

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

Vermont Occupational Safety and Health Administration  
(VOSHA)



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## **I. Executive Summary**

The purpose of this report is to assess the Vermont State Plan's (VOSHA's) performance for Fiscal Year (FY) 2021 and its progress in resolving outstanding findings from previous Federal Annual Monitoring Evaluation (FAME) Reports.

In FY 2021, ongoing pandemic and personnel issues impacted VOSHA's operations. VOSHA began the year with a vacant compliance officer position; later in the year, the State Plan had to replace the workplace retaliation investigator. Another opening occurred when one of the compliance officers became the compliance assistance specialist. By the end of the fiscal year, VOSHA had filled all positions; however, staff vacancies, although temporary, contributed to a budget surplus, and VOSHA had to return a portion of its federal funding to OSHA.

Due to the pandemic, VOSHA conducted relatively few programmed inspections in FY 2021, which resulted in the State Plan achieving less than 60 percent of the goal for inspections. In addition, many outreach activities were curtailed. Nonetheless, VOSHA reached a sizable number of workers through virtual training activities and by assisting other state agencies in disseminating pandemic-related guidance.

Having no findings from the FY 2020 Follow-up FAME Report, VOSHA focused on three outstanding observations. The State Plan was successful in resolving two observations, one pertaining to case file documentation and the other to severity assessments. The third observation, which relates to conducting enough inspections in state and local government workplaces, has been continued.

The State Plan's performance on a couple of metrics related to the workplace retaliation program was not quite up to par; OSHA is not overly concerned, though, because the State Plan has already begun to improve this situation. However, some issues related to the Voluntary Protection Program surfaced and have resulted in two new observations in this report.

This report contains no new or continued findings or recommendations. Appendix B describes observations and related federal monitoring plans; this appendix lists two closed observations, one continued observation, and two new observations. Appendix C is used to describe the status of previous findings and associated completed corrective actions. However, there were no findings in the previous FAME Report. In summary, this report contains three observations, one continued and two new.

## **II. State Plan Background**

### **A. Background**

The Vermont Department of Labor, Division of Workers' Compensation and Safety has been administering VOSHA since July 1, 2005. The Commissioner of Labor is the State Plan designee, and VOSHA's headquarters are in Montpelier, Vermont.

VOSHA's statutory authority is contained in Title 21 of the Vermont Statutes Annotated (V.S.A.) §§201-232. Under these statutes, VOSHA conducts workplace inspections, issues citations and penalties, and provides administrative and judicial review processes for employers seeking to contest citations and/or penalties. Title 21 V.S.A. §231 prohibits employers from retaliating against workers who exercise their rights under VOSHA's occupational safety and health statutes and authorizes the investigation and prosecution of complaints of workplace retaliation. An express private right of action for workers who believe that workplace retaliation or discrimination has occurred is contained in 21 V.S.A. §232.

In 1978, the U.S. Court of Appeals, in *AFL-CIO v. Marshall*, ordered OSHA to create a formula to set enforcement staffing benchmark levels for each State Plan. Meeting these staffing benchmark levels is a requirement for a State Plan to attain final approval status. VOSHA does not have final approval status and, due to a limited state budget, cannot allocate the number of staff that is sufficient to meet its benchmark levels.

The program manager and the compliance supervisor are VOSHA's first-line supervisors. At full staffing, VOSHA has seven compliance safety and health officers (CSHOs), one workplace retaliation investigator, a compliance assistance specialist, and a program technician. VOSHA's state and local government consultation program consists of two safety and health consultants who commit a portion of their time to providing on-site consultation services to state and local government workplaces.

In FY 2021, VOSHA covered approximately 282,214 workers, including 239,090 private sector workers, 15,306 state workers, and 27,818 local government workers. There were approximately 26,408 private sector establishments, 251 state government worksites, and 734 local government worksites in the state in FY 2021.<sup>1</sup>

VOSHA's coverage of state and local government workers is identical to that of private sector workers, including citation issuance and first instance sanctions. VOSHA also administers the Green Mountain Voluntary Protection Program (GMVPP).

The State Plan has two unique standards: one addressing permissible exposure limits (PELs) and one for electrical power generation, transmission, and distribution. The PELs enforced by VOSHA are considerably stricter than OSHA's current PELs.

In FY 2021, VOSHA's base level funding award was \$833,800. Due to the pandemic and staff vacancies, the State Plan did not spend as much as it originally anticipated; thus, VOSHA had to return \$40,000 to OSHA, which reduced the federal funding amount to \$793,800. In addition to matching the federal funding amount of \$793,800, VOSHA also contributed \$20,603. Thus, VOSHA's final FY 2021 funding amount was \$1,608,203 (which consisted of \$793,800 in federal funds and \$814,403 in state funds).

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<sup>1</sup> Vermont Economic and Labor Market Information Division, Quarterly Census of Employment and Wages (<http://www.vtlmi.info/indareanaics.cfm?areatype=01>)

## **B. New Issues**

None.

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

## **A. Data and Methodology**

OSHA established a two-year cycle for the FAME process. FY 2021 was a comprehensive year, and as such, OSHA was required to conduct an evaluation and case file review. From October 25 through October 30, 2021, OSHA conducted an evaluation of VOSHA's enforcement program. OSHA's team consisted of six personnel who reviewed 37 safety and health inspection files, most of which were randomly selected from a universe of 69 inspections VOSHA opened and closed during FY 2021. The review was conducted in Montpelier at a site separate from VOSHA's headquarters. This arrangement was designed to reduce exposure to the pandemic.

The selected population consisted of:

- Eleven (11) programmed inspection case files
- Eight (8) complaint case files
- Eight (8) referral case files
- Seven (7) accident case files
- Two (2) fatality inspection case files
- One (1) follow-up inspection case file

OSHA also reviewed five files related to the GMVPP, two Alliance files, and the disposition of 16 cases that had citations appealed to the VOSHA Review Board in FY 2020 and FY 2021. During the review, OSHA conducted virtual interviews with the program manager, occupational safety compliance supervisor, administrative assistant, and a staff attorney. The purpose of these interviews was to discuss topics related to the operation of the State Plan, such as progress in resolving observations from the FY 2020 Follow-up FAME Report, cases filed with the review board, standard and federal program change (FPC) adoptions, complaint processing, compliance assistance, and abatement tracking, etc.

## **Workplace Retaliation Program Case File Review**

OSHA held an opening conference on November 30, 2021, with the VOSHA Compliance and Workplace Retaliation Program Supervisor. Due to the ongoing pandemic, on January 12, 2022, the Assistant Regional Administrator for OSHA's Whistleblower Protection Program conducted a remote evaluation of VOSHA.

OSHA reviewed 22 workplace retaliation case files. The selected population consisted of:

- Eleven (11) administratively closed files
- Nine (9) closed investigation files

- Two (2) alternative dispute resolution program files

## **Monitoring Sources**

The analyses and conclusions described in this report are based on information obtained from a variety of monitoring sources, including the:

- State Activity Mandated Measures (SAMM) Report (Appendix D)
- State Information Report (SIR)
- Mandated Activities Report for Consultation (MARC)
- State OSHA Annual Report (SOAR)
- State Plan Annual Performance Plan
- State Plan Grant Application
- OSHA Information System (OIS) Reports (Abatement Tracking, Fatality/Catastrophe, Inspection Summary, Open Inspection, and Scan Summary)
- OSHA IT Support System Reports (Case Summary, Activity Measures, Investigation Data and Length of Investigation)
- Quarterly monitoring meetings between OSHA and the State Plan
- Full case file review

SAMMs are enforcement data points that OSHA and the State Plans have agreed are important in monitoring State Plan performance. Each SAMM has an agreed-upon further review level (FRL) that can be either a single number or a range of numbers above and below the national average. State Plan SAMM data that falls outside the FRL triggers a closer look at the underlying performance of the mandatory activity. Appendix D presents the State Plan's FY 2021 SAMM Report and includes the FRL for each measure.

## **B. Review of State Plan Performance**

### **1. PROGRAM ADMINISTRATION**

#### *Training*

VOSHA adopted OSHA Training and Education Directive 01-00-019, which prescribes policies and procedures for training compliance officers. Three CSHOs and the compliance assistance specialist have completed Phase 1 of the directive, which requires CSHOs to complete a minimum of eight initial training courses offered by the OSHA Training Institute (OTI) during the first three years of employment. VOSHA ensures each CSHO completes the technical courses required once the initial training requirements have been completed. Two other CSHOs reached their three-year mark at the end of FY 2021 and have taken only a few of the initial courses in Phase 1. OSHA is not overly concerned with this situation, given the disruption caused by the pandemic and the time devoted by VOSHA to disseminating pandemic-related

information. OTI offers initial training courses online, which should help the State Plan’s CSHOs get back on track. The State Plan’s two newest CSHOs who were hired during FY 2021 did not complete any Phase 1 courses. The new workplace retaliation investigator who was hired in the fourth quarter of FY 2021 completed the initial training course for whistleblower investigators in early FY 2022. A complete listing of the technical training completed by all CSHOs in FY 2021 is included in the VOSHA SOAR.

### *OSHA Information System*

In FY 2021, OSHA did not identify any issues with VOSHA’s utilization of OIS for entering data and information or for running reports to ensure proper monitoring of case files and program activities. VOSHA has complied with OSHA’s suggestion in the FY 2019 Comprehensive FAME Report to run and review OIS reports more frequently to track abatement and monitor citation issuance.

### *State Internal Evaluation Program (SIEP) Report*

VOSHA did not develop a SIEP in FY 2021 because of the ongoing challenges from the pandemic and management needing to devote a significant amount of time to filling staff vacancies. Chapter 6 of the State Plan Policies and Procedures Manual says, “each state must periodically conduct reviews of its activities under the plan, focusing on key issues and areas of concern to the state”. Since the State Plan is not required to complete an internal evaluation of its program *annually*, OSHA is not concerned that VOSHA did not develop a SIEP in FY 2021.

### *Staffing*

Near the end of FY 2021, the longstanding Director of the Vermont Workers’ Compensation and Safety Division—the agency within the Vermont Department of Labor that oversees VOSHA—announced his retirement. The new director, formerly VOSHA’s general counsel, was appointed in early 2022.

## **2. ENFORCEMENT**

### a) Complaints

VOSHA’s procedures for handling complaints are detailed in Chapter 9 of the VOSHA Field Operations Manual (FOM), which mirrors the OSHA FOM in this regard. SAMMs 1 through 3 assess the program’s efficiency in handling complaints.

### **SAMM 1a - Average number of work days to initiate complaint inspections (state formula)**

Discussion of State Plan Data and FRL: The negotiated FRL for this measure is five work days. VOSHA’s FY 2021 average was 2.64 work days.

Explanation: VOSHA met the FRL in FY 2021.

**SAMM 2a- Average number of work days to initiate complaint investigations (state formula)**

Discussion of State Plan Data and FRL: The negotiated FRL is one work day. VOSHA’s average in FY 2021 was 0.76 work days, which was outside (below) the FRL.

Explanation: VOSHA’s result was less than one work day, which was a positive outcome.

**SAMM 3 - Percent of complaints and referrals responded to within one work day (imminent danger)**

Discussion of State Plan Data and FRL: The FRL of 100 percent is fixed for all State Plans. In FY 2021, SAMM 3 did not apply to VOSHA. VOSHA did not receive any imminent danger complaints or referrals.

Explanation: VOSHA did not receive any imminent danger complaints or referrals.

**SAMM 4 - Number of denials where entry not obtained**

Discussion of State Plan Data and FRL: The FRL of zero is fixed for all State Plans. In FY 2021, VOSHA’s result was zero.

Explanation: VOSHA did not have any denials of entry in FY 2021.

b) Fatalities

OSHA reviewed two fatality inspections, one of which was in compliance. For the inspection that was not in compliance, OSHA noted the investigation and supporting documentation were thorough and complete and documentation was adequate to support the Vermont General Duty Clause violation (21 V.S.A. § 223).<sup>2</sup> However, the General Duty Clause citation did not include a recommendation for a feasible means of abatement. VOSHA should review Chapter 4 of the VOSHA FOM and ensure General Duty Clause citations include a feasible means of abatement.

**SAMM 10 - Percent of work-related fatalities responded to in one work day**

Discussion of State Plan Data and FRL: The FRL of 100 percent is fixed for all State Plans. In FY 2021, VOSHA’s result was 100 percent.

Explanation: VOSHA responded to all work-related fatalities in one work day.

c) Targeting and Programmed Inspections

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<sup>2</sup> Vermont’s statute, 21 V.S.A. § 223, mirrors Section 5 (a)(1) of the OSHA Act of 1970 (i.e., General Duty Clause), which states, “Each employer shall furnish to each of his employees employment and a place of employment which are free from recognized hazards that are causing or are likely to cause death or serious physical harm to his employees.”



Each year, VOSHA obtains randomized lists of high-hazard safety and health employers from OSHA's Office of Statistical Analysis to schedule programmed inspections in non-construction workplaces. In August 2021, VOSHA adopted OSHA's most recent Site-Specific (SST) Targeting Directive (SST-19), which uses employer-submitted OSHA Form 300A data from calendar years 2017- 2019 to target non-construction workplaces that have 20 or more workers.

For programmed inspections in construction, VOSHA uses OSHA's Construction Inspection Targeting Application (C-Targeting Application). The State Plan also conducts programmed inspections at construction sites the C-Targeting Application is unable to capture because they are too small. VOSHA becomes aware of activity at these sites through media reports, travels throughout the state, and word-of-mouth, etc. VOSHA covers inspections of smaller construction sites under its emphasis programs on residential construction and falls.

In addition to the local emphasis program (LEP) for work zones, VOSHA has had LEPs for falls, trenching and excavation, and residential construction for many years. In most cases, VOSHA adopts the policies and procedures in OSHA's national emphasis programs identically. For inspections under emphasis programs, VOSHA uses OSHA's ListGen webpage to generate targeting lists.

For local government, VOSHA randomly selects workplaces for programmed inspections from a list of all cities and towns in the state. Any local government site that has had a programmed inspection within the last five years is exempt from an inspection. For state government, VOSHA randomly selects sites for programmed inspections from the three state agencies that tend to have the most hazardous working conditions: the Department of Buildings and General Services, the Agency of Human Services, and the Agency of Transportation. Like local government sites, state agencies that have had a programmed inspection in the last five years are exempt from programmed inspections.

Until the fourth quarter of FY 2021, the State Plan had suspended most programmed inspections and handled most complaints as inquiries due to COVID-19.<sup>3</sup> Thus, for private sector inspections, VOSHA made little use of its targeting lists (high-hazard, C-Target, SST, and ListGen). In FY 2021, the State Plan conducted two programmed inspections in state government workplaces and none in local government workplaces.

### **SAMM 7 - Planned v. actual inspections – safety/health**

Discussion of State Plan Data and FRL: The FRL is based on a number negotiated by OSHA and the State Plan through the grant application. In FY 2021, VOSHA planned to conduct 207 safety inspections and 38 health inspections. The FRL range was from 196.65 to 217.35 for safety inspections and from 36.10 to 39.90 for health inspections. In FY 2021, VOSHA conducted 107

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<sup>3</sup> According to the Chapter 9 of the VOSHA FOM, an inquiry is a "process conducted in response to a complaint or a referral that...does not involve an on-site inspection of the workplace, but rather the employer is notified of the alleged hazard(s) or violation(s) by telephone, fax, email, or by letter if necessary. The employer is then requested to provide a response, and OSHA will notify the complainant of that response by appropriate means."

safety inspections and 34 health inspections; both totals were outside (below) the FRL ranges and were not positive outcomes.

Explanation: OSHA is not concerned with VOSHA's performance on this metric. Due to the ongoing pandemic, VOSHA suspended most programmed inspections until the fourth quarter, which made it difficult for the State Plan to achieve its goals for safety and health inspections during the reporting period. Based on OIS Inspection Summary Reports, VOSHA conducted 196 programmed inspections in FY 2019 and 83 programmed inspections in FY 2020. These totals compare to only 49 programmed inspections in FY 2021.

### **SAMM 9 – Percent in compliance**

Discussion of State Plan Data and FRL: The FRL is based on a three-year national average. In FY 2021, the FRL range was from 25.32 percent to 37.98 percent for safety inspections and from 32.51 percent to 48.77 percent for health inspections. VOSHA's in-compliance rate of 16.88 percent for safety inspections was outside (below) the FRL range, and its in-compliance rate of 31.58 percent for health inspections was also outside (below) the FRL range; both results were positive.

Explanation: Low in-compliance rates indicate CSHOs are adept at identifying and citing violations.

### **SAMM 5 - Average number of violations per inspection with violations by violation type**

Discussion of State Plan Data and FRL: The FRL is based on a three-year national average. VOSHA's FY 2021 average of 1.80 was within the FRL range of 1.42 to 2.14 for serious, willful, repeat, or unclassified (SWRU) violations. For other-than-serious (OTS) violations, the State Plan's average of 0.25 was outside (below) the FRL range of 0.73 to 1.09.

Explanation: OSHA would be concerned if the State Plan had a high average for OTS violations and a correspondingly low average for SWRU violations; this could indicate that the State Plan was not targeting high-hazard employers and/or tended to classify some serious violations as OTS violations. For VOSHA, this was not the case. Therefore, OSHA is not concerned that VOSHA's result for OTS violations was outside (below) the FRL range.

#### d) Citations and Penalties

#### *Citations*

### **SAMM 17 – Percent of enforcement presence**

Discussion of State Plan Data and FRL: The FRL is based on a three-year national average. The FRL range in FY 2021 was from 0.74 percent to 1.24 percent, and VOSHA's total enforcement presence was 0.84 percent, which was within the FRL range. This result was positive.

Explanation: This SAMM calculates the percent of enforcement presence as the total number of inspections divided by the total number of establishments. Total establishments do not include

state and local government establishments or establishments in low-hazard private sector industries. Although the pandemic prevented VOSHA from meeting its goal for inspections, SAMM 17 indicates that the State Plan was adequately covering high-hazard sites in the private sector with enforcement activity.

### **SAMM 11 - Average lapse time**

Discussion of State Plan Data and FRL: The FRL is based on a three-year national average. In FY 2021, the FRL range was from 41.94 work days to 62.90 work days for safety and from 52.88 work days to 79.32 work days for health. VOSHA's averages were 57.27 work days for safety and 78.07 work days for health; both results were within the acceptable range.

Explanation: Lapse time is calculated as the number of work days from the opening conference date to the earliest issuance date. VOSHA has a long track record of meeting the safety and health FRLs for SAMM 11.

Next, the case file review indicated that the State Plan resolved two observations that originally appeared in the FY 2019 FAME Report; one pertained to documentation of worker interviews and the other to severity assessments. Over the past two years, the managers mentored CSHOs on these issues and emphasized the need to follow guidance in Chapter 5 of the VOSHA FOM for documenting violations, along with guidance in Chapter 6 of the VOSHA FOM for severity assessments.

**Observation FY 2020-OB-01 (formerly Observation FY 2019-OB-02):** In 12 (33 percent) of 36 inspections that were not in compliance, the State Plan did not follow the guidance in Chapter 5 of the VOSHA FOM for documenting violations by taking notes on worker interviews and including them in the case file.

**Status FY 2020-OB-01:** VOSHA included adequate documentation of worker interviews in 28 (93 percent) of 30 case files reviewed for this issue. This observation is closed.

**Observation FY 2020-OB-02 (formerly Observation FY 2019-OB-03):** In 12 (33 percent) of 36 cases not in compliance, the severity assessment was not documented or was incorrectly applied to the cited violation.

**Status FY 2020-OB-02:** In FY 2021, the severity was properly assessed and correctly applied to the cited violation in 23 (89 percent) of 25 case files reviewed that for this issue. This observation is closed.

### *Penalties*

VOSHA adopted OSHA's Interim Final Rule on Maximum Penalty Increases on July 1, 2017. In this statute, VOSHA also included an annual adjustment to civil penalties for inflation that is identical to the federal rule. In Chapter 6 of the VOSHA FOM, the State Plan made minor changes to the employer sizes used for gravity-based penalty reductions. OSHA reviewed and approved these changes in September 2017.

**SAMM 8 – Average current serious penalty in private sector - total (1 to greater than 250 workers)**

Discussion of State Plan Data and FRL: The FRL for SAMM 8 is based on a three-year national average. In FY 2021, for employers having one to greater than 250 workers, VOSHA’s average of \$3,553.38 was within the FRL range of \$2,325.28 to \$3,875.46.

Explanation: In FY 2021, VOSHA met the FRL for SAMM 8. Also, for each of the SAMM 8 sub-categories based on employer size, VOSHA’s average was within the FRL range.

e) Abatement

During the on-site case file review, OSHA determined case files contained adequate documentation of abatement. OSHA did not identify any issues with abatement periods, use of extensions, and overall timeliness.

f) Worker and Union Involvement

Under 21 V.S.A. § 206, employers and worker representatives have the opportunity to accompany the CSHO to aid in the inspection. When there is no authorized worker representative, the CSHO is required to consult with a reasonable number of workers concerning matters of safety and health in the workplace. VOSHA’s policies and procedures regarding worker involvement during inspections are acceptable. The case file review and SAMM 13 indicate CSHOs interviewed or included workers in their initial inspections.

**SAMM 13 – Percent of initial inspections with worker walk around representation or worker interview**

Discussion of State Plan Data and FRL: The FRL of 100 percent for SAMM 13 is fixed for all State Plans. In FY 2021, VOSHA’s result was 100 percent.

Explanation: VOSHA performed satisfactorily on SAMM 13.

**3. REVIEW PROCEDURES**

a) Informal Conferences

VOSHA does not have penalty reduction programs, such as expedited informal settlement agreements. The case file review did not reveal any major issues with the State Plan’s informal conference procedures. In most of the 27 case files reviewed for informal conferences, OSHA noted that changes made during the informal conference were well-documented. However, OSHA identified two inspections where VOSHA did not enter the date the employer requested the informal conference on the case activity diary sheet. By recording this information on the diary sheet, VOSHA will align more closely with Chapter 5 of the VOSHA FOM, which states, “Diary entries...should be dated in chronological order to reflect a timeline of the case

development. Information provided should include, at a minimum, the date of the action or event, a brief description of the action or event, and the initials of the person making the entry.” OSHA is not overly concerned with this issue since it was identified in less than one percent of the case files reviewed. Nonetheless, during the closing conference, OSHA emphasized the importance of including the date the employer requested the informal conference on the diary sheet.

### **SAMM 12 - Percent penalty retained**

Discussion of State Plan Data and FRL: The FRL is based on a three-year national average. In FY 2021, VOSHA’s percent penalty retained of 60.48 was within the FRL range of 58.72 percent to 79.44 percent.

Explanation: The State Plan performed satisfactorily on SAMM 12.

Although VOSHA met the FRL for SAMM 12, the State Plan vacated a relatively high number of violations for private sector inspections during informal conferences. Based on SIR 5A, the State Plan’s result of 3.63 for percent of violations vacated (pre-contest) for private sector inspections was a bit higher than the national average of 2.23 percent. This outcome was not positive; however, it was an improvement over VOSHA’s FY 2020 result of 4.30 percent, which was above the national average of 2.56 percent.

#### b) Formal Review of Citations

The Vermont Occupational Safety and Health Review Board is “an establishment of the executive branch of the Vermont state government created by the VOSHA code, consisting of three members appointed by the governor by and with the advice and consent of the Senate....”<sup>4</sup>

OSHA reviewed 16 cases that had citations appealed to the review board over the past two fiscal years (seven from FY 2021 and nine from FY 2020). VOSHA Review Board Rule 2200.31(a) requires the commissioner “to send the original notice of contest to the board within seven days of receipt.” All 16 cases were sent to the VOSHA Review Board in a timely manner. In nine (56 percent) of the cases, a settlement was reached before a hearing was held. In most of the cases settled prior to a hearing, the employer agreed to one or more stipulations, such as providing workers with additional safety and health training or agreeing to specific abatement measures, etc. OSHA determined no action was needed by VOSHA regarding State Plan defense, quality of decisions, or procedural issues.

## **4. STANDARDS AND FEDERAL PROGRAM CHANGE ADOPTION**

#### a) Standards Adoption

The Vermont Administrative Procedures Act was first adopted in 1968 (Act no. 360 of 1967 adj.) and governs the process by which administrative rules are to be adopted by state agencies.

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<sup>4</sup> Vermont Occupational Safety and Health Review Board, *Rules of Procedure*, §2200.2b.

It can be found in Title 3 V.S.A. Chapter 25. Vermont’s rulemaking process is lengthy, and Vermont agencies are required to make filings of every new, amended, or repealed rule at least four times during the rulemaking process.

Table 1 summarizes the status of VOSHA’s standard adoptions over the past two fiscal years and is followed by a discussion of each standard. Although the State Plan missed some deadlines, its performance was acceptable.

**Table 1**  
**FY 2020 and FY 2021 Federal Standards Adoption**  
*(Includes one delinquent standard from an earlier fiscal year)*

<b>Standard:</b>	<b>Response Due Date:</b>	<b>State Plan Response Date:</b>	<b>Intent to Adopt:</b>	<b>Adopt Identical:</b>	<b>Adoption Due Date:</b>	<b>State Plan Adoption Date:</b>
<b><i>Adoption Required</i></b>						
Final Rule on the Implementation of the 2020 Annual Adjustment to Civil Penalties for Inflation 29 CFR 1903 (1/15/2020)	3/15/2020	2/5/2020	Yes	Yes	7/15/2020	2/1/2020
Final Rule on the Beryllium Standard for General Industry 29 CFR 1910 (7/14/2020)	9/14/2020	10/1/2020	Yes	Yes	1/14/2021	12/20/2021
Final Rule on the Beryllium Standard for Construction and Shipyards 29 CFR 1915, 1926 (8/31/2020)	10/30/2020	10/27/2020	Yes	Yes	2/27/2021	
Final Rule on the Implementation of the 2021 Annual Adjustment to Civil Penalties for Inflation (1/15/2021)	3/16/2021	1/25/2021	Yes	Yes	7/14/2021	3/1/2021
Occupational Exposure to COVID-19; Healthcare Emergency Temporary Standard 29 CFR 1910 (6/21/2021)	7/6/2021	7/6/2021	Yes	Yes	7/21/2021	7/19/2021
<b><i>Adoption Encouraged</i></b>						
Final Rule on the Rules for Agency Practice and Procedures Concerning OSHA Access to Employee Medical Records 29 CFR 1913 (7/30/2020)	9/28/2020	10/27/2020	Yes	Yes	n/a adoption not required	2/24/2021
Final Rule on Cranes and Derricks in Construction: Railroad Roadway	11/14/2020	11/24/2020	No	No	n/a adoption not required	

Work 29 CFR 1926 (9/15/2020)						
Final Rule on the Standards Improvement Project – Phase IV 29 CFR 1904,1910,1915,1926 (5/14/2019)	7/13/2019	7/11/2019	Yes	Yes	11/14/2019	

*Adoption Required*

**Implementation of the 2020 Annual Adjustment to Civil Penalties for Inflation Rule  
Implementation of the 2021 Annual Adjustment to Civil Penalties for Inflation Rule**

As mentioned earlier, VOSHA adopted OSHA’s rule raising maximum and minimum penalties. This rule allows for an annual increase in penalties according to the consumer price index. VOSHA notified OSHA timely (within 60 days from publication of the standard in the *Federal Register*) of its intent to adopt these rules and adopted them timely (within six months from the effective date identified in the final *Federal Register* notice).

**Beryllium Standards**

OSHA’s beryllium standards require employers to implement protective measures for workers exposed to beryllium in their workplace. VOSHA was a few days late in responding to the standard for general industry but responded timely to the standard for construction and shipyards. However, for both standards, the State Plan has gone far beyond the due date for adoption. Over the past couple of years, legislative committees involved in rulemaking have postponed hearings due to the pandemic. In FY 2021, the VOSHA manager had to divert time from rulemaking to dealing with staff vacancies and other human resources issues. VOSHA finally adopted the Beryllium Standard for General Industry in December 2021. The rulemaking for the Beryllium Standard for Construction and Shipyards faced an additional delay when the Director of the Division of Workers’ Compensation and Safety retired, and the new director needed additional time to review this standard. VOSHA anticipates adoption of this rule in mid-2022.

OSHA is not overly concerned with VOSHA’s lateness in adopting these standards, given the unique challenges brought on by COVID-19. Also, the VOSHA Program Manager shoulders most of the responsibilities for rulemaking in addition to running the rest of the State Plan.

**Occupational Exposure to COVID-19; Healthcare Emergency Temporary Standard**

OSHA has determined that employee exposure to SARS-CoV-2, the virus that causes COVID-19, presents a grave danger to workers in healthcare settings where people with COVID-19 are reasonably expected to be present and has issued an Emergency Temporary Standard (ETS) to address the hazard.

When Federal OSHA promulgates an ETS, State Plans must either amend their standards to be identical or “at least as effective” as the new standard or show that an existing state standard

covering this area is “at least as effective” as the new federal standard (29 CFR 1953.5(b)). Adoption of the ETS by State Plans must be completed within 30 days of the promulgation date of the final federal rule, and State Plans must notify Federal OSHA of the action they will take within 15 days. The State Plan standard must remain in effect for the duration of the federal ETS. VOSHA’s response and adoption were timely.

### *Adoption Encouraged*

#### **Final Rule on the Rules for Agency Practice and Procedures Concerning OSHA Access to Employee Medical Records**

This rule describes internal procedures for obtaining and using personally identifiable employee medical information. VOSHA’s response and adoption were both about a month beyond the due date.

#### **Final Rule on Cranes and Derricks in Construction: Railroad Roadway Work**

OSHA revised the standard for cranes and derricks in construction to provide specific exemptions and clarifications regarding the application of the standard to cranes and derricks used for railroad roadway work. These exemptions and clarifications recognize the unique equipment and circumstances in railroad roadway work and reflect the preemption of some OSHA requirements by regulations promulgated by the Federal Railroad Administration. VOSHA responded with its intent about a week after the due date. The State Plan did not adopt this standard, citing that it would have “minimal impact” on workers in Vermont.

#### **Standards Improvement Project - Phase IV Rule**

As part of OSHA’s Standards Improvement Project, OSHA issued a final rule on May 14, 2019, that revises 14 provisions in the recordkeeping, general industry, maritime, and construction standards that may be confusing, outdated, or unnecessary. The revisions increase understanding and compliance with the provisions, improve worker safety and health, and save employers an estimated \$6.1 million per year. This is the fourth rule under OSHA’s Standards Improvement Project (SIP-IV).

VOSHA notified OSHA in a timely manner of its intent to adopt this rule; however, the State Plan has gone far beyond the allowable timeframe for adopting this standard. Under the Vermont Administrative Procedures Act, VOSHA would have to undertake 14 separate rulemakings, one for each of the 14 provisions that SIP-IV revises; each rulemaking process is lengthy and involves multiple filings and hearings.

To remedy this situation, VOSHA modified its procedures; instead of undertaking 14 separate rulemakings, the State Plan adopts the latest versions of OSHA’s standards (recordkeeping, general industry, maritime, and construction) in their entirety. The latest versions of OSHA’s standards contain all the revisions in SIP-IV. Thus, VOSHA’s plan entails adopting four rules (one at a time), rather than 14, and it has been approved by the Vermont Secretary of State, the agency that oversees rulemaking in Vermont. VOSHA has already adopted the latest versions of OSHA’s recordkeeping and general industry standards. When VOSHA adopts the Beryllium



Standard for Construction and Shipyards in FY 2022, it will adopt the latest versions of OSHA’s construction and maritime standards in their entirety. At that point, the State Plan will have completed adoption of SIP-IV. OSHA will follow up to ensure that this adoption occurs in FY 2022.

b) Federal Program Change Adoption

Table 2 summarizes the status of VOSHA’s FPC adoptions over the past two fiscal years and is followed by a discussion. Like standards adoption, the State Plan exceeded some deadlines, but its overall performance was acceptable.

**Table 2**  
**FY 2020 and FY 2021 Federal Program Change Adoption**

<b>FPC Directive/Subject:</b>	<b>Response Due Date:</b>	<b>State Plan Response Date:</b>	<b>Intent to Adopt:</b>	<b>Adopt Identical:</b>	<b>Adoption Due Date</b>	<b>State Plan Adoption Date:</b>
<b><i>Adoption Required</i></b>						
Amputations in Manufacturing Industries NEP CPL 03-00-022 (12/10/2019)	2/10/2020	2/5/2020	Yes	Yes	6/10/2020	3/2/2020
Respirable Crystalline Silica NEP CPL 03-00-023 (2/4/2020)	4/4/2020	3/30/2020	Yes	Yes	8/4/2020	5/4/2020
<b><i>Equivalency Required</i></b>						
Field Operations Manual CPL 02-00-164 (4/14/2020)	6/13/2020	6/12/2020	Yes	No	10/11/2020	7/1/2020
Inspection Procedures for the Respirable Crystalline Silica Standards CPL 02-02-080 (6/25/2020)	8/24/2020	9/1/2020	Yes	Yes	12/22/2020	9/1/2020
Site-Specific Targeting (SST) CPL 02-01-062 (12/14/2020)	2/12/2021	8/4/2021	Yes	Yes	6/12/2021	8/4/2021
Consultation Policies and Procedures Manual CSP 02-00-004 (3/19/2021)	5/19/2021	5/12/2021	Yes	Yes	9/19/2021	6/12/2021

Inspection Procedures for the COVID-19 Emergency Temporary Standard CPL DIR 2021-02 (CPL 02) (6/28/2021)	7/13/2021	8/4/2021	Yes	Yes	7/28/2021	8/30/2021
Compliance Directive for the Excavation Standard 29 CFR 1926, Subpart P CPL 02-00-165 (7/1/2021)	8/30/2021	8/4/2021	Yes	Yes	12/28/2021	9/6/2021
Revised National Emphasis Program - Coronavirus Disease 2019 (COVID-19) CPL DIR 2021-03 (CPL 03) (7/7/2021)	7/22/2021	8/4/2021	Yes	Yes	8/7/2021	8/4/2021
<b><i>Adoption Encouraged</i></b>						
Voluntary Protection Programs Policies and Procedures Manual CSP 03-01-005 (1/30/2020)	3/30/2020	3/30/2020	Yes	Yes	n/a adoption not required	5/4/2020
Electronic Case File System Procedures for the Whistleblower Protection Program CPL 02-03-009 (6/18/2020)	8/18/2020	8/19/2020	Yes	Yes	n/a adoption not required	9/1/2020
National Emphasis Program - Coronavirus Disease 2019 (COVID-19) CPL DIR 2021-01 (CPL-03) (3/12/2021)	5/12/2021	5/12/2021	No	No	n/a adoption not required	
Communicating OSHA Fatality Inspection Procedures to a Victim's Family CPL 02-00-166 (7/7/2021)	9/7/2021	9/22/2021	Yes	Yes	n/a adoption not required	9/22/2021

VOSHA responded timely (i.e., within 60 days) to seven of the 13 FPCs listed in Table 2 and adopted 11 of the 13 FPCs within the allowable six-month timeframe. The lapse time between VOSHA's response date and the response due date was not substantial for most of the FPCs that VOSHA did not respond to in a timely manner. VOSHA did not adopt two of the FPCs where adoption was not required. When the State Plan adopts new FPCs and standards, VOSHA's managers provide copies of them to field staff and request that they become familiar with their requirements. In addition, new FPCs and standards are reviewed and discussed during staff meetings.

## 5. VARIANCES

VOSHA did not have any variances in FY 2021 or FY 2020.

## 6. STATE AND LOCAL GOVERNMENT WORKER PROGRAM

Based on the OIS Scan Summary Report, VOSHA conducted eight inspections in state and local government workplaces. VOSHA's FY 2021 goal was 20 inspections (13 safety and seven health), which is eight percent of the annual goal of 245 inspections.

### **SAMM 6 - Percent of total inspections in state and local government workplaces**

Discussion of State Plan Data and FRL: The FRL is based on a number negotiated by OSHA and the State Plan through the grant application. In FY 2021, the FRL range was from 7.76 percent to 8.57 percent. VOSHA's percent of 5.67 was outside (below) the FRL range. This outcome was not positive.

Explanation: Since FY 2020, VOSHA has initiated relatively few programmed inspections at state and local government workplaces to reduce exposure to the pandemic. Also, several state and local government agencies allowed employees to work at alternative sites over the past year and a half. Thus, OSHA is not overly concerned that VOSHA's result for SAMM 6 was not within the FRL range, given the ongoing challenges from the pandemic.

**Observation FY 2021-OB-01: (formerly Observations FY 2020-OB-03 and FY 2019-OB-04):** In FY 2019, VOSHA conducted only two inspections in state government, a relatively low number. Furthermore, only one inspection was programmed, which indicates that the State Plan did little in terms of targeting high-hazard employers in state government for inspections.

**Federal Monitoring Plan FY 2021-OB-01:** On a quarterly basis, OSHA will discuss enforcement activity with VOSHA to ensure that the State Plan conducts enough inspections, including programmed inspections, at workplaces in state government.

**Status FY 2021-OB-01:** In FY 2021, VOSHA conducted three inspections in state government, two of which were programmed. The State Plan's totals for both overall inspections and programmed inspections in state government workplaces continued to be relatively low.

However, due to the pandemic in FY 2021, the extent to which VOSHA resolved this observation is difficult to assess. Therefore, this observation is continued.

## **7. WHISTLEBLOWER PROGRAM**

The Vermont Department of Labor operates the VOSHA Whistleblower Protection Program under Title 21 V.S.A. Sec. 231. VOSHA has jurisdiction over workplace retaliation cases arising from both state and local government and private sector workers in the State of Vermont. The State Plan models its program after OSHA's Whistleblower Protection Program and follows the OSHA Whistleblower Investigations Manual for practices and procedures. The VOSHA Program Manager oversees the workplace retaliation program, and in FY 2019, the State Plan expanded the role of the current compliance chief to include supervision of the workplace retaliation investigator. Most of the cases reviewed were well-organized and contained appropriate information.

VOSHA began experiencing issues with workplace retaliation program performance in 2020. Attempts to improve the program through training were unsuccessful. In June 2021, the investigator position became vacant, and a new investigator was hired in September 2021. The compliance supervisor is working one day per week on training the new investigator and assisting with reducing a backlog of 77 cases.

### **SAMM 14 - Percent of 11(c) investigations completed within 90 days**

Discussion of State Plan Data and FRL: The FRL of 100 percent is fixed for all State Plans. In FY 2021, VOSHA's result for this SAMM was zero. This result was not positive.

Explanation: The caseload was overwhelming in FY 2021. Thus, VOSHA did not meet the FRL in SAMM 14. However, the State Plan is training the new investigator and the compliance supervisor is helping with the backlog.

### **SAMM 15 - Percent of 11(c) complaints that are meritorious**

Discussion of State Plan Data and FRL: In FY 2021, the FRL range for SAMM 15 was from 16 percent to 24 percent. VOSHA's percent of 11(c) complaints that were meritorious was 50, which was outside (above) the FRL range. This outcome was positive.

Explanation: VOSHA closed 10 cases in FY 2021, and five (50 percent) of those 10 were settled. A settlement is a positive outcome for a complainant; therefore, it is "meritorious."

### **SAMM 16 – Average number of calendar days to complete an 11(c) investigation**

Discussion of State Plan Data and FRL: The FRL of 90 calendar days is fixed for all State Plans. In FY 2021, VOSHA's average of 772 days was well outside (above) the FRL. This result was not positive.

Explanation: In FY 2021, the cases were not investigated in a timely manner. VOSHA is addressing this situation, as discussed under SAMM 14.

## **8. COMPLAINT ABOUT STATE PROGRAM ADMINISTRATION (CASPA)**

VOSHA did not have any CASPAs in FY 2021 or FY 2020.

## **9. VOLUNTARY COMPLIANCE PROGRAM**

VOSHA began FY 2021 with eight GMVPP sites and planned to end the year with the same total. However, one site discontinued participation in FY 2021 because the facility closed. For this report, OSHA reviewed the 2020 annual self-evaluations of seven GMVPP sites.<sup>5</sup> In two (29 percent) of the seven submissions, OSHA identified errors in the calculations of the sites' Bureau of Labor Statistics' days away/restricted or transfer (DART) rates and/or total case incident rates (TCIRs). VOSHA should review Table B-1 in each site's annual submission to identify and correct errors in DART rate and TCIR calculations.

**Observation FY 2021-OB-02:** In FY 2021, there were errors in the calculations of the DART rates and TCIRs for two (29 percent) of seven GMVPP sites' annual participant submissions.

**Federal Monitoring Plan FY 2021-OB-02:** On a quarterly basis, OSHA will emphasize the need for VOSHA to review each GMVPP site's annual self-evaluation to identify and correct errors in DART rate and TCIR calculations.

**Status FY 2021-OB-02:** This observation is new.

Next, in the same two evaluations, the GMVPP participants did not provide sufficient information regarding evaluation of its safety and health management system. VOSHA should make sure each participant follows Attachment A, Annual VPP Participant Submission (effective 12/1/2019), which lists the five questions each participant should answer in evaluating each element and sub-element of its safety and health management system.

**Observation FY 2021-OB-03:** In FY 2021, two (29 percent) of seven annual GMVPP participant submissions did not contain a sufficient evaluation of the site's safety and health management system.

**Federal Monitoring Plan FY 2021-OB-03:** On a quarterly basis, OSHA will also reinforce the need to ensure each GMVPP participant adequately evaluates all elements and sub-elements of the safety and health management system.

**Status FY 2021-OB-03:** This observation is new.

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<sup>5</sup> A GMVPP participant's yearly self-assessment gauges the effectiveness of all required GMVPP elements and any other elements of the participant's safety and health management system. The annual self-evaluation is due to the State Plan each year by February 15. (Source: GMVPP Policies and Procedures Manual)

In FY 2021, VOSHA allowed a site to remain in the GMVPP even though it had been unsuccessful in reducing injury and illness rates below the industry average during a three-year probationary period (i.e., rate reduction plan) from 2017 to 2019. Chapter 1 of the GMVPP Policies and Procedures Manual states that a site must maintain injury and illness rates below the industry average to qualify for participation in the program.<sup>6</sup> In February 2020, when the site submitted its annual report indicating it had not sufficiently reduced its injury and illness rates, VOSHA should have requested the site withdraw from GMVPP but did not do so. Because the site has since voluntarily withdrawn from the GMVPP, OSHA does not need to monitor this situation. Nonetheless, VOSHA should follow the direction in the GMVPP Policies and Procedures Manual and only allow sites in GMVPP that maintain injury and illness rates below the industry average.

VOSHA met the FY 2021 annual performance goal of maintaining two active Alliances. OSHA verified that VOSHA's written policies and procedures for the voluntary and cooperative programs were adequate.

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

In each of the past two fiscal years, VOSHA's state and local government consultation program projected 20 state and local government visits. Based on the MARC, the program conducted only 11 visits in FY 2021 and 10 visits in FY 2020. Project WorkSAFE began FY 2020 with one less consultant and finally filled the vacancy in March 2020. However, the new hire was unable to complete the basic training until September 2020 and, thus, was not able to conduct field work until the course was completed. In February 2021, one of the long-time consultants retired, which opened a position not filled until July 2021. The new hire completed the introductory course in October 2021. Given this timeline, the program was down one consultant for about seven months.

In addition to staff vacancies, Project WorkSAFE was affected by the pandemic. In FY 2020, the program canceled on-site visits for more than two months (from mid-March to June 2020). Although onsite visits resumed mid-way through FY 2020, the program experienced a significant drop in visit requests. The program manager noted several conferences and other venues were canceled in FY 2021, diminishing the program's interaction with state and local government agencies and resulting in fewer requests than normal.

Although Project WorkSAFE had difficulty meeting its goal for visits in each of the past two fiscal years, MARC 4A shows that 100 percent of all hazards were corrected timely (i.e., within 14 days or less of the latest correction due date). As discussed in previous FAME Reports, the State Plan has a long track record of achieving 100 percent for MARC 4A. In FY 2021 and in FY 2020, Project WorkSAFE also met the reference of 65 percent for MARC 4D, percent of serious hazards corrected (in original time or onsite). In FY 2021, all 34 serious hazards were

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<sup>6</sup> VOSHA adopted OSHA's Voluntary Protection Program Policies and Procedures Manual identically in May 2020.

corrected in the original time or onsite; and in FY 2020, the State Plan's percentage was 98.37 percent (121 of 123 serious hazards were corrected in original time or onsite). OSHA did not identify any concerns with VOSHA's 23(g) on-site consultation program over the past two fiscal years.

## Appendix A – New and Continued Findings and Recommendations

FY 2021 VOSHA Comprehensive FAME Report

FY 2021-#	Finding	Recommendation	FY 2020-# or FY 2020-OB-#
	None.		



## Appendix B – Observations Subject to New and Continued Monitoring

### FY 2021 VOSHA Comprehensive FAME Report

Observation # FY 2021-OB-#	Observation# FY 2020-OB- # or FY 2020- #	Observation	Federal Monitoring Plan	Current Status
FY 2021-OB-01	FY 2020-OB-03 FY 2019-OB-04	In FY 2019, VOSHA conducted only two inspections in state government, which is a relatively low number. Furthermore, only one inspection was programmed, which indicates that the State Plan did little in terms of targeting high-hazard employers in state government for inspections.	On a quarterly basis, OSHA will discuss enforcement activity with VOSHA to ensure that the State Plan conducts enough inspections, including programmed inspections, at workplaces in state government.	Continued
FY 2021-OB-02		In FY 2021, there were errors in the calculations of the DART rates and TCIRs for two (29 percent) of seven GMVPP sites' annual participant submissions.	On a quarterly basis, OSHA will emphasize the need for VOSHA to review each GMVPP site's annual self-evaluation to identify and correct errors in DART rate and TCIR calculations.	New
FY 2021-OB-03		In FY 2021, two (29 percent) of seven annual GMVPP participant submissions did not contain a sufficient evaluation of the site's safety and health management system.	On a quarterly basis, OSHA will reinforce the need to ensure each GMVPP participant adequately evaluates the elements and sub-elements of the safety and health management system.	New
	FY 2020-OB-01 FY 2019-OB-02	In 12 (33 percent) of 36 inspections not in compliance, the State Plan did not follow guidance in Chapter 5 of the VOSHA FOM for documenting violations by taking notes on worker interviews and including them in the case file.		Closed
	FY 2020-OB-02 FY 2019-OB-03	In 12 (33 percent) of 36 cases not in compliance, the CSHO did the severity assessment was not document or was incorrectly applied to the cited hazard.		Closed

## Appendix C - Status of FY 2020 Findings and Recommendations

FY 2021 VOSHA Comprehensive FAME Report

<b>FY 2020-#</b>	<b>Finding</b>	<b>Recommendation</b>	<b>State Plan Corrective Action</b>	<b>Completion Date (if Applicable)</b>	<b>Current Status (and Date if Item is Not Completed)</b>
	None.				

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

### FY 2021 VOSHA Comprehensive FAME Report

SAMM Number	SAMM Name	State Plan Data	Further Review Level	Notes
<b>1a</b>	Average number of work days to initiate complaint inspections (state formula)	2.64	5	The further review level is negotiated by OSHA and the State Plan.
<b>1b</b>	Average number of work days to initiate complaint inspections (federal formula)	2.17	N/A	This measure is for informational purposes only and is not a mandated measure.
<b>2a</b>	Average number of work days to initiate complaint investigations (state formula)	0.76	1	The further review level is negotiated by OSHA and the State Plan.
<b>2b</b>	Average number of work days to initiate complaint investigations (federal formula)	0.25	N/A	This measure is for informational purposes only and is not a mandated measure.
<b>3</b>	Percent of complaints and referrals responded to within one workday (imminent danger)	N/A	100%	N/A – The State Plan did not receive any imminent danger complaints or referrals in FY 2021.  The further review level is fixed for all State Plans.
<b>4</b>	Number of denials where entry not obtained	0	0	The further review level is fixed for all State Plans.
<b>5a</b>	Average number of violations per inspection with violations by violation type (SWRU)	1.80	+/- 20% of 1.78	The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from 1.42 to 2.14 for SWRU.
<b>5b</b>	Average number of violations per inspection with violations by violation type (other)	0.25	+/- 20% of 0.91	The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from 0.73 to 1.09 for OTS.
<b>6</b>	Percent of total inspections in state and local government workplaces	5.67%	+/- 5% of 8.16%	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 7.76% to 8.57%.
<b>7a</b>	Planned v. actual inspections	107	+/- 5% of	The further review level is based on a number negotiated by

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

### FY 2021 VOSHA Comprehensive FAME Report

SAMM Number	SAMM Name	State Plan Data	Further Review Level	Notes
	(safety)		207	OSHA and the State Plan through the grant application. The range of acceptable data not requiring further review is from 196.65 to 217.35 for safety.
<b>7b</b>	Planned v. actual inspections (health)	34	+/- 5% of 38	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 36.10 to 39.90 for health.
<b>8</b>	Average current serious penalty in private sector - total (1 to greater than 250 workers)	\$3,553.38	+/- 25% of \$3,100.37	The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from \$2,325.28 to \$3,875.46.
	<b>a.</b> Average current serious penalty in private sector (1-25 workers)	\$1,858.00	+/- 25% of \$2,030.66	The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from \$1,523.00 to \$2,538.33.
	<b>b.</b> Average current serious penalty in private sector (26-100 workers)	\$4,356.47	+/- 25% of \$3,632.26	The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from \$2,724.20 to \$4,540.33.
	<b>c.</b> Average current serious penalty in private sector (101-250 workers)	\$6,297.38	+/- 25% of \$5,320.16	The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from \$3,990.12 to \$6,650.20.
	<b>d.</b> Average current serious penalty in private sector (greater than 250 workers)	\$7,900.69	+/- 25% of \$6,575.70	The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from \$4,931.78 to \$8,219.63.
<b>9a</b>	Percent in compliance (safety)	16.88%	+/- 20% of 31.65%	The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from 25.32% to 37.98% for safety.
<b>9b</b>	Percent in compliance (health)	31.58%	+/- 20% of 40.64%	The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from 32.51% to 48.77% for health.
<b>10</b>	Percent of work-related fatalities	100%	100%	The further review level is fixed for all State Plans.

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

### FY 2021 VOSHA Comprehensive FAME Report

SAMM Number	SAMM Name	State Plan Data	Further Review Level	Notes
	responded to in one workday			
<b>11a</b>	Average lapse time (safety)	57.27	+/- 20% of 52.42	The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from 41.94 to 62.90 for safety.
<b>11b</b>	Average lapse time (health)	78.07	+/- 20% of 66.10	The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from 52.88 to 79.32 for health.
<b>12</b>	Percent penalty retained	60.48%	+/- 15% of 69.08%	The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from 58.72% to 79.44%.
<b>13</b>	Percent of initial inspections with worker walk-around representation or worker interview	100%	100%	The further review level is fixed for all State Plans.
<b>14</b>	Percent of 11(c) investigations completed within 90 days	0%	100%	The further review level is fixed for all State Plans.
<b>15</b>	Percent of 11(c) complaints that are meritorious	50%	+/- 20% of 20%	The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from 16% to 24%.
<b>16</b>	Average number of calendar days to complete an 11(c) investigation	772	90	The further review level is fixed for all State Plans.
<b>17</b>	Percent of enforcement presence	0.84%	+/- 25% of 0.99%	The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from 0.74% to 1.24%.

Note: The national averages in this report are three-year rolling averages. Unless otherwise noted, the data contained in this Appendix D is pulled from the State Activity Mandated Measures (SAMM) Report in OIS and the State Plan WebIMIS report run on November 8, 2021, as part of OSHA's official end-of-year data run.

