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

Virgin Islands Division of Occupational Safety and Health (VIDOSH)



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## 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) 2022, 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, VIDOSH has not addressed its prior FAME findings or taken appropriate actions to correct them. Overall, OSHA is not satisfied with the lack of progress, responsiveness, and communication from VIDOSH.

Since September 2019, OSHA’s New York Regional Office (Region II) has increased its monitoring of VIDOSH due to concerns about program performance. OSHA developed mandatory program activities for VIDOSH to complete during the first quarter of the FY 2020 performance period, but VIDOSH did not sufficiently address these activities. Therefore, on March 2, 2020, VIDOSH was designated as a high-risk grantee where OSHA placed conditions on VIDOSH’s grant which continued through FY 2021 and FY 2022.

The designation of high-risk grantee has been the most effective tool that OSHA has utilized to date to improve the performance of this State Plan. However, this has proven to have lost its effectiveness over the past two years as evidenced by VIDOSH’s failure to meet any of their five mandatory grant activities required under this high-risk designation in FY 2022. In addition, VIDOSH lapsed $3,035 and deobligated $149,208 of federal funding in FY 2022 due to their failure to meet their mandatory grant activities. VIDOSH has lapsed federal funds six times over the past eight years.

VIDOSH conducted 25 inspections, 18 health, and seven inspections or approximately 56% of the inspection goal for the fiscal year. The OIS Open Inspection report, run on February 10, 2023, for the period October 1, 2021, to September 30, 2022, showed that there 18 open inspections and 10 inspections pending issuance of citations from the 25 inspections that were opened in FY 2022. This represents 72% of the inspections opened in FY 2022 that remain open as of February 10, 2023. In addition, VIDOSH’s citation lapse time for both safety and health was above the Federal Review Level (FRL) for the review period.

VIDOSH’s consultation program did not conduct any consultation visits in FY 2022 due to the program not staffing trained consultants to conduct visits. This was the second year in a row that consultation visits were not conducted. Although VIDOSH hired a consultant in February 2022, the consultant did not take the required training needed to conduct visits. The consultant did not attend the required OTI 1500 course until the end of September 2022 because VIDOSH failed to properly register the consultant for the course or respond timely to requests for information from the OSHA Training Institute (OTI).

VIDOSH was also not responsive to Region II’s requests for information or responses to FPCs in FY 2022. OSHA had to consistently send reminders that information was needed which is a strain on OSHA’s limited time and resources.

During FY 2022, VIDOSH received five whistleblower (WB) complaints for processing. Since whistleblower complaints were not reviewed in the FY 2021 Comprehensive FAME review, Region II requested copies of these five whistleblower files for this FAME period. Upon examination, the auditor noted that the files failed to demonstrate a understanding on how to handle a WB complaint. Issues were found from the very beginning of the process, with acknowledging receipt, contacting/screening the complaint, interviewing the complainant, processing/docketing the complaint, placing the parties on notice of the complaint, reviewing employer/respondent’s responses, asking for a rebuttal, requesting evidence and investigative documents, comparators, testing the defense, identifying and interviewing the appropriate witnesses (decision makers, employees with relevant knowledge) and analyzing the investigative data and results. Additionally, the case files did not properly document any, or all these activities, which prevented the investigation from being credible and withstanding scrutiny.

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 did not to issue citations in a timely manner, secure timely abatement of hazards, close files timely, and establish an enforcement presence in VI. During the FY 2022 performance period, VIDOSH made little progress to address its 15 findings from last year’s FAME. To address some of last year’s FAME findings, VIDOSH scheduled a training session for its staff which was to take place in November 2022, but did not occur and still had not when this report was drafted in February 2023.

Two findings from last year’s FY 2021 comprehensive FAME were completed when VIDOSH hired additional staff to fill the vacancies and updated the State Plan Application (SPA) to provide notice of intent for adoption of federal program changes. Two observations were closed because the health in-compliance rate was reduced to within the acceptable range of the FRL and the average number of serious, willful, and repeat citations issued was increased to within the acceptable range of the FRL. However, OSHA identified a new finding regarding the failure to adequately process whistleblower complaints and one new observation regarding health lapse time exceeding the FRL. Therefore, this year’s FAME resulted in VIDOSH having a total of 14 findings and three observations.

 II. State Plan 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 (ALAE) 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 VIDOSH.

On November 13, 1995, OSHA announced that the Virgin Islands State Plan was no longer ALAE 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 Region II 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 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 2022, VIDOSH had filled all the administrative, enforcement, and consultation positions that were federally funded. VIDOSH’s current staff includes one director, one assistant director, two administrative support staff, one safety compliance safety and health officer (CSHO), one health CSHO, and one consultant. There is a vacant safety CSHO position on the organizational chart, but this position is 100% state funded.

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.

**New Issues**

Grantee High-Risk Designation

VIDOSH’s high-risk designation continued in FY 2022 due to only meeting one of four mandatory activities from FY 2021. For FY 2022, a fifth mandatory grant activity was added which included the following:

1. VIDOSH will conduct 45 enforcement inspections in FY 2022.
2. VIDOSH will ensure that abatement is achieved, and case files are closed.
3. VIDOSH will conduct 12 consultation visits for FY 2022.
4. VIDOSH program manager will address OSHA’s request for information in a timely manner and comply with the specified activities in the grant.
5. The average lapse time for safety and health will not be higher than 20% of the national reference level.

Lapsing Federal Funds

Because VIDOSH failed to meet their mandatory grant activities in FY 2022, the program lapsed $3,035, and deobligated $149,208 of the $294,200 in federal funding under Section 23(g) of the Occupational Safety and Health Act (OSH Act). These lapsed funds 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 eight years and shows the program administration’s inability to manage federal funding received. VIDOSH’s program administration lapsed federal funding six of the last eight fiscal years. In FY 2015, VIDOSH lapsed $7,071; $5,605 in FY 2017; $76,517 in FY 2018; $19,787 in FY 2020; $11,767 in FY 2021; and $3,035 in 2022– totaling $123,782 in federal funds or almost $124,000.

As a result of lapsing of these funds in FY 2022, 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 a formal notice to VIDOL on April 18, 2022, warning that if VIDOSH lapses or deobligates additional funds for its 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 previous three-year period.

## 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
* State Information Report (SIR)
* Mandated Activities Report for Consultation (MARC)
* OSHA Information System (OIS)
* State OSHA Annual Report (SOAR)
* State Plan Annual Performance Plan (APP)
* State Plan Grant Application
* Quarterly monitoring meetings between OSHA and the State Plan

###  Findings and Observations

#### Findings (Status of Previous and New Items)

VIDOSH made little progress to address the previous 15 findings and four observations from the FY 2021 Comprehensive FAME Report. This follow-up FAME report contains 14 findings (13 continued, one new) and three observations (two continued and one new). Two findings were completed, and two observations were closed from last year’s FAME. Appendix A describes the new and continued findings and recommendations. Appendix B describes observations subject to continued monitoring and the related federal monitoring plan. Appendix C describes the status of each FY 2021 finding and recommendation in detail.

**Completed Findings**

**Finding FY 2021-03 (FY 2021-01, FY 2020-01, FY 2019-01):** *Staffing Issues*

The grant allocates the program two safety CSHOs, 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 resulting in a non-operational consultation program.

**Status:** At the end of FY 2022, the program was staffed with a consultant, new health CSHO, a new safety CSHO, two administrative support staff, an assistant director, and a director. The organizational chart included with the FY 2022 grant application identified eight positions including an additional vacant safety CSHO. However, this vacant safety enforcement position is funded with state funds only. All the federally funded enforcement and consultation positions are now filled. This item is completed.

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

VIDOSH’s adoption of Federal Program Changes is not timely.

**Status:** All required FPCs from FY 22 have been updated in the State Plan Application to provide intent on adoption. This item is completed.

**Continued Findings**

**Finding FY 2022-01 (FY 2020-01, FY 2019-01):** *OSHA Information System (OIS) Reports*

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 by OSHA in October 2021. VIDOSH did not utilize OIS reports to ensure proper monitoring and closure of case files.

**Status:** The OIS Open Inspection report run on February 10, 2023, for the period October 1, 2021 to September 30, 2022, showed that there were 18 open inspections and 10 inspections pending issuance of citations from the 25 inspections that were opened in FY 22. This represents 72% of the inspections opened in FY 22 that remain open as of February 10, 2023. This finding remains open.

**Finding 2022-02 (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.

**Status:** For the FY 2022 evaluation period, the FRL for average lapse time for safety was +/-20% of the FRL of 52.42 days which equals a range of 41.94 to 62.90 days for safety. VIDOSH’s average lapse time for safety in FY 2022 was 121.50 days which was above the FRL. This is a significant increase from FY 21. This finding is being continued as Finding FY 2022-02, but it will be amended to reflect the new SAMM data from FY 2022. This finding remains open.

**Finding 2022-03 (FY 2021-04, FY 2020-03, FY 2019-03, FY 2018-02):** *Complaint Notification*

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 2021 FAME because all sources of the eight complaints that were reviewed had the source listed as anonymous.

**Status:** A case file review is necessary to gather the facts needed to evaluate progress on this finding. This finding will be a focus of next year’s on-site case file review during the FY 2023 Comprehensive FAME and remains open.

**Finding FY 2022-04 (FY 2021-05, FY 2020-04, FY 2019-04):** *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 in-compliance inspection.

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.

**Status:** A case file review is necessary to gather the facts needed to evaluate progress on this finding. This finding will be a focus of next year’s on-site case file review during the FY 2023 Comprehensive FAME and remains open.

**Finding FY 2022-05 (FY 2021-06, FY 2020-04, FY 2019-04):** *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. For FY 2021, there were no citations in the files reviewed so this finding could not be evaluated and will continue.

**Status:** A case file review is necessary to gather the facts needed to evaluate progress on this finding. This finding will be a focus of next year’s on-site case file review during the FY 2023 Comprehensive FAME and remains open.

**Finding FY 2022-06 (FY 2021-07, FY 2020-06, FY 2019-06):** *Citations for All Apparent Violations*

Two of the nine case 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.

**Status:** A case file review is necessary to gather the facts needed to evaluate progress on this finding. This finding will be a focus of next year’s on-site case file review during the FY 2023 Comprehensive FAME and remains open.

For FY 2022, SAMM 5a, average number of violations per inspection with serious, willful, and repeat violations was within the FRL. SAMM 5b, average number of violations per inspection with other-than-serious violations was below the FRL.

**Finding FY 2022-07 (FY 2021-08, FY 2020-07, FY 2019-07, FY 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 in FY 2021 and will continue.

**Status**: A case file review is necessary to gather the facts needed to evaluate progress on this finding. This finding will be a focus of next year’s on-site case file review during the FY 2023 Comprehensive FAME and remains open.

**Finding FY 2022-08 (FY 2021-09):** *Overdue Abatement*

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.

**Status:** The OIS Open Inspection report run on February 10, 2023, showed six inspection files from FY 2022 with overdue abatement. A case file review is necessary to gather the facts needed to evaluate progress on this finding. This finding will be a focus of next year’s on-site case file review during the FY 2023 Comprehensive FAME and remains open. The finding will be amended to reflect the new information from the OIS Open Inspection.

**Finding FY 2022-09 (FY 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.

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.

**Status:** A case file review is necessary to gather the facts needed to evaluate progress on this finding. This finding will be a focus of next year’s on-site case file review during the FY 2023 Comprehensive FAME and remains open.

**Finding FY 2022-10 (FY 2021-11, FY 2020-OB-02, FY 2019-OB-04)**: *Worker Involvement – Inspection Process*

In FY 2021, documentation was lacking in 4 of the 4 (100%) case files reviewed explaining 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, other than an employer representative, there was no documentation to show that workers were interviewed.

**Status:** A case file review is necessary to gather the facts needed to evaluate progress on this finding. This finding will be a focus of next year’s on-site case file review during the FY 2023 Comprehensive FAME and remains open.

**Finding FY 2022-11 (FY 2021-12, FY 2020, 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 because none of the FY 2021 files reviewed had a union representative and citations issued.

**Status:** A case file review is necessary to gather the facts needed to evaluate progress on this finding. This finding will be a focus of next year’s on-site case file review during the FY 2023 Comprehensive FAME and remains open.

**Finding FY 2022-12 (FY 2021-14, 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. No consultation visits were conducted in FY 2021 or FY 2022.

**Status:** A case file review is necessary to gather the facts needed to evaluate progress on this finding. This finding will be a focus of next year’s on-site case file review during the FY 2023 Comprehensive FAME and remains open.

**Finding FY 2022-13 (FY 2021-15, FY 2020-13, FY 2019-13):** *Correction of Serious Hazards*

In FY 2021, 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 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.

**Status:** A case file review is necessary to gather the facts needed to evaluate progress on this finding. This finding will be a focus of next year’s on-site case file review during the FY 2023 Comprehensive FAME and remains open.

**New FY 2022 Finding**

**Finding FY 2022-14:** *Whistleblower Complaints*

During FY 2022, VIDOSH received five whistleblower complaints for processing. These cases were not processed and investigated per the Federal Whistleblower Investigations Manual which VIDOSH has agreed to adopt. OIS was not updated to reflect the status of these cases and all documents were not uploaded onto the system. Electronic files were not maintained per directive CPL 02-03-009, “Electronic Case File (ECF) System Procedures for the Whistleblower Protection Program” which was adopted by VIDOSH. VIDOSH is not operating a whistleblower protection program that is (ALAE) as OSHA.

**Recommendation:** VIDOSH staff must review and become familiar with the Federal Whistleblower Investigations Manual. VIDOSH staff assigned to investigating whistleblower cases must retake the Basic 1420 Whistleblower Training Course, review available archived OSHA webinars, attend any WB training offered throughout the year, and create electronic work folders per the directive. Until VIDOSH has trained staff to investigate whistleblower complaints effectively, VIDOSH must consider other options available to complaints, including referring them to the Virgin Islands Public Employee Relations Board.

#### Observations

**Closed FY 2021 Observations**

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

In FY 2021, the percent in-compliance (SAMM #9 b) for health inspections was 57.14% which was above the FRL of 40.64%.

**Status:** In 2022, the percent in-compliance (SAMM #9 b) for health inspections was 42.86% which was below the FRL of 44.42%. This observation is closed.

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

SAMM #5a 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.

**Status:** In FY 2022, SAMM #5a revealed that VIDOSH issued an average number of violations by inspection type (SWR) of 1.60. This is within the acceptable range of the FRL of 1.78. This observation is closed.

**Continued FY 2021 Observations**

**Observation FY 2022-OB-01 (FY 2021-OB-01, FY 2020-OB-01):** *Inspection Coding*

In FY 2021, 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.

**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:** *Timeliness of State Plan Response*

In 2021, VIDOSH failed to respond to complaints within an average of five workdays from receipt. VIDOSH responded to complaints 12.89 workdays on average from receipt of the complaint which exceeded the FRL of five days.

**Status:** For FY 2022 evaluation period, the negotiated FRL for the average number of workdays to initiate complaint inspections was five workdays for SAMM #1a. VIDOSH responded to complaints 5.79 workdays on average from receipt of the complaint, slightly above the FRL. This was a significant improvement from FY 2021. This observation is being continued as Observation FY 2022-OB-02, but it will be amended to reflect the new SAMM data from FY 2022. This observation remains open.

**New FY 2022 Observation**

**Observation FY 2022-03:** *Health Lapse Time*

The FRL for average lapse time for health was +/-20% of the FRL of 66.01 days which equals a range of 52.88 to 79.32 days for health. VIDOSH’s average lapse time for health in FY 2022 was 86.67 days which was above the FRL. VIDOSH’s high average lapse time for health can be contributed to the loss of the health CSHO during the review period.

**Federal Monitoring Plan:** The Region will continue to monitor this issue with the SAMM Report quarterly.Maintaining average lapse time within the FRL for both safety and health is a mandatory grant activity, tracked monthly and reported by VIDOSH.

### State Activity Mandated Measures (SAMM) Highlights

Each SAMM has an agreed upon 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 State Activity Mandated Measures (SAMM) Report and includes the FRLs for each measure.

It should be noted that 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 OIS, a modern data system. For FY 2022, a portion of the State Plan whistleblower data was recorded OITSS, and a portion was captured in OIS. OSHA encountered challenges in combining the report that generates SAMM 14, 15, and 16 from both systems. As such, OSHA will not be relying on SAMMs 14, 15, or 16 in their evaluation of the State Plans whistleblower programs for FY 2022.

VIDOSH was outside the FRL on the following SAMMs:

**SAMM 7a & 7b – Planned vs. Actual Inspections**

The FRL for planned vs. actual safety inspections was 25 +/- 5% of the inspection number negotiated in the grant application which equals a range of 23.75 to 26.25. VIDOSH completed seven safety inspections during FY 2022 which was substantially lower than the FRL and a cause for concern. The FRL for planned vs. actual health inspections was 20 +/- 5% of the inspection number negotiated in the grant application which equals a range of 19 to 21. Virgin Islands completed 18 health inspections during FY 2022 which was slightly lower than the FRL, but still a cause for concern. OSHA continues to monitor this using the monthly mandatory grant activity updates received from VIDOSH.

VIDOSH’s failure to meet the FRL for the number of both safety and health inspections conducted can be contributed to a loss of the health CSHO during the year, and the two new on-board enforcement staff requiring training before conducting independent inspections.

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

FY 2022 Virgin Islands State Plan Follow-up FAME Report

|  |  |  |  |
| --- | --- | --- | --- |
| **FY 2022-#** | **Finding** | **Recommendation** | **FY 2021-# or** **FY 2021-OB-#** |
|  FY 2022-01 | *OSHA Information System (OIS) Reports*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 reports to ensure proper monitoring and closure of case files. | VIDOSH must utilize OIS reports as a tool to effectively manage both the program and work products of its staff. This ensures proper monitoring and closure of case files in accordance with adopted policy in the Field Operations Manual (FOM).  | FY 2021-01FY 2020-01FY 2019-01 |
|  FY 2022-02 | *Safety Lapse Time*The FRL for average lapse time for safety was +/-20% of the FRL of 52.42 days which equals a range of 41.94 to 62.90 days for safety. VIDOSH’s average lapse time for safety in FY 2022 was 121.50 days which was above the FRL.  | VIDOSH must utilize OIS reports as a tool to effectively manage both the program and work products of its staff. This ensures proper monitoring and closure of case files in accordance with adopted policy in the Field Operations Manual (FOM).  | FY 2021-02FY 2020-14FY 2019-OB-02FY 2018-OB-07 |
| FY 2022-03 | *Complaint Notification*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 2021 Comprehensive FAME because all sources of the eight complaints that were reviewed had the source listed as anonymous. | 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 2021-04FY 2020-03FY 2019-03FY 2018-02 |
| FY 2022-04 | *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 VIDOSH 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 in-compliance inspection.Also, in nine of nine (100%) of the case 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.  | VIDOSH must ensure case files include the required documentation in accordance with VIDOSH’s FOM.  | FY 2021-05FY 2020-04FY 2019-04  |
| FY 2022-05 | *Adequate Evidence to Support Violations*During the 2019 FAME, the case file review revealed that seven of the 15 (47%) case files 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.  | VIDOSH must ensure case files include the required documentation in accordance with VIDOSH’s FOM.  | FY 2021-06FY 2020-05FY 2019-05FY 2018-OB-01 |
| FY 2022-06 | *Citations for All Apparent Violations*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. | VIDOSH must ensure that all hazards documented are cited per the FOM. | FY 2021-07FY 2020-06FY 2019-06 |
| FY 2022-07 | *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.  | 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 2021-08FY 2020-07FY 2019-07FY 2018-03 |
| FY 2022-08 | *Overdue Abatement*The OIS Open Inspection Report, run on February 10, 2023, showed six inspection files from FY 2022 with overdue abatement.  | VIDOSH must utilize OIS reports as a tool to effectively manage abatement of cited hazards.  |  FY 2021-09 |
| FY 2022-09 | *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.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. | VIDOSH must ensure that procedures as stated in the Field Operations Manual (FOM) Chapter VII (1903.14(a)) are followed for any PMA request. | FY 2021-10FY 2020-09FY 2019-09 |
| FY 2023-10 | *Worker Involvement – Inspection Process* Documentation was lacking in 4 of the 4 (100%) case files explaining 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, other than an employer representative, there was no documentation to show that workers were interviewed. | VIDOSH must ensure that employer representatives and workers are involved in the inspection process. | FY 2021-11FY 2020-OB-02FY 2019-OB-04 |
| FY 2022-11 | *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 because none of the files reviewed that had a union representative had citations issued. | 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 2021-12FY 2020-10FY 2019-10FY 2018-OB-03 |
| FY 2022-12 | *Consultation Case File Documentation* Adequate documentation was lacking in the consultation case files reviewed during the FY 2019 FAME review. No consultation visits were conducted in FY 2021 or FY 2022.  | VIDOSH must ensure that the consultant follows procedures and completes case files in accordance with CSP 02-00-004. | FY 2021-14FY 2020-12FY 2019-12FY 2018-05 |
| FY 2022-13 | *Correction 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.
 | VIDOSH must ensure that the consultant follows procedures and completes case files in accordance with CSP 02-00-004. | FY 2021-15FY 2020-13FY 2019-13 |
| FY 2022-14 | *Whistleblower Complaints*During FY 2022, VIDOSH received five whistleblower complaints for processing. These cases were not processed and investigated per the Federal Whistleblower Investigations Manual which VIDOSH has verbally agreed to adopt. OIS was not updated to reflect the status of these cases and all documents were not uploaded onto the system. Electronic files were not maintained per directive CPL 02-03-009, “Electronic Case File (ECF) System Procedures for the Whistleblower Protection Program” which was adopted by VIDOSH. VIDOSH is not operating a whistleblower protection program that is at least as effective (ALAE) as OSHA.  | VIDOSH staff must review and become familiar with the Federal Whistleblower Investigations Manual. VIDOSH staff assigned to investigating whistleblower cases must retake the Basic 1420 Whistleblower Training Course, review available archived OSHA webinars, attend any WB training offered throughout the year, and create electronic work folders per the directive. Until VIDOSH has trained staff to investigate whistleblower complaints effectively, VIDOSH must consider other options available to complaints including referring them to the Virgin Islands Public Employee Relations Board.  | New |

### Appendix B – Observations Subject to Continued Monitoring

FY 2022 Virgin Islands State Plan 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-01FY 2020-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. | 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. | Continued |
| FY 2022-OB-02 | FY 2021-OB-02 | *Timeliness of State Plan Response*In 2022, VIDOSH did not respond to complaints within an average of five workdays from receipt.  | The Region will continue to monitor this issue by utilizing the SAMM Report quarterly. | Continued |
| FY 2022-OB-03 |  | *Health Lapse Time*The FRL for average lapse time for health was +/-20% of the FRL of 66.01 days which equals a range of 54.82 to 79.32 days for health. VIDOSH’s average lapse time for health in FY 2022 was 86.67 days which was above the FRL.  | The Region will continue to monitor this issue by utilizing the SAMM Report quarterly. | New |
|  | FY 2021-OB-03 | *In-Compliance Health Inspections* In FY 2021, the percent in-compliance (SAMM #9 b) for health inspections was 57.14% which was above the FRL of 40.64%.  |  | Closed |
|  | FY 2021-OB-04 | *Average Number of Serious, Willful, and Repeat Citations*SAMM #5a 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.  |  | Closed |

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

FY 2022 Virgin Islands State Plan Follow-up FAME Report

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
| **FY 2021-#** | **Finding** | **Recommendation** | **State Plan Corrective Action** | **Completion Date** | **Current Status** **and Date** |
| FY 2021-01 | *OSHA Information System (OIS)*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. | VIDOSH must utilize OIS reports as a tool to effectively manage both the program and work products of its staff. This ensures proper monitoring and closure of case files in accordance with adopted policy in the Field Operations Manual (FOM).  | VIDOSH will utilize the OIS reporting tools to effectively manage all aspects of the open case files. Training will be provided to the VIDOSH staff on management of case files. | Not Completed | Open (As of March 15, 2023) |
| FY 2021-02 | *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. | VIDOSH must utilize OIS reports as a tool to effectively manage both the program and work products of its staff. This ensures proper monitoring and closure of case files in accordance with adopted policy in the Field Operations Manual (FOM).  | VIDOSH will utilize the OIS report tool to effectively manage all aspects of the open cases. These measures will be utilized to decrease the lapse times. Training will be provided to the staff on case management. | Not Completed | Open (As of March 15, 2023) |
| FY 2021-03 | *Staffing Issues*The grant allocates the program two safety compliance safety and health officers (CSHOs), 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. | VIDOSH must fill current staffing vacancies with qualified staff. | VIDOSH worked with VIDOL Human Resources and the Division of Personnel to fill VIDOSH staffing vacancies with qualified staff. | September 30, 2022 | Completed |
| FY 2021-04 | *Complaint Notification*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.  | VIDOSH must ensure the case files include the required documentation in accordance with VIDOSH’s FOM.  | All documentation will be uploaded into the OIS inspection case diary tab. VIDOSH will create an electronic case file. Staff will be trained on these procedures and the importance of providing final responses to the complainant. | Not Completed | Open (As of March 15, 2023) |
| FY 2021-05 | *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 VIDOSH 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 in-compliance inspection. 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 | VIDOSH must ensure case files included required documentation in accordance with VIDOSH’s Field Operations Manual (FOM). | All case file diary communications will be uploaded into the inspection in OIS. Staff will be trained on these procedures. | Not Completed | Open (As of March 15, 2023) |
| FY 2021-06  | *Adequate Evidence to Support Violations*During the 2019 FAME, the case file review revealed that seven of the 15 (47%) case files 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. | VIDOSH must ensure the case files include the required documentation in accordance with VIDOSH’s FOM.  | All case file diary communications will be uploaded into the inspection in OIS. Staff will be trained on these procedures. | Not Completed | Open (As of March 15, 2023) |
| FY 2021-07 | *Citations for All Apparent Violations:*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**.** | VIDOSH must ensure that all hazards documented are cited per the FOM. | Applicable documentation for all hazards will be uploaded into OIS. These measures will ensure 100% hazard documentation with the case file. VIDOSH will train all staff on these procedures. | Not Completed | Open (As of March 15, 2023) |
| FY 2021-08 | *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. | 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. | VIDOSH will utilize the OIS reports establishing the scheduling of follow-up inspections. FTA citations will be issued to ensure abatements are completed in a timely manner. | Not Completed | Open (As of March 15, 2023) |
| FY 2021-09 | *Overdue Abatement*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. | VIDOSH must utilize OIS reports as a tool to effectively manage abatement of cited hazards.  | VIDOSH will utilize the OIS reports to establish the scheduling of follow-up inspections. FTA citations will be issued to ensure abatements are completed in a timely manner. | Not Completed | Open (As of March 15, 2023) |
| FY 2021-10 | *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.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. | VIDOSH must ensure that procedures as stated in the Field Operations Manual (FOM) Chapter VII (1903.14 (a)) are followed for any PMA requested.  | The VIDOSH director will review the PMA process (per the FOM requirements) with staff. PMAs will be approved only after all required information has been received. | Not Completed | Open (As of March 15, 2023) |
| FY 2021-11 | *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 case files reviewed, other than an employer representative, there was no documentation to show that workers were interviewed. | VIDOSH must ensure that employee representatives and workers are involved in the inspection process.  | VIDOSH will obtain a complete listing of the employee representatives from the Public Employer Relation Board (PERB). This listing will be utilized to contact the representatives during the inspection. VIDOSH will also requesting that the employer notify the employee’s representatives at the beginning of the inspection. The VIDOSH director will ensure during case file reviews that workers have been interviewed for all inspections. | Not Completed | Open (As of March 15, 2023) |
| FY 2021-12 | *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.  | VIDOSH must ensure that employer representatives and workers are involved in the inspection process. | VIDOSH will obtain a complete listing of the employee representatives from the Public Employer Relation Board (PERB) which will be utilized to disseminate inspection documentation and official correspondence. The VIDOSH director will ensure that a copy of the citation and notification of the inspection results is provided to union representatives, and this is documented in the case file. VIDOSH staff will receive refresher training on communication with union representatives.  | Not Completed | Open (As of March 15, 2023) |
| FY 2021-13 | *Federal Program Changes*VIDOSH’s adoption of federal standards and federal program changes is not timely.  | VIDOSH must 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 State Plan Application (SPA) timely. | The VIDOSH director has kept his SPA account updated and is entering the required changes into SPA. | March 10, 2023 | Completed |
| FY 2021-14 | *Consultation Case File Documentation*Adequate documentation was lacking in the consultation case files reviewed during the FY 2019 FAME review. | VIDOSH must ensure that the consultant follows procedures and completes case files in accordance with CSP 02-00-003. | The consultant will receive training to ensure that adequate documentation is obtained in accordance with CSP 02-00-004. During case file review, the VIDOSH director will ensure procedures are adhered to and case files are completed in accordance with CSP 02-00-004. | Not Completed | Open (As of March 15, 2023) |
| FY 2021-15 | *Correction 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.
 | VIDOSH must ensure that the consultant follows procedures and completes case files in accordance with CSP 02-00-003. | The consultant will receive training to ensure that adequate correction of serious hazards is obtained in accordance with CSP 02-00-004. During case file review, the VIDOSH director will ensure procedures are adhered to and case files are completed in accordance with CSP 02-00-004. | Not Completed | Open (As of March 15, 2023) |

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

FY 2022 Virgin Islands State Plan Follow-up FAME Report

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| **SAMM Number** | **SAMM Name** | **State Plan Data** | **Further Review Level** | **Notes** |
| 1a | Average number of workdays to initiate complaint inspections (state formula) | 5.79 | 5  | The further review level is negotiated by OSHA and the State Plan. |
| 1b | Average number of workdays to initiate complaint inspections (federal formula) | 3.58 | 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% | 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) | 1.60 | +/- 20% of1.78 | The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from 1.42 to 2.14 for SWRU.  |
| 5b | Average number of violations per inspection with violations by violation type (other) | 0.40 | +/- 20% of 0.91 | The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from 0.73 to 1.09 for OTS. |
| 6 | Percent of total inspections in state and local government workplaces | 100% | 100% | Since this a State and Local Government State Plan, all inspections are in state and local government workplaces. |
| 7a | Planned v. actual inspections (safety) | 7 | +/- 5% of  25 | 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 23.75 to 26.25 for safety. |
| 7b | Planned v. actual inspections (health) | 18 | +/- 5% of  25 | 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 19 to 21 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. |
|  | **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) | 25% | +/- 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) | 42.86% | +/- 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 | 0% | 100% | The further review level is fixed for all State Plans.  |
| 11a | Average lapse time (safety) | 121.50 | +/- 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 from 41.94 to 62.90 for safety. |
| 11b | Average lapse time (health) | 86.67 | +/- 20% of  66.10 | The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from 52.88 to 79.32 for health. |
| 12 | Percent penalty retained | N/A | +/- 15% of 69.08% | N/A-This is a State and Local Government State Plan. The further review level is based on a three-year national average. |
| 13 | Percent of initial inspections with worker walk-around representation or worker interview | 88% | 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 22. 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 22. 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 22. Please see note below. |

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.