

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

Virgin Islands Division of Occupational Safety and Health (VIDOSH)



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I. Executive Summary

The purpose of this report is to assess the Virgin Islands Division of Occupational Safety and Health (VIDOSH) program's activities for Fiscal Year (FY) 2021, and its progress in resolving outstanding findings from previous Federal Annual Monitoring Evaluation (FAME) reports. OSHA continues to have serious concerns with VIDOSH's inability to address significant programmatic issues that have been outstanding for more than a decade. Despite OSHA's continual efforts to assist and provide support to VIDOSH, the Virgin Islands (VI) State Plan failed to resolve its prior FAME findings and recommendations. Overall, OSHA is not satisfied with the lack of progress, responsiveness, and communication from VIDOSH.

Over the past few years, OSHA's New York Regional Office (Region 2) has increased its monitoring of VIDOSH by including an addendum of mandatory grant activities, aligning deadlines in the grant approval letter, and designating VIDOSH as a high-risk grantee in accordance with 2 Code of Federal Regulations (CFR) 200.207. However, OSHA did not withhold VIDOSH's access to drawdown federal funding during the fall of FY 2020. OSHA developed mandatory program activities for VIDOSH to be completed during the first quarter of the FY 2020 performance period, and VIDOSH did not make any progress during the performance period to address the mandatory activities. The program administration's autonomy also continued to be a concern.

Therefore, as a result, on June 22, 2020, VIDOSH was once again designated as a high-risk grantee and OSHA identified four mandatory grant activities, corresponding deadlines, and percentage of monies dispersed per completed activity from June 1, 2020 through September 30, 2020. VIDOSH only met 50% of its four mandatory activities, and therefore was not approved to draw down all their available funds. In addition, in FY 2020 VIDOSH failed to deobligate their federal funds in a timely manner and \$19,787 in funds were returned to the United States Treasury and were not able to be used by OSHA or any other State Plans to support worker safety and health. At the end of the FY 2020 performance period, VIDOSH did not meet all mandatory grant activities and continued to be designated as a high-risk grantee in FY 2021.

The designation of high-risk grantee has been the most effective tool that OSHA has utilized to date to improve the performance of the State Plan. However, this has proven to have lost its effectiveness over the past two years as evidenced by VIDOSH's failure to meet most of the mandatory activities required under this high-risk designation. VIDOSH met only one of its four mandatory grant activities during FY 2021 performance period by conducting 30 inspections. As a result of failing to meet the other three mandatory activities, VIDOSH lapsed \$11,767 in federal funding in FY 2021. VIDOSH has lapsed federal funds five times over the past seven years. OSHA added a fifth mandatory activity in FY 2022 to address lapse time for inspections.

VIDOSH made some progress in addressing outstanding legacy abatement for inspections issued prior to FY 2021 and closed 18 files. However, five inspections conducted in FY 21 still had overdue abatement at the end of FY 21, and three inspections that were started prior to FY 21 were still open as of January 2022. Also, VIDOSH does not issue enforcement citations in a timely manner or close most of its case files timely. Of the 30 inspections conducted during FY 2021, only nine (30%) cases were closed and available for this year's comprehensive review when OSHA requested it on October 23, 2021. In addition, VIDOSH's citation lapse time for safety remains considerably above the national average.

VIDOSH's consultation program was non-operational in FY 2021 because the program had no consultants to conduct visits; therefore, no consultation visits were conducted in FY 2021. The program

hired a consultant in February 2022, but the consultant will not be able to conduct visits until the required training occurs. VIDOSH was not responsive to OSHA's requests for information and responses to Federal Program Changes (FPC) in FY 2021. In 11 out of 12 months of the year, VIDOSH did not respond to OSHA's requests timely, and OSHA had to consistently send reminders that information was needed. VIDOSH does not maintain an updated account in the OSHA IT Support System and therefore does not enter important status information and updates in the OSHA Information System (OIS).

VIDOSH continues to be ineffective in protecting the safety and health of Virgin Islands' state and local government (SLG) workers. Findings from this FAME, as well as previous FAMEs, show that VIDOSH fails to issue citations in a timely manner, issue citations when hazards are found, close files timely, and establish an enforcement presence in VI. During the FY 2021 performance period, VIDOSH made little to no progress to address its 15 findings from the FY 2020 FAME. One finding from last year's FY 2020 follow-up FAME was completed because the health lapse time was reduced in FY 2021 to the acceptable range of the Federal Review Level (FRL), and one observation was closed because the safety in-compliance rate was reduced to within the acceptable range of the FRL. However, OSHA identified a new finding regarding overdue abatement and three new observations. Therefore, this year's FAME resulted in VIDOSH having a total of 15 findings and four observations.

Appendix A describes the new and continued findings and recommendations. Appendix B describes the observations and the related federal monitoring plans. Appendix C describes the status of previous findings with associated completed corrective actions.

II. State Plan Background

A. Background

Historical Background

The Virgin Islands State Plan was initially approved on August 31, 1973, completed all the State Plan developmental steps, and was certified as structurally complete on September 22, 1981. Pursuant to Section 18(e) of the OSH Act and procedures at 29 CFR 1902, OSHA determined that the Virgin Islands program met all requirements and, in actual operation, was "at least as effective" as the federal program. The Virgin Islands State Plan was granted final approval on April 17, 1984, and OSHA relinquished federal enforcement authority (49 FR 16766). The Virgin Islands Department of Labor (VIDOL) is the designated agency for administering the OSHA funded enforcement program in the Virgin Islands through its Virgin Islands Division of Occupational Safety and Health (VIDOSH).

On November 13, 1995, OSHA announced that the Virgin Islands State Plan was no longer "at least as effective as" OSHA and other 18(e) requirements were no longer being met. In response to this finding, the Virgin Islands Commissioner of Labor agreed to voluntarily relinquish the State Plan's final approval status under Section 18(e), to the reassertion of concurrent OSHA enforcement authority and jurisdiction, and to undertake necessary corrective action to regain final approval status (60 FR 56950).

The 1995 decision to reinstate concurrent jurisdiction allowed OSHA to exercise concurrent enforcement authority to assure worker protection, while allowing the Virgin Islands time and assistance to improve its performance. However, between 1995 and 2003, VIDOSH was unable to institute improvements to

its staffing and operational performance. A series of meetings between the Region and then Virgin Islands Governor Charles W. Turnbull was initiated to discuss these outstanding performance issues and next steps.

Pursuant to Governor Turnbull's May 12, 2003, letter, OSHA revised 29 CFR 1952 and 29 CFR 1956 in July 2013 to reflect the Virgin Islands decision to exclude private sector employment from coverage under the plan while retaining coverage of state and local government employment. The new plan applies to the state and local government workers (SLG) only. State Plan coverage of all private sector employers and employees was terminated effective July 1, 2003, and OSHA resumed full jurisdiction over private sector employment in the Virgin Islands. This action made it possible for OSHA to devote its resources to providing safety and health protection in Virgin Islands workplaces, rather than expending its resources in a possibly lengthy and complex proceeding under 29 CFR 1955 to formally terminate State Plan approval.

The agreement allowed the Virgin Islands to qualify for enhanced funding under a provision of the Omnibus Insular Areas Act of 1977 (48 U.S.C. Section 1469 (d)), which authorizes OSHA to waive the requirement for Territorial matching funds for grant amounts under \$200,000. A new subpart H to 29 CFR part 1956 was added and codified the Virgin Islands State Plan as a developmental plan under 29 CFR part 1956, to allow the Territory to make certain adjustments to its state and local government employee program structure, and to revise its State Plan document to reflect its more limited scope. This change also terminated the private sector consultation services that were provided under the 23(g)-grant funding. To address this, OSHA provided funding for a new 21(d) private sector consultation program for the Virgin Islands.

Current Background

The Virgin Islands State Plan is currently administered by VIDOSH which is part of VIDOL. VIDOL Commissioner Gary Molloy oversees VIDOSH, which has offices on St. Croix and St. Thomas. These offices cover all safety and health enforcement and consultation activities for state and local government workers in the Virgin Islands. All private sector and federal government agency complaints are forwarded to OSHA's Puerto Rico Area Office for appropriate action. At the end of FY 2021, VIDOSH had two vacant safety CSHO positions, and one vacant consultant position. VIDOSH's current staff includes one director, two administrative support staff, one safety CSHO and one IH CSHO (five total).

The Virgin Islands Occupational Safety and Health (VI-OSH) Act provides for the adoption of federal standards applicable to state and local government, with issuance on the effective date specified in the federal standard. The VI-OSH Act contains provisions for the issuance of failure-to-abate monetary penalties for those state and local government employers found not to be in compliance with applicable standards on a first instance basis. VIDOSH's review procedures are handled through a hearing examiner with the right to appeal to the Commissioner of Labor and the Virgin Islands Superior Court in lieu of the Review Commission as is the case in the federal program.

B. New Issues

Grantee High-Risk Designation

In September 2019, VIDOSH's FY 2020 grant was awarded with an addendum letter, due to the outstanding and continual concerns of unsatisfactory program progress and performance. Unfortunately,

VIDOSH was not responsive to these four mandatory activities in the letter and did not make progress addressing their deficiencies.

Therefore, on March 2, 2020, OSHA designated the VI State Plan as a high-risk grantee placing conditions on its FY 2020 grant. VIDOSH had to complete three mandatory activities on schedule during the remaining FY 2020 performance period. In June 2020, OSHA updated the March 2, 2020, addendum with four core mandatory grant activities, corresponding deadlines, and percentage of monies dispersed per completed activity from June 1, 2020, through September 30, 2020. VIDOSH met only two (enforcement inspections and compliance assistance activities) of the four mandatory activities, and therefore was not approved to draw down all available funds which resulted in lapsed federal funds from the FY 2020 grant.

OSHA continued VIDOSH's high-risk designation in FY 2021. Four mandatory grant activities and supplementing deadlines were assigned to VIDOSH to be completed during the FY 2021 performance period. To be considered for removal of its high-risk grantee designation, VIDOSH had to successfully complete these four mandatory activities by September 30, 2021:

- 1) Meet inspection goals
- 2) Meet abatement schedule
- 3) Meet consultation visit goals
- 4) Comply with OSHA's requests for information in a timely manner

The State Plan met the inspection goal total of 25 inspections. A total of 30 inspections were conducted in FY 2021. VIDOSH made progress to address the outstanding abatement for inspections issued prior to FY 2021 and closed 18 files during FY 21. However, five inspections conducted in FY 21 still had overdue abatement. Only nine case files from FY 2021 were closed by September 30, 2021. No consultation visits were conducted. The State Plan has responded to all requests for State Plan Applications, but the responses were late. The VIDOSH public webpage has been updated but still requires additional work. In 11 of the 12 months of the year, VIDOSH failed to respond to OSHA within the deadlines established.

Since VIDOSH met only one of the four mandatory grant activities in FY 2021, the high-risk designation was continued in FY 2022. In FY 2022, a fifth mandatory grant activity (lapse time) was added.

Lapsing Federal Funds

Because VIDOSH failed to meet all but one mandatory activity in FY 2021, the program lapsed \$11,767 in federal funding under Section 23(g) of the Occupational Safety and Health Act (OSH Act). VIDOSH failed to deobligate funds in a timely manner, in anticipation of not being able to complete all mandated activities, and as a result, federal funds allocated for VIDOSH were returned to the United States Treasury. When this occurs, this federal funding is not accessible to OSHA or any other State Plans to support worker safety and health. Lapsing funds is highly problematic as it sends an incorrect message to Congress that State Plans do not need all the appropriated federal funding. This message likely has a negative impact on State Plans and worker protection as Congress may be less inclined to provide increases to overall State Plan funding in the future.

Lapsing federal funds has become a consistent trend for VIDOSH over the last seven years and shows the program administration's inability to manage funding received. The State Plan lapsed funds from FY 2015 through FY 2020. VIDOSH program administration lapsed federal funding five of the last six FYs.

In FY 2015, VIDOSH lapsed \$7,071; \$5,605 in FY 2017; \$76,517 in FY 2018 and \$19,787 in FY 2020 and \$11,767 in FY 2021– totaling \$120,747 in federal funds or almost \$121,000.

As a result of lapsing of these funds in FY 2021, VIDOSH is subject to the new federal lapsing funds policy which was effective on August 8, 2019. Under this policy, State Plans who lapse or deobligate funds for three consecutive years will have a percentage of their base federal award reduced in Year Four. OSHA issued formal notice to VIDOL on April 18, 2022, warning that if VIDOSH lapses or deobligates additional funds for the FY 2022 State Plan Grant Award, OSHA will permanently reduce VIDOSH's base award by the smaller of the amounts lapsed and/or deobligated during the three-year period.

Insufficient Staffing

VIDOSH conducted no consultation visits in FY 21 because the consultant resigned in September 2020. A new consultant was hired in February 2022. This consultant needs to attend the OTI 1500 course, the Introduction to On-site Consultation Programs, prior to conducting consultation visits. VIDOSH's consultation program, lacking a consultant throughout all of FY 2021, was non-operational throughout FY 2021 and will not be operational until at least after the new consultant attends mandatory training in July 2022.

There are two vacant safety CSHO positions that have remained unfilled since January 2019. VIDOSH is operating with a director, assistant director (stationed in St. Thomas), a new health CSHO (stationed in St. Croix), and two administrative support staff. There are two vacant safety enforcement positions and a vacant consultant position. The consultant position has been vacant since September 2020.

III. Assessment of State Plan Progress and Performance

A. Data and Methodology

OSHA established a two-year cycle for the FAME process. FY 2021 is a comprehensive year and as such, OSHA was required to conduct an on-site evaluation and case file review. The Region II State Plan Program Manager conducted the comprehensive case file review. VIDOSH conducted 30 enforcement inspections in FY 2021 and only nine (30%) of these 30 case files were closed and available for OSHA to review. OSHA requested that VIDOSH send the nine case files to the Regional State Plan Program Manager for review. The case files were reviewed on December 20, 2021. Case files were selected from closed inspections conducted during the evaluation period (October 1, 2020, through September 30, 2021) and are broken down as follows:

- Eight health enforcement files
- One safety enforcement file
- Zero consultation files
- Zero whistleblower files

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

- State Activity Mandated Measures Report (SAMM)
- State Information Report (SIR)

- Mandated Activities Report for Consultation (MARC)
- State OSHA Annual Report (SOAR)
- State Plan Annual Performance Plan (APP)
- State Plan Grant Application
- Quarterly monitoring meetings between OSHA and the State Plan
- Limited (*or full*) case file review

Each SAMM Report has an agreed-upon Further Review Level (FRL) which can be either a single number or a range of numbers above and below the national average. State Plan SAMM data that falls outside the FRL triggers a closer look at the underlying performance of the mandatory activity. Appendix D presents the State Plan’s FY 2021 SAMM Report and includes the FRL for each measure.

B. Review of State Plan Performance

1. PROGRAM ADMINISTRATION

a) Training

VIDOSH staff participated in the following webinars and/or training sessions:

- Monthly IT State Enforcement Teleconference
- Monthly IT State Consultation Teleconference
- OTI Initial Compliance Course 1001
- OSHA’s COVID National Emphasis Program webinar
- OTI Investigative Interviewing Techniques Course 1311
- OTI Introduction to Health Standards for Industrial Hygienists Course 1251
- OSHA Summer 2021 Healthcare Symposium

b) OSHA Information System (OIS)

Finding FY 2021-01 (FY 2019-01, FY 2018-01): OSHA Information System (OIS)

VIDOSH conducted 30 inspections during FY 2021. Only nine of these 30 (30%) case files were closed in OIS and available for review when OSHA requested them in October 2021. Additionally, VIDOSH has three files open from prior to FY 2021 (OIS Open Inspection Report). VIDOSH did not utilize OIS system reports to ensure proper monitoring and closure of the case files.

Recommendation FY 2021-01:

VIDOSH must utilize OIS reports as a tool to effectively manage both the program and work product of its staff. This ensures proper monitoring and closure of case files in accordance with the adopted policy in the Field Operations Manual (FOM).

Observation FY 2021-OB-01 (FY 2020-OB-01, FY 2019-OB-01): Inspection Coding

Five inspections that should have been coded under the state strategic initiative were not coded in OIS. One inspection report was coded under the site-specific targeting program which was not adopted by VIDOSH.

Federal Monitoring Plan FY 2021-OB-01:

During the next FAME year, a limited number of case files will be selected randomly and reviewed to determine if these are isolated instances or if this represents a trend that requires further action.

Lapse Time

During FY 2021, VIDOSH's average lapse time for citations was calculated at 80.50 days for safety which was significantly higher than the FRL. The FRL is based on a three-year national average. The range of acceptable data not requiring further review was from 41.94 to 62.90 for safety.

The FRL average lapse time for health is +/- 20% of the three-year national average of 66.10 which equals a range of 52.88 to 79.32 days. The further review level is based on a three-year national average. VIDOSH's health lapse time was calculated at 71.33 days which was within the range of acceptable data.

Finding FY 2021-02 (FY 2020-14, FY 2019-OB-02, FY 2018-OB-07): *Safety Lapse Time*

The FRL for FY 2021 was +/- 20% of 52.42 days. The average safety lapse time (SAMM #11) for citations was calculated at 80.50 days – a significant increase from 67.86 days in FY 2019 but a decrease from 110.17 days in FY 2020 and above the FRL range of 41.94 to 62.90 days.

Recommendation FY 2021-02:

VIDOSH must utilize OIS reports as a tool to effectively manage both the program and work product of its staff. This ensures proper monitoring and closure of case files in accordance with adopted policy in the Field Operations Manual (FOM).

c) State Internal Evaluation Program (SIEP) Report

VIDOSH did not draft SIEP reports for FY 2020 and 2021.

d) Staffing

Staff recruitment and retention continues to be a challenge.

Finding FY 2021-03 (FY 2020-02, FY 2019-02): *Staffing Issues*

The grant allocates the program two safety Compliance Safety & Health Officers (CSHO), one health CSHO, and one consultant. During FY 2021, there was only one enforcement safety supervisor (St. Thomas), a newly hired health CSHO (St. Croix) and no consultant. VIDOSH has two vacant safety CSHO positions and a vacant consultant position in FY 2021.

Recommendation FY 2021-03:

VIDOSH must fill current staffing vacancies with qualified staff.

2. ENFORCEMENT

a) Complaints

Timeliness of State Plan Response

During this evaluation period, VIDOSH responded to 27 complaints with an average response time of 12.89 days from notification. This represents an increase from 10.88 days in FY 2020 (SAMM #1a). The FRL is five (5) days. There were no complaint investigations for FY 2020 or FY 2021 documented (SAMM #2a). During FY 2020 and FY 2021, VIDOSH did not receive any imminent danger complaints or referrals (SAMM #3) and did not receive any denials of entry (SAMM#4).

Observation FY 2021-OB-02: Timeliness of State Plan Response

In 2021, VIDOSH failed to respond to complaints within an average of five (5) days from receipt.

Federal Monitoring Plan FY 2021-OB-02:

The Region will continue to monitor the issue quarterly with the SAMM report.

Complaint Notification

Finding FY 2021-04 (FY 2020-03, FY 2019-03, FY 2018-02): Complaint Notification

In FY 2019, four of eight (50%) of the formal complaint case files and the one available phone/fax complaint case file lacked documentation that notification of the results of the inspection and/or the employer's response was sent to the complainant.

This finding could not be evaluated during the FY 2021 FAME because all the sources of the eight complaints that were reviewed had the source listed as anonymous.

Recommendation FY 2021-04:

VIDOSH must ensure case files include all required forms and all letters or communications related to the complaint in accordance with VIDOSH's FOM.

b) Fatalities

There were no reported fatalities in FY 2021.

c) Targeted and Programmed Inspections

VIDOSH conducted 30 inspections in FY 2021. Under the high-risk grantee addendum letter, VIDOSH was required to conduct 25 inspections. There were 25 health and 5 safety inspections conducted in FY 2021.

VIDOSH conducted five out of 30 (17%) inspections in FY 2021 in the following four state and local government agencies for enforcement interventions:

- Electric and Other Utilities
- First Responders (Fire Department and Police Department)
- Hospitals
- Bureau of Corrections

In-Compliance Inspections

The FRL for percent noncompliance for safety inspections is +/- 20% of the three-year national average of 31.65% which equals a range of 25.32% to 37.98%. VIDOSH's percent noncompliance

for safety was 33.33% which was within the FRL. The FRL for percent noncompliance for health inspections is +/- 20% of the three-year national average of 40.64% which equals a range of 32.51% to 48.77%. VIDOSH's percent noncompliance for health was 57.14 % which was above the FRL (SAMM #9).

Observation FY 2021-OB-03: *In-Compliance Health Inspections*

In FY 2021, the percent noncompliance (SAMM #9) for health inspections was 57.14% which was above the three-year national average of 40.64%.

Federal Monitoring Plan FY 2021-OB-04:

The Region will continue to monitor this issue by utilizing the quarterly SAMM reports.

During FY 2020 and FY 2021 there were no significant cases noted.

d) Citations and Penalties

None of the nine files reviewed in this FAME contained citations which made it impossible to determine if some findings from the FAME 2019 related to the issuance of citations were resolved.

Finding FY 2021-05 (FY 2020-04) *Lack of Case File Documentation*

One inspection file was received only with an Unprogrammed Activity (UPA) summary report in the file for a facility located in Seattle, Washington. For the other eight files, eight of these inspection files were received with only the OIS inspection summary report, rather than the complete inspection report, two files were missing field notes and eight had only the UPA summary report rather than the complete UPA report in the file. Three of the files were missing photos and/or supporting documentation that were requested by the State Plan from the employer during the inspection. Additionally, there was no indication in the diary sheet that this requested information was received before the file was closed and marked as an noncompliance inspection.

Additionally, in nine of nine of the files reviewed, there was no OSHA 300 logs in the files or a statement that logs were not required. CSHOs were not collecting/including nor were they documenting that the logs were reviewed for injury/illness trends.

Recommendation FY 2021-05:

VIDOSH must ensure the case files include the required documentation in accordance with VIDOSH's Field Operations Manual (FOM).

Adequate Evidence to Support Violations

Finding FY 2021-06 (FY 2020-05, FY 2019-05, FY18-OB-01): *Adequate Evidence to Support Violations*

During the 2019 FAME, the case file review revealed that seven of the 15 case files (47%) with citations lacked evidence to support the specific citations issued. For example, in four of the case files (two health and two safety) the violation worksheet (OSHA 1b) was missing, and in the other three (all safety) case files the violation worksheet was incomplete.

There were no citations in the files reviewed so this finding could not be evaluated and will continue.

Recommendation FY 2021-06:

Ensure the case files include the required documentation in accordance with VIDOSH’s Field Operations Manual (FOM).

Citations for All Apparent Violations

Finding FY 2021-07 (FY 2020-06, FY2019-06): *Citations for All Apparent Violations:*

Two of the nine files reviewed had evidence of the existence of hazards that were not issued citations. In one file, there were housekeeping, and storage hazards noted but no citations were issued. The employer was allowed to correct these hazards without having citations issued. A verbal response via phone was accepted as correction of these observed hazards.

In another file, the employer was allowed to file for a Petition for Modification of Abatement (PMA) in lieu of a citation under housekeeping for a leaking roof.

In another complaint inspection reviewed, the complainant alleged heat hazards in a kitchen due to an in-operable air conditioning system. The investigation found that the air conditioning system was not working but an evaluation of the heat hazards was not conducted. The narrative stated that no evaluation was performed because no OSHA standards were relevant to the heat hazard. The State Plan did not document consideration of the General Duty Clause to address the potential heat hazards in this kitchen.

Recommendation FY 2021-07:

Ensure that all hazards documented are cited per the FOM.

Average Number of Serious, Willful, and Repeat Citations

The FRL for the average number of violations per inspection with violations by violation type is +/- 20% of the three-year national average of 1.78 for serious/willful/repeat (S/W/R) violations which equals a range of 1.42 to 2.14. VIDOSH’s S/W/R average was 1.13 violations which was below the FRL range. The FRL for other-than-serious (OTS) violations is +/- 20% of the three-year national average of 0.83 which equals a range of 0.66 to .99 VIDOSH’s OTS average was 0.25 which was below the FRL range (SAMM #5).

Observation FY 2021-OB-04: *Average Number of Serious, Willful and Repeat Citations*

SAMM measure #5 at the end of FY 2021, revealed that VIDOSH issued an average number of violations by inspection type (SWR) of 1.13. This was below the FRL.

Federal Monitoring Plan FY 2021-OB-04:

The Region will continue to monitor this issue utilizing quarterly SAMM report quarterly.

e) Abatement

The review of case files during this audit could not evaluate if appropriate abatement periods were being provided and if accurate abatement was being received before closing the files. None of the closed files reviewed had citations issued.

Adequate Verification or Evidence of Abatement

Finding FY 2021-08 (FY 2020-07, FY 2019-07, 2018-03): Adequate Verification or Evidence of Abatement

During the FY 2019 review, VIDOSH accepted abatement responses from employers and closed the cases without adequate evidence in seven of the 15 (47%) case files reviewed. Since none of the closed files reviewed had citations issued and required abatement, this finding could not be evaluated and will continue during the next performance period.

Recommendation FY 2021-08:

VIDOSH must utilize strategies such as follow-up inspections, failure to abate (FTA) citations, and 29 CFR 1903.19 provisions to ensure that abatement of cited hazards is achieved in a timely manner and improve case file documentation of abatement.

Overdue Abatement

Finding FY 2021-09 (FY 2020-08, FY 2019-08, FY 2018-04): Overdue Abatement

OIS reports were run to show that the inspections with overdue abatement in 2019 and 2020 were closed. However, there were five inspections conducted in FY 2021 that still had overdue abatement according to the OIS Open Inspection Report that was run on January 7, 2022.

This finding will continue in FY 2021 because OIS reports showed five (5) inspections from FY 2021 with overdue abatement.

Recommendation FY 2021-09:

VIDOSH must utilize strategies such as follow-up inspections, FTA citations, and 29 CFR 1903.19 provisions to ensure that abatement of cited hazards is achieved in a timely manner.

Petition for Modification of Abatement (PMA)

Finding 2021-10 (FY 2020-09, FY 2019-09): Petition for Modification of Abatement

One of the files reviewed in the 2021 FAME contained a PMA. This PMA was granted even though it lacked the steps taken to correct the hazard during the correction period and used future tense "will" to describe interim steps. No certification of posting was provided. There was no indication in the diary sheet or in the file that VIDOSH responded to the PMA request from the employer.

This PMA issued was based on previous inspection #1448354 where a citation was issued for this same hazard alleged and documented in inspection #1508132. Correction was noted in OIS for the same hazard that a PMA was being requested under inspection #1508132. Multiple attempts to obtain a copy of inspection #1448354 were made to VIDOSH with no success.

Recommendation FY 2021-10:

VIDOSH must ensure that procedures as stated in the Field Operations Manual (FOM) Chapter VII (1903.14(a)) are followed for any PMA requested.

f) Worker and Union Involvement

Unions were documented as being present in 4 of the 9 (44%) case files reviewed. Determining full involvement in the inspection process was difficult because the participation status was not entered into OIS for two files and the field notes did not state a union representative was present

during these two virtual visits.

The other two files had participation documented in OIS but either showed participation in the opening conference and walkaround portions of these virtual inspections. There were no diary entries or field notes showing contact with the union representatives.

The percent of initial inspections with worker walk-around representation or worker interview was 73.33% for SAMM #13 measure.

Finding FY 2021-11 (FY 2020-OB-02, FY 2019-OB-04): *Worker Involvement – Inspection Process*

Documentation was lacking in 4 of the 4 (100%) case files reviewed as to why union representatives were not involved in the inspection process (opening conference, walkaround, and closing conference).

In eight of nine (88%) of the files reviewed, that other than an employer representative, there was no documentation to show that workers were interviewed.

Recommendation FY 2021-11:

Ensure employer representatives and workers are involved in the inspection process.

Worker Notification of Inspection Results

Finding FY 2021-12 (FY 2020-10, FY 2019-10, FY 2018-OB-03): *Worker Notification of Inspection Results*

In FY 2019, 17 of the 29 case files reviewed had unions. Of those 17 case files, seven (41%) case files with citations, lacked documentation that the union was provided a copy of the citation. This finding will continue in FY 2021 because none of the files reviewed that had a union representative had citations issued.

Recommendation FY 2021-12:

VIDOSH must ensure that a copy of the citation is sent to the union representative as required in Chapter V of VIDOSH's FOM.

3. REVIEW PROCEDURES

a) Informal Conferences

There was no request for informal conferences during FY 2021.

b) Formal Review of Citations

In FY 2021, VIDOSH did not have any cases that underwent the formal review process.

4. STANDARDS AND FEDERAL PROGRAM CHANGE (FPC) ADOPTION

In accordance with 29 CFR 1902, State Plans are required to adopt standards and Federal Program Changes (FPCs) within a six-month timeframe. State Plans that do not adopt identical standards and procedures must establish guidelines which are “at least as effective as” the federal rules. State

Plans also have the option to promulgate standards covering hazards not addressed by federal standards. VIDOSH's adoption of federal standards and FPCs continues to be untimely.

The State Plan did provide intention to adopt the Emergency Temporary Standard, "Occupational Exposure to COVID-19: Healthcare Emergency Temporary Standard 29 CFR 1910 Subpart U on July 9, 2021.

The tables below provide a complete list of the federal directives and standards which required action during FY 20-FY 21.

**Table A
Status of FY 2020 and 2021 Federal Standards Adoption**

Standard	Response Due Date	State Plan Response Date	Intent to Adopt	Adopt Identical	Adoption Due Date	State Plan Adoption Date
Final Rule on the Beryllium Standard for General Industry 29 CFR 1910 (7/14/2020)	9/14/2020	1/22/2021	Y	N	1/14/2021	2/27/2021
Final Rule on the Beryllium Standard for Construction and Shipyards 29 CFR 1915, 1926 (8/31/2020)	10/30/2020	1/22/2021	Y	Y	2/27/2021	2/27/2021
Occupational Exposure to COVID-19; Emergency Temporary Standard 29 CFR 1910 (6/21/2021)	7/6/2021	7/9/2021	Y	Y	7/21/2021	7/21/2021
Final Rule on the Implementation of the 2020 Annual Adjustment to Civil Penalties for Inflation 29 CFR 1903 (1/15/2020)	3/15/2020	2/28/2020	N	N/A	7/15/2020	N/A
Final Rule on the Implementation of the 2021 Annual Adjustment to Civil Penalties for Inflation (1/15/2021)	3/16/2021	1/6/2021	N	N/A	7/14/2021	N/A
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	1/14/2021	Y	Y	1/26/2021	6/30/2021
Final Rule on Cranes and Derricks in Construction: Railroad Roadway Work 29 CFR 1926 (9/15/2020)	11/14/2020	1/14/2021	Y	N	3/14/2021	3/14/2021

Table B
Status of FY 2020 and FY 2021 Federal Program Change (FPC) Adoption

FPC Directive/Subject	Response Due Date	State Plan Response Date	Intent to Adopt	Adopt Identical	Adoption Due Date	State Plan Adoption Date
<i>Adoption Required</i>						
Amputations in Manufacturing Industries NEP CPL 03-00-022 (12/10/2019)	2/10/2020	6/30/2020	N	N/A	6/10/2020	N/A
Respirable Crystalline Silica NEP CPL 03-00-023 (2/4/2020)	4/4/2020	6/30/2020	Y	Y	8/4/2020	8/3/2020
<i>Equivalency Required</i>						
Field Operations Manual CPL 02-00-164 (4/14/2020)	6/13/2020	10/14/2020	Y	N	10/14/2020	10/14/2020
Inspection Procedures for the Respirable Silica Standards CPL 02-02-080 (6/25/2020)	8/24/2020	9/22/2020	N	N/A	12/22/2020	N/A
Site-Specific Targeting (SST) CPL 02-01-062 (12/14/2020)	2/12/2021	8/24/2021	N	N/A	6/12/2021	N/A
Consultation Policies and Procedures Manual CSP 02-00-004 (3/19/2021)	5/19/2021	6/2/2021	Y	Y	9/19/2021	9/19/2021
Inspection Procedures for the COVID-19 Emergency Temporary Standard CPL DIR 2021-02 (CPL 02) (6/28/2021)	7/13/2021	8/24/2021	Y	Y	7/28/2021	10/1/2021
Compliance Directive for the Excavation Standard 29 CFR 1926, Subpart P CPL 02-00-165 (7/1/2021)	8/30/2021	8/30/2021	Y	Y	12/28/2021	1/31/2022
Revised National Emphasis Program- Coronavirus Disease2019 (COVID-19) CPL DIR 2021-03 (CPL 03) (7/7/2021)	7/22/2021	8/24/2021	Y	Y	8/7/2021	10/1/2021

FPC Directive/Subject	Response Due Date	State Plan Response Date	Intent to Adopt	Adopt Identical	Adoption Due Date	State Plan Adoption Date
<i>Adoption Encouraged</i>						
Voluntary Protection Programs Policies and Procedures Manual CSP 03-01-005 (1/30/2020)	3/30/2020	6/30/2020	N	N/A	N/A	N/A
Electronic Case File System Procedures for the Whistleblower Protection Program CPL 02-03-009 (6/18/2020)	8/18/2020	9/16/2020	Y	Y	N/A	1/29/2021
National Emphasis Program – Coronavirus Disease 2019 (COVID-19) CPL DIR 2021-01 (CPL-03) (3/12/2021)	5/12/2021	6/2/2021	Y	N	4/12/2021	7/15/2021
Communicating OSHA Fatality Inspection Procedures to a Victim’s Family CPL 02-00-166 (7/7/2021)	9/7/2021	8/24/2021	Y	Y	N/A	10/1/2021

Federal Program Changes

Finding FY 2021-13 (FY 2020-11, FY 2019-11): *Federal Program Changes*

VIDOSH’s adoption of federal standards and FPCs is not timely. There are 20 changes identified in the table above that required a response. A late response was received for 16 of the 20 (80%) of the federal program changes.

Recommendation FY 2021-13:

VIDOSH needs to respond to all standards and FPCs within the established timeframe. VIDOSH needs to maintain their account on the OSHA IT Support System so that they can update the SPA timely.

5. VARIANCES

There was no request for variances received or processed during FY 2020 and FY 2021.

6. STATE AND LOCAL GOVERNMENT WORKER PROGRAM

One hundred percent (100%) of all inspections conducted by VIDOSH occurred in SLG workplaces during FY 2020 and FY 2021 (SAMM #6). VIDOSH does not contain provisions for

the issuance of monetary penalties for SLG employers found not to be in-compliance with applicable standards on a first instance basis, except in cases of FTA violations.

7. WHISTLEBLOWER PROGRAM

VIDOSH has jurisdiction on discrimination cases arising from SLG workers in the Virgin Islands. According to VIDOSH, no discrimination cases were received or processed during FY 2020 and FY 2021.

8. COMPLAINT ABOUT STATE PROGRAM ADMINISTRATION (CASPA)

OSHA has not received any CASPAs during FY 2020 and FY 2021.

9. VOLUNTARY COMPLIANCE PROGRAM

VIDOSH does not administer a Voluntary Compliance Program.

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

VIDOSH had no consultants employed in the program in FY 2021. Therefore, no consultation visits were conducted. Since there were no consultation files to review, the progress in correcting the findings from the FY 2019 FAME could not be evaluated and remain as findings in FY 2021.

Consultation Case File Documentation/Procedures

Adequate documentation was lacking in the consultation case files reviewed during the FY 2019 FAME review. Specifically:

- All eight (100%) case files reviewed lacked evidence in the file that the supervisor had reviewed the file.
- One of one (100%) case files with a union failed to include evidence in the file that a union representative was contacted and given the opportunity to participate.
- Three of the four (75%) initial case files that required a Form 33 to be completed had incorrectly scored attitudes based on the comments included.
- All the initial case files with extension requests were incorrectly processed. The extension requests received from the employers were either missing the required elements and/or the program failed to respond to the request in writing. In the three case files provided for review, there was no evidence that an updated "List of Hazards" with new correction dates was forwarded to the employer.
- All four (100%) initial case files did not have evidence that the consultant reviewed the employer's current and previous three years' Form 300 logs to calculate the employer's rates and compare them to the national average for the employer's North American Industry Classification System (NAICS).

- Three of the four (75%) initial case files contained evidence in the field notes or Form 33 comments that hazards were present, but hazard notices were not issued. The files contained no reasoning as to why the notices were not issued.
- Three of four (75%) initial case files specified correction dates that were excessive for the hazards noted in the files.
- Two of four follow-up case files (50%) were missing evidence in the file that a follow-up letter was sent to the employer after the visit.
- The one (100%) initial case file available for review lacked evidence that the union was provided with a copy of the “List of Hazards.”
- Six out of eight (75%) case files showed evidence that the consultant did not confer with a reasonable number of workers during the visits.

Finding 21-14 (FY 2020-12, FY 2019-12, FY 2018-05): *Consultation Case File Documentation*
Adequate documentation was lacking in the consultation case files reviewed during the FY 2019 FAME review.

Recommendation FY 2021-14:

VIDOSH should ensure that the consultant follows procedures and completes case files in accordance with CSP 02-00-003.

Corrections of Serious Hazards

Finding 2021-15 (FY 2020-13, FY 2019-13): *Corrections of Serious Hazards*

Case files reviewed showed deficiencies in obtaining adequate correction of serious hazards. Specifically:

- Failure to conduct follow-up visits in a timely manner. Four of the four (100%) follow-up case files reviewed with consultation visits in 2019 were in response to uncorrected hazard notices issued in 2017.
- Failure to obtain timely correction. Two of the four (50%) initial case files had outstanding correction that was more than 90 days past due and remained open. There was no evidence that a follow-up visit had been scheduled or conducted.
- Closing files without adequate correction. Three of six (50%) case files were closed without adequate correction for all serious hazards received from either the employer or documented as corrected during follow-up visits.

Recommendation FY 2021-15:

VIDOSH should ensure that the consultant follows procedures and completes case files in accordance with CSP 02-00-004.

11. PRIVATE SECTOR 23(g) ON-SITE CONSULTATION PROGRAM

VIDOSH does not operate a private sector on-site consultation program.

Appendix A – New and Continued Findings and Recommendations

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FY 2021-#	Finding	Recommendation	FY 2020-# or FY 2020-OB-#
FY 2021-01	<p><i>OSHA Information System (OIS)</i> VIDOSH conducted 30 inspections during FY 2021. Only nine of the 30 (30%) case files were closed in OIS and available for review when requested in October 2021. VIDOSH did not utilize OIS system reports to ensure proper monitoring and closure of case files.</p>	VIDOSH must utilize OIS reports as a tool to effectively manage both the program and work product of its staff. This ensures proper monitoring and closure of case files in accordance with adopted policy in the Field Operations Manual (FOM).	FY 2020-01 FY 2019-01
FY 2021-02	<p><i>Safety Lapse Time</i> The FRL for FY 2021 was +/- 20% of 52.42 days. The average safety lapse time (SAMM #11) for citations was calculated at 80.50 days – a significant increase from 67.86 days in FY 2019 but a decrease from 110.17 days in FY 2020 and above the FRL range of 41.94 to 62.90 days.</p>	VIDOSH must utilize OIS reports as a tool to effectively manage both the program and work product of its staff. This ensures proper monitoring and closure of case files in accordance with adopted policy in the Field Operations Manual (FOM).	FY 2020-14 FY 2019-OB-02 FY 2018-OB-07
FY 2021-03	<p><i>Staffing Issues</i> The grant allocates the program two safety Compliance Safety & Health Officers (CSHO), one health CSHO, and one consultant. In FY 2021, there was one enforcement safety supervisor (St. Thomas), a newly hired health CSHO (St. Croix) and no consultant. VIDOSH has two vacant safety CSHO positions, a new health CSHO, and no consultant resulting in a non-operational consultation program.</p>	VIDOSH must fill current staffing vacancies with qualified staff.	FY 2020-02 FY 2019-02
FY 2021-04	<p><i>Complaint Notification</i> In FY 2019, four of eight (50%) formal complaint case files and the one available phone/fax complaint case file lacked documentation that notification of the results of the inspection and/or the employer's response was sent to the complainant. This finding could not be evaluated during the FY 21 FAME because all sources of the eight complaints that were reviewed had the source listed as anonymous.</p>	VIDOSH must ensure case files include all required forms and all letters or communications related to the complaint in accordance with VIDOSH's FOM.	FY 2020-03 FY 2019-03 FY 2018-02

Appendix A – New and Continued Findings and Recommendations

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FY 2021-#	Finding	Recommendation	FY 2020-# or FY 2020-OB-#
FY 2021-05	<p><i>Lack of Case File Documentation</i> One inspection file was received only with an Unprogrammed Activity (UPA) summary report in the file for a facility located in Seattle, Washington. For the other eight files, eight of these inspection files were received with only the OIS inspection summary report, rather than the complete inspection report, two files were missing field notes and eight had only the UPA summary report rather than the complete UPA report in the file. Three of the files were missing photos and/or supporting documentation that were requested by the State Plan from the employer during the inspection. Additionally, there was no indication in the diary sheet that this requested information was received before the file was closed and marked as an incompliance inspection.</p> <p>Also, in nine of nine of the files reviewed, there was no OSHA 300 logs in the files or a statement that logs were not required. CSHOs were not collecting/including nor were they documenting that the logs were reviewed for injury/illness trends.</p>	VIDOSH must ensure case files include required documentation in accordance with VIDOSH’s Field Operations Manual (FOM).	FY 2020-04 FY 2019-04
FY 2021-06	<p><i>Adequate Evidence to Support Violations</i> During the 2019 FAME, the case file review revealed that seven of the 15 case files (47%) with citations lacked evidence to support the specific citations issued. For example, in four of the case files (two health and two safety) the violation worksheet (OSHA 1b) was missing, and in the other three (all safety) case files the violation worksheet was incomplete. There were no citations in the files reviewed so this finding could not be evaluated and will continue.</p>	VIDOSH must ensure case files include the required documentation in accordance with VIDOSH’s Field Operations Manual (FOM).	FY 2020-05 FY 2019-05 FY 2018-OB-01

Appendix A – New and Continued Findings and Recommendations

FY 2021 Virgin Islands State Plan Comprehensive FAME Report

FY 2021-#	Finding	Recommendation	FY 2020-# or FY 2020-OB-#
FY 2021-07	<p><i>Citations for All Apparent Violations:</i> Two of the nine files reviewed had evidence of hazards that were not issued citations. In one file, there were housekeeping and storage hazards noted but no citations were issued. The employer was allowed to correct the hazards. A verbal response via phone was accepted as corrected.</p>	Ensure that all hazards documented are cited per the FOM.	FY 2020-06 FY 2019-06
FY 2021-08	<p><i>Adequate Verification or Evidence of Abatement</i> During the FY 2019 review, VIDOSH accepted abatement responses from employers and closed the cases without adequate evidence in seven of the 15 (47%) case files reviewed. Since none of the closed files reviewed had citations issued and required abatement, this finding could not be evaluated and will continue.</p>	VIDOSH must utilize strategies such as follow-up inspections, FTA citations, and 29 CFR 1903.19 provisions to ensure that abatement of cited hazards is achieved in a timely manner and improve case file documentation of abatement.	FY 2020-07 FY 2019-07 FY 2018-03
FY 2021-09	<p><i>Overdue Abatement</i> OIS reports were run to show that the inspections with overdue abatement in 2019 and 2020 were closed. However, there were five inspections conducted in FY 2021 that had overdue abatement according to the OIS Open Inspection Report that was run on January 7, 2022.</p> <p>This finding will continue in FY 2021 because OIS reports showed five inspections from FY 2021 with overdue abatement.</p>		
FY 2021-10	<p><i>Petition for Modification of Abatement</i> One of the files reviewed in the 2021 FAME contained a PMA. This PMA was granted even though it lacked the steps taken to correct the hazard</p>	VIDOSH must ensure that procedures as stated in the Field Operations Manual (FOM) Chapter VII (1903.14(a)) are followed for any PMA requested.	FY 2020-09 FY 2019-09

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FY 2021-#	Finding	Recommendation	FY 2020-# or FY 2020-OB-#
	<p>during the correction period and used future tense "will" to describe interim steps. No certification of posting was provided. There was no indication in the diary sheet or in the file that VIDOSH responded to the PMA request from the employer.</p> <p>This PMA issued was based on previous inspection #1448354 where a citation was issued for this same hazard alleged and documented in inspection #1508132. Correction was noted in OIS for the same hazard that a PMA was being requested under inspection #1508132. Multiple attempts to obtain a copy of inspection #1448354 were made to VIDOSH with no success.</p>		
FY 2021-11	<p><i>Worker Involvement – Inspection Process</i> Documentation was lacking in 4 of the 4 (100%) case files reviewed as to why union representatives were not involved in the inspection process (opening conference, walkaround, and closing conference).</p> <p>In eight of nine (88%) of the files reviewed, that other than an employer representative, there was no documentation to show that workers were interviewed.</p>	Ensure employer representatives and workers are involved in the inspection process.	FY 2020-OB-02 FY 2019-OB-04
FY 2021-12	<p><i>Worker Notification of Inspection Results</i> In FY 2019, 17 of the 29 case files reviewed had unions. Of those 17 case files, seven (41%) case files with citations, lacked documentation that the union was provided a copy of the citation. This finding will continue in FY 2021 because none of the files reviewed that had a union representative had citations issued.</p>	VIDOSH must ensure that a copy of the citation is sent to the union representative as required in Chapter V of VIDOSH's FOM.	FY 2020-10 FY 2019-10 FY 2018-OB-03

Appendix A – New and Continued Findings and Recommendations

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FY 2021-#	Finding	Recommendation	FY 2020-# or FY 2020-OB-#
FY 2021-13	<p><i>Federal Program Changes</i> VIDOSH’s adoption of federal standards and FPCs is not timely. There are 20 changes identified in the table above that required a response. A late response was received for 16 of the 20 (80%) of the federal program changes.</p>	VIDOSH needs to respond to all standards and FPCs within the established timeframe. VIDOSH needs to maintain their account on the OSHA IT Support System so that they can update the SPA timely.	FY 2020-11 FY 2019-11
FY 2021-14	<p>Consultation Case File Documentation Adequate documentation was lacking in the consultation case files reviewed during the FY 2019 FAME review.</p>	VIDOSH should ensure that the consultant follows procedures and completes case files in accordance with CSP 02-00-004.	FY 2020-12 FY 2019-12 FY 2018-05
FY 2021-15	<p><i>Correction of Serious Hazards</i> Case files reviewed showed deficiencies in obtaining adequate correction of serious hazards. Specifically:</p> <ul style="list-style-type: none"> • Failure to conduct follow-up visits in a timely manner. Four of the four (100%) follow-up case files reviewed with consultation visits in 2019 were in response to uncorrected hazard notices issued in 2017. • Failure to obtain timely correction. Two of the four (50%) initial case files had outstanding correction that was more than 90 days past due and remained open. There was no evidence that a follow-up visit had been scheduled or conducted. • Closing files without adequate correction. Three of six (50%) case files were closed without adequate correction for all serious hazards received from either the employer or documented as corrected during follow-up visits. 	VIDOSH should ensure that the consultant follows procedures and completes case files in accordance with CSP 02-00-003.	FY 2020-13 FY 2019-13

Appendix B – Observations Subject to New and Continued Monitoring

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Observation # FY 2021-OB-#	Observation# FY 2020-OB-#	Observation	Federal Monitoring Plan	Current Status
FY 2021-OB-01	FY 2020-OB-01	<i>Inspection Coding</i> Five inspections that should have been coded under the state strategic initiative were not coded in OIS. One inspection report was coded under the site-specific targeting program which was not adopted by VIDOSH.	During the next FAME year, a limited number of case files will be selected randomly and reviewed to determine if these are isolated instances or if this represents a trend that requires further action.	Continued
FY 2021-OB-02		<i>Timeliness of State Plan Response</i> In 2021, VIDOSH failed to respond to complaints within an average of five days from receipt.	The Region will continue to monitor this issue with the SAMM report quarterly.	New
FY 2021-OB-03		<i>Incompliance Health Inspections</i> In FY 2021, the percent incompliance (SAMM #9) for health inspections was 57.14% which was above the three-year national average of 40.64%.	The Region will continue to monitor this issue with the SAMM report quarterly.	New
FY 2021-OB-04		<i>Average Number of Serious, Willful and Repeat Citations</i> SAMM measure #5 at the end of FY 2021 revealed that VIDOSH issued an average number of violations by inspection type (SWR) of 1.13. This is below the FRL.	The Region will continue to monitor this issue with the SAMM report quarterly.	New
	FY 2020-OB-03	<i>Incompliance Safety Inspections</i> In FY 2020, the percent incompliance (SAMM 9) for safety inspections was 83.33% which was above the three-year national average of 31.03%.		Closed

Appendix C – Status of FY 2020 Findings and Recommendations

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FY 2020-#	Finding	Recommendation	State Plan Corrective Action	Completion Date (if Applicable)	Current Status (and Date if Item is Not Completed)
FY 2020-01	<p><i>OSHA Information System (OIS)</i> VIDOSH conducted 63 inspections during FY 2019. Twenty-nine (29) of the 63 (46%) case files were closed in OIS and available for review. VIDOSH did not utilize OIS system reports to ensure proper monitoring and closure of case files.</p>	<p>VIDOSH must utilize OIS reports as a tool to effectively manage both the program and work product of its staff. This ensures proper monitoring and closure of case files in accordance with adopted policy in the Field Operations Manual (FOM).</p>	<p>The VIDOSH director will generate OIS reports on a weekly basis to monitor and close case files in a timely manner.</p>		Continued
FY 2020-02	<p><i>Staffing</i> VIDOSH staffing level is allocated for eight employees. For most of FY 2020, VIDOSH had two enforcement staff, one consultant, two administrative and one manager onboard (six total). However, VIDOSH lost one industrial hygiene (IH) Compliance Safety and Health Officer (CSHO) (January 2020) and one consultant (September 2020) leaving four staff onboard at the end of FY 2020.</p>	<p>VIDOSH must fill current staffing vacancies with qualified staff.</p>	<p>VIDOSH hired a health compliance officer who will be onboard by September 28, 2020. VIDOSH will fill the other vacant positions, including the consultant vacancy.</p>		Continued

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FY 2020-03	<p><i>Complaint Notification</i> In FY 2019, four of eight (50%) formal complaint case files and the one available phone/fax complaint case file lacked documentation that notification of the results of the inspection and/or the employer's response was sent to the complainant.</p>	<p>VIDOSH must ensure case files include all required forms and all letters or communications related to the complaint in accordance with VIDOSH's FOM.</p>	<p>The VIDOSH director will ensure that all required communications relating to a complaint are documented in the case file. VIDOSH staff will receive refresher training on requirements following an inspection.</p>		Continued
FY 2020-04	<p><i>Lack of Case File Documentation</i> During the FY 2019 case file review, 15 of 29 (52%) enforcement files (12 safety and three health) lacked narratives, five files (four safety and one health) were missing the inspection report (OSHA 1/1A), two safety case files lacked field notes, and three (two health and one safety) files lacked documentation that the supervisor reviewed and/or closed the case.</p>	<p>VIDOSH must ensure the case files include required documentation in accordance with VIDOSH's Field Operations Manual (FOM).</p>	<p>The VIDOSH director is responsible for ensuring that all required case file documentation is complete. VIDOSH staff will receive refresher training on case file documentation.</p>		Continued
FY 2020-05	<p><i>Adequate evidence to support violations</i> The FY 2019 case file review revealed that seven of the 15 case files (47%) with citations lacked evidence to support the specific citations issued. For example, in four of the case files (two health and two</p>	<p>VIDOSH must ensure the case files include required documentation in accordance with VIDOSH's Field Operations Manual (FOM).</p>	<p>The VIDOSH director is responsible for ensuring that all required documentation to support violations is in the case files. VIDOSH staff will receive refresher training regarding case file documentation such as evidence to support</p>		Continued

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	safety) the violation worksheet (OSHA 1b) was missing, and in the other three (all safety) case files the violation worksheet was incomplete		violations.		
FY 2020-06	<i>Citations for All Apparent Violations</i> In 15 of the 29 (52%) FY 2019 enforcement case files reviewed, citations were not issued to the employer for failing to keep OSHA 300 logs. CSHOs were not collecting/including nor were they documenting that the logs were reviewed for injury/illness trends.	VIDOSH must ensure the case files include copies of the previous three years of OSHA 300 logs in the case files in accordance with VIDOSH’s Field Operations Manual (FOM). This data is required for calculating the Days Away, Restricted, or Transferred (DART) rate.	The VIDOSH director will ensure that OSHA 300 logs are maintained in the case file, or a citation will be issued. VIDOSH staff will receive refresher FOM training.		Continued
FY 2020-07	<i>Adequate Verification or Evidence of Abatement</i> In FY 2019, VIDOSH accepted abatement responses from employers and closed the cases without adequate evidence in seven of the 15 (47%) case files reviewed.	VIDOSH must utilize strategies such as follow-up inspections, FTA citations, and 29 CFR 1903.19 provisions to ensure that abatement of cited hazards is achieved in a timely manner and improve case file documentation of abatement.	The VIDOSH director will generate and distribute OIS reports to staff on a weekly basis, while monitoring the work and ensuring adequate verification/evidence of abatement is obtained from the employer. Follow-up inspections will be conducted, and FTAs will be issued when abatement is not received.		Continued
FY 2020-08	<i>Overdue Abatement</i> Eighteen (18) of the 42 (43%) inspections with citations issued in FY 2019 have open abatement of cited hazards. Not protecting workers from	VIDOSH must utilize strategies such as follow-up inspections, FTA citations, and 29 CFR 1903.19 provisions to ensure that abatement of	The VIDOSH director will generate and distribute OIS reports to staff on a weekly basis, while monitoring the work and ensuring adequate verification/evidence of		Continued

Appendix C – Status of FY 2020 Findings and Recommendations

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	<p>identified hazards by verifying abatement has been an on-going, consistent trend displayed by VIDOSH for years.</p>	<p>cited hazards is achieved in a timely manner.</p>	<p>abatement is obtained from the employer. Follow-up inspections will be conducted, and FTAs will be issued when abatement is not received. The Labor Commissioner will be informed of FTA violators who will channel the information to the Office of the Governor for further action.</p>		
<p>FY 2020-09</p>	<p><i>Petition for Modification of Abatement (PMA)</i> Late PMAs were accepted in three of the seven (43%) PMA case files reviewed in FY 2019. Also noted, PMAs were being granted when one or more of the required interim steps were not addressed in five of the seven (71%) PMA case files reviewed. Examples of the missing interim steps are:</p> <ul style="list-style-type: none"> • Steps taken by the employer, and the dates of such action, to achieve compliance. • The specific amount of additional time needed to achieve abatement. • The reasons additional time is necessary. 	<p>VIDOSH must ensure that procedures as stated in the Field Operations Manual (FOM) Chapter VII (1903.14(a)) are followed for any PMA requested.</p>	<p>The VIDOSH director will review the PMA process (per the FOM requirements) with staff. PMAs will be approved after all required interim steps have been met.</p>		<p>Continued</p>

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	<ul style="list-style-type: none"> • The interim steps being taken to safeguard workers exposed to the hazards during the abatement period. • Certification that a copy of the petition has been posted at the worksite and/or served on the authorized representative. 				
FY 2020-10	<p><i>Worker Notification of Inspection Results</i> In FY 2019, 17 of the 29 case files reviewed had unions. Of those 17 case files, seven (41%) case files with citations, lacked documentation that the union was provided a copy of the citation.</p>	VIDOSH must ensure that a copy of the citation is sent to the union representative as required in Chapter V of VIDOSH’s FOM.	The VIDOSH director is responsible for ensuring that a copy of the citation and notification of the inspection results are provided to union representatives and documented in the case file. VIDOSH staff will receive refresher training on communication with union representatives.		Continued
FY 2020-11	<p><i>Federal Program Changes (FPCs)</i> VIDOSH’s adoption of federal standards and FPCs is not timely. During FY 2020, six FPCs required a response as to whether VIDOSH would adopt. A late response was received in all six (100%) of the FPCs.</p>	VIDOSH must respond to all standards and FPCs within the established timeframe.	The VIDOSH director will utilize the State Plan Application (SPA) by entering information on all federal standards and FPCs within the established timeframe. VIDOSH will develop a public webpage that reflects up-to-date federal standards’ and FPC information and ensure it is maintained on a consistent basis.		Continued

Appendix C – Status of FY 2020 Findings and Recommendations

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<p>FY 2020-12</p>	<p><i>Consultation Case File Documentation</i></p> <p>The documentation/procedures in the consultation case files reviewed in FY 2019 were deficient. Specifically:</p> <ul style="list-style-type: none"> • All eight (100%) case files reviewed lacked evidence in the file that the supervisor had /reviewed the file. • One of one (100%) case files with a union failed to include evidence in the file that a union representative was contacted and given the opportunity to participate. • Three of the four (75%) initial case files that required a Form 33 to be completed had incorrectly scored attitudes based on the comments included. • All the initial case files with extension requests were incorrectly processed. The extension requests received from the employers were either missing the required elements and/or the program failed to respond to the request in writing. 	<p>VIDOSH must ensure that the consultant follows procedures and completes case files in accordance with CSP 02-00-003.</p>	<p>The consultant vacancy will be filled, and the new consultant will receive training to ensure that documentation in the case files is in accordance with CSP 02-00-003. The VIDOSH director will ensure procedures are being followed and case files are completed in accordance with CSP 02-00-003.</p>		<p>Continued</p>
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	<p>In the three case files provided for review, there was no evidence that an updated “List of Hazards” with new correction dates was forwarded to the employer.</p> <ul style="list-style-type: none">• All four (100%) initial case files did not have evidence that the consultant reviewed the employer’s current and previous three years’ Form 300 logs to calculate the employer’s rates and compare them to the national average for the employer’s North American Industry Classification System (NAICS).• Three of the four (75%) initial case files contained evidence in the field notes or Form 33 comments that hazards were present but hazard notices were not issued. The files contained no reasoning as to why the notices were not issued.• Three of four (75%) initial case files specified correction dates that were				
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	<p>excessive for the hazards noted in the files.</p> <ul style="list-style-type: none"> • Two of four follow-up case files (50%) were missing evidence in the file that a follow-up letter was sent to the employer after the visit. • The one (100%) initial case file available for review lacked evidence that the union was provided with a copy of the “List of Hazards.” • Six out of eight (75%) case files showed evidence that the consultant did not confer with a reasonable number of workers during the visits. 				
FY 2020-13	<p><i>Corrections of Serious Hazards</i></p> <p>Case files reviewed showed deficiencies in obtaining adequate correction of serious hazards. Specifically:</p> <ul style="list-style-type: none"> • Failure to conduct follow-up visits in a timely manner. Four of the four (100%) follow-up case files reviewed with consultation visits in 2019 were in response 	<p>VIDOSH must ensure that the consultant follows procedures and completes case files in accordance with CSP 02-00-003.</p>	<p>The new consultant will receive training to ensure that adequate correction of serious hazards is obtained in accordance with CSP 02-00-003. During case file review, the VIDOSH director will ensure procedures are adhered to and case files are completed in accordance with CSP 02-00-003.</p>		Continued

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	<p>to uncorrected hazard notices issued in 2017.</p> <ul style="list-style-type: none"> • Failure to obtain timely correction. Two of the four (50%) initial case files had outstanding correction that was more than 90 days past due and remained open. There was no evidence that a follow-up visit had been scheduled or conducted. • Closing files without adequate correction. Three of six (50%) case files were closed without adequate correction for all serious hazards received from either the employer or documented as corrected during follow-up visits. 				
FY 2020-14	<p><i>Safety Lapse Time</i> In FY 2020, the average safety lapse time (SAMM #11) for citations was calculated at 110.17 days a significant increase from 67.86 days in FY 2019, 40.91 days in FY 2018 and substantially higher than the FRL range of 40.46 to 60.70 days.</p>	<p>VIDOSH must utilize OIS reports as a tool to effectively manage both the program and work product of its staff. This ensures proper monitoring and closure of case files in accordance with adopted policy in the Field Operations Manual (FOM).</p>			Continued

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FY 2020-15	<p><i>Health Lapse Time</i> In FY 2020, the average health lapse time (SAMM #11) for citations was calculated at 92.10 days an increase from 71.81 days in FY 2019, and significantly higher than the 37.80 days in FY 2018. The FY 2020 average of 92.10 days is above the FRL range of 48.31 to 72.47.</p>	<p>VIDOSH must utilize OIS reports as a tool to effectively manage both the program and work product of its staff. This ensures proper monitoring and closure of case files in accordance with adopted policy in the Field Operations Manual (FOM).</p>		September 30, 2021	Completed
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Appendix D - FY 2021 State Activity Mandated Measures (SAMM) Report

FY 2021 Virgin Islands State Plan Comprehensive FAME Report

U.S. Department of Labor

Occupational Safety and Health Administration State Plan Activity Mandated Measures (SAMMs)

SAMM Number	SAMM Name	State Plan Data	FY 2021 Further Review Level	FY 2021 Notes
1a	Average number of workdays to initiate complaint inspections (state formula)	12.89	5	The further review level is negotiated by OSHA and the State Plan.
1b	Average number of workdays to initiate complaint inspections (federal formula)	9.48	N/A	This measure is for informational purposes only and is not a mandated measure.
2a	Average number of workdays to initiate complaint investigations (state formula)	0	1	The further review level is negotiated by OSHA and the State Plan.
2b	Average number of workdays to initiate complaint investigations (federal formula)	0	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)	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.
4	Number of denials where entry not obtained	0	0	The further review level is fixed for all State Plans.
5a	Average number of violations per inspection with violations by violation type (SWRU)	1.13	+/-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 1.42 to 2.14 for SWRU.
5b	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 0.73 to 1.09 for OTS.

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Occupational Safety and Health Administration State Plan Activity Mandated Measures (SAMMs)

SAMM Number	SAMM Name	State Plan Data	FY 2021 Further Review Level	FY 2021 Notes
6	Percent of total inspections in state and local government workplaces	100%	100%	Since this is a State and Local Government State Plan, all inspections are in state and local government workplaces.
7a	Planned v. actual inspections – safety	5	+/- 5% of 25	The further review level is based on the number negotiated by OSHA and the State Plan through the grant application. The range of acceptable data not requiring further review is from 23.75 to 26.25 for safety.
7b	Planned v. actual inspections-health	25	+/-5% of 5	The further review level is based on the number negotiated by OSHA and the State Plan through the grant application. The range of acceptable data not requiring further review is from 4.75 to 5.25 for health.
8	Average current serious penalty in private sector - total (1 to greater than 250 workers)	N/A	+/- 25% of \$3,100.37	N/A-This is a State and Local Government State Plan. The further review level is based on a three-year national average.
	a. Average current serious penalty in private sector (1-25 workers)	N/A	+/-25% of \$2,030.66	N/A-This is a State and Local Government State Plan. The further review level is based on a three-year national average.
	b. Average current serious penalty in private sector (26-100 workers)	N/A	+/-25% of \$3,632.26	N/A-This is a State and Local Government State Plan. The further review level is based on a three-year national average.
	c. Average current serious penalty in private sector (101-250 workers)	N/A	+/-25% of \$5,320.16	N/A-This is a State and Local Government State Plan. The further review level is based on a three-year national average.

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Occupational Safety and Health Administration State Plan Activity Mandated Measures (SAMMs)

SAMM Number	SAMM Name	State Plan Data	FY 2021 Further Review Level	FY 2021 Notes
	d. Average current serious penalty in private sector (Greater than 250 workers)	N/A	+/-25% of \$6,575.70	N/A-This is a State and Local Government State Plan. The further review level is based on a three-year national average.
9a	Percent in-compliance (safety)	33.33%	+/-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 25.32% to 37.98% for safety.
9b	Percent in-compliance (health)	57.14%	+/-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 32.51% to 48.77% for health.
10	Percent of work-related fatalities responded to in one workday	N/A	100%	N/A-The State Plan did not have any work-related fatalities in FY 2021. The further review level is fixed for all State Plans.
11a	Average lapse time (safety)	80.50	+/- 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 41.94 to 62.90 for safety.
11b	Average lapse time (health)	71.33	+/-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 52.88 to 79.32 for health.
12	Percent penalty retained	N/A	+/-15% of 69.08%	N/A-This is a State and Local Government State Plan and is not held to this SAMM. The further review level is

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Occupational Safety and Health Administration State Plan Activity Mandated Measures (SAMMs)

SAMM Number	SAMM Name	State Plan Data	FY 2021 Further Review Level	FY 2021 Notes
				based on a three-year national average.
13	Percent of initial inspections with worker walk around representation or worker interview	73.33%	100%	The further review level is fixed for all State Plans.
14	Percent of 11(c) investigations completed within 90 days	0%	100%	The further review level is fixed for all State Plans.
15	Percent of 11(c) complaints that are meritorious	0%	+/- 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%.
16	Average number of calendar days to complete an 11(c) investigation	0	90	The further review level is fixed for all State Plans.
17	Percent of enforcement presence	N/A	+/- 25% of 0.99%	N/A – This is a State and Local Government State Plan and is not held to this SAMM. The further review level is based on a three-year national average.