**FY 2023 Comprehensive**

**Federal Annual Monitoring Evaluation (FAME) Report**

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



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1. **Executive Summary**

The purpose of this comprehensive Federal Annual Monitoring Evaluation (FAME) report is to assess the VOSH program’s performance during Fiscal Year (FY) 2023. As part of the comprehensive evaluation, an on-site review of safety and health inspection; rapid response investigation (RRI); and workplace retaliation case files was conducted. In addition, an off-site evaluation of electronic state and local government (SLG) consultation files was accomplished.

VOSH’s coverage extends to over 300,000 businesses in the Commonwealth of Virginia. The program continues to effectively fulfill its mission of safeguarding over 4.5 million Virginians from workplace safety and health hazards. VOSH’s previous five-year strategic plan concluded in FY 2023. The plan included two goals – to reduce occupational hazards through direct intervention and to promote a safe and healthful workplace culture. VOSH met all the associated performance goals.

VOSH continued to respond to occupational concerns in the Commonwealth of Virginia by inspecting or investigating at least 82% (1,177 of 1,433) of all the complaints received in FY 2023. VOSH investigated at least 189 employer reported injuries. VOSH also remained steadfast in its commitment to conduct inspections in industries with known safety and health hazards by conducting 736 programmed inspections in FY 2022. Overall, VOSH maintains a significant enforcement presence in the Commonwealth. It conducted 1,690 inspections in private and SLG workplaces and issued 2,800 violations in FY 2023. Since its inception in 2015, VOSH’s Worker Misclassification policy resulted in over 452 referrals to the Department of Professional and Occupational Regulations for potential misclassification issues.

In response to fatality at the Spotsylvania County Chancellor Convenience Center, VOSH issued two willful and three serious violations with a penalty totaling $296,402. In addition, a criminal referral was made and the supervisor in charge was indicted for manslaughter. In FY 2023, VOSH issued 31 cases with penalties totaling $40,000 or above. Seven of the 31 were issued with penalties over $100,000.

In addition to enforcement initiatives, VOSH uses various tools and programs to connect with the occupational safety and health community. The Voluntary Protection Programs Actwas adopted by the Virginia General Assembly in 2015. In FY 2023, VOSH worked cooperatively with 73 businesses in five different types of voluntary protection programs in Virginia. VOSH’s annual Safety and Health conference was held March 29-31, 2023, in Newport News, Virginia. It successfully hosted 322 participants and 19 vendors. VOSH will co-host the 2024 Region 3 Voluntary Protection Programs Participant’s Association (VPPPA) in Virginia Beach in June 2024.

There were two findings and two observations identified in the FY 2022 FAME report. OSHA evaluated the observations regarding documentation of communication with the next-of-kin (NOK) and adoption of federal program changes (FPCs) during FY 2023. The NOK documentation observation was closed and the adoption of FPCs was converted to a finding. In addition, OSHA identified one new finding for not documenting if employee representatives were provided copies of citations. OSHA developed three new observations; one for identifying inspections initiated due to unprogrammed activity as programmed, another for not identifying all the prima facie elements in the citation worksheet, and a third for the whistleblower screening process.

VOSH is responsive to OSHA requests and works collaboratively to achieve the mission of protecting the nation’s workers. VOSH maintained a high level of performance and consistently strives to improve the program. State Activity Mandated Measure (SAMM) outliers, where they exist, are frequently the result of unique procedures not captured by the algorithms used to calculate the State Plan data.

**II. State Plan Background**

**A. Background**

Virginia operates a State Plan occupational safety and health program under Section 18 of the Occupational Safety and Health (OSH) Act of 1970. 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.

In FY 2023, VOSH operated under Gary Pan, Commissioner of DOLI. David Johnon was appointed DOLI’s Deputy Commissioner and Charles Stiff assumed the Assistant Commissioner position after William Burge’s departure. Ronald Graham served as VOSH’s health director and Jeffrey Cabral replaced Marta Fernandes as VOSH’s safety director in early FY 2024. James Garrett acted as the safety director during FY 2023. Jennifer Rose continued her role within VOSH as the Director of Cooperative Programs which includes consultation and Voluntary Protection Programs (VPP). Diane Duell currently oversees the Division of Legal Support (DLS) which includes whistleblower oversight. The agency directors for safety, health, whistleblower, cooperative programs, and legal services are under the direction of the assistant commissioner who, in turn, reports to the commissioner. Additionally, Princy Doss serves as the Director of Policy and Planning under the direction of Senior Fellow, Jay Withrow who reports directly to the deputy 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 robust 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) CHALLENGE ; 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 Commonwealth. The majority of VOSH standards are identical to federal 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.

VOSH actively recruits safety and health compliance staff to fill vacancies. Based on its FY 2024 grant application, as of July 1, 2023, VOSH filled 66% of safety compliance officer benchmark and 72% its health compliance officer benchmark. VOSH overmatched the $4,522,400 federal award by $1,450,000, contributing to 57% of its funding in FY 2023.

**B. New Issues**

OSHA received one Complaint About State Program Administration (CASPA) in FY 2023 related to the handling and outcome of two retaliation complaints, as well as the processing and handling of two safety and health complaints related to the retaliation allegations. The CASPA was investigated in accordance with the State Plan Policies and Procedures Manual (SPPPM). Although it was determined that the associated on-site inspection adequately addressed the complainant’s allegations, VOSH provided its staff with retraining to ensure accuracy when documenting complaint allegations. During the investigation, VOSH identified a potential vulnerability in its online complaint system and immediately took corrective action to ensure that complainant typos do not affect the distribution of complaints to the appropriate regional office. OSHA determined that VOSH conducted its investigations in accordance with its policies and procedures and the CASPA was closed with no findings.

VOSH responded to a fatality report on July 7, 2022, at the Spotsylvania County Chancellor Convenience Center, due to an employee attempting to remove a piece of metal beneath the hydraulic cylinder of a waste compactor. The compactor ram was actuated via the operator station. VOSH issued two willful and three serious violations on January 3, 2023. The violations carried penalties totaling $296,402. A criminal referral was made by the Department and a Spotsylvania County Grand Jury met on July 17, 2023. The supervisor in charge was indicted for manslaughter.

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

1. **Data and Methodology**

OSHA established a two-year cycle for the FAME process. FY 2023 is a comprehensive year and as such, OSHA was required to conduct an on-site evaluation and case file review. A six-person OSHA team, including a whistleblower regional supervisory investigator (RSI) and investigator, was assembled to conduct a full on-site case file review. The case file review was completed at the VOSH Tidewater Regional Office located in Norfolk, Virginia on January 16, 2024 through January 18, 2024.

A total of 191 safety, health, and whistleblower as well as 11 SLG consultation files were reviewed. The files were randomly selected from closed inspections and investigations conducted during the evaluation period (October 1, 2022 through September 30, 2023). The selected population included:

* Fifteen (15) fatality inspection case files
* Fifty (50) programmed inspection case files
* Fifty (50) UPA inspection case files
* Forty (40) employer reported referral investigation files
* Thirty (30) administratively closed whistleblower files
* Six (6) docketed whistleblower files
* Eleven (11) SLG consultation 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 Report (Appendix D)
* State Information Report (SIR)
* Mandated Activities Report for Consultation (MARC)
* State OSHA Annual Report (SOAR)
* State Plan Annual Performance Plan
* State Plan Grant Application
* Quarterly monitoring meetings between OSHA and the State Plan
* Comprehensive on-site case file review

Each SAMM Report has an agreed-upon Further Review Level (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 2023 SAMM 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.

1. **Review of State Plan Performance**

**1. PROGRAM Administration**

1. Training

VOSH established a registered apprenticeship program to train safety and health compliance officers in 2005 that takes approximately 1.5 years to complete. To date, 102 compliance safety and health officers (CSHOs) and consultant apprentices have graduated from the VOSH Registered Apprenticeship Program. Out of the 55 CSHOs currently employed by VOSH, 11 are currently in the apprenticeship program. Under the guidance of senior compliance staff, apprentices perform inspections and other related activities in 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.

Furthermore, VOSH provides local hands-on training opportunities for high hazard industries in Virginia. For example, in FY 2023, VOSH provided staff with a two-day logging operations course that included on-site and classroom instruction. VOSH invites local OSHA staff to participate when space is available.

1. OSHA Information System (OIS)

VOSH began using OIS to capture inspection and consultation data in FY 2014. Since that time, VOSH personnel have 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 promptly corrected.

VOSH transitioned from entering data into the Whistleblower Application in the OSHA IT Support System (OITSS), also referred to as WebIMIS, to the Whistleblower module in OIS during FY 2022. VOSH entered all new Whistleblower complaints into OIS in FY 2023.

OSHA did not note any trending data entry concerns. 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.

1. 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 an experienced lead CSHO and one or both regional directors before being submitted to the appropriate program director and legal services 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 2023 SAMM report indicates that the VOSH in-compliance rate for safety fell outside the FRL. VOSH conducted an internal 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 in-compliance rates for safety inspections. OSHA verified the SIEP method and results during the FY 2021 comprehensive FAME case file review by specifically selecting a random sample of in-compliance safety cases.

1. Staffing

VOSH continues to experience vacancies in both safety and health compliance staff positions. Based on the FY 2024 grant application, as of July 1, 2023, VOSH filled 66% of the safety compliance officer benchmarks and 72% of the health compliance officer benchmarks. Approximately 19 (18.8) benchmark positions were not filled. VOSH reported nine first line supervisors, two whistleblower positions, and two compliance assistance specialists were on board as of July 1, 2023. Overall, VOSH was staffed with nearly 70 FTE during FY 2023.

**2. ENFORCEMENT**

a) Complaints and Referrals

During FY 2023, OSHA implemented a new OIS capability whereby electronic complaints (e-complaints) submitted through the OSHA on-line system are entered directly into OIS. VOSH elected to receive all e-complaints for establishments in Virginia directly into one of its OIS Reporting IDs (RIDs) and transfer all complaints covered by OSHA to the Norfolk Area Office (NFAO) RID. This procedure has been successfully employed.

VOSH’s complaint response continues to excel. VOSH’s complaint procedures are outlined in its FOM. An Unprogrammed Activity (UPA) report for FY 2023 indicates that VOSH received a total of 1,433 complaints in FY 2023. In response, as indicated by the FY 2023 end-of-year (EOY) SAMM report, VOSH inspected 518 of the valid complaints it received. SAMM #1A clarifies that VOSH initiated inspections within an average of 2.88 days – well within the FRL of five days. VOSH received 659 complaints for which investigations were determined to be warranted and were conducted. SAMM #2A provides that the investigations were initiated within an average of 1.83 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.

In addition to its complaint response, an OIS UPA report reveals that VOSH received 508 referrals. At least 365 of the 508 (72%) of the referrals were employer reported. VOSH, like OSHA, requires employers to report in-patient hospitalizations, amputations, or loss of an eye. Employers may report directly to VOSH or through OSHA’s Serious Event Reporting Online Form. Serious events reported directly to OSHA or through the OSHA online form are forwarded to VOSH. The report indicates that VOSH inspected or investigated all VOSH covered employer reported referrals in addition to 134 VOSH covered referrals from other sources. A review of the RRIs revealed that VOSH assessed each employer reported referral and considered a commensurate response based on the initial report. OSHA identified two amputation-related RRI’s and two fall-related RRI’s that VOSH could have been considered for inspection under the associated NEPs, but the investigation was deemed satisfactory.

During the on-site review, it was determined that two serious event reports, one e-complaint, and an anonymous call were not documented as UPA but were responded to as programmed planned inspections. The inspections did not list a secondary inspection type, nor were they linked to a UPA. This does not rise to the level of a finding, but OSHA will continue to monitor how often inspections initiated due to a complaint or referral occur and if inconsistently coding inspections in response to complaints and referrals as programmed impacts the VOSH Program.

**Observation FY 2023-OB-01** -*UPA Coding*

In four of the 50 (8%) programmed inspections reviewed, it was determined that the inspections were initiated in response to a complaint or referral and were not coded as UPA.

**Federal Monitoring Plan FY 2023-OB-01**

In FY 2024, OSHA will conduct a review of Serious Event Reports and complaints to determine how often complaints and referral related inspections are coded as programmed and if coding inconsistencies have any impact to the VOSH Program.

1. 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. The case file review revealed that VOSH conducts a full investigation into the circumstances surrounding all fatalities occurring at each worksite and evaluates if a work condition contributed to or caused the fatality.

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 2023, VOSH responded to all 28 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%.

The on-site case file review revealed that initial contact with NOK was made in all reviewed fatality cases that were determined to be work-related and when appropriate. 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 sent a final notification letter to the NOK at the conclusion of all but one work-related fatality inspection. VOSH explained that the oversight was due to transferring the case. OSHA closed the associated observation (FY-2022-OB-01).

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 annual Census of Fatal Occupational Injuries, conducted through the Bureau of Labor Statistics (BLS), provides a 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 1,690 inspections – exceeding its projected by goal by 132 inspections. VOSH conducted 1,209 safety inspections, exceeding SAMM #7A with an FRL of +/- 5% of 1,099 (1,044 to 1,154). VOSH conducted 481 health inspections, nearly exceeding SAMM #7B with an FRL of +/- 5% of 459 (436 to 482). OIS reports also indicate that VOSH issued 2,800 violations in FY 2023.

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. SEPs adopted by VOSH 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 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 current OSHA 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 CPL 03-00-019 (August 13, 2015)
* Trenching and Excavation - CPL 2.69 (September 19, 1985)
* Heat

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 FY 2023 in-compliance rate for safety cases was 39.66%, just exceeding the FRL and 49% for health cases, which fell within the FRL. The FRL for SAMM #9A, percent incompliance for safety inspections, is +/- 20% of the three-year national average of 31.73% which equals a range of 25.38% to 38.08%. The FRL for percent incompliance for health inspections, SAMM #9B, is +/- 20% of the three-year national average of 43.82% which equals a range of 35.06% to 52.58%. VOSH in-compliance safety rates have been consistent over the past few years. The VOSH in-compliance health rate decreased significantly in FY 2023.

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.

Although VOSH was within the FRL in FY 2023, the health in-compliance rate remains above the national average. Virginia conducts a 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 many 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 the multi-employer inspection policy affected the safety in-compliance rate. If VOSH followed OSHA’s multi-employer construction policy, it would have conducted 172 fewer construction multi-employer inspections and had 172 fewer in-compliance inspections. Recalculating the Virginia Safety In- Compliance Rate by adjusting for those 172 in-compliance construction inspections results in a rate of 28.68%. This is within the safety in-compliance FRL range.OSHA reviewed and evaluated VOSH’s study and determined that the evaluation accurately reflected the impact of the policies on VOSH’s safety in-compliance rate.

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 case files reviewed during the on-site evaluation did not indicate any specific areas where hazards were not appropriately identified. OSHA will continue to work with VOSH to assess how VOSH’s unique policies affect both safety and health in-compliance rates. VOSH policies afford CSHOs the opportunity to connect and interact with numerous employers at each site. Percent of Enforcement Presence (SAMM #17), at 1.03% is inside the FRL established at +/- 25% of the three-year national average (0.93%), providing a range of 0.70% to 1.17%.

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 three significant case inspections in FY 2022 and one in FY 2023. The FY 2023 significant case included at least one willful violation.

d) Citations and Penalties

Based on the information and documentation contained in the reviewed case files, citations that were issued for apparent violations were appropriate. The case file review revealed that most case files contained sufficient evidence for supporting recommended and proposed violations. The review identified three cases where recommendations regarding employer knowledge could be enhanced beyond plain view. This did not constitute a trend and therefore, a finding is not recommended. VOSH conducted additional training in response.

OSHA noted two fatality cases where violation worksheets identifying the prima facie elements were not completed. VOSH explained that the citations were recommended upon regional review and therefore, violation worksheets were not entered into OIS. OSHA discussed the importance of documenting the prima facie violation elements in the worksheets of the case file and will monitor it as an observation.

**Observation FY 2023-OB-02** – *Prima Facie Case File Documentation*

In two of the seven (29%) fatality cases with violations, a hazard worksheet identifying the prima facie elements was not completed.

**Federal Monitoring Plan FY 2023-OB-02**

In FY 2024, OSHA will conduct a review of fatality case files issued with violations to determine if VOSH is consistently identifying the prima facie elements in the hazard worksheets.

In FY 2023, VOSH’s average safety lapse time was within the SAMM #11A FRL (+/- 20% of the three-year national average of 55.23 days or 44.18 to 66.28 days) at 52.59 days. VOSH health lapse time also fell within the SAMM #11B FRL (+/-20% of the three-year national average of 69.72 days or 55.78 to 83.66 days) at 57.39 days. The on-site review determined that VOSH completes inspections promptly without undue delay.

With respect to cases opened in FY 2023, VOSH issued 2,800 violations with 59.18% classified as serious. VOSH issued 12 willful and 65 repeat violations in FY 2023. SAMM #5 clarifies that VOSH averaged 1.86 serious, willful, or repeat (SWR) violations per inspection, and 0.90 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 1.75 or 1.40 to 2.10. OTS violations per inspection also fell within the FRL set at +/- 20% of the three-year national average of 0.89 or 0.71 to 1.07.

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 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 2023 was $3,332.07 and was within the SAMM #8 FRL of +/- 25% of the three-year national average of $3,625.21 or $2,718.91 to $4,531.51. VOSH penalties were within the FRL for each penalty category. A breakdown of average VOSH penalties based on the number of workers is provided in the table below:

|  |  |
| --- | --- |
| Average Penalty |  |
| Number of Workers | Average Serious Penalty |
| 1 – 25 | $1,830.00 |
| 26 – 100 | $3,826.17 |
| 101 – 250 | $6,078.70 |
| Greater than 250 | $7,517.03 |

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.

OSHA’s 2018 CPI-U adjustment to the Bipartisan Budget Bill was adopted by OSHA in January 2018.  Therefore, between OSHA’s adoption of the CPI-U adjustment in January 2018, and August 1, 2018, when VOSH’s CPI-U adjustment became effective, VOSH maximum penalties were below OSHA maximum penalties by the CPI-U adjustment factor (1.01636) adopted by OSHA in January 2017 and the adjustment factor adopted by OSHA in January 2018.

By August 1, 2018, when the first VOSH CPI-U adjustment took effect, the maximum penalties differed only by the 2017 adjustment factor. Each following year the adjustment will be increased in this manner.  Consequently, VOSH maximum penalties will always be less than OSHA’s by the 2017 CPI-U adjustment factor (1.01636) and the most recently adopted CPI-U adjustment factor for approximately the first 7 months of the year; and then by only the 2017 adjustment factor for the remainder of the year.

1. 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. OSHA did not identify any concerns regarding abatement certification or documentation during the case file review. The FY 2023 EOY SIR indicates that VOSH promptly obtains, evaluates, and closes abatement as appropriate. In FY 2023, VOSH conducted two follow-up inspection. There were no deviations from current VOSH policy.

1. 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%.

Of the 115 safety and health inspection case files reviewed, VOSH identified three sites that were represented by a union and did not include documentation that the collective bargaining agent was provided with a copy of the citations. Upon discussion with VOSH this appears to be a clerical oversight for which VOSH has taken corrective action to resolve. VOSH consistently provides status updates regarding union representation associated with contentious and high-profile cases during quarterly meetings and notifies OSHA when the union requests party status during settlement.

**Finding FY 2023-02 –** *Employee Representation Documentation*

In three of the three (100%) sites with union representation, the case file did not document if the collective bargaining agent was provided with a copy the citations.

**Recommendation FY 2023-02**

VOSH should ensure that a copy of the citations is sent to the employee representative in accordance with its FOM.

**3. REVIEW PROCEDURES**

1. 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 2023, VOSH provided effective consideration to the gravity and severity of violations, the size of the business being inspected, good faith of the employer, the employer’s previous inspection history, and the type of violation when initially assessing penalty adjustment factors. Regional safety or health directors may contact the DLS to request assistance in drafting settlement agreements containing safety and health improvements.

Overall, there was no indication that regional directors did not follow the established procedures.

The VOSH FOM outlines procedures for vacating and reclassifying citations for settlement purposes. For routine cases, the regional directors are authorized to reclassify violations and to modify or withdraw a penalty, a citation, or a citation item. In 21 of the 45 cases reviewed where informal settlement conferences were held, some violations were vacated and/or reclassified. The FY 2023 EOY SIR indicated that only 2.87% and 3.49% 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 76.78% of penalties. The FRL for FY 2023 is set at +/-15% of the three-year national average of 71.84% or 61.06% to 82.62%. 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.

1. Formal Review of Citations

The VOSH ARM outlines the contest process for employers. Section 16 VAC 25- 270 provides regulatory guidelines to an employer to whom a citation or proposed penalty was issued as the result of a VOSH inspection or investigation. The notice of contest must be mailed or delivered by hand within 15 days from the receipt of the citation or proposed penalty. Upon receipt of a notice of contest, the commissioner will attempt to resolve the matter by settlement, either by participation in an informal conference or through a formal settlement process.

If the matter is not settled or it is determined a settlement is not probable, the commissioner will initiate judicial proceedings by referring the contested issues to the appropriate Commonwealth attorney. Virginia does not use an administrative law judge and review commission system to handle litigated cases. VOSH is unique among State Plans in using local circuit courts and prosecutors (Commonwealth attorneys) to litigate contested cases. Attorneys assigned to Virginia’s DLS have been approved by the Office of the Attorney General to represent VOSH in litigation when they are appointed by the local commonwealth’s attorney and the circuit court judge on a case-by-case basis.

DLS conducts formal reviews of all contested cases and provides guidance to all regional offices for significant cases that involve any of the following conditions: willful/criminal, willful violations, willful cases suitable for an egregious penalty consideration, fatality/catastrophe, interest at the national level identified by OSHA, interest by media, public officials, or other interest groups identified as significant by the commissioner, repeat violations (third instance or higher), and ergonomic violations.

The on-site review identified five of seven contested cases settled at the regional level after the 15 working day contest period were entered into OIS as a contested case. Two of the seven contested cases settled at the regional level after the 15 working day contest period were entered into OIS as informal settlements. OSHA believes this was a data entry error. VOSH has discussed the data entry procedures for these cases with the regional directors to ensure consistency with its policies.

The FY 2023 EOY SIR indicates that 75.66% of penalties are retained after a contest has been filed (the national average was 66.14%). 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**

1. 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 2023, VOSH regularly maintained contact with the Regional Office concerning the status of any necessary legislative and regulatory actions.

VOSH adopted the Interim Final Rule on Maximum Penalty Increases (1902, 1904) on July 1, 2017. 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 adopted the FY 2022 and 2023 annual increase in the Final Rule on the Department of Labor Civil Penalties for Inflation Adjustment Act. However, due to the timing of the legislative session when adopting the Interim Final Rule on Maximum Penalty Increases, VOSH’s statutory maximums will always be less than OSHA’s by the 2017 CPI-U adjustment factor (1.01636) and the most recently adopted CPI-U adjustment factor for approximately the first 7 months of the year; and then by only the 2017 adjustment factor for the remainder of the year.

The Emergency Temporary Standard for COVID-19 Vaccination and Testing was withdrawn.

The status of FY 2022 and 2023 federal standard adoptions are presented in Table A below:

**Table A**

**Status of FY 2022 and FY 2023 Federal Standards Where Adoption Was Required**

(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** |
| --- | --- | --- | --- | --- | --- | --- |
| COVID-19 Vaccination and Testing; Emergency Temporary Standard  29 CFR 1910, 15, 17, 18, 26, 28  (11/5/2021) | 11/20/2021 | N/A | N/A | N/A | 12/5/2021 | N/A |
| Updated COVID-19 Vaccination and Testing; Emergency Temporary Standard  29 CFR 1910  (11/5/2021) | 1/7/2022 | N/A | N/A | N/A | 1/24/2022 | N/A |
| Final Rule on the Department of Labor Civil Penalties for Inflation Adjustment Act – Annual Adjustment for 2022  29 CFR 1903  (1/15/2022) | 3/15/2022 | 2/1/2023 | Yes | No | 7/15/2022 | 8/1/2022 |
| Occupational Exposure to COVID-19; Healthcare Emergency Temporary Standard: COVID-19 Log and Reporting Provisions  29 CFR 1910.502(q)(2)(ii), (q)(3)(ii)-(iv) and (r)  (2/14/2022) | 4/14/2022 | 6/23/2021 | Yes | Yes | 8/14/2022 | 8/2/2021 |
| Final Rule on the Department of Labor Civil Penalties for Inflation Adjustment Act – Annual Adjustment for 2023  29 CFR 1903  (1/15/2023) | 3/15/2023 | 2/1/2023 | Yes | No | 7/15/2023 | 8/1/2023 |
| Final Rule to Improve Tracking of Workplace Injuries and Illnesses  29 CFR 1904  (7/21/2023) | 9/21/2023 | 7/24/2023 | Yes | Yes | 1/21/2024 | 1/1/2024 |

1. Federal Program Change (FPC) Adoption

Adoption Required

VOSH adopted the Revised Combustible Dust National Emphasis Program (NEP) issued by OSHA on January 30, 2023, but has not yet adopted the required NEPs on Trenching and Excavation, Amputations in Manufacturing, and Warehousing and Distribution Centers. Although VOSH is technically delinquent in the adoption of the 2018 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 2019 Amputations in the Manufacturing Industries NEP and in the interim continues to use the 2015 version of the OSHA Directive.

OSHA converted Observation FY 2022-OB-02 to a finding.

**Finding FY 2023-01** (FY 2022-OB-02) **–** *Federal Program Changes (FPCs)*

VOSH did not adopt FPCs within the required timeframes.

**Recommendation:**

VOSH should develop a strategy that ensures action is taken on FPCs within the required

timeframes.

The status of the FY 2022 and 2023 and any previously delinquent FPCs where adoption was required is listed in Table B below:

**Table B**

**Status of FY 2022 and FY 2023 Federal Program Changes (FPCs) Where Adoption Was Required**

(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** |
| --- | --- | --- | --- | --- | --- | --- |
| National Emphasis Program on Trenching and Excavation  CPL 02-00-161  (10/1/2018) | 11/30/2018 | 10/26/2018 | Yes | No | 4/1/2019 |  |
| Amputations in Manufacturing Industries NEP  CPL 03-00-022  (12/10/2019) | 2/10/2020 | 2/10/2020 | Yes | Yes |  |  |
| Revised Combustible Dust National Emphasis Program  CPL 03-00-008  (1/30/2023) | 3/31/2023 | 2/3/2023 | Yes | Yes | 7/30/2023 | 1/10/2024 |
| National Emphasis Program on Warehousing and Distribution Center Operations  CPL 03-00-026  (7/13/2023) | 9/11/2023 | 11/20/2023 | Yes | Yes | 1/9/2024 |  |

Equivalency Required

VOSH adopted the Compliance Directive for Cranes and Derricks in Construction Standard and the Consultation Policies and Procedures Manual. VOSH adopted the 2023 National Emphasis Program for Falls, with VOSH Program Directive 14-201A. 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. VOSH also intends to adopt the 2021 Compliance Directive for the Excavation Standard and the 2020 Field Operations Manual update.

VOSH adopted 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 currently evaluating the state specific impacts related to the adoption of the 2022 Severe Violator Enforcement Program (SVEP) directive.

The status of the FY 2022 and 2023 and any previously delinquent FPCs where equivalent adoption was required is listed in Table C below:

**Table C**

**Status of FY 2022 and FY 2023 Federal Program Changes Where Equivalency Was Required**

(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** |
| --- | --- | --- | --- | --- | --- | --- |
| Field Operations Manual  CPL 02-00-164  (4/14/2020) | 6/13/2020 | 6/13/2020 | Yes | No | 10/13/2020 |  |
| Compliance Directive for the Excavation Standard  CPL 02-00-165  (7/1/2021) | 7/1/2021 | 2/16/2023 | Yes | Yes | 1/1/2022 |  |
| Compliance Directive for Cranes and Derricks in Construction Standard  CPL 02-01-063  (2/11/2022) | 7/3/2022 | 11/29/2022 | Yes | Yes | 11/3/2022 | 1/10/2024 |
| OSHA Whistleblower Investigations Manual  CPL 02-03-011  (4/29/2022) | 10/11/2022 | 2/3/2023 | Yes | No | 2/11/2023 |  |
| Severe Violator Enforcement Program (SVEP)  CPL 02-00-169  (9/15/2022) | 11/15/2022 | 11/22/2022 | Yes | No | 3/15/2023 |  |
| Site-Specific Targeting (SST)  CPL 02-01-064  (2/7/2023) | 4/8/2023 |  |  |  | 8/6/2023 |  |
| National Emphasis Program – Falls  CPL 03-00-025  (5/1/2023) | 6/30/2023 | 7/24/2023 | Yes | No | 10/28/2023 | 2/1/2024 |
| Consultation Policies and Procedures Manual  CSP 02-00-005  (9/29/2023) | 11/28/2023 | 11/20/2023 | Yes | Yes | 3/27/2024 | 1/10/2024 |

Adoption Encouraged

VOSH adopted the 2022 NEP on Outdoor and Indoor Heat-Related Hazards. VOSH was not required to, and did not adopt, OSHA’s Use of Small Unmanned Aircraft Systems directive.

The status of the FY 2022 and 2023 FPCs where equivalent adoption was encouraged is listed in Table D below:

**Table D**

**Status of FY 2022 and FY 2023 Federal Program Changes (FPCs) Where Adoption Was Encouraged**

(May include any delinquent FPCs from earlier fiscal years)

| **FPC Directive/Subject** | **Response Due Date** | **State Plan Response Date** | **Intent to Adopt** | **Adopt Identical** | **State Plan Adoption Date** |
| --- | --- | --- | --- | --- | --- |
| OSHA’s Use of Small Unmanned Aircraft Systems  CPL 02-01-169  (12/22/2021) | 2/22/2022 | 11/29/2022 | No | N/A | N/A |
| National Emphasis Program – Outdoor and Indoor Heat-Related Hazards  CPL 03-00-024  (4/8/2022) | 6/8/2022 | 8/3/2022 | Yes | No | 9/29/2022 |

VOSH did not provide OSHA with any state-initiated change guidance documents adopted during FY 2022 and FY 2023.

**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. VOSH did not receive any variance requests in FY 2023.

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 jurisdictions. 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.

**6. STATE AND LOCAL government WORKER Program**

VOSH conducted 96 safety and health inspection in SLG workplaces or 6% of its total inspection activity for FY 2023. SAMM #6 indicates that VOSH SLG inspections was within the FRL of +/- 5% of the 6.03% of total inspections negotiated in the FY 2023 grant application (5.73% to 6.34%). During the on-site review, 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. Abatement information is required from SLG entities and is reviewed and evaluated in the same manner as private sector abatement documentation. The on-site review did not reveal any deviations from VOSH’s SLG inspection policies and procedures.

**7. WHISTLEBLOWER Program**

The Whistleblower associated SAMMs (#s 14, 15, and 16) are not being reported for FY 2023 due to the transition of whistleblower data from the Whistleblower Application in OITSS to the Whistleblower module in OIS.

The VOSH Office Whistleblower Protection Program consists of one Director that oversees the program and works out of the Richmond, VA office, two whistleblower investigators, one located in the Richmond and one in the Norfolk, VA office. In early FY 2024, OSHA Region 3 signed onto a whistleblower pilot program whereby electronically filed complaints are transferred to VOSH in OIS.

Of the 36 whistleblower files reviewed during the on-site evaluation, 30 were administratively closed, five were dismissed, and one was settled. The on-site review revealed that all determinations were based on sound investigations, relevant evidence, and appropriate witness interviews.

Complainants are required to file complaints in writing. When a complaint is received. A screening questionnaire is sent to complainant via email requesting completion of the questionnaire, written statement, and evidence within 10-days a response is required. If complainant does not respond, the case is administratively closed for lack of cooperation.

The on-site review revealed that 17 of 30 administratively closed cases were closed for lack of cooperation. In nine of the administratively closed complaints, the electronic case files indicate complainant failed to return the requested questionnaire. Specifically, the complainant was given 10 days to return the questionnaire and if the complainant failed to do so, the case was administratively closed for lack of cooperation without further contact attempts from the VOSH staff.

**Observation FY 2023-OB-03** *Whistleblower Complaint Screening*

VOSH closed nine of 30 (30%) administratively closed whistleblower cases for lack of cooperation for not completing the required questionnaire and providing evidence within 10 days.

**Federal Monitoring Plan**

OSHA will discuss the importance of conducting verbal screening interviews and continue to evaluate the effect of using only a screening form and continue to evaluate administratively closed files in FY 2025.

The case file review also revealed that some VOSH case files lacked documentation required in the WIM including copies of the initial complaint, administrative closure letters, and activity logs. VOSH provided the missing items and explained that the Information Technology Division is working to resolve an error associated with the electronic case file maintenance.

Otherwise, the review determined that VOSH adheres to the instructions, policies and procedures contained in the current Whistleblower Investigations Manual (WIM) and supplemental guidance provided by the Directorate Whistleblower Protection Program.

**8. Complaint About State Program Administration (CASPA)**

OSHA received one CASPA in FY 2023 and determined that VOSH handled the whistleblower, safety, and health complaints referenced in the CASPA in accordance with its policies and procedures which were determined to be as least as effective as OSHA’s. During the investigation, VOSH identified a potential vulnerability in its online complaint system and immediately took corrective action to ensure that complainant typos do not affect the distribution of complaints to the appropriate regional office. Although it was determined that that associated on-site inspection adequately addressed the complainant’s allegations, VOSH provided its staff with retraining to ensure accuracy documenting complaint allegations.

VOSH provided a timely written response and promptly provided requested documentation for the CASPA and 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 are similar to the 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.

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

* SHARP – administered by the VOSH Consultation Program, this program recognizes small employers who develop and implement exemplary safety and health management systems.

• Virginia STAR (37 sites) – 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 (11 sites) – 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 (15 sites) – 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 Challenge (Eight sites) – 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 24 Program provides a three-stage process to prepare correctional facilities to apply for Virginia STAR recognition.

• Virginia BUILT (two sites) - 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.

VOSH held its annual Virginia Occupational Safety and Health Conference on March 29-31, 2023, in Newport News, VA. There was a total of 322 participants and 19 vendors. VOSH’s 2024 Annual Conference is being organized in cooperation with Region III’s Voluntary Protection Program Participant’s Association (VPPPA) and is scheduled to be held the week of June 10, 2024 in Virginia Beach.

**10. STATE AND LOCAL GOVERNMENT 23(g) On-site CONSULTATION PROGRAM**

According to the FY 2023 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. In its FY 2023 grant application, VOSH had projected seven total consultation visits in SLG workplaces; however, VOSH conducted four 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 maintains electronic consultation files and in FY 2023, the OSHA Region 3 Consultation Project Manager conducted a remote review of all 11 files. The case file review found that the program administered the 23(g) public sector consultation program in an effective manner, including timely issuance of written reports, effective documentation of hazards, and management procedures to ensure serious hazards were corrected in a timely manner. No concerns were noted during the review period.

VOSH actively markets 23(g) consultation services to state and local government agencies in various ways. Some methods include discussion during on-site consultation visits, compliance inspections, informal conferences, and the annual Virginia safety and health conference. Additional marketing tools include VOSH’s website, informational brochures, and VPP press releases.

| **FY 2023-#** | **Finding** | **Recommendation** | **FY 2022-# or**  **FY 2022OB-#** |
| --- | --- | --- | --- |
| FY 2023-01 | *Federal Program Changes (FPCs)*  VOSH did not adopt FPCs within the required timeframes. | VOSH should develop a strategy that ensures action is taken on FPCs within the required timeframes. | FY 2022-OB-02 |
| FY 2023-02 | *Employee Representative Documentation*  In three of the three (100%) of the sites with union representation, the case file did not document if the collective bargaining agent was provided with a copy the citations. | VOSH should ensure that a copy of the citations is sent to the employee representative in accordance with its FOM. | New |

| **Observation #**  **FY 2023-OB-#** | **Observation#**  **FY 2022-OB-# *or* FY 2022-#** | **Observation** | **Federal Monitoring Plan** | **Current Status** |
| --- | --- | --- | --- | --- |
| FY 2023-OB-01 |  | *UPA Coding*  In four of the 50 (8%) programmed inspections reviewed, it was determined that the inspections were initiated in response to a complaint or referral and were not coded as UPA. | In FY 2024, OSHA will conduct a review of Serious Event Reports and complaints to determine how often complaints and referral related inspections are coded as programmed and if coding inconsistencies have any impact to the VOSH Program. | New |
| FY 2023-OB-02 |  | *Prima Facie Case File Documentation*  In two of the seven (29%) fatality cases with violations, a hazard worksheet identifying the prima facie elements was not completed. | In FY 2024, OSHA will conduct a review of fatality case files issued with violations to determine if VOSH is consistently identifying the prima facie elements in the hazard worksheets. | New |
| FY 2023-OB-03 |  | *Whistleblower Complaint Screening*  VOSH closed nine of 30 (30%) of administratively closed whistleblower cases for lack of cooperation for not completing the required questionnaire and providing evidence within 10 days. | OSHA will discuss the importance of conducting verbal screening interviews and continue to evaluate the effect of using only a screening form and continue to evaluate administratively closed files in FY 2025. | New |
|  | FY 2022-OB-01 | *NOK Documentation*  In seven of 16 (44%) 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. | Closed |
|  | FY 2022-OB-02 | *Federal Program Changes (FPCs)*  VOSH did not adopt FPCs within the required timeframes. | OSHA will continue to identify overdue FPCs and monitor adoption status. | Converted to a Finding |

There were no new or continued findings in FY 2022.

| State Plan: SAMM Number | State Plan: SAMM Name | State Plan: Data | FY 2023 Further Review Level | FY 2023 Notes |
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| 1a | Average number of work days to initiate complaint inspections (state formula) | 2.88 | 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) | 1.57 | 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) | 1.83 | 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) | 0.93 | 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) | 1.86 | +/- 20% of 1.75 | The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from 1.40 to 2.10 for SWRU. |
| 5b | Average number of violations per inspection with violations by violation type (other) | 0.90 | +/- 20% of 0.89 | The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from 0.71 to 1.07 for OTS. |
| 6 | Percent of total inspections in state and local government workplaces | 5.68% | +/- 5% of  6.03% | The further review level is based on a number negotiated by OSHA and the State Plan through the grant application. The range of acceptable data not requiring further review is from 5.73% to 6.34%. |

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| 7a | Planned v. actual inspections (safety) | 1,209 | +/- 5% of  1,099 | 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 1,044.05 to 1,153.95 for safety. |
| 7b | Planned v. actual inspections (health) | 481 | +/- 5% of  459 | 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 436.05 to 481.95 for health. |
| 8 | Average current serious penalty in private sector - total (1 to greater than 250 workers) | $3,332.07 | +/- 25% of  $3,625.21 | The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from $2,718.91 to $4,531.51. |
|  | **a**. Average current serious penalty in private sector  (1-25 workers) | $1,830.00 | +/- 25% of  $2,348.03 | The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from $1,761.02 to $2,935.04. |
|  | **b**. Average current serious penalty in private sector  (26-100 workers**)** | $3,826.17 | +/- 25% of  $4,167.28 | The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from $3,125.46 to $5,209.10. |
|  | **c**. Average current serious penalty in private sector  (101-250 workers) | $6,078.70 | +/- 25% of  $6,052.04 | The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from $4,539.03 to $7,565.05. |
|  | **d**. Average current serious penalty in private sector  (greater than 250 workers) | $7,517.03 | +/- 25% of  $7,331.41 | The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from $5,498.56 to $9,164.26. |
| 9a | Percent in-compliance (safety) | 39.66% | +/- 20% of  31.73% | The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from 25.38% to 38.08% for safety. |
| 9b | Percent in compliance (health) | 49.00% | +/- 20% of  43.82% | The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from 35.06% to 52.58% 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) | 52.59 | +/- 20% of 55.23 | The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from 44.18 to 66.28 for safety. |
| 11b | Average lapse time (health) | 57.39 | +/- 20% of 69.72 | The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from 55.78 to 83.66 for health. |
| 12 | Percent penalty retained | 76.78% | +/- 15% of  71.84% | The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from 61.06% to 82.62%. |
| 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 2023 due to the transition of 11(c) data from IMIS to OIS. |
| 15 | Percent of 11(c) complaints that are meritorious | N/A\* | N/A\* | This measure is not being reported for FY 2023 due to the transition of 11(c) data from IMIS to OIS. |

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| 16 | Average number of calendar days to complete an 11(c) investigation | N/A\* | N/A\* | This measure is not being reported for FY 2023 due to the transition of 11(c) data from IMIS to OIS. |
| 17 | Percent of enforcement presence | 1.03% | +/- 25% of  0.93% | The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from 0.70% to 1.17%. |