# FY 2022 Follow-up Federal Annual Monitoring Evaluation (FAME) Report

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



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## Executive Summary

The purpose of the Follow-up Federal Annual Monitoring Evaluation (FAME) Report is to assess the Virginia Occupational Safety and Health (VOSH) Program’s performance during Fiscal Year (FY) 2022. VOSH continues to effectively accomplish its mission of protecting over three million Virginians from workplace safety and health hazards by covering over 291,000 employers. The U.S. Bureau of Labor Statistics’ (BLS) 2021 data reflects an overall Total Recordable Case Rate (TRCR) of non-fatal occupational injuries and illnesses of 2.3 for Virginia (23% lower than the national TRCR). Virginia’s TRCRs in private industry, construction, and government also remain below the national averages.

VOSH was the first State Plan to develop and implement a COVID-19 Emergency Temporary Standard (ETS) in 2020. The *Infectious Disease Prevention of the SARS-CoV-2 Virus that Causes COVID-19* (16VAC25-220) became the first final, permanent standard in the nation to specifically cover COVID-19-related hazards. The Virginia Safety and health Codes Board revoked the Virginia Standard effective March 23, 2022.

In FY 2022, VOSH agreed to honor OSHA’s approval of the Traylor Brothers’ variance modification for compressed air work being performed on the RiverRenew Tunnel System Project crossing through both federal and VOSH jurisdiction. VOSH also received variance requests from Chesapeake Tunnel Joint Venture (CTJV) and the Hampton Roads Connector Partners (HRCP) for projects located exclusively in Virginia. Both projects requested consideration of alternative protective measures for specific paragraphs of the 29 CFR 1926.803 (Underground Construction, Caissons, Cofferdams, and Compressed Air) regulation adopted identically by VOSH. Ultimately, VOSH issued variances for CTJV effective January 20, 2023, and HRCP effective January 23, 2023.

VOSH continued to respond to occupational concerns in the Commonwealth of Virginia by inspecting or investigating at least 89% (1,140 of 1,285) of all the complaints received in FY 2022. 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 826 programmed inspections in FY 2022.

VOSH continues to have significant enforcement presence. VOSH conducted 1,876 inspections in private and state and local government (SLG) workplaces during FY 2022 – 125 more inspections than was conducted in FY 2021. These inspections resulted in VOSH issuing 2,656 violations – an increase of 765 violations from FY 2021. VOSH investigates all work-related fatalities within its jurisdiction and coverage limitations. The program investigated 39 work-related fatalities in FY 2022(five less than FY 2021). Since its inception in 2015, VOSH’s Worker Misclassification policy resulted in over 437 referrals to the Department of Professional and Occupational Regulations for potential misclassification issues.

Throughout the year, VOSH communicated to OSHA that corrective steps were taken to ensure that work-related fatality case files include the final next-of-kin (NOK) letter, ensuring that the results of the inspection and guidance for obtaining a releasable copy of the case file are shared with the NOK. OSHA will conduct a fatality case file review during the FY 2023 comprehensive FAME on-site case file review. In FY 2022, OSHA also identified that VOSH did not adopt Federal Program Changes (FPCs) within the required timeframes.

VOSH is responsive to OSHA requests and works collaboratively to achieve the mission of protecting the nation’s workers. VOSH shares initiatives and seeks to work in concert with OSHA when possible.

## State Plan Background

Virginia operates a State Plan occupational safety and health program under Section 18 of the Occupational Safety and Health (OSH) Act of 1970. The Virginia Department of Labor and Industry (DOLI) administers the VOSH Program. VOSH operates within DOLI and is headquartered in Richmond, Virginia with field offices located in Abingdon, Lynchburg, Manassas, Norfolk, Richmond, Roanoke, and Verona.

The previous DOLI Commissioner, C. Ray Davenport, was replaced by Gary Pan on January 15, 2022. In FY 2022, Harold Pyon and Willis Morris served as Deputy Commissioners of the DOLI and William Burge remained the Assistant Commissioner. Ronald Graham served as VOSH’s health director and Marta Fernandes as VOSH’s safety director. Jay Withrow serves as VOSH’s Director of the Division of Legal Support (DLS). Jennifer Rose continued her role within VOSH as Director of Cooperative Programs throughout FY 2021. The agency directors for safety, health, and consultation services, as well as DLS, the Office of Research and Analysis (ORA), which handles Bureau of Labor Statistics (BLS) survey, Voluntary Protection Programs (VPP), Office of Policy, Planning and Public Information (OPPPI), 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 workplaces; 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. VOSH also provides free educational and training programs for employers and workers to assist them in achieving voluntary compliance.

VOSH’s Cooperative Programs Division continues to offer 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) CHALLANGE; and
* Virginia BUILT (Building Safety and Health Excellence in Construction through Mentorship and Training).

VOSH’s compliance role is to enforce safety and health laws, standards, and regulations (“standards”) 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 as well as private sector employers and workers in Virginia, except for federal workers, the United States Postal Service, private sector maritime, employment at worksites located within federal military facilities and other federal enclaves where the state has ceded coverage to the federal government, and onboard aircraft in operation.

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 overhead high voltage line safety; fall protection in steel erection; reverse signal operation of vehicles, machinery, tool and equipment in general industry, construction, maritime (SLG only), and agriculture; tree trimming; and confined space hazards in telecommunication industries. 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 (MUTCD) referenced in 29 CFR 1926.200 and 1926.202. Virginia has codified in regulation the Multi-Employer Worksite Policy and Multi-Employer Misconduct Defense but provides that the defense does not apply to supervisory personnel having control of the worksite.

The 2021 Virginia General Assembly approved 100% state funding for 12 benchmark positions that took effect on July 1, 2021. Due to the funding increase, VOSH has been actively recruiting safety and health compliance staff to fill vacancies. Based on its FY 2023 grant application, VOSH filled 76% of safety compliance officer benchmarks and met its health compliance officer benchmark. VOSH overmatched the $4,410,800 federal award by $1,450,000, contributing to 57% of its funding in FY 2022.

**New Issues**

VOSH’s 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. On March 21, 2022, the Virginia Safety and Health Codes Board adopted the final revocation of the Virginia Standard for Infectious Disease Prevention of the SARS-CoV-2 Virus that Causes COVID-19 (16VAC25-220). Revocation of the standard became effective on March 23, 2022.

## Assessment of State Plan Progress and Performance

### Data and Methodology

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

* State Activity Mandated Measures (SAMM) Report (Appendix D)
* State Information Report (SIR)
* Mandate Activities Report for Consultation (MARC)
* State OSHA Annual Report (SOAR)
* State Plan Annual Performance Plan (APP)
* State Plan Grant Application
* Quarterly monitoring meetings between OSHA and the VOSH Program

### Findings and Observations

**Findings (Status of Previous and New Items)**

There were no new or continued findings identified during the FY 2022 FAME. VOSH did not have any findings identified during the FY 2021 comprehensive FAME to discuss in this report.

Completed Findings

There were no findings in FY 2021 and therefore no completed findings to report in FY 2022.

Continued Findings

There were no findings in FY 2021 and therefore no continued findings to report in FY 2022.

New Findings

There were no new findings identified in FY 2022.

**Observations (Status of Previous and New Items)**

There was one continued and one new observation identified in the FY 2022 FAME.

Closed Observations

There were no closed findings in FY 2022.

Continued Observations

**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.

**Status:** VOSH has implemented a policy to ensure that documentation of the final NOK letter is maintained in work-related fatality case files. A case file review that will include work-related fatality cases will be conducted as part of the FY 2023 comprehensive FAME to verify that the final NOK letters are included in the case files. This observation is continued.

New Observations

**Observation FY 2022-OB-02:** VOSH did not adopt Federal Program Changes (FPCs) within the required timeframes.

**Federal Monitoring Plan:**OSHA will continue to identify overdue FPCs and monitor adoption status.

**Discussion:**This did not rise to the level of a finding as VOSH has been actively communicating with OSHA concerning the adoption of overdue FPCs, and in many cases, continues to utilize state-specific guidance documents addressing the hazards associated with related OSHA FPCs. Also, VOSH has recently acted on multiple FPCs. Therefore, at this time, OSHA will continue to monitor the status of FPC adoption and any impact to the VOSH Program.

Although VOSH is technically delinquent in the adoption of the specific directive for the National Emphasis Program on Trenching and Excavation and the Compliance Directive for the Excavation Standard, it continued to conduct trenching and excavation inspections in accordance with its Special Emphasis Program (SEP): Trenching and Excavation Directive (14-203) in the interim.

VOSH is currently working on adoption of the Amputations in 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 on 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 ad described in Chapter 3 of the VOSH Field Operations Manual.

VOSH is also considering adoption Compliance Directive for Cranes and Derricks in Construction Standard, recent changes to the OSHA Field Operations Manual (FOM), and the Occupational Exposure to COVID-19; Healthcare Emergency Temporary Standard: COVID-19 Log and Reporting Provisions.

### State Activity Mandated Measures (SAMM) Highlights

Each SAMM has an agreed upon FRL which can be either a single number, or a range of numbers above and below the national average. State Plan SAMM data that falls outside the FRL triggers a closer look at the underlying performance of the mandatory activity. Appendix D presents the State Plan’s FY 2022 State Activity Mandated Measures (SAMM) Report and includes the FRLs for each measure.

It should be noted that OSHA is in the final stages of transitioning from the Whistleblower Application in the OSHA IT Support System (OITSS), a legacy data system, to the Whistleblower module in OIS, a modern data system. For FY 2022, a portion of the State Plan whistleblower data was recorded OITSS, and a portion was captured in OIS. OSHA encountered challenges in combining the report that generates SAMM 14, 15, and 16 from both systems. As such, OSHA will not be relying on SAMMs 14, 15, or 16 in their evaluation of the State Plans whistleblower programs for FY 2022.

The VOSH Program was outside the FRL on the following SAMMs:

**SAMM #5 – Average Number of Violations per Inspection with Violations by Violation Type:**

Discussion of State Plan Data and FRL: The FRL for the average number of violations per inspection with violations by violation type is +/- 20% of the three-year national average of 1.77 for serious/willful/repeat/unclassified (S/W/R/U) violations which provides a range of 1.42 to 2.12. VOSH’s S/W/R/U average is 1.94 violations. The FRL for other-than-serious (OTS) violations is +/- 20% of the three-year national average of 0.90 which provides a range of 0.72 to 1.08. VOSH’s OTS average is 0.71.

Explanation: VOSH is slightly below the FRL for the average number of OTS violations issued per inspection and within the FRL and above the national average for the number of S/W/R/U violations issued per inspection. VOSH increased its number of OTS violations per inspection by 31.48% since FY 2021. The data also indicates that VOSH issued more safety violations as S/W/R/U. Previous reviews have not identified any trends with violation misclassification, unidentified violations, or violations that were not cited; therefore, a finding was not recommended.

**SAMM #6 – Percent of Total Inspections in Public Sector:**

Discussion of State Plan Data and FRL: The FRL for the percent of total inspection in SLG workplaces is +/- 5% of the negotiated value of 6.53% which provides a range from 6.21% to 6.86%. VOSH conducted 6.12% of its total inspections in SLG workplaces in FY 2022 – falling just below the FRL.

Explanation: VOSH conducted 113 safety and health inspections in SLG workplaces. Although this represents a decrease from the previous three years, VOSH fell below the FRL by less than two SLG inspections. Therefore, OSHA will not make this an observation at this time but will continue to discuss with VOSH and monitor during quarterly meetings.

**SAMM #7 – Planned vs. Actual Inspection (Safety/Health):**

Discussion of State Plan Data and FRL: The FRL for planned vs. actual inspections is +/- 5% of the negotiated number of 1,574 safety inspections which provides a range of 1,495.3 to 1,652.7, and 554 health inspections which provides a range of 526.3 to 581.7 inspections. VOSH conducted 1,351 safety and 496 health inspections in FY 2022 – falling below the FRL for both subcategories.

Explanation: VOSH has consistently exceeded its health inspection goal since FY 2019 and exceeded its safety inspection goal in FY 2021. VOSH has experienced staff turnover in the recent years but is actively recruiting. Therefore, OSHA will not make this an observation at this time but will continue to discuss with VOSH and monitor during quarterly meetings.

**SAMM #9 Percent In-compliance:**

Discussion of State Plan Data and FRL: The FRL for percent in-compliance for safety is +/- 20% of the three-year national average of 32.25% which provides a range of 25.80% to 38.70%. The FRL for percent in-compliance for health is +/- 20% of the three-year national average of 44.42% which provides a range of 35.54% to 53.30%. The FY 2022 data shows that VOSH’s in-compliance rate for safety was 44.30%, which was higher than the FRL and 52.83% for health, but was within the FRL.

Explanation: Historically, VOSH safety and health percent in-compliance rates have frequently exceeded the FRL. The outliers can be explained by policies and procedures unique to VOSH. For example, it is VOSH’s policy on multi-employer jobsites to open an inspection and assign an inspection number to all employers covered by the scope of the inspection - regardless of whether citations are going to be issued to the employer or not. Adjusting inspection counts to account for this policy would have placed the VOSH safety in-compliance rate within the FRL.

Although VOSH was within the FRL for its health in-compliance rate, VOSH health inspections often affected by unique policies as well. VOSH inspects all formal and non-formal asbestos complaints alleging worker exposure. According to statutory requirement, VOSH also inspects certain asbestos contractors resulting in a large number of planned asbestos inspections. In FY 2022, VOSH conducted 164 asbestos-related inspections.

VOSH’s in-compliance rate for safety and health inspections has been consistent for many years except for a temporary inflation of the health in-compliance rate in FY 2021 which was attributed to COVID-19 response. The health in-compliance rate returned to its consistent pre-COVID-19 value in FY 2022. This indicates that VOSH’s unique policies drive a higher in-compliance rate, but that it is not necessarily a cause for concern. The FY 2021 comprehensive FAME on-site case file review also confirmed VOSH’s unique policies impact on SAMM #9.

**SAMM #11 – Average Lapse Time:**

Discussion of State Plan Data and FRL: The FRL for average lapse time for safety is +/- 20% of the three-year national average of 54.58 days provides a range of 43.66 to 65.50 days. The FRL for average lapse time for health is +/- 20% of the three-year national average of 69.03 days provides a range 55.22 to 82.84 days. VOSH’s FY 2022 lapse time rate for safety was 49.73 days which was within the FRL and for health was 51.47 days which was below the FRL.

Explanation: VOSH lapse times historically fall either within or below the FRL indicating that VOSH completes inspections promptly without undue delay. The most recent on-site review did not reveal any inconsistencies with case management.

**SAMM#12 – Percent Penalty Retained:**

Discussion of State Plan Data and FRL: The FRL for percent penalty retained is +/- 15% of the three-year national average of 69.97% provides a range of 59.47% to 80.47%. VOSH’s FY 2022 percent penalty retention was 81.48% which was above the FRL.

Explanation: VOSH’s penalty retention has been trending up over the past three years. 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. The FY 2021 EOY SIR indicated that only 2.44% and 2.77% of total violations pre-contest were vacated and reclassified respectively

**SAMM#17 Percent of Enforcement Presence:**

Discussion of State Plan Data and FRL: The FRL for percent of enforcement presence is +/- 25% of the three-year national average of 1.64% provides a range of 1.23% to 2.05%. VOSH’s FY 2022 percent of enforcement presence was 1.21% which was slightly below the FRL.

Explanation: Percent enforcement presence is tied directly to the number of inspections conducted during the year. Because VOSH conducted fewer inspections than anticipated, SAMM #17 was directly impacted. Historically, VOSH has been well within the FRL. Therefore, OSHA will not make this an observation this year.

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

FY 2022 Virginia Occupational Safety and Health Follow-up FAME Report

There were no new or continued findings in FY 2022.

### Appendix B – Observations Subject to Continued Monitoring

FY 2022 Virginia Occupational Safety and Health Follow-up FAME Report

| **Observation #**  **FY 2022-OB-#** | **Observation #**  **FY 2021-OB-# or FY 20XX-#** | **Observation** | **Federal Monitoring Plan** | **Current Status** |
| --- | --- | --- | --- | --- |
| FY 2022-OB-01 | 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. | During next year’s FAME, work-related fatality case files will be reviewed to determine if this continues to reflect a data trend. | Continued |
| FY 2022-OB-02 |  | VOSH did not adopt Federal Program Changes (FPCs) within the required timeframes. | OSHA will continue to identify overdue FPCs and monitor adoption status. | New |

### Appendix C - Status of FY 2021 Findings and Recommendations

FY 2022 Virginia Occupational Safety and Health Program Follow-up FAME Report

There were no new or continued findings in FY 2022.

### Appendix D – FY 2022 State Activity Mandated Measures (SAMM) Report

FY 2022 Virginia Occupational Safety and Health Follow-up FAME Report

| SAMM Number | SAMM Name | State Plan Data | Further Review Level | Notes |
| --- | --- | --- | --- | --- |
| 1a | Average number of work days to initiate complaint inspections (state formula) | 2.61 | 5 | The further review level is negotiated by OSHA and the State Plan. |
| 1b | Average number of work days to initiate complaint inspections (federal formula) | 1.18 | 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) | 1.24 | 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) | 0.61 | 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) | 1.94 | +/- 20% of  1.77 | 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 2.12 for SWRU. |
| 5b | Average number of violations per inspection with violations by violation type (other) | 0.71 | +/- 20% of  0.90 | The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from 0.72 to 1.08 for OTS. |
| 6 | Percent of total inspections in state and local government workplaces | 6.12% | +/- 5% of  6.53% | 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 6.21% to 6.86%. |
| 7a | Planned v. actual inspections (safety) | 1,351 | +/- 5% of  1,574 | 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 1,495.30 to 1,652.70 for safety. |
| 7b | Planned v. actual inspections (health) | 496 | +/- 5% of  554 | 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 526.30 to 581.70 for health. |
| 8 | Average current serious penalty in private sector - total (1 to greater than 250 workers) | $3,156.72 | +/- 25% of  $3,259.35 | The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from $2,444.51 to $4,074.19. |
|  | **a**. Average current serious penalty in private sector  (1-25 workers) | $1,497.00 | +/- 25% of  $2,145.46 | The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from $1,609.10 to $2,681.83. |
|  | **b**. Average current serious penalty in private sector  (26-100 workers**)** | $3,552.37 | +/- 25% of  $3,818.56 | The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from $2,863.92 to $4,773.20. |
|  | **c**. Average current serious penalty in private sector  (101-250 workers) | $6,180.51 | +/- 25% of  $5,469.60 | The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from $4,102.20 to $6,837.00. |
|  | **d**. Average current serious penalty in private sector  (greater than 250 workers) | $7,776.33 | +/- 25% of  $6,725.78 | The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from $5,044.34 to $8,407.23. |
| 9a | Percent in compliance (safety) | 44.30% | +/- 20% of  32.25% | The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from 25.80% to 38.70% for safety. |
| 9b | Percent in compliance (health) | 52.83% | +/- 20% of  44.42% | The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from 35.54% to 53.30% for health. |
| 10 | Percent of work-related fatalities responded to in one workday | 100% | 100% | The further review level is fixed for all State Plans. |
| 11a | Average lapse time (safety) | 49.73 | +/- 20% of  54.58 | The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from 43.66 to 65.50 for safety. |
| 11b | Average lapse time (health) | 51.47 | +/- 20% of  69.03 | The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from 55.22 to 82.84 for health. |
| 12 | Percent penalty retained | 81.48% | +/- 15% of  69.97% | The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from 59.47% to 80.47%. |
| 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. |
| 14 | Percent of 11(c) investigations completed within 90 days | N/A\* | N/A\* | This measure is not being reported for FY 2022. Please see note below. |
| 15 | Percent of 11(c) complaints that are meritorious | N/A\* | N/A\* | This measure is not being reported for FY 2022. Please see note below. |
| 16 | Average number of calendar days to complete an 11(c) investigation | N/A\* | N/A\* | This measure is not being reported for FY 2022. Please see note below. |
| 17 | Percent of enforcement presence | 1.21% | +/- 25% of  1.64% | The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from 1.23% to 2.05%. |

NOTE: The national averages in this report are three-year rolling averages. Unless otherwise noted, the data contained in this Appendix D is pulled from the State Activity Mandated Measures (SAMM) Report in OIS run on November 14, 2022, as part of OSHA’s official end-of-year data run.

\*Due to the transition of 11(c) data from IMIS to OIS, SAMMs 14, 15, and 16 are not being reported for FY 2022.