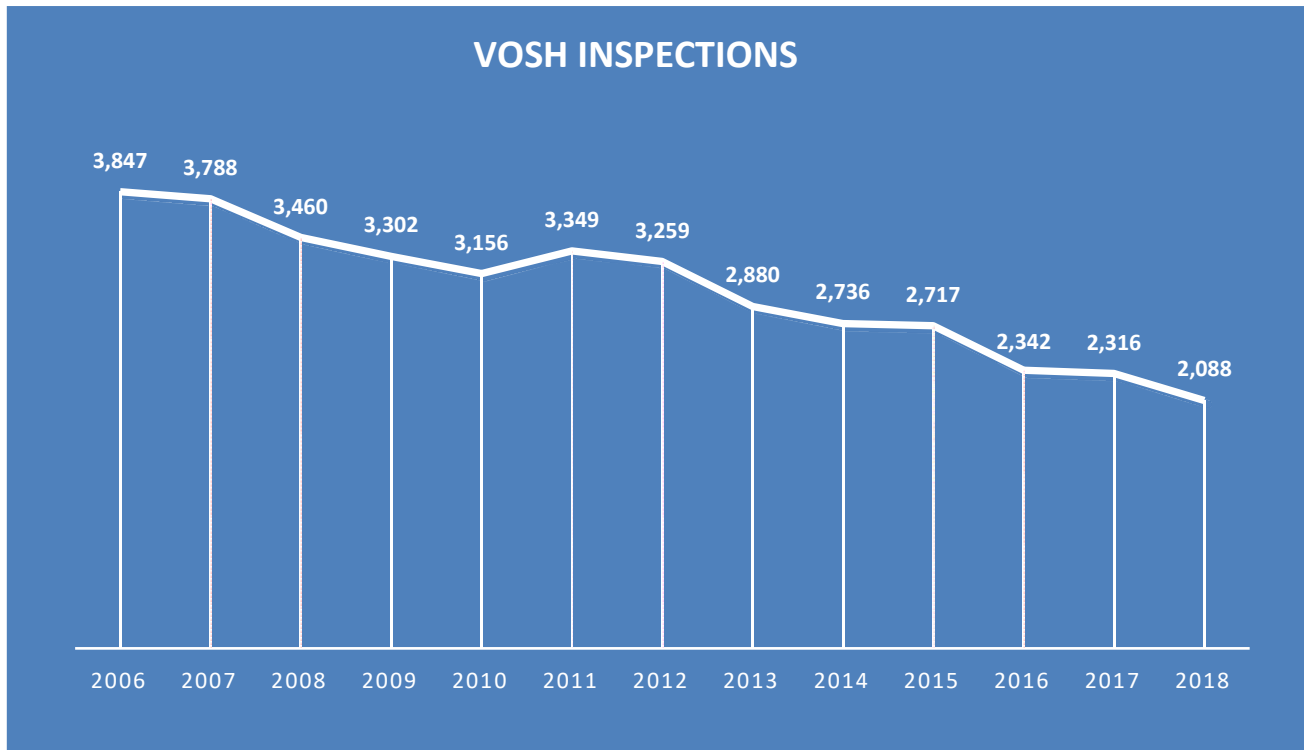
Fifty-nine (59) Compliance Safety and Health Officer positions, twelve (12) of which are unfunded (20% of available staff), are responsible for addressing safety and health issues for over 275,000 Virginia businesses and 4.44 million employees¹.

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 2010-2012 (calendar year), the average number of VOSH inspections was 3255. During the most recent three (3) year period of 2016 to 2018, the average number of inspections was 2,249, a difference of 1006 inspections per year or a decline of 30.9%.

¹ <http://www.vec.virginia.gov/sites/default/files/snapshot-11364-VASnapshotweb-Oct2019.pdf>

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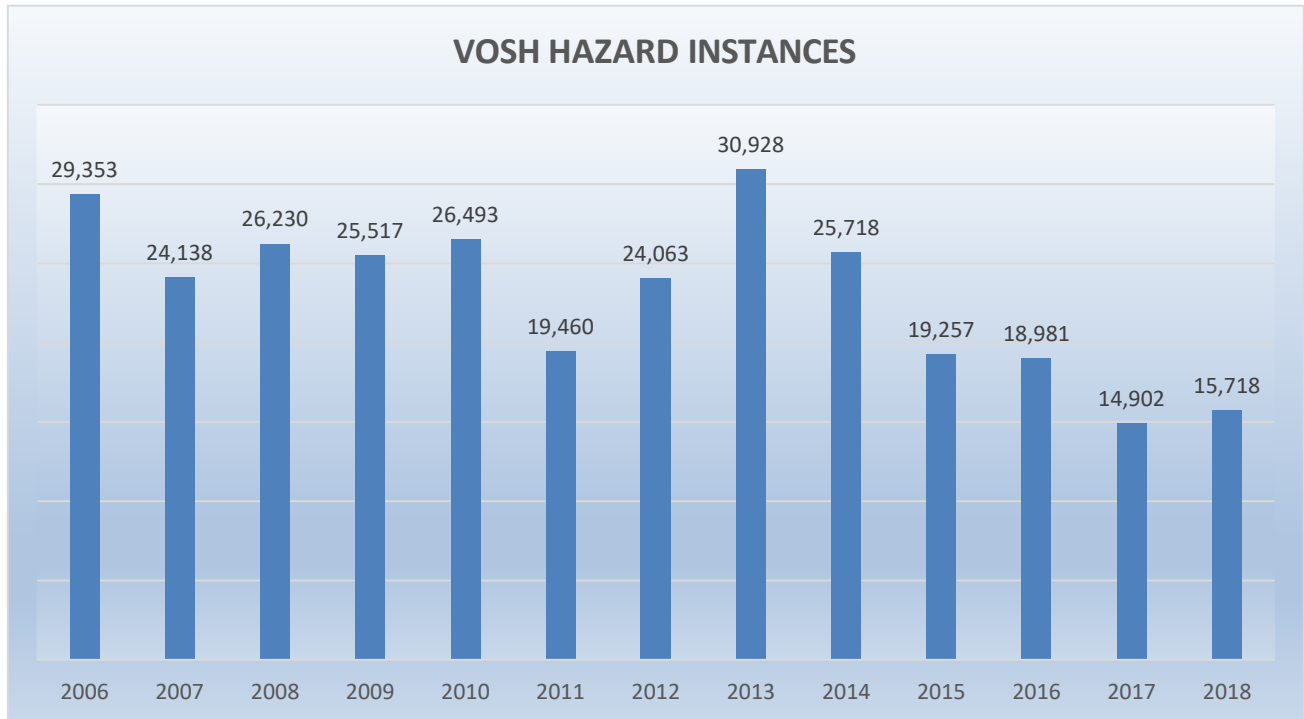
FY 2019 Virginia Occupational Safety and Health Program Comprehensive FAME Report



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 (16,534) for the most recent three (3) years of 2016 to 2018 is 29.2% below that for the period 2010 to 2012 (23,339).

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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 2019 indicates that VOSH has jurisdiction over approximately 4,444,906 workers in 275,090 establishments – a 151.8% increase in establishments and a 111.8 % increase in employees.

Strategic Plan

The Virginia Occupational Safety and Health 5 Year Strategic Plan for FFY 2019-2023 established two strategic goals:

VOSH Compliance Strategic Goals
Goal 1: Reduce Occupational Hazards Through Direct Intervention
Goal 2: Promote a Safe and Healthful Workplace Culture

This SOAR presents a review of the strategies used and results achieved in FFY 2019.

Three metrics require continued monitoring. First, VOSH's Goal 1.1B for initiating complaint investigations is one (1) working day (SAMM 2 contains an OSHA/VOSH negotiated three (3) day period to initiate investigations). For FFY 2019, VOSH took an average of 1.11 days to initiate complaint investigations.

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FY 2019 Virginia Occupational Safety and Health Program Comprehensive FAME Report

VOSH Goal 1.2B (SAMM 10), requires that inspections of 100% of fatalities and catastrophes be initiated within one working day of notification. The goal is 100% and VOSH performance was 97.22%, representing one fatal accident inspection that was not initiated within one working day of notification. The inspection involved the death of a local government employee. Initially, the accident was reported as a serious injury; however, the employee died before 12 pm the first day. The fatality was reported on day two following the accident. VOSH responded on day three because the accident occurred on a public roadway, and traffic control arrangements had to be coordinated to safely access the accident site.

Finally, VOSH Goal 2.1A (SAMM 13), the percent of inspections with employee involvement through walk-around representation or employee interview, also requires further monitoring. The goal is 100% and VOSH performance was 99.90% representing two inspections where employee involvement did not occur. Both outliers were coding errors. In the case of the first outlier, no employee participation was checked. There were no interviews as there was no employee exposure identified on the site. The second outlier was a unique inspection because the employer was in the process of closing down operations and relocating to a new site. However, employees were interviewed and a walk-around performed. Both errors have been corrected in OIS.

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

Appendix E - FY 2019 State OSHA Annual Report (SOAR)

FY 2019 Virginia Occupational Safety and Health Program Comprehensive FAME Report

II. Summary of Annual Performance Plan Results

Goal 1.1A

Strategic Goal	1	Reduce Occupational Injuries, Illnesses, and Fatalities through Direct Intervention		
Performance Goal	1.1	Reduce the rate of workplace injuries and illnesses.		
	1.1A	By 2019, decrease injuries and illnesses per 100 workers in the workplace by 3.8%.		
Strategy	<ul style="list-style-type: none"> • Analyze data to better identify establishments for inspections. • Research new sources for information to identify best targets. • Inspect worksites in non-programmed areas through rapid response to complaints, referrals, and utilizing multi-employer policy. • Inspect 7% of total inspections as public-sector worksites. • Analyze results and effectiveness of compliance inspections to determine their impact on fatalities, injury, and illness rates. • Identify and implement adjustments that will increase the impact of compliance inspections. • Analyze the effectiveness of guidance and standards, and identify needed changes. 			
Performance Indicator	2006 Total Recordable Injury and Illness Baseline.			
FFY 2019 Results	The Total Recordable Injury and illness rate for CY18 is 2.8 per 100 workers. Source: https://www.bls.gov/ - 18summ1_51.xlsx			
Conclusion		Baseline	2018 Target	2018 Result
		2006 TRII	3.8	2.8
	VOSH met this goal.			

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FY 2019 Virginia Occupational Safety and Health Program Comprehensive FAME Report

Goal 1.1B

Strategic Goal	1	Reduce Occupational Injuries, Illnesses, and Fatalities through Direct Intervention		
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"> Promptly and accurately, investigate a workplace complaint within one workday or conduct an inspection within five workdays in an effort to reduce injuries and illnesses. 		
Performance Indicator	The average response for complaint investigations was 1.11 days. The average response for initiating complaint inspections was 2.31 days			
FFY 2019 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	2019 Target	2019 Result
		100%	100%	<p>Goal partially met.</p> <p>The average response for complaint investigations was 1.11 days – GOAL NOT MET, but SAMM 2 negotiated goal is three days and National Average was 2.844 days.</p> <p>The average response for initiating complaint inspections was 2.31days – GOAL MET.</p>
VOSH partially met this goal.				
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 (5) workdays; or, VOSH will conduct an on-site inspection.			

Appendix E - FY 2019 State OSHA Annual Report (SOAR)

FY 2019 Virginia Occupational Safety and Health Program Comprehensive FAME Report

Goal 1.2A

Strategic Goal	1	Reduce Occupational Injuries, Illnesses, and Fatalities through Direct Intervention		
Performance Goal	1.2	Reduce the rate of workplace fatalities.		
	1.2A	By 2018 decrease fatalities in the workplace per 100,000 workers by 3.85%.		
Strategy	<ul style="list-style-type: none"> • Analyze data to better identify establishments for inspections. • Research new sources for information to identify best targets. • Inspect worksites in non-programmed areas. • Inspect identified public-sector worksites. • Analyze results and effectiveness of compliance inspections to determine their impact on fatalities, injury, and illness rates. • Identify and implement adjustments that will increase the impact of compliance inspections. • Analyze the effectiveness of guidance and standards and identify needed changes. 			
Performance Indicator	Workplace fatality rate in Virginia per 100,000 workers. BLS has not released the CY2018 performance data for this measure. The performance data for CY2017 indicates a rate of 2.9 fatalities per 100,000 workers. Baseline rate of 4.0 fatalities per 100,000 workers in 2016. CY2017 rate of 2.9 represents a 27.5% reduction from the 4.0 baseline rate from CY 2016.			
FFY 2018 Results	The number of total fatal injuries in Virginia for CY2018 has not been released. 2017 CFOI: https://www.bls.gov/iif/oshwc/cfoi/staterate2017.htm			
Conclusion		Baseline	2019 Target	2019 Result
		4.0	3.85	Pending BLS data
	VOSH met this goal.			
Comments				

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Goal 1.2B

Strategic Goal	1	Reduce Occupational Injuries, Illnesses, and Fatalities through Direct Intervention		
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"> Promptly initiate fatality and catastrophe investigations within one workday. 		
Performance Indicator		Percent of inspections of fatalities and catastrophes initiated within one working day of notification.		
FFY 2019 Results		97.22% of inspections of fatalities and catastrophes were initiated within one working day of notification, representing 35 out of 36 fatalities.		
Conclusion		Baseline	2019 Target	2019 Result
		NA	100%	100%
		VOSH did not meet this goal.		
Comments		<p>The one outlier is a fatality case that was responded to within two days. The inspection involved the death of a local government employee. Initially, the accident was reported as a serious injury; however, the employee died before 12 pm the first day. The fatality was reported on day two following the accident.</p> <p>VOSH responded on day three because the accident occurred on a public roadway, and traffic control arrangements had to be coordinated to safely access the accident site.</p>		

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Goal 1.3A

Strategic Goal	1	Reduce Occupational Injuries, Illnesses, and Fatalities through Direct Intervention		
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"> Increase the number of employers participating in the VPP. 			
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	2019 Data Not Available The average Virginia VPP worksite had a Total Case Incident Rate (TCIR) for 2018 of 49% below the BLS national average for its industry (3-year rolling national average, 2015-2017).			
Conclusion		Baseline	2019 Target	2019 Result
		38 VPP sites in 2018	50% below	2019 Data Not Available
	VOSH did not meet this goal.			
Comments	There are 37 active VPP sites in Virginia.			

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Goal 2.1A

Strategic Goal	2	Promote a safe and healthful workplace culture through worker involvement in all aspects of safety and health		
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"> Ongoing monitoring of inspection data. 			
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	2019 Target	2019 Result
		100%	100%	99.90%
VOSH did not meet this goal.				
Comments	<p>There were two outliers.</p> <p>The first outlier had a coding error as no employee participation was checked. There were no interviews because no employee exposure was identified on the site. This error has been corrected in OIS.</p> <p>The second outlier was also a coding error. The inspection was unique because the employer was in the process of closing down operations and relocating to a new site. However, employees were interviewed and a walk-around was performed. This error has been corrected in OIS.</p>			

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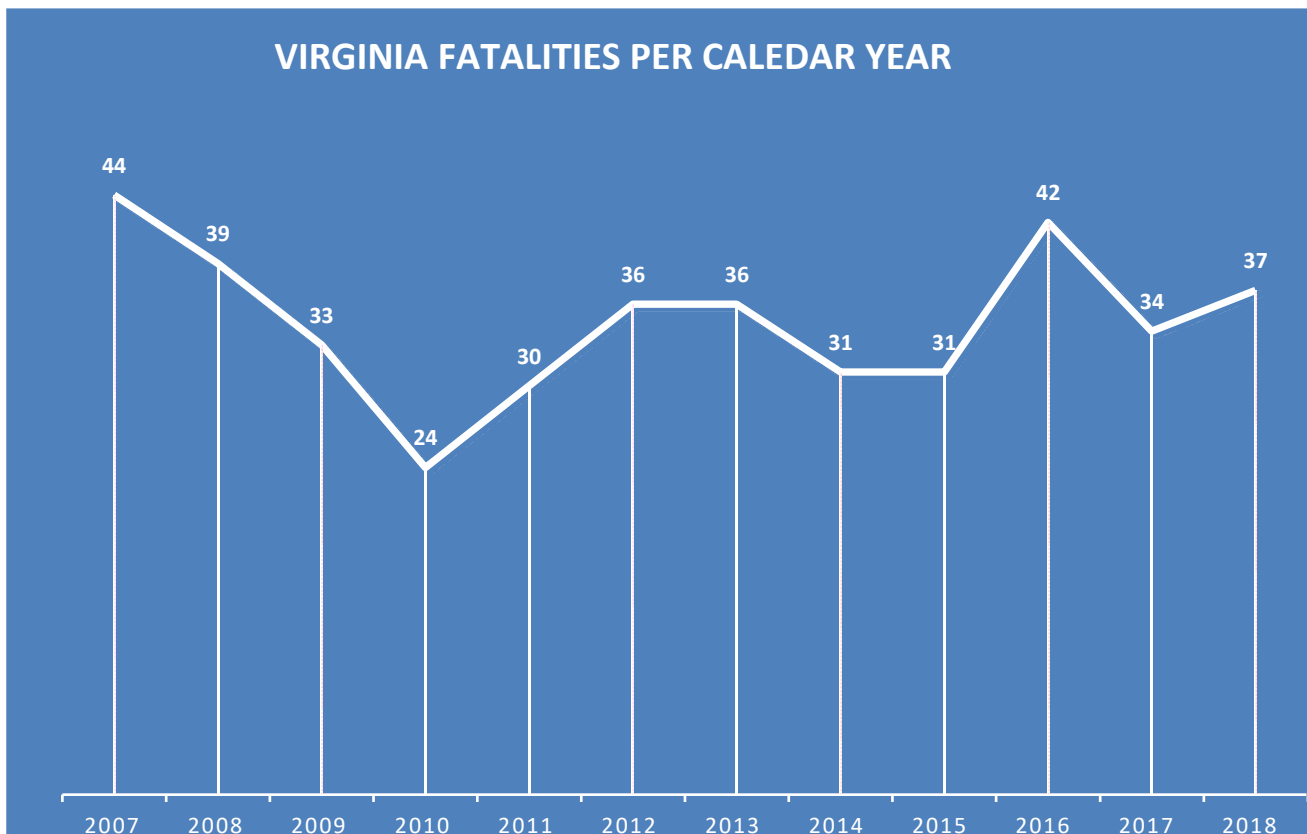
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III. FFY 2019 Accomplishments

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 .9 cases per 100 full-time workers in CY18. This rate is equal to the National rate of 0.9 cases per 100 full-time workers in CY18.²

Fatal accidents inspected by VOSH stands at 36 for calendar year 2019.



In FFY2019, VOSH Safety and Health Compliance Officers performed 1,604 safety inspections and 492 health inspections (total of 2,096)³; and were directly responsible for the identification and correction of 15,718 instances of workplace hazards.⁴ The total number of safety inspections performed fell short of the projected total for FFY 2019 (1,696 Safety) by 5.4%. The shortfall was primarily due to turnover/vacancy issues and a number of new CSHOs working their way through the VOSH registered apprenticeship program.

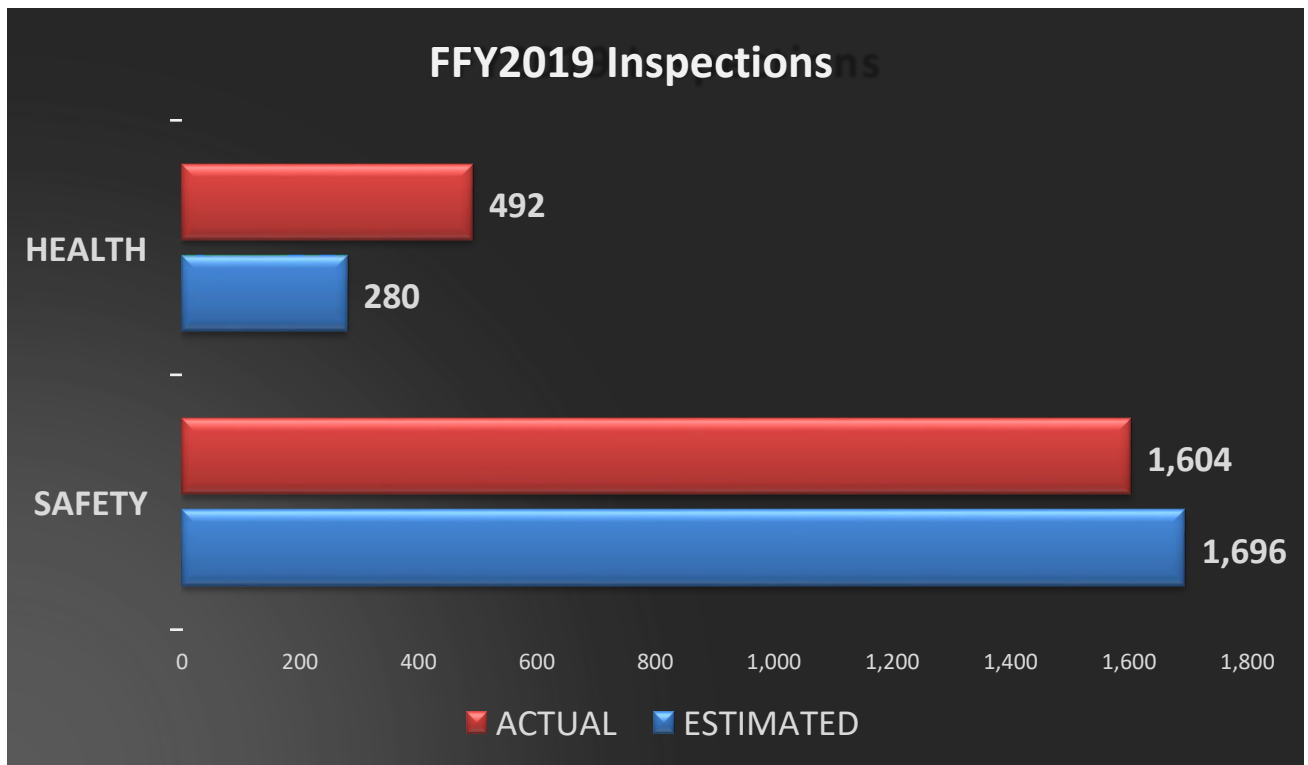
² <https://www.bls.gov/iif/soii-chart-data-2018.htm>

³ Scan Summary Report Virginia FFY 2019 12 13 18.xls

⁴ Violation Detail Data Report Virginia FFY 2019 12 13 18.xls

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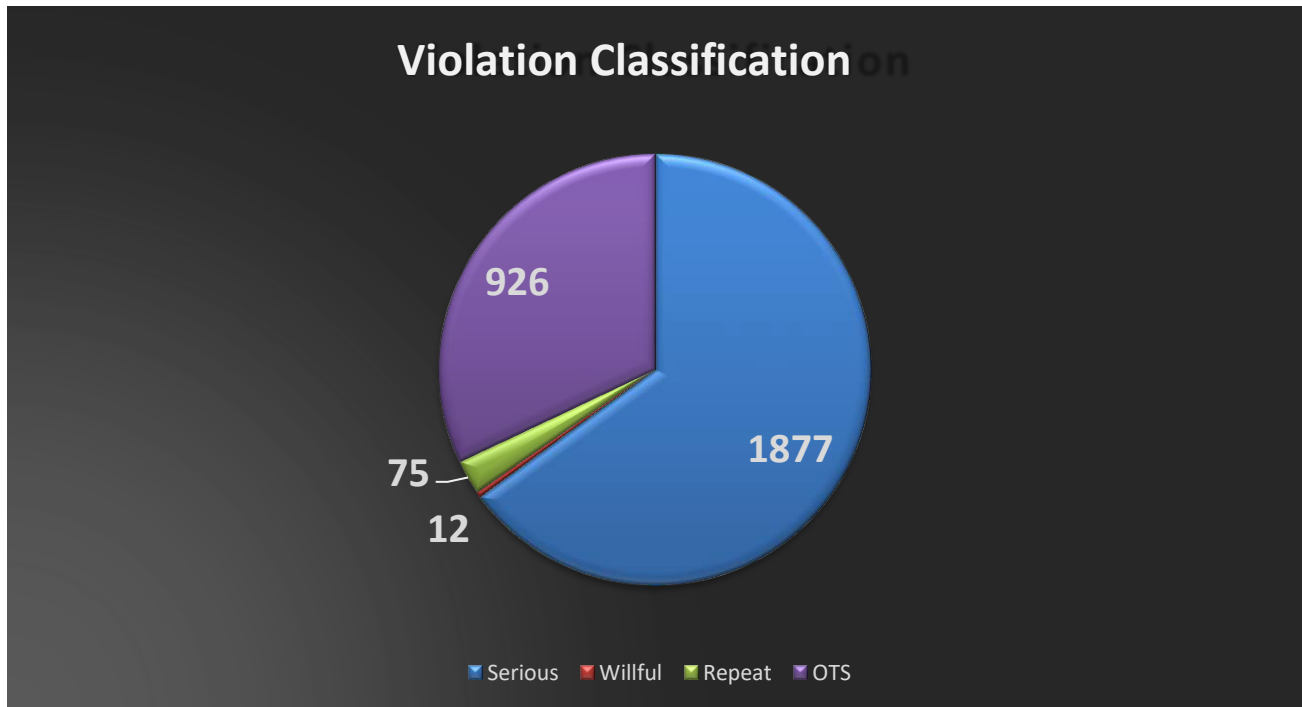


In FFY19, VOSH issued 2,894 violations. The majority of these (64.9%) were classified as Serious (1,877), willful (12) or repeat (75). In addition, 926 violations were classified as other-than-serious.⁵

⁵Scan Summary Report Virginia FFY 2019 12 13 18.xls Violation
Detail Data Report Virginia FFY 2019 12 13 18.xls

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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 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. 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 final regulation November 30, 2017, on public sector penalties, amending the VOSH Administrative Regulations Manual (ARM), 16VAC25-60. The final regulation allows 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 took effect on November 1, 2018, and applies to inspections opened on or after December 1, 2018. Information on the final regulation can be found at:

<https://townhall.virginia.gov/L/ViewStage.cfm?stageid=8153>

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.

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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 have 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 71 CSHO and Consultant apprentices have graduated from the unique VOSH Apprenticeship Program.

Annual Safety and Health Conference

Virginia hosted two annual safety and health conferences during FFY2019. The 23rd annual VOSH conference was held October 31- November 2, 2018, at the DoubleTree by Hilton Hotel in Williamsburg, VA. Over 333 safety professionals and 33 vendors attended. The 24th Annual Safety and Health Conference was held at the Founders Inn in Virginia Beach in September of 2019. The conference was a success. Over 400 attendees and 27 vendors, which included employees and safety and health professionals, received affordable and extremely beneficial safety and health training during the 3-day conference.



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24th Annual Safety and Health Conference at the Founders Inn in Virginia Beach, Virginia

Significant Cases

VOSH Issues \$127,254 in Citations and Penalties in Local Government Trench Case

VOSH's Central Regional Office issued one willful violation and \$127,254 in penalties to a local government department of utilities for exposing workers to trenching and excavation cave-in hazards while repairing a ruptured water main. Inspectors determined that the employer directed workers to enter an approximately eight (8) foot deep trench with vertical walls and water in the base of the trench, without the protection of either shoring or sloped/benched walls.

The penalties were issued under the new VOSH regulation (16VAC25-60) permitting the 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.”

Regulations

VOSH continues its efforts related to the hazards associated with Reverse Signal Operations, the Tree Trimming industry, Confined Space Standard and General Approach Distances in the Telecommunications industry, Overhead High Voltage Line Safety, Fall Protection in Steel Erection, and Sanitation in the Agricultural and Construction industries. Virginia has state specific standards related to these 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/>

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During FFY 19, Virginia issued 19 new program directives and has 50 under development. The Virginia Safety and Health Codes Board adopted seven (7) federal-identical standards:

Standard	Reference	Actions Taken
Clarification of Employer's Continuing Obligation to Make and Maintain an Accurate Record of Each Recordable Injury and Illness		Final Rule
Cotton Dust Standard for General Industry	1910.1043	CFR Correction
Amendment to the Flammable Liquids Standard for General Industry	1910.106	CFR Correction
Revising Beryllium Standard for General Industry	1910.1024	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 Final Rule; limited extension of select compliance dates
Vinyl Chloride	1910.1017	Adopted CFR Correction
Methylenedianiline	1926.60	Adopted CFR Correction

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Worker Misclassification

On June 2, 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. Over 175 referrals have been made to the Department of Professional and Occupational Regulations for potential misclassification issues since June 2, 2015.



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VPP

Voluntary Protection Programs (Virginia VPP) was instituted in 1996 and has a long record of exemplary success and unquestioned integrity. It enjoys strident support in Virginia’s business community and from labor organizations. Virginia VPP continues to thrive. There are currently 38 Virginia STAR participants and 3 Virginia BEST level one participants. Growth for FFY2020 is projected to be 7.3%.

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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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. The Voluntary Protection Program Participant's Association estimates that 100's of millions of dollars have been saved at private sector VPP STAR worksites.⁶

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.

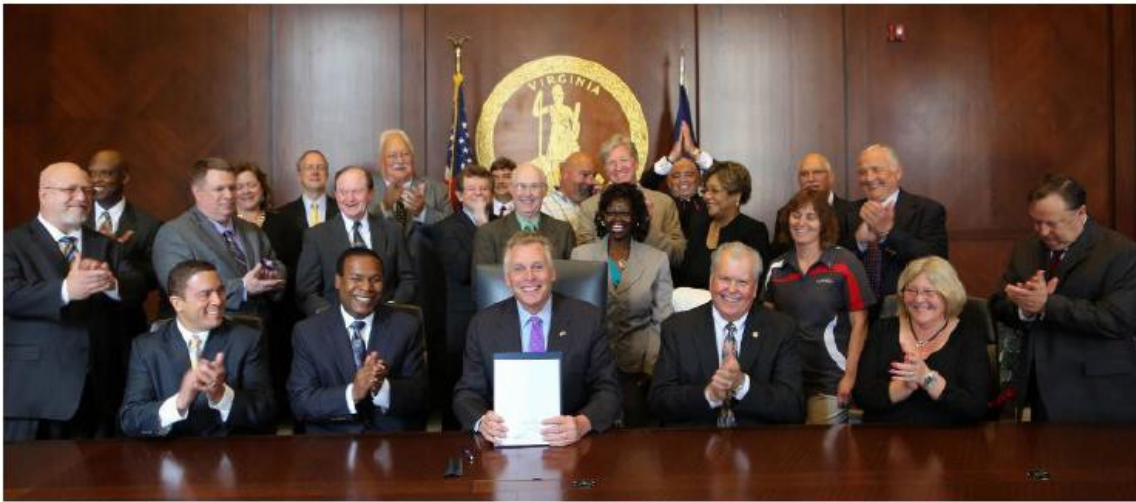
Virginia VPP Legislation

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.

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⁶ https://www.vpppa.org/images/ResourcesFiles/VPP_Works_and_Saves.pdf



The Virginia Safety and Health Codes Board 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

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VOSH – VADOC Challenge

VVPP has also signed a strategic partnership with the Virginia Department of Corrections (VADOC) based on OSHA Challenge concepts. Virginia is the only VPP program in the country that has two public sector correctional facility STAR sites (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 VADOC worksites to become members of VVPP. Eight correctional facilities have been identified and are currently in the application phase for step one participation in VADOC Challenge.



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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.

IV. FFY 2019 SAMM 9, Percent in Compliance for Safety and Health State Initiated Special Study

Safety in Compliance Rate: FY 2019 Virginia FAME

Evaluation Period: October 1, 2018 to September 30, 2019

Issue: In Compliance Rate for Safety

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

In Compliance Rate (Virginia Safety)	OSHA Rate	Nat. Rate	Difference From Nat. Rate
43.14	27.54	30.27	+42.51%

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

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Report Results:

The original Related Activity Report resulted in 995 construction inspections⁷. After sorting for those inspections that were "Related Multi-Employer", 620 inspections remained. Of those 620 Related Multi-Employer inspections, 292 were In Compliance⁸.

If VOSH followed OSHA's multi-employer construction policy, it would have conducted 292 fewer construction Related Multi-Employer inspections and had 292 fewer In Compliance inspections. Recalculating the Virginia Safety In Compliance rate by adjusting for those 292 In Compliance construction inspections results in a rate of 29.42%, within +/-20% of OSHA's rate of 27.54%, a difference of +6.82% (see below for recalculation details).

The recalculated Virginia In-Compliance rate of 29.42% is within the +/-20% Further Review Level of the National rate of 30.27% (the SAMM Reference Level), a difference of +2.81% (see below for recalculation details).

Relevant statistics for recalculating the Virginia Safety In Compliance Rate:

Total Safety Inspections for the period: 1,502⁹

Total Safety In Compliance inspections for the period: 648 (43.14% of 1,502)

Total Safety In Compliance Multi-Employer Construction inspections: 292

Adjusted Numerator and Denominator for Safety In Compliance rate:

In Compliance Inspections: 356 (648-292)

Total Inspections: 1,210 (1,502 – 292)

Recalculated In Compliance Rate: 29.42% (356/1,210)

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
29.42%	27.54%	30.27%	+2.81%

⁹ Source: VA EOY SAMM Report 2019.xls run on 11 13 19

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Health in Compliance Rate: FY 2019 Virginia FAME

Evaluation Period: October 1, 2018 to September 30, 2019

Issue: In Compliance Rate for Health

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

In Compliance Rate (Virginia Health)	Nat. Rate	Difference From Nat. Rate
48.35%	35.42%	+36.50%

Health Analysis:

Virginia conducts a much higher percentage of asbestos inspections than OSHA (155¹⁰ of 455¹¹ inspections or 34.06%) because of a longstanding policy that requires all formal and non-formal asbestos complaints alleging employee exposure be inspected, and a statutory requirement to inspect annually 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 SEP Health inspections for the evaluation period

Report Results:

The Inspection One Liner Report resulted in 155 Health Asbestos SEP inspections¹². Of those 155 inspections, 117¹³ were In-Compliance¹⁴, which is an In-Compliance rate of 75.48% (117/155).

¹⁰ Source: Inspection One-Liner Asbestos Inspections FFY 2019 run 12 10 19. "No Inspections" were not included.

¹¹ Source: VA EOY SAMM Report 2019.xls run on 11 13 19

¹² Source: Inspection One-Line Asbestos Inspections FFY 2019 run 12 10 19

¹³ Source: Inspection One-Liner Asbestos Inspections FFY 2019 run 12 10 19

¹⁴ Column O in the Inspection One-Liner Asbestos Inspections FFY 2019 run 12 10 19

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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 155 total and 117 In-Compliance Asbestos SEP inspections results in a rate of 34.33%, within the +/-20% Further Review Level of the National rate of 35.42% (see below for recalculation details).

Relevant statistics for recalculating the Virginia Health In-Compliance Rate:

Total Health Inspections for the period: 455

Total Health In-Compliance inspections for the period: 220 (48.35% of 455)

Total Health Asbestos inspections for the period: 155

Total Health In-Compliance Asbestos inspections: 117

Adjusted Numerator and Denominator for Health In-Compliance rate:

In-Compliance Inspections: 103 (220 - 117)

Total Inspections: 300 (455 - 155)

Recalculated In-Compliance Rate: 34.33% (103/300)

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

Comparison of Recalculated In-Compliance Rate (Virginia Health)	Nat. Rate	Difference
34.33%	35.42%	-3.08%

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V. Mandated Activities

SAMM Number	SAMM Name	Virginia Data	Further Review Level	Comments/Notes
1a	Average number of work days to initiate complaint inspections (state formula)	2.31	5	State Plan data is pulled only from OIS. Further review level is negotiated by OSHA and the State Plan.
1b	Average number of work days to initiate complaint inspections (federal formula)	1.43	N/A	State Plan data is pulled only from OIS. This measure is for informational purposes only and is not a mandated measure.
2a	Average number of work days to initiate complaint investigations (state formula)	1.11	3	State Plan data is pulled only from OIS. Further review level is negotiated by OSHA and the State Plan.
2b	Average number of work days to initiate complaint investigations (federal formula)	0.65	N/A	State Plan data is pulled only from OIS. This measure is for informational purposes only and is not a mandated measure.
3	Percent of complaints and referrals responded to within one day (imminent danger)	100%	100%	State Plan data is pulled only from OIS. Further review level is fixed for every State Plan.
4	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.
5	Average number of violations per inspection with violations by violation type	SWRU: 1.81	+/-20% of SWRU: 1.78	State Plan data is pulled only from OIS. Further Review – VOSH performance of .67 <u>Other</u> violations per inspection fell outside of the lower review level of .76 other violations per inspection. VOSH will monitor this measure during FFY 2020.
		Other: 0.67	+/-20% of Other: .95	

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V. Mandated Activities

6	Percent of total inspections in state and local government workplaces	6.83%	+/-5% of 7%	<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>
7	Planned v. actual inspections – safety/health	S: 1592	+/-5% of S: 1696	<p>State Plan data is pulled only from OIS.</p> <p>Actual safety inspections (1,592) were 6.13% below planned, slightly outside the Further Review Level of +/- 5% of planned safety inspection (1,696).</p>
		H: 488	+/-5% of H: 435	<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>Actual health inspections (488) were 10.86% above planned, slightly outside the Further Review Level of +/- 5% of planned health inspection (435).</p> <p>Further review level is based on a number negotiated by OSHA and the State Plan through the grant application.</p>
8	Average current serious penalty in private sector - total (1 to greater than 250 workers)	2,415.49	+/-25% of 3,105.52	<p>Further review –VOSH increased its maximum penalties by statute effective August 1, 2019. Some penalties issued during the evaluation period were under the old statutory maximums.</p> <p>State Plan data is pulled only from OIS.</p>
	a. Average current serious penalty in private sector (1-25 workers)	1,343.12	+/-25% of 2,011.81	<p>Further review level is based on a one-year national rate, pulled only from OIS.</p>

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b. Average current serious penalty in private sector (26-100 workers)	3,205.71	+/-25% of 3,674.15
c. Average current serious penalty in private sector (101-250 workers)	4,917.45	+/-25% of 5,417.61
d. Average current serious penalty in private sector (greater than 250 workers)	6,796.94	+/-25% of 6,439.88

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V. Mandated Activities

9	Percent in compliance	S: 43.14%	+/-20% of S: 30.27%	<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.</p> <p>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: 48.35%	+/-20% of H: 35.42%	
10	Percent of work-related fatalities responded to in one workday	97.22%	100%	<p>State Plan data is pulled only from OIS.</p> <p>1 fatality case was responded to within 2 workdays and involved the death of a local government employee.</p> <p>Initially, the accident was reported as a serious injury; however, the employee died before 12 pm the first day. The fatality was reported on day two following the accident. VOSH responded on day three because the accident occurred on a public roadway, and traffic control arrangements had to be coordinated to safely access the accident site.</p> <p>Further review level is fixed for every State Plan.</p>
11	Average lapse time	S:38.96	+/-20% of S: 49.35	<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: 40.89	+/-20% of H: 59.70	

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V. Mandated Activities

12	Percent penalty retained	64.41%	+/-15% of 68.04%	<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>
13	Percent of initial inspections with worker walk around representation or worker interview	99.90%	100%	<p>Further review – VOSH procedures require 100% employee participation. There were two outliers.</p> <p>One outlier was a coding error as no employee participation was checked. There was no interview because there was no employee exposure identified on the site. This error has been corrected in OIS.</p> <p>The second outlier was also a coding error. This inspection was unique because the employer was in the process of closing down operations and relocating to a new site. However, employees were interviewed and a walk-around was performed. This error has been corrected in OIS.</p> <p>State Plan data is pulled only from OIS.</p> <p>Further review level is fixed for every State Plan.</p>
14	Percent of 11(c) investigations completed within 90 days	17%	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 Whistleblower Information System.</p> <p>Further review level is fixed for every State Plan.</p>

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15	Percent of 11(c) complaints that are meritorious	22%	+/-20% of Data Not Available	<p>VA settled 4 merit cases with damages totaling \$77,192.28.</p> <p>The average percent of complaints determined to be meritorious for all state plan states was 16%.</p> <p>Further Review Level data not available from National Office (including OSHA data) as of 12.18.19.</p> <p>State Plan data is pulled from Whistleblower Information System.</p> <p>Further review level is based on a three-year national average pulled from Whistleblower Information System.</p>
16	Average number of calendar days to complete an 11(c) investigation	223	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>VOSH performance continues to be considerably better than the average for completion of OSHA 11c investigations, and the 290 day average for all State Plans.</p> <p>State Plan data is pulled from Whistleblower Information System.</p> <p>Further review level is fixed for every State Plan.</p>
17	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 12.18.19.</p> <p>Further review level is fixed for every State Plan.</p>

⁷ Source: "Related Activities Report Multi-Employer Construction FFY 2019 run 12 10 19". "No Inspections" were not included in any counts.

⁸ Column O in the "Related Activities Report Safety Multi-Employer Inspections 12 10 19.xls".