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

**Vermont Occupational Safety and Health Administration (VOSHA)**



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## Executive Summary

The primary purpose of this report is to assess the Vermont State Plan’s (VOSHA’s) progress in Fiscal Year (FY) 2022 in resolving outstanding findings from the previous FY 2021 Comprehensive Federal Annual Monitoring Evaluation (FAME) Report.

In FY 2022, VOSHA had notable results, particularly in terms of outreach. The State Plan created an online training program that highlighted employers with exemplary safety and health programs, and this series was well-received by stakeholders. FY 2022 was also the first full year that VOSHA had a full-time compliance assistance specialist (CAS). For many years, the VOSHA Director performed many of the compliance assistance duties, but with a full-time CAS, the quality of outreaches improved, and the director had more time to manage the State Plan. Another positive note is that the new workplace retaliation investigator proved to be a quick learner and adjusted to this role rather quickly.

However, the State Plan experienced a few difficulties during the year. In response to a COVID-19 resurgence in late 2021, VOSHA postponed programmed inspections until the spring of FY 2022. As a result, only 60 percent of the inspection goal was achieved. Additionally, long periods of absence taken by two new compliance officers caused the lapse time for health to be higher than normal.

VOSHA had three observations in the FY 2021 Comprehensive FAME Report. One observation regarding VOSHA not conducting enough inspections in state government has been resolved. The other two observations, which pertain to the Voluntary Protection Program, have been continued, pending the results of the FY 2023 Comprehensive FAME. This report contains no new findings.

## State Plan 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 CAS, 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 2022, VOSHA covered approximately 292,077 workers, including 247,459 private sector workers, 15,346 state government workers, and 29,272 local government workers. There were approximately 28,434 private sector establishments, 253 state government worksites, and 730 local government worksites in the state in FY 2022.**[[1]](#footnote-2)**

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.

Based on FY 2022 financial close-out forms, VOSHA’s initial federal funding award was $855,700. The State Plan contributed a total of $899,742 which consisted of the 50 percent match of $855,700 plus an additional $44,042. Thus, VOSHA’s final FY 2022 funding amount was $1,755,442 ($855,700 in federal funds and $899,742 in state funds).

**New Issues**

None.

## Assessment of State Plan Progress and Performance

### Data and Methodology

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

* State Activity Mandated Measures (SAMM) Report
* Mandated Activities Report for Consultation
* State OSHA Annual Report
* State Plan Annual Performance Plan
* State Plan Grant Application
* Quarterly monitoring meetings between OSHA and the State Plan

### Findings and Observations

This report contains no new or continued findings or recommendations. Appendix B describes observations and related federal monitoring plans; this appendix lists one closed observation and two continued 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 two continued observations.

#### Observations

**Closed FY 2021 Observation**

**Observation FY 2021-OB-01: (formerly Observations FY 2020-OB-03 and FY 2019-OB-04)**: In FY 2021, VOSHA conducted only three inspections in state government, two of which were programmed.

**Status**: The State Plan did not conduct any inspections at the state level in FY 2022. However, no complaints were received from state workers during the fiscal year, so no complaint inspections were conducted. In terms of programmed inspections, VOSHA randomly selects sites from three state agencies that tend to have the most hazardous working conditions. State agencies that have had a programmed inspection in the last five years are exempt from programmed inspections. VOSHA was prepared to conduct programmed inspections in state government in FY 2022 but determined that there were no employers on the targeting list that had gone beyond five years without an inspection. Due to these circumstances, this observation is closed.

**Continued FY 2021 Observations**

**Observation FY 2022-OB-01 (formerly Observation FY 2021-OB-02)**: In FY 2021, there were errors in the calculations of the days away/restricted or transfer (DART) rates and total case incident rates (TCIRs) for two (29 percent) of seven GMVPP sites’ annual participant submissions.

**Status**: A case file review is necessary to gather the facts needed to evaluate performance in relation to this observation. This observation will be a focus of next year’s on-site case file review during the FY 2023 Comprehensive FAME. This observation will be continued.

**Observation FY 2022-OB-02 (formerly 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.

**Status**: A case file review is necessary to gather the facts needed to evaluate performance in relation to this observation. This observation will be a focus of next year’s on-site case file review during the FY 2023 Comprehensive FAME.This observation will be continued.

### State Activity Mandated Measures (SAMM) Highlights

Each SAMM 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 2022 SAMM Report and includes the FRL for each measure.

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

The State Plan was outside the FRL on the following SAMMs:

**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 2022 average was 3.79 work days. This was a positive result.

**Explanation:** VOSHA met the FRL in FY 2022.

**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 2022 average of 1.88 was within the FRL range of 1.42 to 2.12 for serious, willful, repeat, or unclassified (SWRU) violations. For other-than-serious (OTS) violations, the State Plan’s average of 0.38 was outside (below) the FRL range of 0.72 to 1.08.

**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.

**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 2022, the FRL range was from 7.76 percent to 8.57 percent. VOSHA’s result of 9.93 percent was outside (above) the FRL range. This was an acceptable result.

**Explanation:** VOSHA’s percentage of 9.93 was acceptable even though the State Plan conducted only 15 of 20 inspections projected in state and local government. This is because VOSHA’s final total of inspections conducted in FY 2022 (151) was also lower than the initial projection of 245.

**SAMM 7a - Planned v. actual inspections – (safety)**

**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 2022, VOSHA planned to conduct 207 safety inspections. VOSHA’s total of 112 was outside (below) the FRL range of 196.65 to 217.35 safety inspections. This was not a positive result.

**Explanation:** VOSHA suspended most programmed inspections until the spring of 2022 because of a resurgence of COVID-19 in late 2021, and as stated earlier, two new CSHOs took long leaves of absence during the fiscal year. OSHA is not overly concerned with VOSHA's performance on SAMM 7a due to inspection activity returning to normal in the second half of the fiscal year as the pandemic's grip eased. Also, having two CSHOs on extended leave was a temporary situation.

**SAMM 9 – Percent in compliance**

**Discussion of State Plan Data and FRL:** The FRL is based on a three-year national average. In FY 2022, the FRL range was from 25.80 percent to 38.70 percent for safety inspections and from 35.54 percent to 53.30 percent for health inspections. VOSHA’s in-compliance rate of 21.59 percent for safety inspections was outside (below) the FRL range, and its in-compliance rate of 10 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 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 2022, VOSHA’s result was 50 percent.

**Explanation:** VOSHA had two work-related fatalities in FY 2022 but responded to only one within one work day. VOSHA was not certain of its jurisdiction in one of the fatality cases and needed time to make this determination. OSHA was aware of this situation and conferred with the State Plan on this matter. Therefore, VOSHA’s result for SAMM 10 is not cause for concern.

**SAMM 11b – Average lapse time (health)**

**Discussion of State Plan Data and FRL**: The FRL is based on a three-year national average. The FRL range was from 55.22 to 82.84 work days. In FY 2022, VOSHA’s average lapse time of 96.12 work days for health inspections was outside (above) the FRL. This was not a positive result.

**Explanation**: Lapse time is the number of work days from the opening conference date to the earliest issuance date. In FY 2022, four of VOSHA's seven CSHOs had relatively high average lapse times for health inspections that ranged from 105 to 110 work days. However, as previously mentioned, two of the four CSHOs with high average lapse times were new and took long periods of absence during the fiscal year. Also, with the exception FY 2020, VOSHA met the FRL from FY 2017 through FY 2021. Since VOSHA typically meets the FRL for SAMM 11b, and the absence of the two CSHOs was a temporary situation that has ended, OSHA believes VOSHA will likely improve on this metric. OSHA will monitor the State Plan’s performance on this SAMM, but an observation is not warranted at this time.

**SAMM 17 – Percent of enforcement presence**

**Discussion of State Plan Data and FRL**: The FRL is based on a three-year national average. The range of acceptable data not requiring further review was from 1.23 percent to 2.05 percent. In FY 2022, VOSHA’s percent of 0.91 was outside (below) the FRL range.

**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. Over the past five years, VOSHA’s performance on SAMM 17 has been acceptable: from FY 2017 through FY 2019, VOSHA’s results for this metric were higher than the FRL ranges, and in FY 2020 and in FY 2021, the State Plan’s percent was within the FRL range. Furthermore, VOSHA’s FY 2022 percent of 0.91 percent was higher than its previous year’s percent of 0.84 (which was within that year’s FRL range). Therefore, the State Plan’s performance on this metric is not overly concerning.

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

FY 2022 VOSHA Follow-up FAME Report

|  |  |  |  |
| --- | --- | --- | --- |
| **FY 2022-#** | **Finding** | **Recommendation** | **FY 2021-# or**  **FY 2021-OB-#** |
|  | None. |  |  |

### Appendix B – Observations Subject to Continued Monitoring

FY 2022 VOSHA Follow-up FAME Report

| **Observation #**  **FY 2022-OB-#** | **Observation#**  **FY 2021-OB-# *or* FY 2021-#** | **Observation** | **Federal Monitoring Plan** | **Current Status** |
| --- | --- | --- | --- | --- |
| FY 2022-OB-01 | 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. | Continued |
| FY 2022-OB-02 | 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 also reinforce the need to ensure each GMVPP participant adequately evaluates all elements and sub-elements of the safety and health management system. | Continued |
|  | FY 2021-OB-01  FY 2020-OB-03  FY 2019-OB-04 | In FY 2021, VOSHA conducted only three inspections in state government, two of which were programmed. |  | Closed |

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

FY 2022 VOSHA Follow-up FAME Report

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
| **FY 2021-#** | **Finding** | **Recommendation** | **State Plan Corrective Action** | **Completion Date** | **Current Status**  **and Date** |
|  | None. |  |  |  |  |

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

FY 2022 VOSHA Follow-up FAME Report

| SAMM Number | SAMM Name | State Plan Data | Further Review Level | Notes |
| --- | --- | --- | --- | --- |
| 1a | Average number of work days to initiate complaint inspections (state formula) | 3.79 | 5 | The further review level is negotiated by OSHA and the State Plan. |
| 1b | Average number of work days to initiate complaint inspections (federal formula) | 3.00 | N/A | This measure is for informational purposes only and is not a mandated measure. |
| 2a | Average number of work days to initiate complaint investigations (state formula) | 1.00 | 1 | The further review level is negotiated by OSHA and the State Plan. |
| 2b | Average number of work days to initiate complaint investigations (federal formula) | 0.27 | 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 2022.  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) | 1.88 | +/- 20% of  1.77 | The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from 1.42 to 2.12 for SWRU. |
| 5b | Average number of violations per inspection with violations by violation type (other) | 0.38 | +/- 20% of  0.90 | The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from 0.72 to 1.08 for OTS. |
| 6 | Percent of total inspections in state and local government workplaces | 9.93% | +/- 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%. |
| 7a | Planned v. actual inspections (safety) | 112 | +/- 5% of  207 | 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 196.65 to 217.35 for safety. |
| 7b | Planned v. actual inspections (health) | 39 | +/- 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. |
| 8 | Average current serious penalty in private sector - total (1 to greater than 250 workers) | $3,496.37 | +/- 25% of  $3,259.35 | The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from $2,444.51 to $4,074.19. |
|  | **a**. Average current serious penalty in private sector  (1-25 workers) | $2,183.00 | +/- 25% of  $2,145.46 | The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from $1,609.10 to $2,681.83. |
|  | **b**. Average current serious penalty in private sector  (26-100 workers**)** | $3,162.91 | +/- 25% of  $3,818.56 | The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from $2,863.92 to $4,773.20. |
|  | **c**. Average current serious penalty in private sector  (101-250 workers) | $4,803.61 | +/- 25% of  $5,469.60 | The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from $4,102.20 to $6,837.00. |
|  | **d**. Average current serious penalty in private sector  (greater than 250 workers) | $6,842.65 | +/- 25% of  $6,725.78 | The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from $5,044.34 to $8,407.23. |
| 9a | Percent in compliance (safety) | 21.59% | +/- 20% of  32.25% | The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from 25.80% to 38.70% for safety. |
| 9b | Percent in compliance (health) | 10% | +/- 20% of  44.42% | The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from 35.54% to 53.30% for health. |
| 10 | Percent of work-related fatalities responded to in one workday | 50% | 100% | The further review level is fixed for all State Plans. |
| 11a | Average lapse time (safety) | 65.41 | +/- 20% of  54.58 | The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from 43.66 to 65.50 for safety. |
| 11b | Average lapse time (health) | 96.12 | +/- 20% of  69.03 | The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from 55.22 to 82.84 for health. |
| 12 | Percent penalty retained | 60.04% | +/- 15% of  69.97% | The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from 59.47% to 80.47%. |
| 13 | Percent of initial inspections with worker walk-around representation or worker interview | 100% | 100% | The further review level is fixed for all State Plans. |
| 14 | Percent of 11(c) investigations completed within 90 days | N/A\* | N/A\* | This measure is not being reported for FY 2022. Please see note below. |
| 15 | Percent of 11(c) complaints that are meritorious | N/A\* | N/A\* | This measure is not being reported for FY 2022. Please see note below. |
| 16 | Average number of calendar days to complete an 11(c) investigation | N/A\* | N/A\* | This measure is not being reported for FY 2022. Please see note below. |
| 17 | Percent of enforcement presence | 0.91% | +/- 25% of  1.64% | The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from 1.23% to 2.05%. |

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

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

1. Source: [Vermont Economic and Labor Market Information Division, Quarterly Census of Employment and Wages](http://www.vtlmi.info/indareanaics.cfm?areatype=01)  [↑](#footnote-ref-2)