



**VIRGINIA DEPARTMENT OF
LABOR AND INDUSTRY
2023 STATE OSHA ANNUAL
REPORT (SOAR)**



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I. Executive Summary

The Virginia Occupational Safety and Health (VOSH) Program is administered by the Virginia Department of Labor and Industry (DOLI). Virginia operates a “state plan” occupational safety and health program under Section 18 of the federal Occupational Safety and Health Act of 1970. Though the VOSH Program mirrors the federal program as closely as possible, it recognizes the autonomy and unique characteristics of the Commonwealth.

The mission of the VOSH program is to “Improve and protect Virginia's workplaces through education and enforcement, reducing fatalities and injuries at work.” This mission is embodied in the statutory mandate for the Virginia Safety and Health Codes Board, Va. Code §40.1-1, which states in part:

“...The Department shall be responsible for administering and enforcing occupational safety and occupational health activities as required by the Federal Occupational Safety and Health Act of 1970 (P.L. 91-596), in accordance with the state plan for enforcement of that act; ...”

The VOSH Program works to assure knowledge of and facilitate compliance with safety and health regulations for general industry, construction, agricultural, and state and local government entities. It covers public and private sector employers and employees in Virginia. VOSH provides information, guidance, regulatory interpretations, conducts safety and health inspections in response to accidents, complaints, referrals, as well as of high hazard industries. VOSH’s long-term approach for achieving workplace safety and health is to engage stakeholders and communicate on evolving occupational safety and health trends, issues, and requirements while working to identify effective means of addressing significant high hazard trends using available tools and resources to include monitoring and measurements.

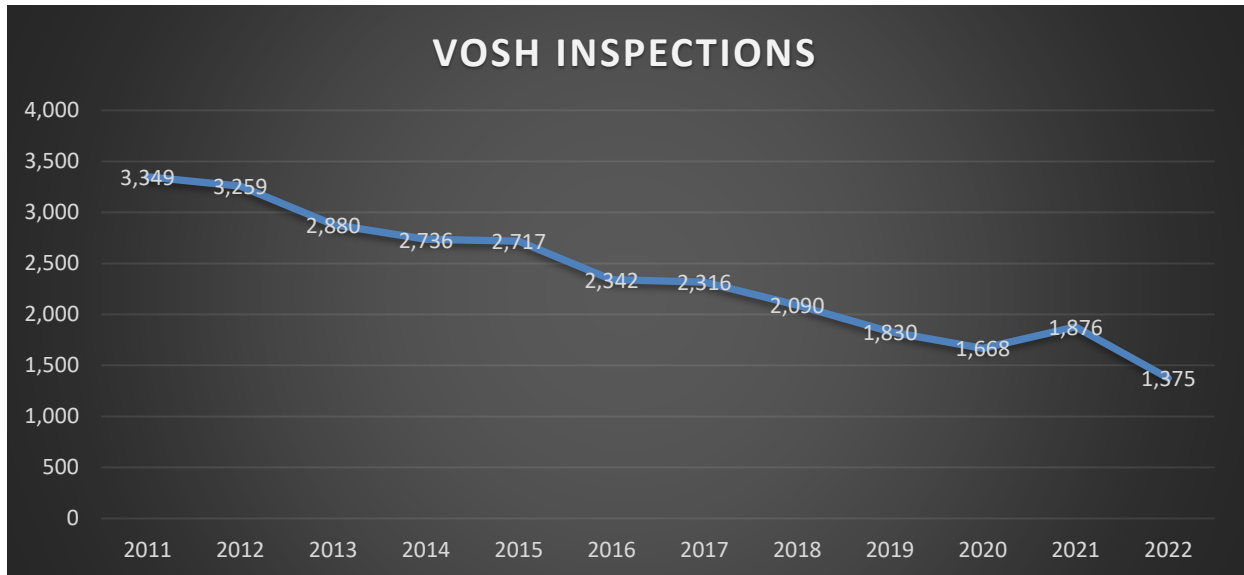
VOSH provides compliance assistance through targeted outreach, education, and training to increase awareness of the importance of a safety and health culture for employers and employees. VOSH Consultation Services Program provides free and confidential onsite consultation surveys and employee training to help small employers understand and proactively comply with VOSH laws, standards and regulations.¹

DOLI currently employs fifty-five (55) CSHOs that are responsible for addressing safety and health issues for over 310,660 Virginia businesses and 4.6 million employees². DOLI has fifty-nine (59) Safety & Health Compliance Officer (CSHO) funded positions. Due to a highly competitive labor market, DOLI experienced challenges in attracting, hiring, and retaining experienced professionals. However, over the past year, the agency has made a major effort to recruit and retain CSHOs. DOLI conducted a classification and compensation study resulting in increased compensation for CSHOs, revised recruitment ads to attract new talent and fill our talent pipeline and clarified the distinction between an apprentice and a journeyman. Of the fifty-five (55) CSHOs, eleven (11) are currently apprentices. The apprenticeship program takes approximately 1.5 years to complete.

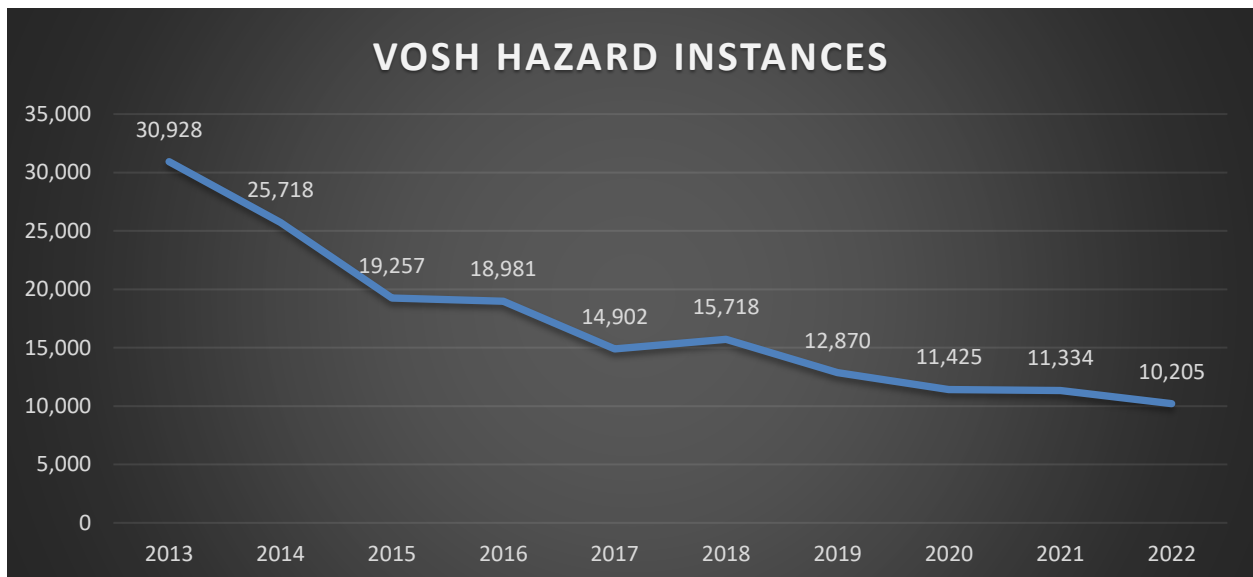
¹ <https://www.doli.virginia.gov/vosh-programs/consultation/>

² [snapshot-17921-Sept2023-VASnapshot.pdf \(virginia.gov\)](https://www.doli.virginia.gov/vosh-programs/consultation/snapshot-17921-Sept2023-VASnapshot.pdf)

During the three (3) year period of 2011-2013, the average number of VOSH inspections was 3,163. During the three (3) year period of 2020-2022, the average number of inspections was 1,640, a difference of 1,523 inspections in the same timeframe or a decline of 48.15%.



In viewing the impact of the previously unfunded CSHO positions through the lens of VOSH hazard instances (i.e., each hazard instance corrected representing an occupational hazard corrected and from which employees were protected), there has been a steady decline over the last several years. The average number of instances (10,988) for the three (3) years of 2020 to 2022 was 56.57% below that for the period 2013 to 2015 (25,301).



Staffing resources, (e.g. – attraction, retention, development) in relation to the number of

employers and employees covered by VOSH jurisdiction continue to present a challenge since the safety and health benchmarks (38 safety and 21 health compliance officers) that were established for the VOSH Program in 1986 were based on business and employment level data from 1984.

In 1984, three years after the VOSH Program achieved operational status, there were 109,238 employers and 2,098,046 employees in the Commonwealth. More recently, the Virginia Employment Commission, Virginia Snapshot for September 2023 indicates that VOSH has jurisdiction over approximately 4.6 million workers in 310,666 establishments – a 184.4% increase in establishments and a 119 % increase in employees.

Strategic Plan

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

Goal 1: Reduce Occupational Hazards through Direct Intervention

Goal 2: Promote a Safe and Healthful Workplace Culture

This State OSHA Annual Report (SOAR) presents a review of the strategies used and results achieved in FFY 2023.

Annual Performance Plan results for strategic goals, special accomplishments, and mandated activity metrics are discussed below.

II. Summary of Annual Performance Plan Results

Goal 1.1.A

Strategic Goal	1	Reduce Occupational Injuries, Illnesses, and Fatalities through Direct Intervention		
Performance Goal	1.1	Reduce the rate of workplace injuries and illnesses.		
	1.1.A	By FFY2023, decrease injuries and illnesses per 100 workers in the workplace. 5-Year Strategic Plan Goal Rate Targets: FY 2023: 3.60 FY 2022: 3.65 FY 2021: 3.70 FY 2020: 3.75 FY 2019: 3.80		
Strategy	<ul style="list-style-type: none"> • Analyze data to better identify establishments for inspections. • Research new sources for information to identify best targets. • Inspect worksites in non-programmed areas through rapid response to complaints, referrals, and utilizing multi-employer policy. • Inspect 7% of total inspections as public-sector worksites. • Analyze results and effectiveness of compliance inspections to determine their impact on fatalities, injury, and illness rates. • Identify and implement adjustments that will increase the impact of compliance inspections. • Analyze the effectiveness of guidance and standards and identify needed changes. 			
Performance Indicator	Annual Total Recordable Injury and Illness rate released by the Bureau of Labor Statistics (BLS) on a calendar year basis.			
FFY 2023 Results	The performance data for this measure for 2023 has not been released by the BLS yet, so the most recent data was utilized for 2022. The Total Recordable Injury and Illness rate for CY22 is 2.5 per 100 workers. Source: https://www.bls.gov/iif/state-data/table-1-injury-and-illness-rates-by-industry-2022-virginia.xlsx			
Conclusion		Baseline	2023 Target	2022 Result
		2006 TRII	3.60	2.5
	VOSH met this goal.			

Goal 1.1.B

Strategic Goal	1	Reduce Occupational Injuries, Illnesses, and Fatalities through Direct Intervention		
Performance Goal	1.1	Reduce the rate of workplace injuries and illnesses.		
	1.1.B	Annually initiate investigations of 100% of worker complaints within one working day or conduct an on-site inspection within five working days.		
Strategy		<ul style="list-style-type: none"> Promptly and accurately, investigate a workplace complaint within one workday or conduct an inspection within five workdays in an effort to reduce injuries and illnesses. 		
Performance Indicator	The average response for complaint investigations was 0.93 days. The average response for initiating complaint inspections was 1.57 days.			
FFY 2023 Results	100% of worker complaints had an investigation initiated within one working day or an on-site inspection initiated within five working days.			
Conclusion		Baseline	2023 Target	2023 Result
		100%	100%	<p>The average response for complaint investigations was 0.93 days –SAMM 2a negotiated goal is 1.83 days and National Average was 2.15 days (SAMM 2b). GOAL MET</p> <p>The average response for initiating complaint inspections was 1.57 days (SAMM 1b)– SAMM 1a negotiated goal is 2.88 days and National Average was 4.64. GOAL MET.</p>
	VOSH met this goal.			
Comments	VOSH offers workers two approaches to handle their complaints: either VOSH will investigate by contacting the employer via phone/fax/email to inform them of the complaint, with a response required back from the employer within five (5) workdays; or VOSH will conduct an on-site inspection.			

Goal 1.2.A

Strategic Goal	1	Reduce Occupational Injuries, Illnesses, and Fatalities through Direct Intervention
	1.2	Reduce the rate of workplace fatalities.

Performance Goal	1.2.A	By 2023 decrease fatalities in the workplace per 100,000 workers. 5-Year Strategic Plan Goal Rate Targets: FY 2023: 3.65 FY 2022: 3.70 FY 2021: 3.75 FY 2020: 3.80 FY 2019: 3.85		
Strategy	<ul style="list-style-type: none"> Analyze data to better identify establishments for inspections. Research new sources for information to identify best targets. Inspect worksites in non-programmed areas. Inspect identified public-sector worksites. Analyze results and effectiveness of compliance inspections to determine their impact on fatalities, injury, and illness rates. Identify and implement adjustments that will increase the impact of compliance inspections. Analyze the effectiveness of guidance and standards and identify needed changes. 			
Performance Indicator	Annual workplace fatality rate in Virginia per 100,000 workers released by BLS on a calendar year basis.			
FFY 2021 Results	<p>The performance data for this measure for years 2022 and 2023 have not been released by BLS as of November 29, 2023, so the most recent data was utilized for 2021.</p> <p>The performance data for CY2021 indicates a rate of 3.2 fatalities per 100,000 workers. Baseline rate of 4.0 fatalities per 100,000 workers in 2016. CY2021 rate of 3.2 represents a 12.3% reduction from the 2021 Target of 3.65.</p> <p>https://www.bls.gov/iif/state-data/fatal-injury-rates-by-state-and-industry-2021.htm</p> <p>NOTE: The number of total fatal injuries in Virginia for CY2021 was 125.³</p> <p>2021 CFOI: Fatal occupational injuries in Virginia : U.S. Bureau of Labor Statistics (bls.gov)</p>			
Conclusion		Baseline	2021 Target	2021 Result
		4.0	3.6	3.2
VOSH met this goal.				
Comments				

Goal 1.2.B

Strategic Goal	1	Reduce Occupational Injuries, Illnesses, and Fatalities through Direct Intervention
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³ This data is from the Bureau of Labor Statistics Census of Fatal Occupational Injuries (CFOI) and includes fatalities and industries that are not within VOSH’s jurisdiction. This data is used because it can be compared to the national rate and other state rates.

Performance Goal	1.2	Reduce the rate of workplace fatalities.		
	1.2.B	Annually initiate inspections of 100% of fatalities and catastrophes within one working day of notification.		
Strategy	<ul style="list-style-type: none"> Promptly initiate fatality and catastrophe investigations within one workday. 			
Performance Indicator	Percent of inspections of fatalities and catastrophes initiated within one working day of notification. SAMM 10.			
FFY 2023 Results	100% of inspections of fatalities and catastrophes were initiated within one working day of notification,			
Conclusion		Baseline	2023 Target	2023 Result
		100%	100%	100%
	VOSH met this goal.			
Comments	In FFY 2023, a total of 28 fatal accidents were responded to within one working day.			

Goal 1.3A

Strategic Goal	1	Reduce Occupational Injuries, Illnesses, and Fatalities through Direct Intervention
Performance Goal	1.3	Reduce the rate of workplace injuries and illness in worksites.
	1.3A	Reduce the rate of workplace injuries and illnesses in work sites through participation in the Voluntary Protection Programs (VPP).
Strategy	<ul style="list-style-type: none"> Increase the number of employers participating in the VPP. 	

Performance Indicator	Annual Total Recordable Cases (TRC) rate (national) for all industries released by BLS on a calendar year basis compared to the Virginia VPP STAR worksite TRC rates as an average for all participating sites. NOTE: National averages historically show that VPP sites are routinely 50% below normal workplace injuries and illnesses for their respective industry sectors.		
FFY 2023 Results	FFY2023 year to date is 37 active sites. In 2022, the TRC for all industries reported by BLS was 3.0. https://www.bls.gov/web/osh/table-1-industry-rates-national.htm . The average Virginia VPP STAR worksite had a TRC of 1.2, 60% below the national average.		
Conclusion	Baseline	2023 Target	2023 Result
	38 VPP sites in 2018	50% below	56% below
VOSH met this goal.			
Comments	There are 37 active Virginia STAR sites in 2023.		

Goal 2.1A

Strategic Goal	2	Promote a safe and healthful workplace culture through worker involvement in all aspects of safety and health
Performance Goal	2.1	Enhance worker involvement in all aspects of safety and health.
	2.1 A	One hundred percent (100%) of VOSH on-site activities (e.g., inspections) will include a worker involvement component annually, such as interviews, informal conferences, and walk-around inspections.
Strategy	<ul style="list-style-type: none"> Ongoing monitoring of inspection data. 	
Performance Indicator	Observed data in OIS/IMIS review. SAMP 13.	
FFY 2023 Results	Worker involvement through interviews, informal conferences and walk-around inspections as reviewed by region Safety and Health Directors at 100%. Observed data in OIS review. SAMP 13	

Conclusion	Baseline	2023 Target	2023 Result
	100%	100%	100%
	VOSH met this goal.		
Comments			

III. FFY 2023 Accomplishments

Metrics

The VOSH program tracks numerous metrics to assess the effectiveness of its programs and as a method to identify areas for increased emphasis and allocation of cooperative and compliance programs resources. Such metrics include but are not limited to:

- Cooperative Programs Activities and Outreach Efforts
- BLS Injury, Illness and Fatal Accident Statistics
- Compliance Inspection-related Activities
- Federal OSHA State Activity Mandated Measures (SAMM)

The Virginia BLS DART rate (Days Away Restricted or Transferred) of nonfatal occupational injury and illness cases for all industries is 1.5 per 100 full-time workers in CY2022⁴. This rate is 16.7% lower than the national rate of 1.8 in CY2022.⁵

Following is a comparison of national 2022 BLS Days Away Restricted or Transferred (DART) rates to Virginia industries:

2022 Days Away Restricted or Transferred (DART)	National	Virginia	Difference
All Industries	1.8	1.5	-16.7%
Private Industry	1.7	1.5	-11.8%
Construction	1.5	1.4	-6.7%
Manufacturing	2.0	2.2	10.0%
Agriculture, Forestry, Fishing and Hunting	2.7	1.4	-48.1%
State and Local Government	2.6	1.6	-38.5%

The following is a comparison of 2022 Virginia private industry DART rates to the Virginia State and Local Government DART rates:

2022 Days Away Restricted or Transferred (DART)	Virginia	Virginia State/Local Government	Difference
All Industries	1.5	1.6	6.7%
Private Industry	1.5	1.6	6.7%
Construction	1.4	1.6	14.3%
Manufacturing	2.2	1.6	-27.3%
Agriculture, Forestry, Fishing and Hunting	1.4	1.6	14.3%

⁴ <https://www.bls.gov/iif/state-data/table-1-injury-and-illness-rates-by-industry-2022-virginia.xlsx>

⁵ <https://www.bls.gov/web/osh/table-1-industry-rates-national.htm>

The Virginia BLS Total Case Rate (TRC) of nonfatal occupational injury and illness cases for all industries is 2.5 per 100 full-time workers in CY2022⁶. This rate is 16.7% lower than the national rate of 3.0 in CY2022.

The following is a comparison of national 2022 BLS Total Case Rates (TRC) to Virginia industries:

2022 Total Recordable Cases (TRC)	National	Virginia	Difference
All Industries	3	2.5	-16.7%
Private Industry	2.7	2.3	-14.8%
Construction	2.4	1.8	-25.0%
Manufacturing	3.2	3.4	6.3%
Agriculture, Forestry, Fishing and Hunting	4.1	2.1	-48.8%
State and Local Government	4.9	3.6	-26.5%

The following is a comparison of 2022 Virginia private industry TRCs to the Virginia State and Local Government TRC:

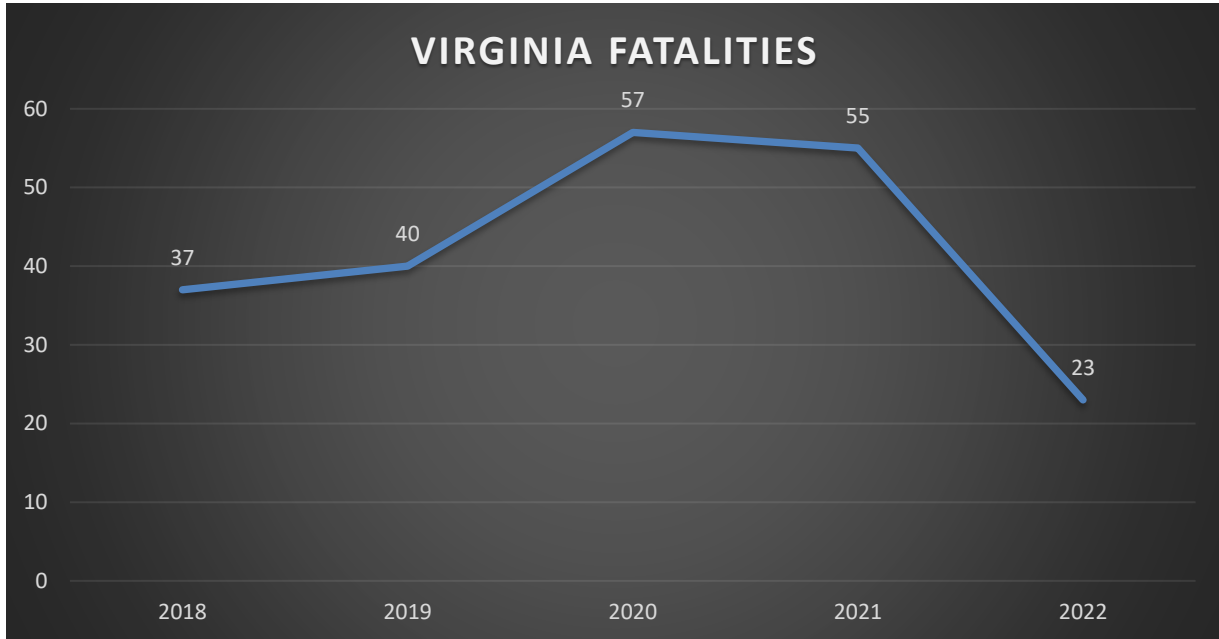
Total Recordable Cases (TRC)	Virginia	Virginia State/Local Government	Difference
All Industries	2.5	3.6	44.0%
Private Industry	2.3	3.6	56.5%
Construction	1.8	3.6	100.0%
Manufacturing	3.4	3.6	5.9%
Agriculture, Forestry, Fishing and Hunting	2.1	3.6	71.4%

Virginia: <https://www.bls.gov/iif/state-data.htm#VA>

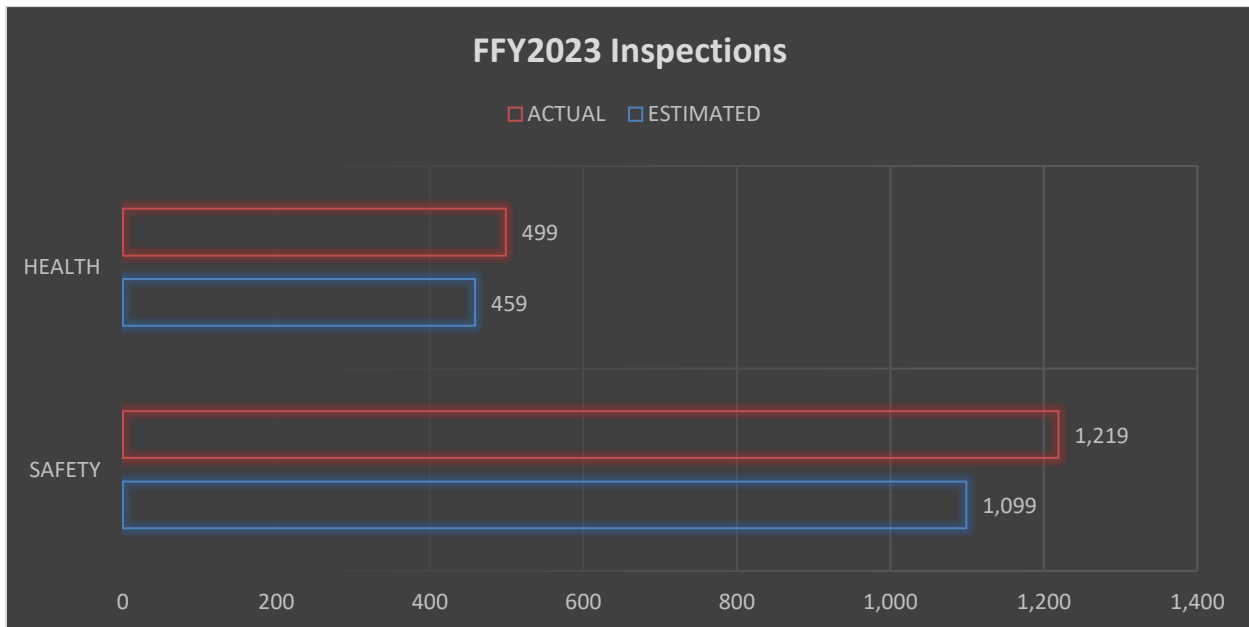
National: <https://www.bls.gov/web/osh/table-1-industry-rates-national.htm>

⁶ <https://www.bls.gov/iif/state-data/table-1-injury-and-illness-rates-by-industry-2022-virginia.xlsx>

Fatal accidents inspected by VOSH stand at 23 for calendar year 2022 as of November 29, 2023.



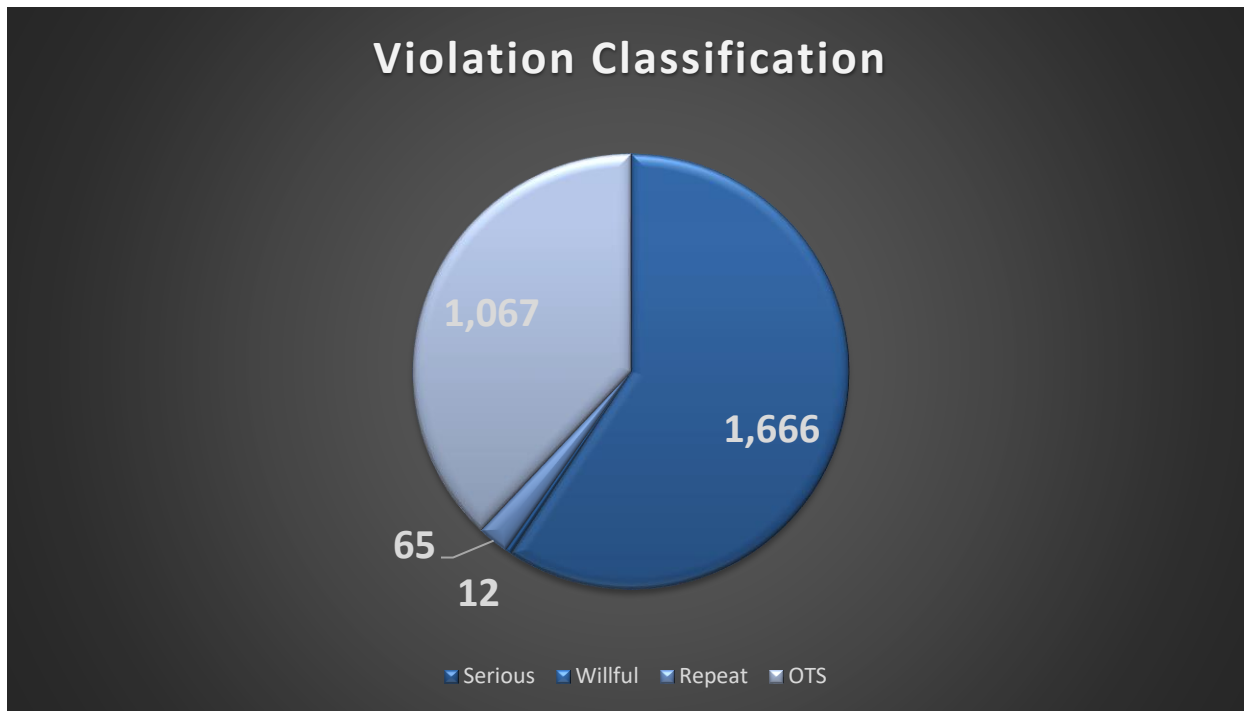
In FFY2023, VOSH Safety and Health Compliance Officers performed 1,219 safety inspections and 499 health inspections (total of 1,718)⁷; and were directly responsible for the identification and correction of 10,806 instances of workplace hazards.⁸ The total number of inspections for both safety and health respectively were higher than projected.



⁷ FFY2023 EOY SAMM Report Virginia.xlsx

⁸ Violation Detail Data Report Virginia FFY 2023.xls

In FFY2023, VOSH identified a broad number of workplace hazards which were addressed through the issuance of 2,810 violations. The majority of these violations (59.29%) were classified as Serious (1,666), willful (12) or repeat (65). In addition, 1,067 violations were classified as other-than-serious (OTS) with zero (0) failure to abate (FTA).⁹



State and Local Government Penalty Legislation and Regulation

In 2016, the Virginia General Assembly passed Senate Bill 607 directing the Virginia Safety and Health Codes Board to adopt regulations allowing VOSH to issue proposed penalties to the Commonwealth, its agencies, political subdivisions, or any public body. The law became effective July 1, 2016.¹⁰

The Virginia Safety and Health Codes Board adopted a final regulation¹¹ implementing the statutory change on public sector penalties on November 30, 2017, amending the VOSH Administrative Regulations Manual (ARM), 16VAC25-60-260.E.¹² The final regulation allows issuance of penalties to public sector employers for willful, repeat and failure-to-abate violations, as well as serious violations that cause a fatal accident or are classified as “high gravity”. The final regulation took effect on November 1, 2018, and applies to inspections opened on or after December 1, 2018.

⁹ Inspection Summary 10.1.22 to 9.30.23.xlsx

¹⁰ <https://lis.virginia.gov/cgi-bin/legp604.exe?ses=161&typ=bil&val=sb607>

¹¹ <https://townhall.virginia.gov/L/ViewStage.cfm?stageid=8153>

¹² <https://law.lis.virginia.gov/admincode/title16/agency25/chapter60/section260/>

Emphasis Programs

VOSH implements both state and national emphasis programs to respond to developing situations in which the health and safety of workers may be compromised, or in which negative trends in safety and health call for heightened scrutiny of certain industries. State emphasis programs include fall protection, scaffolding, heavy equipment, and trenching, all of which increase awareness of safety in the construction industry. Other emphasis programs covering asbestos, lead, silica, and hazardous chemical processes focus on health hazards encountered in the work environment.

In FY2022, VOSH adopted a national emphasis program (NEP) for outdoor and indoor heat-related hazards. This NEP was designed to protect employees from heat-related hazards and resulting injuries and illnesses in outdoor and indoor workplaces. It expands on VOSH's ongoing heat-related illness prevention initiative and campaign by setting forth a targeted enforcement component and reiterating its compliance assistance and outreach efforts. It is intended to encourage early interventions by employers to prevent illnesses and deaths among workers during high heat conditions, such as working outdoors in a local area experiencing a heat wave, as announced by the National Weather Service. Examples of interventions include, but are not limited to, implementing water, rest, shade, training, and acclimatization procedures for new or returning employees.

Non-English-Speaking Outreach

VOSH recognizes that English is not the primary language of some of our customers. In the construction trades, landscaping, and service industries, non-English speaking employees make up a significant portion of the workforce. Language barriers affect not only job quality, but the understanding of employee rights, and most importantly, misunderstanding safety communications and requirements that can lead to serious and sometimes fatal work accidents.

DOLI's mission is to make Virginia a safer place in which to live, work, and conduct business for all employees. DOLI has made a specific effort to better communicate with this segment of the workforce by providing users the option to translate information on its website to French, German, Italian, Japanese, Korean, and Spanish. The agency uses *Language Line* and several multilingual VOSH staff to translate documents and provide translation services.

Compliance Safety and Health Officers (CSHO) Apprenticeship

The VOSH program established the first in the nation registered apprenticeship program for VOSH Consultants and Compliance Safety and Health Officers (CSHO) through the Commonwealth of Virginia's Registered Apprenticeship program. To date, 102 CSHO and Consultant apprentices have graduated from the VOSH Apprenticeship Program. This innovative effort represents DOLI's commitment to develop a talent pipeline that enhances its bench strength in the VOSH program.

Annual Safety and Health Conference

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. The OSHA 10 Course was taken by 14 participants.

Driving increased stakeholder engagement and innovation in occupational safety and health, 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. Adding VPPA, as a co-host, will attract more stakeholders and drive more awareness and engagement in the benefits of integrating safety management systems and strategies into business operations.

Significant Cases

Occupational Fatality Prevention - Criminal Prosecution Pursued in Death of a County Employee

A Spotsylvania County employee was crushed to death on July 7, 2022, while working at the Spotsylvania County Chancellor Convenience Center attempting to remove a piece of metal beneath the hydraulic cylinder of a waste compactor. The compactor ram was actuated via the operator station. As a result of the VOSH inspection, 2 willful and 3 serious violations of the VOSH standards for General Industry were issued on January 3, 2023, with proposed penalties of 296,402.00.¹³ A criminal referral was made by the Department and a Spotsylvania County Grand Jury met on July 17, 2023, and returned an indictment for manslaughter for the supervisor in charge.

Occupational Safety and Health Regulations

Most VOSH standards and regulations are identical to federal OSHA's, but to prevent fatalities and eliminate workplace injuries that impact Virginians, VOSH has adopted some laws, standards, and regulations unique to Virginia¹⁴ (e.g., Overhead High Voltage Line Safety Act; Reverse Signal Operations of Vehicles, Machinery and Equipment; Tree Trimming Operations; Confined Space Standard and General Approach Distances in the Telecommunications industry). The Virginia Unique Standards are enacted by the Safety and Health Codes Board for Virginia.

The Virginia Safety and Health Codes Board (Board) met three times during FFY2023, November 14, 2022, June 27, 2023, and September 18, 2023. The Board adopted one federal-identical standard addressing recordkeeping and reporting during this period.

On November 14, 2022, VOSH presented to the Board a Report on the Periodic Review of Regulations Noticed by the Board at the December 3, 2021, Board Meeting. The report informed the Board of the Administrative Process Act, Governor Glenn Youngkin's Executive Order 19

¹³ https://www.osha.gov/ords/imis/establishment.inspection_detail?id=1606520.015

¹⁴ <https://www.doli.virginia.gov/vosh-programs/regulations-standards/>

(2022), “Development and Review of State Agency Regulations,” and the Office of Regulatory Management (ORM) Procedures for the Review of the State Agency Regulations that govern the periodic review of existing regulations.

On June 27, 2023, the Board approved DOLI’s request to prepare Notices of Intended Regulatory Action to consider revision up to and including repeal of the standards for Construction Industry Sanitation and Virginia Confined Spaces for the Telecommunications Industry. The Board also authorized the agency to appoint Regulatory Advisory Panels (RAP) to assist the agency in its reviews of the two Virginia Unique standards.

On September 18, 2023, the Board voted to adopt Section 1904.41, Improve Tracking of Workplace Injuries and Illnesses, as published on July 21, 2023, in Volume 88 Federal Register (FR) No. 139,¹⁵ with an effective date of January 1, 2024.

During FFY 2023, Virginia issued one (1) program directive on Outdoor and Indoor Heat Related Hazards, 14-442, issued a revision to the VOSH Field Operations Manual (FOM) reflecting the annual increase in VOSH maximum penalties, and updated 01-001D on Program Directive Development. VOSH is in the process of revising/drafting five (5) more.

Variance Requests

VOSH completed the review of two variance requests which were approved during FFY2023. Both variance requests involved four compressed air work standards, 29 C.F.R. § 1926.803(e)(5), 29 C.F.R. §1926.803(f)(1), 29 C.F.R. §1926.803(g)(1)(iii), and 29 C.F.R. §1926.803(g)(1)(xvii). The variances allowed employees: to be subjected to higher maximum pressure, the use of different compression and decompression procedures and tables, the use of automatic controls to regulate decompressions, and eliminated the need for the entire force of employees to be decompressed.

The review of these variance requests were performed in accordance with VOSH’s regulatory requirements for employers to include in the variance application a description of the conditions, practices, means, methods, operations, or processes used and evidence that these would provide employment and a place of employment as safe and healthful as would be provided by the standard from which the variance was sought; a period for public comments; and that the Commissioner make a determination that the employer has met by a preponderance of the evidence the requirements for a variance. The Chesapeake Joint Venture (CTJV) and Hampton Roads Connector Partners (HRCP) submitted Hyperbaric Operations Manuals (HOM) which were site-specific. The HOMs underwent thorough review by VOSH with assistance from OSHA’s directorate of construction.

The variances for CTJV were approved on January 20, 2023, allowing the construction of a 1.1-mile sub-aqueous tunnel crossing, using an Earth Pressure Balance Tunnel Boring Machine to begin. The variance for HRCP was approved on January 23, 2023, allowing the Hampton Roads Bridge Tunnel Expansion Project, one of the largest infrastructure projects in the country, to begin construction.

¹⁵ OSHA “Improve Tracking of Workplace Injuries and Illnesses” Federal Register Vol. 88, No. 139, Friday, July 21, 2023. www.osha.gov/sites/default/files/laws-regs/federalregister/2023-07-21.pdf

Worker Misclassification

On June 2, 2015, the Commissioner of Labor and Industry announced a policy to address Worker Misclassification in Virginia Occupational Safety and Health (VOSH) Cases. Misclassification occurs when an employer improperly classifies a worker as an independent contractor who should in fact be an employee.

This policy is intended to improve protections for workers because misclassification can result in payroll fraud, reduced workers' compensation and unemployment insurance protections, and violations of the tax code and other laws designed to protect workers.

Employers who are willing to commit payroll fraud and cut corners when it comes to providing employee protections such as workers' compensation and unemployment insurance may be willing to cut corners when it comes to providing a safe and healthy workplace.

This policy is intended to level the playing field for employers who currently provide all legal protections for their workers against those who misclassify workers. Employers who properly classify workers incur higher payroll costs because they pay costs avoided by employers who misclassify. Employers who misclassify can undercut the bids of those honest contractors who follow the law. Assuring that all employers are playing by the same rules when it comes to classifying employees will help to assure that the construction bid process is fair for all and improve safety and health and other legal protections for workers.

VOSH continues to enforce the Worker Misclassification policy. Over 452 referrals have been made to the Department of Professional and Occupational Regulations for potential misclassification issues since June 2, 2015.

Voluntary Protection Programs

Voluntary Protection Programs (Virginia VPP) was instituted in 1996 and has a long record of exemplary success and unquestioned integrity. It enjoys strident support in Virginia's business community and from labor organizations and DOLI looks to further enhance these programs in order to drive benefits in occupational safety and health across Virginia.

The Voluntary Protection Programs Act¹⁶ was adopted by the Virginia General Assembly in 2015. The bill codified the Virginia VPP system, which encourages companies to take safety and health management systems above and beyond OSHA and VOSH requirements. In 2018, the Virginia Safety and Health Codes Board adopted a final VPP regulation at 16VAC25-60-200¹⁷ in accordance with Va. Code 40.1-49.13.¹⁸

¹⁶ Va. Code §40.1-49.13, <https://law.lis.virginia.gov/admincode/title16/agency25/chapter200/section10/>

¹⁷ <http://leg1.state.va.us/cgi-bin/legp504.exe?000+reg+16VAC25-200-10>

¹⁸ <https://law.lis.virginia.gov/admincode/title16/agency25/chapter200/section10/>



Virginia VPP continues to thrive:

- 37 Virginia STAR sites in 2023
- 15 Virginia CHALLENGE
- 11 Virginia BEST
- 2 Virginia BUILT
- 8 VADOC CHALLENGE

Virginia's Voluntary Protection Program (VPP) establishes highly effective and productive cooperative relationships with the business community, workers, and state and local government agencies.

Virginia VPP acknowledges and fosters a state-of-the-art approach to implementing safety and health management systems that prevent serious injuries, illnesses, and fatal accidents to employees; while also providing a return on investment to businesses allowing them to be more productive, competitive, and economically viable in a challenging economy.

Virginia STAR¹⁹

In 1996, VOSH established the Virginia STAR, a recognition program that promotes excellence in worksite-based safety and health. In Virginia STAR, management, labor, and the Department's VOSH program, establish cooperative relationships at workplaces that have implemented an exceptional comprehensive safety and health management system. Sites that are in VPP have a 3-year average Days Away, Restricted, or Transferred (DART) and Total Case Incident Rate (TCIR) below the industry average.

The Virginia STAR program has an elite membership with active sites throughout the state and include a wide range of industries, such as manufacturers of pollution control, insulation, chemicals, electronics, and plastics; warehousing facilities, industrial launderers, turkey processing operations, correctional centers, commercial airlines, breweries, and electric utilities, just to name a few.



Virginia STAR has 37 sites in 2023.²⁰

¹⁹ <https://www.doli.virginia.gov/voluntary-protection-program/star/>

²⁰ <https://www.doli.virginia.gov/voluntary-protection-program/vpp-star-worksite-companies/>



The U.S. Department of Labor (DOL) estimates that tens of millions of taxpayer dollars are saved annually through the national and state VPP initiatives. The Voluntary Protection Program Participant’s Association estimates that 100’s of millions of dollars have been saved at private sector VPP STAR worksites.²¹

Statistical evidence for VPP’s success is impressive. Nationally, the average VPP worksite has a Days Away Restricted or Transferred (DART) case rate of 52% below the average for its industry. Reductions in injuries and illnesses begin when the site commits to the VPP approach to safety and health management and the challenging VPP application process.²²

VPP assists businesses and state and local government agencies in substantially improving occupational safety and health protections for thousands of employees through voluntary and cooperative efforts that can result in reduced insurance premiums, Workers’ Compensation costs and absenteeism, while increasing productivity and competitiveness.

Virginia CHALLENGE²³

In 2018, the VOSH program established Virginia CHALLENGE, which is a first-of-its-kind program in a state plan which is a step-by-step three-stage process that provides businesses a road map to making a participating worksite one of the safest and healthiest in the country. When a participating site completes the three stages of Virginia CHALLENGE, it will have established an exemplary safety and health management system (SHMS) that will also prepare it to apply for Virginia STAR recognition.

²¹ https://www.vpppa.org/images/ResourcesFiles/VPP_Works_and_Saves.pdf

²² <https://www.osha.gov/vpp/all-about-vpp>

²³ <https://www.doli.virginia.gov/voluntary-protection-program/challenge/>



Virginia CHALLENGE has: Total of 15 sites active as of 6/30/23 (2 sites completed Challenge Stage 3 in 2022-23 with a total of 6 “graduates” since inception in 2018 and are not included in the 15 total)

In 2023:

- 0 accepted applications for Challenge
- 10 Challenge stage 1 sites 3 Challenge stage 2 sites
- 2 Challenge stage 3 sites

Virginia BEST²⁴

In 2016, Virginia VPP established a strategic partnership with the Associated General Contractors of Virginia (AGCVA) for the construction industry. Known as Virginia BEST (Building Excellence in Safety, Health and Training), this new recognition program is based on OSHA Challenge concepts and allows for recognition of construction contractors as they progress through three levels of safety and health management system development.



Virginia BEST has: Total of 10 BEST Companies

BEST Level 1

7 companies completed.

BEST Level 2

3 companies completed.

VOSH – VADOC CHALLENGE²⁵



VADOC CHALLENGE has: Total of 8 sites

- 7 sites completed Stage 1 requirements.

In 2018, Virginia VPP established a strategic partnership with the Virginia Department of Corrections (VADOC) based on OSHA Challenge concepts. Virginia is the only VPP program in the country that has two public sector correctional facility STAR sites (Augusta and Lunenburg Correctional Facilities).

The goal of the new strategic partnership is to work with and encourage more VADOC worksites to become members of VVPP. Eight correctional facilities are currently participating in VADOC Challenge.

²⁴ <https://www.doli.virginia.gov/voluntary-protection-program/virginia-best-outreach-docs/virginia-best-program/>

²⁵ <https://www.doli.virginia.gov/voluntary-protection-program/vadoc-challenge/>

The following correctional facilities/operations are actively participating:²⁶:



Baskerville Correctional Center
Caroline Correctional Unit 2
Dillwyn Correctional Center
Green Rock Correctional Center
Greensville Work Center
Harrisonburg Men’s Community Corrections Alternative Program
Red Onion State Prison
Virginia Correctional Enterprises HQ

Virginia BUILT: A VOSH Strategic Partnership with the Associated Builders and Contractors of Virginia (ABCVA)²⁷

In 2020 VOSH established a Strategic Partnership with ABCVA to combine Challenge concepts with the ABCVA’s STEP (Safety Evaluation and Training Process) program to recognize commercial construction contractors that develop and implement exemplary safety and health management systems. The new partnership, known as Virginia BUILT, Virginia BUILT is designed to encourage and recognize ABC-VA 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 Built has: Total of 2 companies

- 2 Tier II Participants²⁸
- 0 Tier I

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.

²⁶ <https://www.doli.virginia.gov/vadoc-challenge-program-participants/>

²⁷ <https://www.doli.virginia.gov/virginia-built-program/>

²⁸ <https://www.doli.virginia.gov/virginia-built-tier-ii-participants/>

Another essential component of Virginia BUILT is the incorporation of the ABC STEP program (Safety Training Evaluation Process) as the gateway to participation in Virginia BUILT. Founded in 1989 as a safety benchmarking and improvement tool, STEP has evolved into a world-class safety management system that dramatically improves safety performance among participants regardless of company size or type of work. Participating ABC member firms measure their safety processes and policies on 24 key components resulting in recognition through progressive levels of achievement (Bronze, Silver, Gold, Platinum, and Diamond).

IV. FFY 2023 SAMM 9, Percent in Compliance for Safety and Health

State Initiated Special Study

Safety in Compliance Rate: FY 2023 Virginia FAME

Evaluation Period: October 1, 2022 to September 30, 2023

Issue: In Compliance Rate for Safety

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

In Compliance Rate (Virginia Safety)²⁹	OSHA Rate³⁰	Nat. Rate³¹	Difference From Nat. Rate
39.66%	35.03%	32.27%	+22.90%

Safety Analysis:

It is federal OSHA policy on multi-employer construction job sites to open an inspection and assign an inspection number to only those employers that are going to be issued citations. Virginia's policy in such situations is to open an inspection and assign an inspection number to all employers covered by the scope of the inspection, regardless of whether citations are going to be issued to the employer or not. Based on the above policy differences, VOSH is supplying a recalculated Safety in Compliance Rate.

OIS Report:

Scan Summary Reports for the evaluation period

²⁹ FFY 2023 number

³⁰ FFY 2023 number

³¹ Three year rolling average.

Report Criteria:

Construction safety multi-employer inspections for the evaluation period

Report Results:

The original Scan Summary Report for Virginia activities resulted in 642 construction inspections.³² Those construction inspections that were "Multi-Employer" totaled 447. Of those 447 Multi-Employer inspections, 172 were In Compliance³³ (i.e., no violations were issued as a result of the inspection).

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%, within +/-20% of OSHA's rate of 35.03%, a difference of -18.13%.

Recalculating the Virginia Safety In-Compliance rate by adjusting for the 172 In-Compliance multi-employer construction inspections resulted in a Virginia Safety In-Compliance rate of 28.68%, which is within the +/-20% Further Review Level of the National rate of 32.27% (the SAMM Reference Level), a difference of -11.12% (see below for recalculation details).

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

Total Safety Inspections for the period: 1,117³⁴

Total Safety In-Compliance inspections for the period: 443³⁵ (39.66% of 1,117)

Total Safety In-Compliance Multi-Employer Construction inspections: 172

Adjusted Numerator and Denominator for Safety In-Compliance rate:

In Compliance Inspections:	271	(443-172)
Total Inspections:	945	(1,117-172)
Recalculated In Compliance Rate:	28.68%	(271/945)

³² Source: "Scan Summary SAFETY CONSTRUCTION TOTAL FFY 20223 run 11.29 23". "No Inspections" were not included in any counts.

³³ Source: "Scan Summary SAFETY CONSTRUCTION Multi-employer Inspections IN COMPLIANCE ONLY FFY 2023 run 11.29.23". "No Inspections" were not included in any counts.

³⁴ Source: VA FY Appendix D SAMM Report 2023

³⁵ *Id.*

Summary of Recalculated Measure:

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

Comparison of Recalculated In Compliance Rate (Virginia Safety)	OSHA Rate	Nat. Rate	Difference from Nat. Rate
28.68%	35.03%	32.27%	-11.12%

V. Mandated Activities

SAMM Number	SAMM Name	State Plan Data	Further Review Level	Notes
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 State Plan received 2 imminent danger complaints or referrals in FY 2023. 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.
5	Average number of violations per inspection with violations by violation type	SWRU: 1.86	+/- 20% of SWRU: 1.74	The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from 1.39 to 2.09 for Serious, Willful, Repeat, Unclassified (SWRU) and from 0.74 to 1.10 for Other-than-serious.
		Other: 0.90	+/- 20% of Other: 0.92	
6	Percent of total inspections in state and local government workplaces	5.68%	+/- 5% of 7.0%	The further review level is based on a number negotiated by OSHA and the State Plan through the grant application (7%). The range of acceptable data not requiring further review is from 6.65% to 7.35%.
7	Planned v. actual inspections – safety/health	S: 1,209	+/- 5% of S: 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 1,044.5 to 1,153.95 for safety and from 436.05 to 481.95 for health.
		H: 481	+/- 5% of H: 459	

8	Average current serious penalty in private sector - total (1 to greater than 250 workers)	\$3,332.07	+/- 25% of \$3,863.91	The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from \$2,897.93 to \$4,829.89.
	a. Average current serious penalty in private sector (1-25 workers)	\$1,830.00	+/- 25% of \$2,561.29	The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from \$1,920.97 to \$3,201.61.
	b. Average current serious penalty in private sector (26-100 workers)	\$3,823.17	+/- 25% of \$4,387.92	The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from \$3,290.94 to \$5,484.90.
	c. Average current serious penalty in private sector (101-250 workers)	\$6,078.70	+/- 25% of \$6,184.93	The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from \$4,638.70 to \$7,731.16.
	d. Average current serious penalty in private sector (greater than 250 workers)	\$7,517.03	+/- 25% of \$7,589.03	The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from \$5,691.77 to \$9,486.29.
9	Percent in compliance	S: 39.66%	+/- 20% of S: 32.27%	The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from 25.82% to 38.72% for safety and from 34.13% to 51.19% for health.
		H: 49.00%	+/- 20% of H: 42.66%	

10	Percent of work-related fatalities responded to in one workday	100%	100%	The further review level is fixed for all State Plans.
11	Average lapse time	S: 53.59	+/- 20% of S: 57.19	The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from 45.75 to 68.63 for safety and from 53.00 to 79.50 for health.
		H: 57.39	+/- 20% of H: 66.25	
12	Percent penalty retained	76.78%	+/- 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	0.0%	100%	The further review level is fixed for all State Plans. Note: The VOSH Office of Whistleblower Protections continued to be affected by the COVID-19 pandemic during the evaluation period as it worked to reduce a backlog of investigations and administrative closures accumulated during the pandemic. At the beginning of the pandemic, the Office had only one Whistleblower Investigator, but it now has two investigators.

15	Percent of 11(c) complaints that are meritorious	50%	+/- 20%	The further review level is based on a three-year national average.
16	Average number of calendar days to complete an 11(c) investigation	131.50	90	The further review level is fixed for all State Plans.
17	Percent of enforcement presence	Not Available	+/- 25%	The further review level is based on a three-year national average.