

VOSH PROGRAM DIRECTIVE: 12-005**ISSUED: 15 June 2018****Subject** **VOSH Voluntary Protection Program****Purpose** This directive transmits the standard for the Voluntary Protection Program (VPP) for use in the VOSH Program.

This Program Directive is an internal guideline, not a statutory or regulatory rule, and is intended to provide instructions to VOSH personnel regarding internal operation of the Virginia Occupational Safety and Health Program and is solely for the benefit of the program. This document is not subject to the Virginia Register Act or the Administrative Process Act; it does not have general application and is not being enforced as having the force of law.

Scope This Directive applies VOSH-wide.**Reference** Not Applicable**Cancellation** Not Applicable**Effective Date** 25 January 2018**Expiration Date** Not Applicable – remains in effect until cancelled or superseded.**Action** Directors and Managers shall ensure that field personnel understand and comply with the policies and procedures established in this Directive and that they are uniformly administered.

C. Ray Davenport
Commissioner

Distribution: Commissioner of Labor and Industry
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VOSH Directors and Managers
VOSH DLS and OIS Staffs

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I. Purpose and Background

The Voluntary Protection Program (VPP) stimulates and encourages safer and healthier work places in Virginia by using a proactive, cooperative approach between employers, employees and Virginia government, rather than a punitive one. Employers have experienced that Virginia VPP worksites have demonstrated over many years that VPP participation will:

- substantially reduce workplace injuries and illnesses;
- reduce workers' compensation costs;
- result in a more highly trained and experienced workforce;
- improve company productivity; and promote competitiveness in the marketplace

VPP participation benefits employees by enhancing workplace safety and health practices; reducing workplace injuries and illnesses and the associated workers' compensation and medical costs; and improving employee morale. The Department benefits from this cooperative relationship by having exemplary sites to lead and guide other employers to improve their occupational safety and health performance and reduce employee injury and illness.

In Virginia, VPP was instituted in 1996 and is patterned after federal OSHA's VPP, which was originally created in 1982. VOSH adopted VPP as a component of DOLI's larger mission "...to make Virginia a better place in which to work, live and conduct business...by promoting safe, healthful workplaces, best employment practices...". An employer's membership in VPP is recognized as the highest award in Virginia and the nation that can be bestowed by a government agency to an employer for excellence in occupational safety and health management systems.

On 19 March 2015, Chapter 339 of the 2015 Virginia Acts of Assembly adopted §40.1-49.13 of the *Code of Virginia* which codified the VOSH Voluntary Protection Program (VPP). Subsection B. of §40.1-49.13 required the Safety and Health Codes Board to adopt a VPP regulation that provides for definitions, rules, regulations, and standards necessary for the operation of the Voluntary Protection Program in a manner that will promote safe and healthy workplaces throughout the Commonwealth. The Board adopted the final regulation at its meeting on 27 July 2017 and, following Executive Branch approval, became effective on 25 January 2018.

II. Program Requirements and Options for Participation

The traditional site-based VPP has two levels of participation, Star worksite and Merit worksite. Star participants are a select group of worksites that have designed and implemented outstanding safety and health programs, including full and meaningful employee involvement. Merit participants are those that have demonstrated the potential and willingness to achieve Star status and are implementing planned actions to fully meet the VPP Star requirements. The following components are requirements for VPP participation:

- Upper management leadership and active and meaningful employee involvement;
- Systematic assessment of occupational hazards;
- Comprehensive hazard prevention, mitigation, and control programs;
- Employee safety and health training; and
- Safety and health program evaluation.

VPP encompasses the following programs which provide interested employers and employees the opportunity to develop and implement exemplary safety and health management systems:

- Challenge – where employers are guided by Challenge Administrators through a three-stage process, which can prepare an employer to achieve VPP Star status;

- Site-based Construction – for long-term construction sites;
- Mobile Workforce – for employers that move from site to site; and
- Corporate - designed for corporate applicants.

III. Summary

VPP promotes and recognizes employer implementation of exceptional safety and health management systems throughout the Commonwealth and is available to private and public sector employers of all sizes. Program participants do incur costs on a voluntary basis associated with developing and implementing safety and health management systems that often exceed current requirements in VOSH laws, standards and regulations. As VPP is a voluntary program, there is no negative impact on Virginia’s employers that do not choose to participate in the program.

Once a site has qualified and successfully submitted an application for consideration in the VPP Star program, final approval requires an intensive weeklong onsite evaluation by a VOSH VPP team. Final approval is determined by DOLI’s Commissioner. VPP participants are exempt from regular VOSH programmed compliance inspections while they maintain their VPP status. Each VPP member site is required to be re-certified by an onsite evaluation team of safety and health professionals every 3-4 years to remain in VPP.

The regulation addresses the following program elements:

- Program scope, purpose, and applicability;
- Definitions;
- Categories of participation (Star, Merit, Challenge, etc.);
- Ways to participate (site-based in both general industry and construction, mobile workforce, VPP corporate);
- Application requirements;
- Comprehensive safety and health management system requirements;
- Certification and re-certification processes;
- On-site evaluations;
- Annual submissions;
- Other participation requirements;
- Enforcement activity at VPP sites; and
- Withdrawal or termination

VOSH Voluntary Protection Program, 16VAC25-200

As Adopted by the
Safety and Health Codes Board

Date: 27 July 2017



VIRGINIA OCCUPATIONAL SAFETY AND HEALTH PROGRAM

VIRGINIA DEPARTMENT OF LABOR AND INDUSTRY

Effective Date: 25 January 2018

VOSH Voluntary Protection Program, 16VAC25-200

Regulation for the VOSH Voluntary Protection Program

16VAC25-200-10

- A. Participation in VPP is strictly voluntary. The applicant that wishes to participate freely submits information to VOSH on its safety and health management system and opens itself to department review.
- B. VPP emphasizes trust and cooperation between VOSH, the employer, employees, and employee representatives and is complementary to the department's enforcement activity but does not take its place. This partnership enables the department to remove participating sites from programmed inspection lists, allowing it to focus inspection resources on establishments in greater need of department oversight and intervention. However, VOSH will continue to investigate valid employee safety and health complaints, referrals, fatalities, accidents, and other significant events at VPP participant sites in accordance with VOSH enforcement procedures.
- C. VPP participants develop and implement a systems approach to effectively identify, evaluate, prevent, and control occupational hazards so that injuries and illnesses to employees are prevented.
- D. VPP participants are selected based on their written safety and health management system, the effective implementation of this system over time, and their performance in meeting VPP requirements. Not all worksites are appropriate candidates for VPP. At qualifying sites, all personnel are involved in the effort to maintain rigorous, detailed attention to safety and health. VPP participants often mentor other worksites interested in improving safety and health, participate in safety and health outreach and training initiatives, share best practices, and promote excellence in safety and health in their industries and communities.
- E. VPP participants must demonstrate continuous improvement in the operation and impact of their safety and health management systems. Annual VPP self-evaluations help participant's measure success, identify areas needing improvement, and determine needed changes. VOSH onsite evaluation teams verify this improvement.
- F. Participation in VPP does not diminish employee and employer rights and responsibilities under VOSH laws, standards, and regulations.
- G. The provisions of this chapter are intended to provide solely for the safety, health, and welfare of employees and the benefits thereof shall not run to any applicant, participant, or any other person nor shall a third party have any right of action for breach of any provision of this chapter except as otherwise specifically provided in this chapter.
- H. Nothing in this chapter shall be construed to in any way limit the commissioner's discretion to use department personnel and resources in accordance with the powers and duties as set forth in Title 40.1 of the Code of Virginia.

16VAC25-200-20—Definitions.

The following words and terms when used in this chapter shall have the following meanings unless the context clearly indicates otherwise:

"90-day item" means compliance related issues that must be corrected within a maximum of 90 days, with effective protection provided to employees in the interim.

"Annual evaluation" means a participant's yearly self-assessment to gauge the effectiveness of all required VPP elements and any other elements of the safety and health management system.

"Annual submission" means a document written by a participant and submitted to the department on or before February 15 each year, consisting of the following information: updated names and addresses, the participant's and

applicable contractors' injury and illness case numbers and rates, average annual employment and hours worked for the previous calendar year, a copy of the most recent annual evaluation of the safety and health management system, descriptions of significant changes or events, progress made on the previous year's recommendations, Merit or one-year conditional goals (if applicable), and any success stories.

"Applicable contractor" means a contractor whose employees worked at least 1,000 hours for the participant in any calendar quarter within the last 12 months and are not directly supervised by the applicant or participant.

"Applicant" means an employer that has submitted an application for one of the Voluntary Protection Programs specified in [16VAC25-200-40](#) that has been accepted but has not yet been approved for participation. Depending on the context used in this chapter, an employer's application may concern one or more locations or sites.

"Challenge" means a voluntary protection program that provides participating employers and workers a three-stage process to work with their designated Challenge administrators to develop and improve their safety and health management program. VOSH-approved volunteer third party Challenge administrators collaborate with participating employers to improve safety and health management programs through mentoring, training, and progress tracking.

"Challenge administrator" means selected individuals in organizations such as corporations, state agencies, or nonprofit associations that have met VOSH VPP criteria, including dedicated resources to administer the Challenge program for their worksites or members or other organizations' worksites or members. Administrators are involved in the application and review processes. In certain situations as specified by the commissioner, VOSH can serve as a Challenge administrator.

"Commissioner" means the Commissioner of Labor and Industry or his designees.

"Commissioner of Labor and Industry" means only the individual who is Commissioner of Labor and Industry.

"Contract employees" means workers who are employed by a company that provides services under contract to the VPP applicant or participant, usually at the VPP applicant's or participant's worksite.

"Days away, restricted, or transfer case incidence rate" or "DART rate" means the rate of all injuries and illnesses resulting in days away from work, restricted work activity, or job transfer. This rate is calculated for a worksite for a specified period of time, usually one to three years.

"Department" means the Department of Labor and Industry.

"Mentoring" means the assistance that a VPP participant provides to another employer to improve that site's safety and health management system or prepare it for VPP application or participation.

"Merit goal" means a target for improving one or more deficient safety and health management system elements for a participant approved to the Merit program. A Merit goal must be met in order for a site to achieve Star status.

"Merit program" means a program designed for worksites that have demonstrated the potential and commitment to achieve Star quality but need to further improve their safety and health management system. A worksite may be designated as "Merit" when, during an initial Star certification review, the VOSH review team determines that not all Star requirements are being fully met. In the case of a Merit designation, the participant must complete specified Merit goals in order to achieve Star status and continue in VPP. "Merit" is not a participation level that can be applied for.

"Misclassification" means when an employer improperly classifies a worker as an independent contractor who should in fact be an employee.

"Model system" means an exemplary, voluntarily implemented worker safety and health management system that (i) implements comprehensive safety and health programs that exceed basic compliance with occupational safety and health laws and regulations and (ii) meets the VPP requirements of this chapter.

"Nested contractor" means a contractor whose employees are supervised by the applicant or participant and are regularly intermingled with the host participant's employees.

"One-year conditional goal" means a target for correcting deficiencies in safety and health management system elements or sub-elements identified by VOSH during the onsite evaluation of a Star participant.

"Onsite assistance visit" means a visit to an applicant or participant site by department personnel or other nonenforcement personnel to offer assistance, including help with its application, conduct of a records review, or make general observations about the site's safety and health management system.

"Onsite evaluation" means a visit to an applicant or participant site by a VOSH onsite evaluation team to determine whether the site qualifies to participate, continue participation, or advance within VPP.

"Onsite evaluation report" means a document written by the VOSH onsite evaluation team and consisting of the site report. This document contains the team's assessment of the safety and health management system and the team's recommendation regarding approval of the applicant or reapproval of the participant in VPP.

"Onsite evaluation team" means an interdisciplinary group of VOSH professionals and private industry volunteers who conduct onsite evaluations. The team normally consists of a team leader, a backup team leader, safety and health specialists, and other specialists as appropriate.

"Participant" means an employer that has submitted an application and been approved for one of the Voluntary Protection Programs specified in [16VAC25-200-40](#). Depending on the context used in this chapter, a "participant" may have one or more active physical locations or sites.

"Private industry volunteer" or "PIV" means a volunteer from a VPP site or corporation knowledgeable in safety and health management system assessment, formally trained in the policies and procedures of VPP, and determined by VOSH to be qualified to perform as a team member on a VPP onsite evaluation.

"Recommendations" means suggested improvements noted by the onsite evaluation team that are not requirements for VPP participation but would enhance the effectiveness of the site's safety and health management system. Compliance with VOSH standards is a requirement, not a recommendation.

"Safety and health management system" means a method of preventing worker fatalities, injuries, and illnesses through the ongoing planning, implementation, integration, and control of four interdependent elements: management leadership and employee involvement, worksite analysis, hazard prevention and control, and safety and health training.

"Star program" means the program within VPP designed for participants whose safety and health management systems operate in a highly effective, self-sufficient manner and meet all VPP requirements. Star is the highest level of VPP participation.

"Temporary employee" means an employee hired on a nonpermanent basis by the applicant or participant site.

"Total case incidence rate" or "TCIR" means a number that represents the total recordable injuries and illnesses per 100 full-time employees, calculated for a worksite for a specified period of time (usually one to three years).

"Voluntary Protection Program" or "VPP" means a voluntary program under which the commissioner recognizes and partners with workplaces in which a model system has been implemented.

"Voluntary Protection Program Participants' Association" or "VPPPA" means a nonprofit § 501(c)(3) organization whose members are involved in VPP. The mission of the VPPPA is to promote safety, health, and environmental excellence through cooperative efforts among employees, management, and government.

"VOSH" means the Virginia Occupational Safety and Health program of the Department of Labor and Industry.

16VAC25-200-30—Categories of Participation.

A. Categories of participation may include:

1. Site-based fixed worksites and long-term construction sites, including traditional Star and Merit designations.
2. Challenge participants where employers are guided by challenge administrators through a three-stage process, which can prepare an employer to achieve VPP Star status.
3. Mobile workforce participants where employers often work as subcontractors and move from site to site.
4. Corporate participants that have adopted VPP on a large scale.

B. Levels of recognition:

1. Star worksite status recognizes the safety and health excellence of worksites where workers are successfully protected from fatality, injury, and illness by the implementation of comprehensive and effective workplace safety and health management systems. These worksites are self-sufficient in identifying and controlling workplace hazards.
2. Merit worksite status recognizes worksites that have good safety and health management systems and that show the willingness, commitment, and ability to achieve site-specific goals that will qualify them for Star participation.
 - a. If the onsite evaluation team recommends participation in the Merit program, the site must then complete a set of goals in order to maintain Merit status and qualify for the Star program.
 - b. Merit goals must address Star requirements not presently in place or aspects of the safety and health management system that are not up to Star quality.
 - c. Methods for improving the safety and health management system that will address identified problem areas must be included in Merit goals.
 - d. Correction of a specific hazardous condition must be a 90-day item, not a Merit goal. However, when a safety and health management system deficiency underlies a specific hazardous condition, then corrections to the system must be included as Merit goals.
 - e. Reducing a three-year TCIR or DART rate to below the national average is not by itself an appropriate Merit goal. Corrections to safety and health management system deficiencies underlying the high rate must be included in the Merit goals.
 - f. Merit worksites are given a three-year conditional goal of achieving Star status. A participant must meet Star rate requirements within the first two years of its Merit participation. This is to afford an additional year's experience, for a total of no more than three years to gain Star approval.
 - g. A Merit participant qualifies for Star when it has met its Merit goals, Star rate requirements, and when all other safety and health elements and sub-elements are operating at Star quality.
 - h. A Merit participant may qualify for the Star program before the end of its Merit term if the participant meets all conditions in subdivision 2 g of this subsection.

3. Challenge recognizes three stages of accomplishment as specified in [16VAC25-200-40](#) B.
- C. Nothing in this chapter shall be construed to prohibit the commissioner from establishing programs that are site-specific, company-wide, statewide, or any combination thereof.

16VAC25-200-40—Ways to Participate.

- A. Site-based fixed participation is directed at the owners and site officials who control site operations and have ultimate responsibility for assuring safe and healthful working conditions of:
1. Private-sector fixed worksites in general industry;
 2. Construction worksites or projects that will have been in operation for at least 12 months at the projected time of approval and that expect to continue in operation for at least an additional 12 months;
 3. State and local government sector fixed worksites;
 4. Resident contractors at participating VPP sites for the contractors' operations at those VPP sites; or
 5. Resident contractors at nonparticipating sites for the contractors' operations at those sites, so long as the resident contractors are part of a larger organization approved to participate under the corporate option.
- B. Challenge provides participating employers and workers an avenue to work with designated Challenge administrators to develop or improve their safety and health management system. Challenge participants do not generally receive exemptions from VOSH programmed inspections, although it is within the commissioner's discretion to design programs that permit exemption from programmed inspections for successful Stage 3 applicants.

Challenge administrators collaborate with participating employers to improve their safety and health management programs in three stages through mentoring, training, and progress tracking:

1. Stage 1 - assess, learn, and develop. Challenge participants learn the elements necessary to develop and implement an effective safety and health management program; assess performance of existing safety and health programs and policies; provide training to management and workers; and develop strategies, programs, and policies.
 2. Stage 2 - implement, track, and control. Challenge participants complete and implement policies and programs developed in Stage 1; continue to enhance and develop their safety and health management program; implement and improve their safety and health management program; and begin to incorporate policies for contractor and special trade contractor safety and health management program requirements.
 3. Stage 3 - reassess, monitor, and improve. Challenge participants monitor, reassess, and continuously improve their safety and health management program. Challenge participants who complete Stage 3 have a safety and health management system sufficiently advanced for the participant to begin the application process for VPP Star certification.
- C. Mobile workforce companies typically function as contractors or subcontractors that may or may not have the authority for safety and health for an entire worksite and for those companies that have employees that move site to site, such as a specialty trade contractor or repair and maintenance company, regardless of size or length and duration of the project or service.
- D. VPP corporate is designed for corporate applicants who demonstrate a strong commitment to employee safety and health and VPP. These applicants, typically large corporations or state or local government agencies, have adopted

VPP on a large scale for protecting the safety and health of their employees. VPP corporate applicants must have established standardized corporate-level safety and health management systems that are effectively implemented organization-wide, as well as internal audit or screening processes that evaluate their facilities for safety and health performance.

16VAC25-200-50—Application Requirements.

A. Term of participation.

1. There is no time limit to the term of participation in Star, as long as a site continues to meet all Star requirements and to maintain Star quality.
2. Fixed-site construction participation ceases with the completion of the construction project.
3. There is no time limit to the term of participation for mobile worksite, corporate, or Challenge site as long as the participant continues to meet all applicable requirements and maintain quality systems.

B. Injury and illness history requirements.

1. Injury and illness history is evaluated using a three-year total case incident rate (TCIR) and a three-year day away, restricted, or transfer case incident rate (DART rate). The three-year TCIR and DART rates must be compared to the published Bureau of Labor Statistics (BLS) national average for the five-digit or six-digit North American Industrial Classification System (NAICS) code for the industry in which the applicant is classified. The BLS publishes NAICS industry averages two years after data is collected. For example, in calendar year 2016, calendar year 2014 national averages will be available and used for comparison.
2. Both the three-year TCIR and the three-year DART rate must be below one of the three most recently published BLS national averages for the specific NAICS code.
3. Some smaller worksites may be eligible to use the alternate rate calculation as provided for in VOSH written procedures.

C. VOSH inspection history.

1. The applicant must not have been issued final VOSH citations related to a fatality in the preceding three-year period prior to application submission. In the event that the employer elects to contest a citation related to a VOSH fatality, the employer may not submit a VPP application until such time as all fatality-related citations have become a final order of the Commissioner of Labor and Industry.
2. If VOSH has inspected an applicant site in the 36 months preceding the application, the inspection, abatement, and any other history of interaction with VOSH must indicate good faith attempts by the employer to improve safety and health at the site. This includes verification of correction of all serious violations. In addition, the existence of any of the following at the site precludes the site's participation in VPP:
 - a. Open enforcement investigations;
 - b. Pending or open contested citations or notices under appeal at the time of application;
 - c. Affirmed willful or antidiscrimination whistleblower violations under § [40.1-51.2:1](#) of the Code of Virginia during the 36 months prior to application;
 - d. Documented instances of misclassification of employees during the 36 months prior to application;
or

- e. Unresolved, outstanding enforcement actions, such as long-term abatement agreements or contests.

D. Contract worker coverage.

1. Workers for applicable contractors must be provided with safety and health protection equal in quality to that provided to participant employees.
2. All contractors, whether regularly involved in routine site operations or engaged in temporary projects such as construction or repair, must follow the safety and health rules of the host site.
3. VPP participants must have in place a documented oversight and management system covering applicable contractors to:
 - a. Ensure that safety and health considerations are addressed during the process of selecting contractors and when contractors are on site;
 - b. Ensure that contractors follow site safety rules;
 - c. Include provisions for timely identification, correction, and tracking of uncontrolled hazards in contractor work areas; and
 - d. Include a provision for removing a contractor or contractor's employees from the site for safety or health violations.
4. Nested contractors, such as contracted maintenance workers, and temporary employees who are supervised by host site management and governed by the site's safety and health management system are entitled to the same workplace protections as host employees and are therefore included in the host site's injury and illness rates.
5. Site management must maintain copies of the TCIR and DART rate data for all applicable contractors based on hours worked at the site. Sites must report all applicable contractor TCIR and DART rate data to VOSH annually.
6. Managers, supervisors, and nonsupervisory employees of contract employers must be made aware of:
 - a. The hazards they may encounter while on the site.
 - b. How to recognize hazardous conditions and the signs and symptoms of workplace- related illnesses and injuries.
 - c. The implemented hazard controls, including safe work procedures.
 - d. Emergency procedures.

E. Assurances.

1. Applicants must understand and agree, through assurances, to fulfill program requirements for participation in VPP.
2. Applicants must assure that:
 - a. The applicant will comply with VOSH laws, standards, and regulations and will correct in a timely manner all hazards discovered through self-inspections, employee notification, accident investigations, VOSH onsite review, process hazard reviews, annual evaluations, or any other means. The applicant will provide effective interim protection as necessary.

- b. Site deficiencies related to compliance with VOSH requirements and identified during the VOSH onsite review will be corrected within 90 days, with interim protection provided to employees.
 - c. Site employees support the VPP application.
 - d. VPP elements are in place, and the requirements of the elements will be met and maintained.
 - e. Employees, including newly hired employees and contract employees when they reach the site, will have the VPP explained to them, including employee rights under the program and VOSH laws, standards, and regulations.
 - f. Employees performing safety and health duties as part of the applicant's safety and health management system will be protected from discriminatory actions resulting from their carrying out such duties. See § [40.1-51.2:1](#) of the Code of Virginia.
 - g. Employees will have access to the results of self-inspections, accident investigations, and other safety and health management system data upon request. At unionized sites, this requirement may be met through the employee representative's access to these results.
 - h. The information listed in this subdivision 2 h will be maintained and available for VOSH review to determine initial and continued approval to the VPP:
 - (1) Written safety and health management system;
 - (2) Agreements between management and the collective bargaining agents concerning safety and health; and
 - (3) Data necessary to evaluate the achievement of individual Merit goals or one-year conditional goals.
 - i. On or before February 15 each year, each participating site must submit its annual evaluation to the department.
 - j. Whenever significant organizational, ownership, union, or operational changes occur, such as a change in management, corporate takeover, merger, or consolidation, a new statement of commitment signed by both management and any authorized collective bargaining agents, as appropriate, will be provided to VOSH within 60 days of the effective date of the significant changes.
3. The applicant must demonstrate a willingness to follow through on all assurances.
 4. Employees must be aware of the recourse available to them if management fails to fulfill any of these assurances. This may include rescinding their support of VPP participation or exercising the right to file a VOSH complaint.

F. Preapplication assistance.

1. Department personnel may conduct onsite assistance visits of a prospective applicant's site to offer assistance in the application process or before scheduling the onsite evaluation to obtain additional information or clarification of information provided in the application.
2. Preapplication assistance may also include referrals to the VPP mentoring program, Virginia VPP best practices training sessions, VPPPA conferences, and VPPPA application workshops.

G. Application receipt and review.

1. The commissioner shall establish written procedures to address requirements concerning receipt and review of application contents, including the comprehensive safety and health management system requirements outlined in [16VAC25-200-60](#).
2. If, upon review, the application is considered incomplete, the department shall notify the applicant by letter, noting the missing elements and requesting that the missing information be submitted within 90 days. If the additional information is not provided within that timeframe, the application must be returned to the applicant. Applications can be resubmitted at any time.
3. If it is clear that the applicant cannot qualify for VPP, the department must ask the applicant to withdraw the application within 30 days. If the application is not withdrawn, the application will be returned with a letter indicating the reasons the application was denied.
4. An applicant may withdraw the application by notifying the department. The withdrawal is effective on the date the notification is received. The original application must be returned to the applicant. If the application had already been accepted, the department must retain a working copy for one year, for use in responding to questions that may arise.

16VAC25-200-60—Comprehensive Safety and Health Management System Requirements.

A. The elements for VPP shall include the following requirements for VPP participation:

1. Upper management leadership and active and meaningful employee involvement;
2. Systematic assessment of occupational hazards;
3. Comprehensive hazard prevention, mitigation, and control programs;
4. Employee safety and health training; and
5. Safety and health program evaluation.

B. The commissioner shall establish written procedures to address applicant and participant requirements concerning the elements and sub-elements appropriate to the program:

1. Management commitment;
2. VPP commitment;
3. Employee involvement;
4. Contract worker coverage;
5. Safety and health management system evaluation;
6. Worksite analysis;
7. Baseline and comprehensive safety and industrial hygiene hazard analysis;
8. Hazard analysis of routine jobs, tasks, and processes;
9. Hazard analysis of significant changes;

10. Pre-use analysis;
11. Documentation and use of hazard analysis;
12. Routine self-inspections;
13. Hazard reporting system for employees;
14. Industrial hygiene (IH) program:
 - a. IH surveys;
 - b. Sampling strategy;
 - c. Sampling results;
 - d. Documentation;
 - e. Communication;
 - f. Use of results;
 - g. IH expertise;
 - h. Procedures; and
 - i. Use of contractors for IH surveys;
15. Analysis of injury, illness, and near-hit incidents;
16. Trend analysis;
17. Hazard prevention and control;
18. Certified professional resources;
19. Hazard elimination and control methods:
 - a. Engineering;
 - b. Administrative;
 - c. Work practices; and
 - d. PPE;
20. Hazard control programs;
21. Compliance with applicable Virginia unique occupational safety and health regulations;
22. Occupational health care program;
23. Preventative maintenance of equipment;
24. Tracking of hazard correction;
25. Disciplinary system;
26. Emergency preparedness and response; and

27. Safety and health training.

16VAC25-200-70—Certification Process.

- A. Evaluation periods. The commissioner shall establish written procedures to set time periods and scheduling requirements for onsite evaluations in response to initial applications accepted by the department and for recertification of participants.
- B. Scheduling exceptions. Onsite evaluations shall be conducted earlier than normal scheduled requirements when:
 - 1. Significant changes have occurred in management, processes, or products that may require evaluation to ensure the site is maintaining a VPP quality safety and health management system.
 - 2. VOSH has learned of significant problems at the site, such as increasing injury and illness rates, serious deficiencies described in the site's annual evaluation of its safety and health management system, or deficiencies discovered through VOSH enforcement activity resulting from an employee complaint, fatality, accident, or other event.
- C. Decision to conduct the onsite evaluation. Once an application is accepted, the department must:
 - 1. Notify the applicant by letter or email in a timely manner that an onsite evaluation will be conducted. However, no onsite evaluation may be conducted until all prior enforcement actions have been closed.
 - 2. Notify the appropriate VOSH enforcement personnel so that the site can be removed from any programmed inspection lists, effective no more than 75 days prior to the scheduled onsite review.
- D. Methods of evaluation. The three primary methods of evaluation during the certification or recertification process are document review, walkthrough, and employee interviews. Additional activities that must occur are the opening conference, daily briefings, report preparation, and closing conference. The onsite evaluation team must evaluate each element and sub-element of the safety and health management system and VPP requirements.
- E. Recommendations. At the conclusion of the onsite evaluation, the onsite evaluation team must reach a consensus to recommend to the Commissioner of Labor and Industry as to whether the site is suitable for participation or continued participation in VPP, and at what level of participation.

16VAC25-200-80—Onsite Evaluations.

- A. Onsite evaluation team. An onsite evaluation consists of a thorough evaluation of a VPP applicant's or participant's safety and health management system in order to recommend approval or re-approval. Onsite evaluations are carried out by a team consisting of VOSH staff acting in a nonenforcement capacity, private industry volunteers, and other qualified team members.
- B. Onsite evaluation procedures. The commissioner shall establish written procedures for onsite evaluations of applicants and participants undergoing recertification. The procedures shall address issues including:
 - 1. Prioritizing and scheduling onsite evaluations;
 - 2. Inclusion of union representatives, if any, in the opening and closing conferences and the opportunity to accompany the onsite evaluation team on the site walkthrough;

3. Onsite evaluation team composition, qualifications, preparation, and assessment of personal protective equipment needed;
4. Opening conference subjects, review of injury and illness records, incentive programs, document review, walkthrough, review of safety and health management system elements and sub-elements, formal and informal interviews of employees, including applicable contractor employees, and closing conference subjects and recommendations;
5. Employee rights under the program and under VOSH laws, standards, and regulations; and
6. Assuring that employees performing safety and health duties as part of the applicant's safety and health management system will be protected from discriminatory actions resulting from their carrying out such duties, pursuant to § [40.1-51.2:1](#) of the Code of Virginia.

C. Correction of hazards.

1. As hazards are found and discussed during the walkthrough, the onsite evaluation team must add them to a written list of the uncontrolled hazards identified. This list will be used when the team briefs site management at the end of each day on site.
2. VOSH expects that every effort will be made by the site to correct identified hazards before the closing conference. If hazard correction cannot be accomplished before the conclusion of the onsite evaluation, the onsite evaluation team and site management must discuss and agree upon correction methods and timeframes.
3. The site may be given up to a maximum of 90 days to correct uncontrolled hazards, as long as Interim protection is provided. These 90-day items must be corrected before the final onsite evaluation report can be processed. Management must provide the team leader with a signed letter indicating how and when the correction will be made. The team leader may decide to return to the site to verify correction.
4. If, after repeated attempts to reach agreement, site management refuses to correct a situation that exposes employees to serious safety or health hazards, that situation shall be referred for enforcement action.
5. Should any identified hazard be determined to present a risk of imminent danger to life or health of an employee, department personnel shall assure that its procedures for immediately removing employees from exposure to the hazard until corrected are complied with by the applicant or participant.

D. Deficiencies in the safety and health management system. Where the team detects deficiencies in the safety and health management system, even when physical hazards are not present, the onsite evaluation team must document these deficiencies as goals for correction, recommendations for improvement, or both.

1. If the system deficiency is a requirement for VPP at the Star level, it must become the subject of a goal, either a Merit goal or a one-year conditional goal.
2. A deficiency resulting in a one-year conditional goal indicates that a participant no longer fully meets Star requirements. For the conditional status to be lifted, (i) the deficiency must be corrected within 90 days, and (ii) the participant must then operate at the Star level for one year. Failure to meet this requirement will result in termination from VPP in accordance with the requirements of [16VAC25-200-110 C](#).
3. A Merit goal must be met in order for a site to achieve Star status.

4. Implementation of goals is mandatory for VPP participation. Timeframes, interim protection, and methods of achieving goals must be discussed and agreed to with site management.
 5. If improvement of the system deficiency is not necessarily a requirement for VPP, but will improve worker safety and health at the site, the improvement must be a recommendation. Implementation of recommendations is encouraged but is not mandatory for VPP participation.
- E. Final analysis of findings.
1. When the documentation review, the walkthrough, and employee interviews have been completed, the onsite evaluation team must meet privately to review and summarize its findings before conducting the closing conference.
 2. A draft of the certification or recertification report shall be completed by the team before leaving the site. The draft report must reflect the consensus of the onsite evaluation team.
- F. Closing conference. The findings of the onsite evaluation team, including its recommendation to the commissioner, must be presented to site management and appropriate employee representatives before the team leaves the site.

16VAC25-200-90—Annual Submissions.

- A. Annual self-assessment.
1. Participation in VPP requires each site or participant to annually evaluate the effectiveness of its safety and health management system, including the effectiveness of all VPP elements and sub-elements.
 2. The commissioner shall establish written procedures establishing the content and reporting requirements of participant annual submissions.
 3. Annual submissions are due on or before February 15 each year.
- B. Applicable contractors. Participants shall report on the injury and illness data for all applicable contractors.

16VAC25-200-100—Enforcement Activity at Voluntary Protection Program Sites.

- A. Types of enforcement activity. Two types of enforcement activity trigger additional VPP assessment:
1. Unprogrammed VOSH inspections, which occur in response to all referrals, formal complaints, fatalities, and certain accidents.
 2. Other incidents or events, whether or not injuries or illnesses have occurred and whether or not normal enforcement procedures apply to the situation.
- B. Site reassessment. VOSH may reassess the site's safety and health management system if there is reason to believe that a serious deficiency exists that would have an impact on the site's continued qualification for VPP.
- C. Enforcement personnel. The commissioner shall establish written procedures describing the use of enforcement personnel during onsite evaluations and any limitations placed on their conducting an enforcement inspection at a VPP site.

D. Impact of enforcement activity.

1. If the event that triggers enforcement activity occurs during the time between application and onsite evaluation, the onsite evaluation must be postponed until the enforcement case is closed.
2. If the event that triggers enforcement activity occurs during the onsite evaluation, the onsite evaluation must cease until the enforcement case is closed.

16VAC25-200-110—Withdrawal, Suspension, or Termination.

A. Withdrawal.

1. Participants may withdraw of their own accord or be asked by VOSH to withdraw from the programs.
2. Any participant may choose to withdraw voluntarily at any time.
3. VOSH shall request that a participant withdraw from VPP if it is determined that it is no longer meeting the requirements for VPP participation.
4. The commissioner shall establish written withdrawal procedures that (i) provide for the participant's formal notification to the department, (ii) the commissioner's acknowledgment of receipt and notification to the participant of the status change, (iii) notification to department personnel of the status change, (iv) return of the participant to the VOSH programmed inspection list, and (v) disposition of the VPP participant file.
5. The commissioner shall establish written procedures to address a VPP participant's change of location that establishes criteria for determining whether the participant can retain its VPP status or must withdraw.
6. The commissioner will consider the employer's reapplication to VPP if and when eligibility requirements are met.

B. Suspension.

1. Participants that experience a work-related fatality, whether an employee or contract employee, may be immediately suspended from program participation until such time as a VOSH fatality investigation can be completed.
2. The commissioner shall establish written procedures to address a VPP participant's temporary suspension from VPP, that provides for the department's formal notification to the participant and removal of the VPP flag or other recognition device from display until the suspension is lifted in accordance with the provisions of §§ [2.2-4019](#) and [2.2-4021](#) of the Code of Virginia. Decisions of the Commissioner of Labor and Industry may be appealed in the manner provided for in §§ [2.2-4026](#) through [2.2-4029](#) of the Code of Virginia.
3. A participant's suspension will not result in the participant being returned to the VOSH programmed inspection list.

C. Termination.

1. The Commissioner of Labor and Industry may terminate a participant from the VPP for failure to maintain the requirements of the program.

2. In the event a fatality investigation shows substantial deficiencies in the participant's safety and health programs, such that during a normal certification audit the types of deficiencies would have precluded the participant from participation in the VPP, the Commissioner of Labor and Industry, in his discretion, may terminate the participation in VPP.
3. If a whistleblower investigation pursuant to §§ [40.1-51.2:1](#) and [40.1-51.2:2](#) of the Code of Virginia shows substantial deficiencies in the participant's safety and health programs, such that during a normal certification audit the types of deficiencies would have precluded the site from participation in the VPP, the Commissioner of Labor and Industry, in his discretion, may terminate the participation in VPP.
4. Under most other situations, termination should occur only when all reasonable efforts for assistance have been exhausted.
5. The commissioner shall establish written termination procedures that provide for the commissioner's formal notification to the participant and union representatives, an appeal process, and notification of the Commissioner of Labor and Industry's final decision in accordance with the provisions of §§ [2.2-4019](#) and [2.2-4021](#) of the Code of Virginia. Decisions of the Commissioner of Labor and Industry may be appealed in the manner provided for in §§ [2.2-4026](#) through [2.2-4029](#) of the Code of Virginia.
6. If the Commissioner of Labor and Industry finds the participant's appeal valid, the participant may continue in VPP.
7. In the event of a final decision to terminate, the written procedures shall provide for notification to department personnel of the status change, return of the participant to the VOSH programmed inspection list, and disposition of the VPP participant file. If a terminated participant wishes to pursue reinstatement, it must wait three years to reapply.