

**FY 2021 Comprehensive
Federal Annual Monitoring Evaluation (FAME) Report**

Virginia Occupational Safety and Health (VOSH) Program



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I. Executive Summary

The purpose of this comprehensive Federal Annual Monitoring Evaluation (FAME) report is to assess the Virginia Occupational Safety and Health (VOSH) Program's performance during Fiscal Year (FY) 2021. VOSH continues to effectively accomplish its mission of protecting approximately four million Virginians from workplace safety and health hazards. VOSH covers nearly 277,000 employers. The U.S. Bureau of Labor Statistics' (BLS) 2020 data reflects an overall Total Recordable Case Rate (TRCR) of non-fatal occupational injuries and illnesses of 2.8 for Virginia (21% lower than the national TRCR). Virginia's TRCRs in private industry, construction, and government are also below the national average.

VOSH was the first State Plan to develop and implement a COVID-19 Emergency Temporary Standard (ETS). VOSH's ETS provided specific requirements for employers and protections for workers during the pandemic. The *Infectious Disease Prevention: SARS-CoV-2 Virus that Causes COVID-19* ETS became effective on July 27, 2020 and expired on January 26, 2021. On January 27, 2021, VOSH's COVID-19 ETS, *Infectious Disease Prevention of the SARS-CoV-2 Virus that Causes COVID-19 (16VAC25-220)*, became the first final, permanent standard and was in effect throughout the entire performance period. Between February 7, 2020 and December 6, 2021, VOSH received at least 2,268 COVID-19 complaints, 101 notifications of worker hospitalizations, and was alerted to 50 worker deaths. During this time, VOSH staff fielded nearly 15,000 COVID-related phone calls.

Although VOSH was inundated with COVID-related concerns, it continued to be responsive to all occupational concerns in the Commonwealth of Virginia by inspecting or investigating at least 97% (1,259 of 1,300) of all the complaints received in FY 2021. VOSH refers complaints falling outside of its coverage or jurisdiction to other regulatory or law enforcement agencies as appropriate. VOSH also remained steadfast in its commitment to conduct inspections in high-hazard industries by conducting 984 programmed inspections in FY 2021. Overall, VOSH continues to have significant enforcement presence as evidenced by the 1,751 inspections it conducted in private and state and local government (SLG) workplaces. These inspections resulted in VOSH issuing 1,891 violations. Since its inception in 2015, VOSH's Worker Misclassification policy resulted in over 377 referrals to the Department of Professional and Occupational Regulations for potential misclassification issues.

Consistent with OSHA's previous FAMES of the VOSH Program, OSHA did not identify any new findings; however, one observation was identified this year regarding final letter documentation that is usually provided to the next-of-kin (NOK) at the conclusion of a fatality inspection. VOSH maintained a very high level of performance, and consistently strives to improve its program. VOSH also actively engages and collaborates with OSHA by sharing ideas and suggestions, and implementing recommendations when appropriate. It should be noted that 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

In FY 2021, VOSH operated under C. Ray Davenport, Commissioner of DOLI. Gary Pan was appointed Commissioner of DOLI on January 18, 2022. William Burge remains Assistant Commissioner of VOSH. In FY 2021, Ronald Graham serves as VOSH's health director and Marta Fernandes as VOSH's safety

director. Jennifer Rose serves as the director of Cooperative Programs. Jay Withrow serves as VOSH's director of the Division of Legal Support (DLS). The agency directors for Safety, Health, and Consultation Services, as well as DLS, Office of Research and Analysis (ORA), which handles Bureau of Labor Statistics (BLS) surveys, Voluntary Protection Programs (VPP), Office of Policy, Planning and Public Information (OPPI), and Office of Whistleblower Protection (OWP), are under the direction of the assistant commissioner who, in turn, reports to the commissioner.

VOSH consists of two major units: compliance and cooperative programs, including consultation and training 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.

VOSH's Cooperative Programs Division offers six voluntary programs to promote and recognize exceptional workplace safety and health efforts. They include:

- Virginia Safety and Health Achievement Recognition Program (SHARP);
- Virginia STAR;
- Virginia BEST (Building Excellence in Safety, Health, and Training);
- Virginia Challenge Program;
- Virginia Department of Corrections (VADOC) Challenge; and
- Virginia BUILT (Building Safety and Health Excellence in Construction Through Mentorship and Training).

Each program is described in further detail in the voluntary compliance program section of this report (Section III, Part 9).

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 overmatched the \$4,332,300 federal award by \$350,000, contributing to 52% of its funding in FY 2021.

The VOSH Program mirrors the federal program as closely as possible while recognizing the autonomy and unique characteristics of the state. The majority of VOSH standards are identical to OSHA

standards. However, VOSH has enacted unique regulations covering confined space hazards in telecommunication industries; overhead high voltage line safety; fall protection in steel erection; reverse signal operation of vehicles, machinery and equipment in construction and general industry; compliance with manufacturer's instructions for vehicles, machinery, tools and equipment in general industry, construction, maritime (SLG only), and agriculture; and tree trimming. In these instances, either OSHA 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. VOSH enforces the Virginia Department of Transportation (VDOT) Work Area Protection Manual in lieu of the federal Manual on Uniform Traffic Control Devices referenced in 1926.200 and 1926.202. 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.

B. New Issues

OSHA received one CASPA for the VOSH Program in FY 2021 related to an electrical meter complaint inspection. The CASPA was investigated in accordance with the State Plan Policies and Procedures Manual (SPPPM). VOSH's complaint response and inspection was determined to have been conducted in accordance with its policies that were deemed at least as effective (ALAE) as OSHA's; therefore, the CASPA was closed with no findings.

VOSH was significantly impacted by its COVID-19 response in FY 2021. Between February 7, 2020 and December 6, 2021, VOSH received at least 2,268 complaints, 101 hospitalization notifications, and 50 worker notifications related to COVID-19. VOSH responded to nearly 15,000 COVID-19-related phone calls in the same period. The VOSH Program's compliance and cooperative programs units have consistently and thoroughly responded to each occupationally related COVID-19 concern in the Commonwealth of Virginia.

III. Assessment of State Plan Progress and Performance

A. Data and Methodology

OSHA established a two-year cycle for the FAME process. FY 2021 is a comprehensive year and as such, OSHA was required to conduct an on-site evaluation and case file review. A five-person OSHA team, including a whistleblower investigator, was assembled to conduct a full on-site case file review. The case file review was conducted at the OSHA Norfolk Federal Building located in Norfolk, Virginia from January 18, 2022 to January 20, 2022 due to COVID-19 restrictions. Marta Fernandes, VOSH Safety Director, accompanied the review team at the federal Building. The review was completed at the VOSH Tidewater Regional Office located in Norfolk, Virginia on February 3, 2022 and the Norfolk Federal Building on February 4, 2022. The whistleblower case review was conducted at the VOSH Tidewater Regional Office from January 18, 2022 to January 21, 2022 and from January 24, 2022 to January 25, 2022.

A total of 200 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, 2019 through September 30, 2021). The selected population included:

- Thirty (30) fatality case files
- Fifty (50) complaint case files
- Fifty-five (55) programmed planned case files
- Forty (40) administratively closed whistleblower case files
- Twenty-five (25) docketed 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
- 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 2021 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, 86 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.

Although OTI did not offer in-person OTI courses during FY 2021 due to COVID-19, VOSH continued to provide compliance staff with essential OTI training courses through the available virtual options. Some examples include the Initial Compliance and Introduction to Construction Standards courses. VOSH also provided compliance personnel with training on state specific issues, including the Inspection Procedures for the COVID-19 Emergency Temporary Standard.

b) OSHA Information System (OIS)

VOSH began using OIS to capture inspection and consultation data in FY 2014. Since that time, VOSH personnel has demonstrated overall proficiency at entering data and running reports within OIS to evaluate and manage the VOSH Program. Historically, data entry errors are few, minimally impactful, and are promptly corrected. Whistleblower related data is entered into OSHA's WebIMIS. OSHA did not note any trending data entry concerns in OIS or WebIMIS. VOSH uses various OIS reports to evaluate and manage its program. The reports assist VOSH in determining if it is meeting established goals and assists in determining if it should consider different or additional areas of emphasis.

c) State Internal Evaluation Program Report (SIEP)

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 potential concerns.

The FY 2021 SAMM report indicates that the VOSH non-compliance rate for safety and health fell outside the FRL. VOSH conducted a special study and, in good faith, as it has done in previous years, 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 non-compliance rates for safety inspections. Similarly, due to a VOSH policy requiring an on-site inspection for all complaints alleging worker exposure to asbestos, the VOSH health non-compliance rate falls outside the further review level.

d) Staffing

VOSH continues to experience vacancies in both safety and health compliance staff positions. Based on the FY 2022 grant application, VOSH filled 71% of the safety compliance officer benchmarks and 71% of the health compliance officer benchmarks. Seventeen benchmark positions were not filled. VOSH received the approval for funding for 12 CSHO positions and intends to fill the positions promptly.

2. ENFORCEMENT

a) Complaints

VOSH's performance continues to excel in the area of enforcement. An Unprogrammed Activity (UPA) report for FY 2021 indicates that VOSH received a total of 1,300 complaints in FY 2021. In response, as indicated by the FY 2021 EOY SAMM report, VOSH inspected 315 of the valid complaints it received. SAMM #1A clarifies that VOSH initiated inspections within an average of 5.05 days – just barely outside of the FRL of five days. VOSH received 944 complaints for which investigations were determined to be warranted and were conducted. SAMM #2A provides that the investigations were initiated within an average of 1.16 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 where inspections were assigned. The FRL for SAMM #3, the percent of imminent danger complaints and referrals responded to within one day is fixed at 100%. The FRL for SAMM #4 (the number of denials where entry is not obtained) is fixed at zero.

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 2021, VOSH responded to all but one of the 44 reported fatalities within one day of notification. The FRL for SAMM #10, or the percent of work-related fatalities inspected in one day, is fixed at 100%. VOSH encountered a delay in responding to one fatality because the CSHO was instructed to open the fatality inspection virtually due to COVID-19. Although numerous attempts were made, the CSHO could not contact the employer within one workday. This does not rise to the level of a finding as it was critical for VOSH to

protect the safety and health of its staff, and VOSH made every effort to initiate the inspection.

The on-site case file review revealed that initial contact with NOK was made in all but one of the reviewed fatality cases that were determined to be work-related. VOSH does not always send an NOK letter for all workplace death cases as VOSH's NOK policy only applies to fatal accident investigations resulting from occupational hazards. The on-site review indicated that VOSH did not send a final notification letter to the NOK at the conclusion of seven of 16 (44%) work-related fatality inspections.

The VOSH FOM indicates that follow-up contact, when requested, will be maintained with the NOK. In each of the seven cases, the NOK did not specifically request follow-up contact. Furthermore, five of the cases were initiated in response to a COVID-19 death. In FY 2018, VOSH recently conducted training addressing NOK notifications indicating that in most cases, a final letter informing the NOK of whether citations were issued and how to obtain the case file should be sent. It appears that the oversight was due to a misinterpretation. VOSH has reclarified its policy with its regional directors. OSHA developed an observation to monitor the status and impact of NOK letters.

Observation FY 2021-OB-01

In seven of 16 (44%) of work-related fatality case files reviewed, the case file did not contain documentation that the final NOK letter identifying how to obtain the inspection file and results was sent.

Federal Monitoring Plan FY 2021-OB-01

In FY 2023, fatality 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. The on-site review indicated that VOSH provided detailed descriptions in fatality case files. 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 primarily consist 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 1,751 inspections – exceeding its projected by goal by 280 inspections. VOSH conducted 1,229 safety inspections, exceeding SAMM #7A with an FRL of +/- 5% of 1,126 (1,069 to 1,182). VOSH conducted 522 health inspections, exceeding the SAMM #7B with an FRL of +/- 5% of 345 (327 to 362). OIS reports also indicate that VOSH issued 1,891 violations in FY 2021.

The VOSH Program Directive 01-019 defines the internal policy and procedures for the development and adoption of State Emphasis Programs (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 (NEPs) developed by OSHA. Examples of some NEPs that have been adopted by VOSH include:

- Primary Metals Industries
- Combustible Dust
- Process Safety Management (PSM) Covered Chemical Facilities
- Lead
- Hexavalent Chromium
- Respirable Crystalline Silica
- Amputations
- Facilities that Manufacture Food Flavorings Containing Diacetyl
- Isocyanates
- 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 02-003V describes the limitations or prohibitions of the use of federal funds for certain VOSH activities. VOSH reserves the right to conduct activities limited or prohibited under this directive by paying for these activities with 100% State Plan funds. For example, VOSH will conduct and pay for with 100% State Plan funds, fatality investigations on farms with 10 or fewer workers, and no temporary labor camp activity within the previous 12 months.

VOSH's in-compliance rate for safety cases was 45.43% and 60.96% for health cases in FY 2021 – both rates exceeded the FRL. The FRL for SAMM #9A, percent in-compliance for safety inspections, is +/- 20% of the three-year national average of 31.65% which equals a range of 25.32% to 37.98%. The FRL for percent in-compliance for health inspections, SAMM #9B, is +/- 20% of the three-year national average of 40.64% which equals a range of 32.51% to 48.77%. VOSH in-compliance safety rates have been consistent over the past few years. The VOSH in-compliance health rate increased more than usual in FY 2021.

The in-compliance 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 assess how VOSH's unique policies affect the in-compliance rates.

If VOSH followed OSHA's multi-employer construction policy, it would have conducted 178 fewer inspections and had 178 fewer in-compliance inspections. When the VOSH safety in-compliance rate is recalculated by adjusting for 178 in-compliance construction inspections on multi-employer sites, the in-compliance rate falls to 35.54%. This is within the safety in-compliance FRL range. The VOSH health in-compliance rate was recalculated by adjusting for 164 total and 135 in-compliance asbestos SEP inspections, resulting in a rate of 49.84%. This falls just outside of the health in-compliance FRL range. VOSH also conducted a significant number of COVID-related inspections – temporarily inflating its health in-compliance rates during FY 2021.

In addition to VOSH's internal review, OSHA reviewed a random sample of in-compliance cases during the FY 2021 FAME on-site. The sample included 25 in-compliance complaint inspection files and 30 in-compliance programmed inspection files. OSHA's on-site review confirmed the results of VOSH's internal special study. Although VOSH's unique policies impact its in-compliance rate, OSHA concluded that it provides VOSH with an opportunity to interact with and document its interaction with more employers encountered by compliance staff in the field. The on-site evaluation, the case files reviewed did not indicate any specific areas where hazards were not appropriately identified.

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 five significant case inspections in FY 2020 and one in FY 2021. In most significant cases, VOSH issued at least one willful violation.

d) Citations and Penalties

The case file review revealed that case files contain sufficient evidence for supporting recommended and proposed violations. Based on the information and documentation contained in the reviewed case files, citations that were issued for apparent violations were appropriate.

In FY 2021, VOSH's average safety lapse time was within the SAMM #11A FRL (+/- 20% of the three-year national average of 52.42 days or 41.94 to 62.90 days) at 53.25 days. VOSH health lapse time also fell within the SAMM #11B FRL (+/-20% of the three-year national average of 66.10 days or 52.88 to 79.32 days) at 63.36 days. The on-site review determined that VOSH completes inspections promptly without undue delay.

With respect to cases opened in FY 2021, VOSH issued 1,891 violations and 67.69% were classified as serious. SAMM #5A clarifies that VOSH averaged 1.54 serious, willful, or repeat (SWR) violations per inspection, and 0.54 other-than-serious (OTS) violations per inspection. SWR violations per inspection fell within the FRL set at +/- 20% of the three-year national average of 1.78 or 1.42 to 2.14. OTS violations per inspection fell below the FRL set at +/- 20% of the three-year national average of 0.91 or 0.73 to 1.09. Although OTS violations per inspection fell below the FRL, the on-site review did not associate any trends with violation misclassification and therefore a finding was not recommended.

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. OSHA did not note any deviations from VOSH penalty policies during the on-site evaluation.

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 2021 was \$3,289.25 and was within the SAMM #8 FRL of +/- 25% of the three-year national average of \$3,100.37 or \$2,325.28 to \$3,875.46. A breakdown of average VOSH penalties based on the number of workers is located in the table below:

Average Penalty	
Number of Workers	Average Serious Penalty
1 – 25	\$1,671.00
26 – 100	\$3,675.89
101 – 250	\$5,569.07
Greater than 250	\$7,854.24

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 (CPIU) 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. The FY 2021 EOY SIR indicates that VOSH promptly obtains, evaluates, and closes abatement as appropriate. In FY 2021, VOSH conducted nine follow-up inspections and issued two 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 100% of inspections, VOSH included worker representation. The FRL is also fixed at 100%.

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 2021, 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 13 of the 26 cases reviewed where informal settlement conferences were held, some violations were vacated and/or reclassified. The FY 2021 EOY SIR indicated that only 2.03% and 3.06% of total violations pre-contest were vacated and reclassified respectively. 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 77.74% of penalties. The FRL for FY 2021 is set at +/-15% of the three-year national average of 69.08% or 58.72% to 79.44%. Overall, changes made aligned with the procedures outlined in the VOSH FOM and did not significantly deviate from OSHA settlement practice. 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.

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 2021 EOY SIR indicates that 72.03% of penalties are retained after a contest has been filed (the national average was 63.30%). VOSH displayed a strong commitment to retaining penalties.

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. In recent years, OSHA has not noted any concerns with the quality of decisions for contested cases.

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 2021, VOSH regularly maintained contact with the Regional Office concerning the status of any necessary legislative and regulatory actions.

VOSH was the first State Plan to develop and implement a COVID-19 ETS. VOSH's ETS provided specific requirements for employers and protections for workers during the pandemic. The ETS entitled, Infectious Disease Prevention: SARS-CoV-2 Virus that Causes COVID-19, became effective on July 27, 2020 and expired on January 26, 2021. On January 27, 2021, VOSH's COVID-19 ETS became the first final, permanent standard and is entitled Infectious Disease Prevention of the SARS-CoV-2 Virus that Causes COVID-19 (16VAC25-220) which was in effect until March 23, 2022.

The Safety and Health Codes Board adopted the federal COVID-19 ETS identically on June 29, 2021. Employers and workers outside of healthcare were still covered by the January 27, 2021 *VOSH Final Permanent Standard* VOSH provided specific adoption/enforcement scenarios in its proposed amendments to the final permanent standard.

VOSH adopted most standards in a timely manner with the exception of the Final Rule on the Implementation of the 2021 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.

VOSH has not yet adopted the OSHA Final Rule on the Rules of Agency Practice and Procedure Concerning OSHA Access to Employee Medical Records. The Final Rule transferred "the approval of written medical access orders (MAO) from the Assistant Secretary for Occupational Safety and Health (Assistant Secretary) to the OSHA Medical Records Officer (MRO) and makes the MRO responsible for making determinations regarding inter-agency transfer and public disclosure of personally identifiable medical information in OSHA's possession."

VOSH currently retains the "Commissioner" as the approving authority, 16VAC25-60-80.D. Section 16VAC25-60-10 defines the term "Commissioner" as follows:

"Commissioner" means the Commissioner of Labor and Industry. Except where the context clearly indicates the contrary, any such reference **shall include his authorized representatives.** (Emphasis added).

When needed, the VOSH Health Compliance Director, an authorized representative of the Commissioner of Labor and Industry, serves as the MRO for VOSH. VOSH considers its current regulation to be the functional equivalent of the FINAL Rule and to be "at least as

effective as" the Final Rule.

The status of FY 2020 and 2021 federal standard adoptions are presented in Table A below:

Table A
Status of FY 2020 and 2021 Federal Standards Adoption
(May include any delinquent standards from earlier fiscal years)

Standard	Response Due Date	State Plan Response Date	Intent to Adopt	Adopt Identical	Adoption Due Date	State Plan Adoption Date
Final Rule on the Beryllium Standard for General Industry 29 CFR 1910 (7/14/2020)	9/14/2020	8/4/2020	Yes	Yes	1/14/2021	1/7/2021
Final Rule on the Rules of Agency Practice and Procedure Concerning OSHA Access to Employee Medical Records (7/30/2020)	9/28/2020	9/28/2020	No		1/26/2021	
Final Rule on Cranes and Derricks in Construction: Railroad Roadway Work (9/15/2020)	11/14/2020	10/27/2020	Yes	Yes	3/14/2021	3/14/2021
Final Rule on the Beryllium Standard for Construction and Shipyards (8/31/2020)	10/30/2020	10/27/2020	Yes	Yes	2/27/2021	1/7/2021
Final Rule on the Implementation of the 2021 Annual Adjustment to Civil Penalties for Inflation (1/15/2021)	3/16/2021	3/16/2021	Yes	Yes	7/14/2021	9/16/2021
Occupational Exposure to COVID-19; Emergency Temporary Standard 29 CFR 1910 (6/21/2021)	7/6/2021	6/23/2021	Yes	Yes	7/21/2021	8/2/2021

b) Federal Program Change (FPC) Adoption

VOSH adopted the Respirable Crystalline Silica National Emphasis Program (NEP) as well as Inspection Procedures for the Respirable Crystalline Silica Standards. VOSH also adopted the Consultation Policies and Procedures Manual. Although VOSH is technically delinquent in the adoption of the specific directive for the National Emphasis Program on Trenching and Excavation, 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 currently working on its adoption of the Amputations in the Manufacturing Industries NEP and in the interim continues to use the 2016 version of the OSHA Directive. VOSH also has an SEP entitled " First Report of Injuries and Illnesses (FRI)," VOSH Directive 14-005C, where VOSH receives weekly reports from the Virginia Workers' Compensation Commission of certain workplace injuries and illnesses, including those resulting in "loss of limb(s) or loss of sight (total or partial), including one or more joints of a finger."

VOSH is reviewing the most recent Site-Specific Targeting directive to consider for adoption and in the interim continues to use its General Schedule Inspection Plans for Safety and Health inspections in General Industry as described in Chapter 3 of the VOSH Field Operations Manual. VOSH is not required to and has not adopted the Voluntary Protection Programs Policies and Procedures Manual and the NEP for Coronavirus Disease 2019.

Effective October 1, 2021, VOSH adopted an internal Electronic Case File System that is similar but not identical to OSHA's system. VOSH is in the process of updating its Whistleblower Investigation Manual (WIM) to summarize its Electronic Case File System.

The status of FY 2020 and 2021 federal directive adoptions is presented in Table B below:

Table B

Status of FY 2020 and 2021 Federal Program Change (FPC) Adoption
(May include any delinquent FPCs from earlier fiscal years)

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 (10/31/2018)	11/30/2018	10/26/2018	Yes	No	3/30/2019	
Amputations in Manufacturing Industries NEP CPL 03-00-022 (12/10/2019)	2/10/2020	2/10/2020	Yes	Yes	6/10/2020	
Respirable Crystalline Silica NEP CPL 03-00-023 (2/4/2020)	4/4/2020	3/10/2020	Yes	No	8/4/2020	4/15/2021
<i>Equivalency Required</i>						
Field Operations Manual CPL 02-00-164 (4/14/2020)	6/14/2020	6/13/2020	Yes	No	10/14/2020	
Inspection Procedures for the Respirable Crystalline Silica Standards CPL 02-02-080 (6/25/2020)	8/24/2020	8/24/2020	Yes	Yes	12/24/2020	4/15/2021
Site-Specific Targeting (SST) CPL 02-01-062 (12/14/2020)	2/12/2021				6/12/2021	
Consultation Policies and Procedures Manual CSP 02-00-004 (3/19/2021)	5/19/2021	3/24/2021	Yes	Yes	9/19/2021	6/10/2021
Inspection Procedures for the COVID-19 Emergency Temporary Standard CPL DIR 2021-02 (CPL 02) (6/28/2021)	7/13/2021	7/12/2021	Yes	Yes	7/28/2021	7/28/2021

FPC Directive/Subject	Response Due Date	State Plan Response Date	Intent to Adopt	Adopt Identical	Adoption Due Date	State Plan Adoption Date
Revised National Emphasis Program – Coronavirus Disease 2019 (COVID-19) CPL DIR 2021-03 (CPL 03) 7/7/2021	7/7/2021	7/22/2021	No			
<i>Adoption Encouraged</i>						
Voluntary Protection Programs Policies and Procedures Manual CSP 03-01-005 (1/30/2020)	3/30/2020	3/30/2020	No	N/A	N/A	N/A
Electronic Case File System Procedures for the Whistleblower Protection Program (6/18/2020)	8/18/2020	8/18/2020	No	N/A	N/A	N/A
National Emphasis Program - Coronavirus Disease 2019 (COVID-19) CPL DIR 2021-01 (CPL-03) (3/12/2021)	5/12/2021	5/10/2021	No	N/A	N/A	N/A

c) State-Initiated Changes (SICs)

As described above, VOSH was the first State Plan to develop and implement a COVID-19 ETS and permanent standard.

In addition, during FY 2020 and FY 2021, VOSH adopted six guidance documents. They are presented in Table C below:

Table C
FY 2020 and 2021 State Initiated Chance (SIC) Adoption

Document	Effective Date
Virginia BUILT Policies and Procedures Manual (09-065)	6/25/2020
Temporary Policy Revisions to VOSH's Voluntary Protection Programs (VPP) During the COVID-19 Pandemic (VOSH VPP-2)	10/7/2020
VOSH Procedures to comply with OSHA Enforcement Exemptions and Limitations under the Federal Appropriations Act, OSHA Instruction CPL 02-00-051 (formerly CPL 2-0.51J); Appendix (02-003V)	4/1/2021
Memorandum of Understanding Between the Department of Transportation (VDOT) and the Department of Labor and Industry (DOLI) (13-006A)	5/10/2021
Virginia BUILT- Building Safety and Health Excellence in Construction Through Mentorship and Training (13-006A)	5/10/2021
VOSH Field Operations Manual (09-001)	9/16/2021

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. VOSH has coordinated with OSHA for technical assistance. In addition, VOSH received a second tunnel boring related variance request. VOSH is reviewing this request in coordination with the first request described above.

Finally, OSHA has requested that VOSH evaluate a variance request received by OSHA for tunnel boring activities on a third project that may cross into VOSH jurisdiction. Based on the results of the technical review, VOSH will determine if it will honor any variance approvals that may be granted by OSHA under 16VAC25-60-190.

6. STATE AND LOCAL GOVERNMENT WORKER PROGRAM

VOSH conducted 132 safety and health inspection in SLG workplaces or 7.54% of its total inspection activity for FY 2021. SAMM #6 indicates that VOSH SLG inspections surpassed the FRL of +/- 5% of the 6.59% of total inspections negotiated in the FY 2021 grant application (6.26% to 6.92%). 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 SLG entities and is reviewed and evaluated in the same manner as private sector abatement documentation.

7. WHISTLEBLOWER PROGRAM

Of the 65 whistleblower files reviewed during the on-site evaluation, 40 were administratively closed, 17 were dismissed, seven were settled, and one was withdrawn. All dispositions were appropriate and timely.

The on-site review revealed that 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. Case status information is entered in WebIMIS from the headquarters office. VOSH does not participate in the Expedited Case Processing (ECP) pilot and prior to the beginning of evaluation period, did not prepare electronic case files. VOSH began the process of converting to electronic case files during FY 2021 and completed the process by September 30, 2021 for new cases. Otherwise, procedures and policies mirror OSHA’s. Cases were investigated timely and all case dispositions were appropriate. The Whistleblower-related SAMMs are presented in the table below.

FY 2021 Whistleblower Protection SAMMs			
SAMM	VOSH	National Average	FRL
Percent of 11(c) Investigations Completed Within 90 Days (SAMM #14)	13%	27%	Fixed at 100%
Percent of 11(c) Complaints that are Meritorious (SAMM #15)	33%	24%	+/- 20% of 20% or 16% to 24%
Average Calendar Days to Complete an 11(c) Investigation (SAMM #16)	237	325	Fixed at 90

8. COMPLAINT ABOUT STATE PROGRAM ADMINISTRATION (CASPA)

OSHA received one CASPA in FY 2021. OSHA determined that VOSH handled the complaint and subsequent inspection regarding electrical meter installation as referenced in the CASPA in accordance with its policies and procedures which were determined to be as least as effective as OSHA’s. VOSH provided a timely written response and promptly provided requested documentation for the CASPA. VOSH made its staff available for interviews throughout the inquiry. The CASPA did not result in any findings or recommendations; therefore, it was not necessary for VOSH to take

any other action.

9. VOLUNTARY COMPLIANCE PROGRAM

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

VOSH's VPP policies and procedures closely mirror that of OSHA VPP. Exemptions for enforcement activities are discussed in the VOSH VPP manual and provide appropriate context for the administration of VPP within the state. VOSH VPP policy enables the Agency to remove participating sites from programmed inspection lists, allowing VOSH to focus its inspection resources on establishments in greater need of agency oversight and intervention. However, VOSH continues to investigate valid worker safety and health complaints, fatalities, catastrophes, and other significant events at VPP participant sites. There are 37 active VPP sites in Virginia.

VOSH's Cooperative Programs Division offers six voluntary programs to promote and recognize exceptional workplace safety and health efforts:

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

Program provides a three-stage process to prepare correctional facilities to apply for Virginia STAR recognition.

- **Virginia BUILT (Building Safety and Health Excellence in Construction Through Mentorship and Training)** - a strategic partnership with the Associated Builders and Contractors – Virginia Chapter (ABC-VA) that combines 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. Virginia BUILT’s unique approach to workplace safety and health incorporates a “mentorship” program as a key component. The Mentorship Tier is the introductory tier of participation in the partnership for those employers actively working with the ABC-VA Virginia BUILT Council (VBC) to improve their safety and health management systems to meet VOSH requirements, with the goal of becoming a Tier One participant. Safety and health experts from Tier Two and Tier Three participants serve as the mentors.

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.

Historically, VOSH sponsors an annual safety and health conference. Due to the COVID-19 pandemic, it was not possible to hold an in-person conference during FY 2021. In response, VOSH held a virtual conference with 200 participants.

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

According to the FY 2021 Mandated Activities Report for Consultation (MARC), the VOSH Consultation Program conducted 11 on-site consultation visits at SLG workplaces. All were reported as initial visits. All hazards were abated within the required timeframe. In its FY 2021 grant application, VOSH had originally projected that ten total visits would be conducted in SLG workplaces; however, VOSH conducted one 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 2021 Virginia Occupational Safety and Health Program Comprehensive FAME Report

There were no new or continued findings in FY 2021.

Appendix B – Observations Subject to New and Continued Monitoring

FY 2021 Virginia Occupational Safety and Health Program Comprehensive FAME Report

Observation # FY 2021-OB-#	Observation# FY 2020-OB- # or FY 2020-#	Observation	Federal Monitoring Plan	Current Status
FY 2021-OB-01		In seven of 16 (44%) of work-related fatality case files reviewed, the case file did not contain documentation that the final NOK letter identifying how to obtain the inspection file and results was sent.	In FY 2023, fatality case files will be randomly selected and reviewed to determine if this item was addressed.	New

Appendix C - Status of FY 2020 Findings and Recommendations

FY 2021 Virginia Occupational Safety and Health Program Comprehensive FAME Report

There were no new or continued findings in FY 2021.

Appendix D - FY 2021 State Activity Mandated Measures (SAMM) Report

FY 2021 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: SAMM Number	State Plan: SAMM Name	State Plan: Data	FY 2021 Further Review Level	FY 2021 Notes
1a	Average number of work days to initiate complaint inspections (state formula)	5.05	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)	2.78	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)	1.16	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)	0.62	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.
5a	Average number of violations per inspection with violations by violation type (SWRU)	1.54	+/- 20% of 1.78	The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from 1.42 to 2.14 for SWRU.
5b	Average number of violations per inspection with violations by violation type (Other)	0.54	+/- 20% of 0.91	The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from 0.73 to 1.09 for OTS.
6	Percent of total inspections in state and local government workplaces	7.54%	+/- 5% of 6.59%	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 6.26% to 6.92%.

Appendix D - FY 2021 State Activity Mandated Measures (SAMM) Report

FY 2021 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: SAMM Number	State Plan: SAMM Name	State Plan: Data	FY 2021 Further Review Level	FY 2021 Notes
7a	Planned v. actual inspections (safety)	1,229	+/- 5% of 1,126	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 1,069.70 to 1,182.30 for safety.
7b	Planned v. actual inspections (health)	522	+/- 5% of 345	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 327.75 to 362.25 for health.
8	Average current serious penalty in private sector - total (1 to greater than 250 workers)	\$3,289.25	+/- 25% of \$3,100.37	The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from \$2,325.28 to \$3,875.46.
	a. Average current serious penalty in private sector (1-25 workers)	\$1,671.00	+/- 25% of \$2,030.66	The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from \$1,523.00 to \$2,538.33.
	b. Average current serious penalty in private sector (26-100 workers)	\$3,675.89	+/- 25% of \$3,632.26	The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from \$2,724.20 to \$4,540.33.
	c. Average current serious penalty in private sector (101-250 workers)	\$5,569.07	+/- 25% of \$5,320.16	The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from \$3,990.12 to \$6,650.20.

Appendix D - FY 2021 State Activity Mandated Measures (SAMM) Report

FY 2021 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: SAMM Number	State Plan: SAMM Name	State Plan: Data	FY 2021 Further Review Level	FY 2021 Notes
	d. Average current serious penalty in private sector (greater than 250 workers)	\$7,854.24	+/- 25% of \$6,575.70	The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from \$4,931.78 to \$8,219.63.
9a	Percent in-compliance (safety)	45.43%	+/- 20% of 31.65%	The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from 25.32% to 37.98% for safety.
9b	Percent in-compliance (health)	60.96%	+/- 20% of 40.64%	The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from 32.51% to 48.77% for health.
10	Percent of work-related fatalities responded to in one workday	97.73%	100%	The further review level is fixed for all State Plans.
11a	Average lapse time (safety)	53.25	+/- 20% of 52.42	The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from 41.94 to 62.90 for safety.
11b	Average lapse time (health)	63.36	+/- 20% of 66.10	The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from 52.88 to 79.32 for health.
12	Percent penalty retained	77.74%	+/- 15% of 69.08%	The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from 58.72% to 79.44%.
13	Percent of initial inspections with worker walk around representation or worker interview	100%	100%	The further review level is fixed for all State Plans.

Appendix D - FY 2021 State Activity Mandated Measures (SAMM) Report

FY 2021 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: SAMM Number	State Plan: SAMM Name	State Plan: Data	FY 2021 Further Review Level	FY 2021 Notes
14	Percent of 11(c) investigations completed within 90 days	13%	100%	The further review level is fixed for all State Plans.
15	Percent of 11(c) complaints that are meritorious	33%	+/- 20% of 20%	The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from 16% to 24%.
16	Average number of calendar days to complete an 11(c) investigation	237	90	The further review level is fixed for all State Plans.
17	Percent of enforcement presence	1.15%	+/- 25% of 0.99%	The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from 0.74% to 1.24%.