**FY 2023 Comprehensive**

**Federal Annual Monitoring Evaluation (FAME) Report**

**Vermont State Plan**

**(VOSHA)**

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**Region I**



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1. **Executive Summary**

The purpose of this report is to assess the Vermont State Plan’s (VOSHA’s) performance for Fiscal Year (FY) 2023 and its progress in resolving outstanding findings from previous Federal Annual Monitoring Evaluation (FAME) Reports.

FY 2023 was a turbulent year for VOSHA. In July, a three-day storm storm—which brought more than a foot of rain to several parts of the state—diverted field staff from their normal inspection activities to disaster recovery efforts. The departure of the compliance supervisor and three compliance officer resignations also hindered the State Plan. Thus, many annual goals were not met, and performance on some metrics was not up to par.

Toward the end of the fiscal year, things began to stabilize; the State Plan began filling staff vacancies, and the combined efforts of OSHA, VOSHA, and the Federal Emergency Management Agency in response to the storm proved to be a huge success. Based on VOSHA’s estimate, about 9,000 workers received personal protective equipment and/or packets of health and safety information, and all three agencies gained important knowledge from their cooperation in the storm’s aftermath.

In FY 2023, VOSHA focused on two observations from the previous FAME Report related to the Voluntary Protection Program. These observations were not resolved in FY 2023 and have been continued in this report. New observations pertaining to high lapse time, abatement documentation, and late standards adoptions have also been made in this report. In addition, this report contains one new finding, which relates to VOSHA having a significant number of cases with abatement long overdue,

FY 2023 was the first year in quite a while that VOSHA had a finding and more than a few observations on the books. However, the State Plan’s management team, with their experience and dedication to VOSHA’s mission, is poised for improvement in the coming months.

Appendix A lists new and continued findings and recommendations and contains the new finding and recommendation in this report. Appendix B describes observations and related federal monitoring plans; this appendix lists two continued observations and three new observations. VOSHA had no previous findings and, therefore, no associated completed corrective actions. In summary, this report contains one new finding and five observations (two continued and three new).

**II. State Plan Background**

1. **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.

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

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

The program manager and the compliance supervisor are VOSHA’s first-line supervisors. At full staffing, VOSHA has seven compliance safety and health officers (CSHOs), one workplace retaliation investigator, a compliance assistance specialist (CAS), and a program technician. Like previous years, the State Plan assigned .95 full-time equivalent (FTE) to VOSHA's 23(g) consultation program to handle administrative, outreach, compliance support, and consultation visits. This FTE is managed by the 21(d) consultation program (Project WorkSAFE) but is funded through the VOSHA 23(g) enforcement program.

In FY 2023, VOSHA covered approximately 299,201 workers, including 253,068 private sector workers, 15,757 state government workers, and 30,376 local government workers. There were approximately 30,352 private sector establishments, 252 state government worksites, and 732 local government worksites in the state in FY 2023.**[[1]](#footnote-1)**

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 2023 financial close-out forms, VOSHA’s initial federal funding award was $726,900. The State Plan contributed a total of $747,500 which consisted of the 50 percent match of $726,900 plus an additional $20,600. Thus, VOSHA’s final FY 2023 funding amount was $1,474,400 ($726,900 in federal funds and $747,500 in state funds).

1. **New Issues**

The devastating storm and a relatively high number of personnel changes disrupted the State Plan’s normal operations in FY 2023. VOSHA’s Anti-Retaliation Program had a backlog of 56 complaints, many of which were filed in calendar year 2020. Finally, the State Plan had 22 cases from FY 2023 and FY 2022 with overdue abatements ranging from 92 days to almost 700 days.

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

1. **Data and Methodology**

OSHA established a two-year cycle for the FAME process. FY 2023 is a comprehensive year and as such, OSHA was required to conduct a case file review. From November 6 through November 8, 2023, OSHA conducted an evaluation of VOSHA’s enforcement program. OSHA’s team consisted of five personnel. The case file review was conducted in OSHA’s Boston South Area Office in Braintree, Massachusetts; 33 safety and health inspection files, most of which were

randomly selected from a universe of 69 inspections that VOSHA opened and closed during FY 2023, were examined.

The selected population of case files consisted of:

* Thirteen (13) programmed inspections
* Eleven (11) complaint inspections
* Six (6) referral inspections
* Three (3) accident inspections
* Two (2) fatality inspection case files
* One (1) follow-up inspection case file

OSHA also reviewed six (6) files related to the GMVPP (four active sites and two sites that had become inactive), one (1) Alliance agreement, and the disposition of seventeen (17) cases that had citations appealed to the VOSHA Review Board in FY 2022 and FY 2023. During the review, OSHA conducted virtual interviews with the program manager, occupational safety compliance supervisor, administrative assistant, and a staff attorney. The purpose of these interviews was to discuss topics related to the operation of the State Plan, such as progress in resolving observations from the FY 2022 Follow-up FAME Report, cases filed with the review board, standards and federal program change (FPC) adoptions, complaint processing, compliance assistance, and abatement tracking, etc.

**Anti-Retaliation Program Case File Review**

The Assistant Regional Administrator for the Whistleblower Protection Program held virtual meetings with the VOSHA Program Manager, the compliance chief and investigator in December 2023 and February 2024. OSHA reviewed sixteen (16) anti-retaliation case files. The selected population consisted of:

* Ten (10) administratively closed files
* Sixteen (16) closed investigation files

The administratively closed files were reviewed in OIS. The investigative files were reviewed via downloaded 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) (Appendix D)
* State Information Report (SIR)
* Mandated Activities Report for Consultation (MARC)
* State OSHA Annual Report (SOAR)
* State Plan Annual Performance Plan
* State Plan Grant Application
* Quarterly monitoring meetings between OSHA and the State Plan
* Fullcase file review
* OSHA Information System (OIS) Reports (Fatality/Catastrophe, Open Inspection, and Scan

Summary, Pending Investigation, Pending Intake, Docketed Closed, Administratively

Closed)

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 2023 SAMM Report and includes the FRL for each measure.

1. **Review of State Plan Performance**
2. **PROGRAM Administration**

**Training** – VOSHA adopted OSHA’s Mandatory Training Program for OSHA Compliance Personnel (TED 01-00-019), which outlines guidelines for compliance officer training. In Phase 1, the CSHO must complete eight courses within the first three years of employment. Under Phase 2, a certain number of technical courses must be completed throughout the rest of the CSHO’s career.

Two veteran CSHOs were taking the Phase 2 required technical courses until FY 2023. However, because of the increased workload brought on by the personnel changes, these two CSHOs were unable to complete any courses under Phase 2 during the fiscal year. Two new CSHOs hired in FY 2023 have completed the initial courses for the first year of employment. However, one CSHO hired in 2018 did not complete three of the eight mandatory courses required in Phase 1. The State Plan’s anti-retaliation investigator has completed all four training courses recommended by OTI for whistleblower investigators.

Due to the unique challenges from the storm and personnel changes, OSHA is not overly concerned that two CSHOs missed taking the required Phase 2 technical courses in FY 2023. The CSHO who is overdue for taking three of the required Phase 1 courses has already been enrolled in two of the courses (which will be held in Massachusetts) and plans to enroll in the third course when it is offered by OTI.

**OSHA Information System** – In FY 2023 and FY 2022, no issues were identified with program staff not properly utilizing OIS (e.g., entering data/information into OIS promptly, running reports to ensure proper monitoring of case files and program activities, etc.). VOSHA mainly runs the OIS Open Inspection Report about every two weeks to help ensure timely citation issuance.

**State Internal Evaluation Program Report** – As discussed in the SOAR, VOSHA developed a SIEP in FY 2022 to address observations from the FY 2021 Comprehensive FAME Report pertaining to deficiencies in GMVPP self-evaluation forms. In FY 2023, VOSHA planned to implement the SIEP; however, the State Plan was unable to follow through due to disruption caused by staffing vacancies and the massive storm that occurred in July 2023.

**Staffing** – In addition to the three CSHO resignations and the departure of the compliance supervisor mentioned earlier, the administrative assistant retired and another CSHO took extended leave during the fourth quarter. Before the end of the fiscal year, VOSHA filled two CSHO vacancies, hired a new administrative assistant, and promoted the CAS to the compliance supervisor position. However, the CAS vacancy and one CSHO position were not filled before the end of FY 2023.

**2. ENFORCEMENT**

a. Complaints

VOSHA’s procedures for handling complaints are detailed in Chapter 9 of the VOSHA Field Operations Manual (FOM), which mirrors the OSHA FOM in this regard. SAMMs 1 through 4 assess the program’s efficiency in handling complaints.

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

Discussion of State Plan Data and FRL: The negotiated FRL is five work days. VOSHA’s average in FY 2023 was 3.33 work days, which was outside (below) the FRL.

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

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

Discussion of State Plan Data and FRL: The negotiated FRL is one work day. VOSHA’s average in FY 2023 was 0.69 work days, which was outside (below) the FRL.

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

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

Discussion of State Plan Data and FRL: The FRL of 100 percent is fixed for all State Plans. In FY 2023, SAMM 3 did not apply to VOSHA. VOSHA did not receive any imminent danger complaints or referrals.

Explanation: OSHA is not concerned with this result.

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

Discussion of State Plan Data and FRL: The FRL of zero is fixed for all State Plans. In FY 2023, VOSHA’s result was zero.

Explanation: VOSHA did not have any denials of entry in FY 2023, which is acceptable.

b. Fatalities

VOSHA investigated five work-related fatalities. In the first quarter, a tree struck a lineman. Large granite blocks fell on a worker in the second quarter and another worker was the victim of workplace violence in the third quarter. In the fourth quarter there were two fatalities: a heavy piece of equipment fell on a worker at a trucking facility and another worker was the victim of electric shock and a fall.

OSHA reviewed three fatality inspections. OSHA found a few small problems with case file documentation that were addressed with the State Plan during the closing conference, but these issues were not enough to suggest a negative trend.

**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 2023, VOSHA’s result was 83.33 percent, which was outside (below) the FRL. This outcome was not positive.

Explanation: In FY 2023, there was a two-day delay in responding to one of the five work-related fatalities that were investigated. When the State Plan was notified, the CSHO who was most qualified to conduct the investigation was in the field conducting a complaint inspection in another part of the state. The remaining CSHOs were either were new and did not have enough experience in the field to conduct a fatality inspection or were conducting other inspections. For several years, VOSHA has consistently met the FRL for this SAMM. Therefore, this one instance where the FRL was not met is not overly concerning.

c. Targeting and Programmed Inspection

Each year, VOSHA obtains randomized lists of high-hazard safety and health employers from OSHA’s Office of Statistical Analysis to schedule programmed inspections in non-construction workplaces. VOSHA consistently adopts OSHA’s Site-Specific (SST) Targeting Directives which use employer-submitted OSHA Form 300A data to target non-construction workplaces that have 20 or more workers.

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

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

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

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

Discussion of State Plan Data and FRL: The FRL is based on a number negotiated by OSHA and the State Plan through the grant application. In FY 2023, VOSHA planned to conduct 207 safety inspections and 38 health inspections. The FRL range was from 196.65 to 217.35 for safety inspections and from 36.10 to 39.90 for health inspections. In FY 2023, VOSHA conducted 124 safety inspections and 30 health inspections. Both totals were outside (below) the acceptable ranges and were not positive outcomes.

Explanation: Staffing issues and the storm made it difficult for VOSHA to achieve safety and health inspection goals in FY 2023. Although two of the three CSHO positions were filled before the end of the fiscal year, the new CSHOs faced a learning curve and could not conduct inspections independently. Also, one CSHO was absent from the State Plan for about a month. The storm diverted field staff from normal inspection activities to recovery efforts for several weeks in the fourth quarter. OSHA is not overly concerned with VOSHA’s results for SAMM 7 because of these circumstances.

**SAMM 9 – Percent in compliance**

Discussion of State Plan Data and FRL: The FRL is based on a three-year national average. In FY 2023, the FRL range was from 25.38 percent to 38.08 percent for safety inspections and from 35.06 percent to 52.58 percent for health inspections. VOSHA’s in-compliance rate of 22.12 percent for safety inspections was outside (below) the FRL range, and its in-compliance rate of 25.93 percent for health inspections was also outside (below) the FRL range; both results were positive.

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

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

Discussion of State Plan Data and FRL: The FRL is based on a three-year national average. VOSHA’s FY 2023 average of 1.74 was within the FRL range of 1.40 to 2.10 for serious, willful, repeat, or unclassified (SWRU) violations. For other-than-serious (OTS) violations, the State Plan’s average of 0.35 was outside (below) the FRL range of 0.71 to 1.07. Both outcomes were acceptable.

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

d. Citations and Penalties

VOSHA must issue a citation and proposed penalty within six months of the violation’s occurrence. Citations describe standards that were allegedly violated, list any proposed penalties, and give deadlines for correcting alleged hazards. Thus, timely citation issuance is essential to VOSHA’s primary goal of correcting hazards and maintaining compliance.

**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 is from 0.70 percent to 1.17 percent. VOSHA’s total enforcement presence was 0.87 percent, which was within the FRL range. This outcome was positive.

Explanation: This SAMM calculates the percent of enforcement presence as the total number of inspections divided by the total number of establishments. Total establishments do not include state and local government establishments or establishments in low-hazard private sector industries. VOSHA’s enforcement presence was not negatively impacted by the storm and personnel changes in FY 2023.

**SAMM 11 - Average lapse time**

Discussion of State Plan Data and FRL: The FRL is based on a three-year national average. In FY 2023, the FRL range was from 44.18 workdays to 66.28 work days for safety and from 55.78 work days to 83.66 work days for health. VOSHA’s averages were 77.06 work days for safety and 102.19 work days for health. VOSHA’s outcome for safety was within the FRL range but its result for health was outside (above) the acceptable range and was not a positive outcome.

Explanation: In FY 2022, the State Plan’s lapse time of 96.12 work days for health was outside (above) the FRL range of 55.22 work days to 82.84 work days. VOSHA attributed this situation to two CSHOs taking long leaves of absence. According to the State Plan, the storm, personnel changes, and a health CSHO's extensive work on an inspection involving willful violations increased the lapse time for health inspections in FY 2023. Nonetheless, since VOSHA’s lapse time for health has been on the upswing for the past two fiscal years, OSHA will monitor this situation to ensure it meets the FRL for SAMM 11.

**Observation FY 2023-OB-03**: In FY 2023, VOSHA’s average lapse time for health was 102.19 days, which was outside (above) the FRL of 55.78 work days to 83.66 workdays. This result is not positive.

**Federal Monitoring Plan FY 2023-OB-03**: During quarterly meetings, OSHA will discuss the need for VOSHA to reduce average health lapse time so that it meets the FRL in SAMM 11.

**Status FY 2023-OB-03**: This observation is new.

Vermont statute (21 V.S.A.includes an annual adjustment to VOSHA’s civil penalties for inflation that is identical to the federal rule. In Chapter 6 of the VOSHA FOM, the State Plan made minor changes to the employer sizes used for gravity-based penalty reductions. OSHA reviewed and approved these changes in September 2017.

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

Discussion of State Plan Data and FRL: The FRL for SAMM 8 is based on a three-year national average. In FY 2023, for employers having one to greater than 250 workers, VOSHA’s average of $4,270.04 was within the FRL range of $2,718.91 to $4,531.51. This outcome was positive.

Explanation: In FY 2023, VOSHA met the FRL for SAMM 8. Also, for each of the SAMM 8 sub-categories based on employer size, VOSHA’s average was within the FRL range.

e. Abatement

During the on-site case file review, OSHA determined that nine (36 percent) of 25 case files reviewed did not contain adequate documentation of abatement completion. **[[2]](#footnote-2)** As discussed in the VOSHA FOM, Chapter 7, except where the CSHO observed abatement during the on-site portion of the inspection, the employer must provide written certification of abatement (minimum level), and for the most serious violations, “the employer must submit documents demonstrating that abatement is complete.” VOSHA’s percentage of case files that did not contain adequate abatement documentation suggests a negative trend, which warrants further monitoring.

**Observation FY 2023-OB-04**: Nine (36 percent) of 25 case files reviewed for abatement did not contain adequate documentation of abatement completion.

**Federal Monitoring Plan FY 2023-OB-04**: During quarterly meetings, OSHA will discuss the need for VOSHA to follow the procedures pertaining to abatement verification and documentation in the VOSHA FOM, Chapter 7.

**Status FY 2023-OB-04**: This observation is new.

An OIS Open Inspection Report shows 22 cases (one that had citations issued in FY 2022 and 21 that had citations issued in FY 2023) with abatement ranging from 92 days to 680 days overdue. For these cases, VOSHA did not follow the procedures outlined in the VOSHA FOM, Chapter 7, Section VIII, Employer Failure to Submit Required Abatement Certification. The State Plan asserts that it has been working on this situation, but it has not had sufficient resources to follow the FOM’s procedures due to staffing turnovers. However, overdue abatements expose workers to injuries and illnesses; thus, the State Plan should make improvement in this area a high priority and should follow the VOSHA FOM’s procedures to obtain overdue abatement. Also, following the VOSHA FOM, Chapter 7, Section 15 for The Closing of a Case File Without Abatement Certification may be appropriate where attempts to locate the employer have been unsuccessful.

**Finding FY 2023-04:** The State Plan has 22 cases from FY 2022 and FY 2023 with abatement ranging from 92 days to 680 days overdue.

**Recommendation FY 2023-04:** Follow the procedures outlined in the VOSHA FOM, Chapter 7, for Employer Failure to Submit Required Abatement certification (Section VIII) and for The Closing of a Case File Without Abatement Certification (Section XV), where appropriate.

**Status FY 2023-04:** This finding is new.

f. Worker and Union Involvement

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

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

Discussion of State Plan Data and FRL: The FRL of 100 percent for SAMM 13 is fixed for all State Plans. In FY 2023, VOSHA’s result was 100 percent. This result was positive.

Explanation: VOSHA performed satisfactorily on SAMM 13.

1. **REVIEW PROCEDURES**

a. Informal Conferences

VOSHA does not have penalty reduction programs, such as expedited informal settlement agreements. The case file review did not reveal any major issues with the State Plan’s informal conference procedures.

**SAMM 12 - Percent penalty retained**

Discussion of State Plan Data and FRL: The FRL is based on a three-year national average. In FY 2023, VOSHA’s percent penalty retained of 53.68 was outside (below) the FRL range of 61.06 percent to 82.62 percent. This outcome was not positive.

Explanation: VOSHA asserts that a single informal settlement agreement had a significant impact on its result for SAMM 12 in FY 2023. Under this agreement, the total penalty for all citations was reduced by 80 percent, and it included citations for two willful violations, each of which was reduced by 93 percent (from $145,027 to $10,151). FY 2023 was the first time in three fiscal years that VOSHA did not meet the FRL for SAMM 12. Currently, VOSHA’s performance on this SAMM does not warrant monitoring.

b. Formal Review of Citations

In accordance with the Vermont Occupational Safety and Health Review Board, Rules of Procedure, §2200.2b, the Vermont Occupational Safety and Health Review Board is an establishment of the executive branch of the Vermont state government created by the VOSHA code, consisting of three members appointed by the governor by and with the advice and consent of the Senate.

OSHA reviewed 13 cases that had citations appealed to the review board over the past two fiscal years. VOSHA Review Board Rule 2200.31(a) requires the commissioner “to send the original notice of contest to the board within seven days of receipt.” All 13 cases were sent to the VOSHA Review Board in a timely manner. In all but two of the cases, a settlement was reached before a hearing was held. In most of the cases settled prior to a hearing, the employer agreed to one or more stipulations, such as providing workers with additional safety and health training or agreeing to specific abatement measures, etc. OSHA did not identify any issues with VOSHA’s cases appealed to the review board in FY 2022 or FY 2023.

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

a. Standards Adoption

The Vermont Administrative Procedures Act was first adopted in 1968 (Act no. 360 of 1967 adj.) and governs the process by which administrative rules are to be adopted by state agencies. It can be found in Title 3 V.S.A. Chapter 25. Vermont’s rulemaking process is lengthy, and Vermont agencies are required to make filings of every new, amended, or repealed rule at least four times during the rulemaking process. Table A shows the status of VOSHA’s standards adoptions over the past two fiscal years and is followed by a discussion of each standard.

**Table A**

**Status of FY 2022 and FY 2023 Federal Standards Where Adoption Was Required**

| **Standard** | **Response Due Date** | **State Plan Response Date** | **Intent to Adopt** | **Adopt Identical** | **Adoption Due Date** | **State Plan Adoption Date** |
| --- | --- | --- | --- | --- | --- | --- |
| COVID-19 Vaccination and Testing; Emergency Temporary Standard  29 CFR 1910, 15, 17, 18, 26, 28  (11/5/2021) | 11/20/2021 | 1/7/2022 | No | N/A | 12/5/2021 | N/A |
| Updated COVID-19 Vaccination and Testing; Emergency Temporary Standard  29 CFR 1910  (11/5/2021) | 1/7/2022 | N/A | N/A | N/A | 1/24/2022 | N/A |
| Final Rule on the Department of Labor Civil Penalties for Inflation Adjustment Act – Annual Adjustment for 2022  29 CFR 1903  (1/15/2022) | 3/15/2022 | 2/1/2022 | Yes | No | 7/15/2022 | 2/1/2022 |
| Occupational Exposure to COVID-19; Healthcare Emergency Temporary Standard: COVID-19 Log and Reporting Provisions  29 CFR 1910.502(q)(2)(ii), (q)(3)(ii)-(iv) and (r)  (2/14/2022) | 4/14/2022 | 2/23/2022 | Yes | Yes | 8/14/2022 |  |
| Final Rule on the Department of Labor Civil Penalties for Inflation Adjustment Act – Annual Adjustment for 2023  29 CFR 1903  (1/15/2023) | 3/15/2023 | 2/1/2023 | Yes | No | 7/15/2023 | 2/1/2023 |
| Final Rule to Improve Tracking of Workplace Injuries and Illnesses  29 CFR 1904  (7/21/2023) | 9/21/2023 | 10/12/2023 | Yes | Yes | 1/21/2024 |  |

**COVID-19 Vaccination and Testing; Emergency Temporary Standard 29 CFR 1910, 15, 17, 18, 26, 28 (11/5/2021); Updated COVID-19 Vaccination and Testing; Emergency Temporary Standard 29 CFR 1910 (11/5/2021)** – The Emergency Temporary Standard for COVID-19 Vaccination and Testing was withdrawn.

**Occupational Exposure to COVID-19; Healthcare Emergency Temporary Standard: COVID-19 Log and Reporting Provisions 29 CFR 1910.502(q)(2)(ii), (q)(3)(ii)-(iv) and (r)(2/14/2022):** This rule requires employers who must keep OSHA injury and illness records under 29 CFR 1904 to continue to maintain and make available a COVID-19 log and report to OSHA all COVID-19-related fatalities and hospitalizations. VOSHA indicated (in a timely manner) it did not intend to adopt this rule identically. The State Plan did not begin rulemaking for this standard until February 2024, which was six months beyond the adoption due date.

**Final Rule on the Department of Labor Civil Penalties for Inflation Adjustment Act – Annual Adjustment for 2022 and 2023 29 CFR 1903 (1/15/2022 and 1/15/2023):** As noted above,Vermont has its own statute requiring an annual adjustment to VOSHA’s civil penalties for inflation that is nearly identical to the federal rule. The only difference between the two rules is VOSHA’s penalty adjustment becomes effective on February 1 annually, whereas the federal rule becomes effective on January 15 of each year. VOSHA was timely in responding to and adopting the penalty adjustments in these rules.

**Final Rule to Improve Tracking of Workplace Injuries and Illnesses 29 CFR 1904 (7/21/2023):** Under this rule, establishments with 100 or more employees in the highest-hazard industries must electronically submit information from their Form 300 Log and Form 301 Incident Report; establishments with 20 or more employees in certain high-hazard industries, and establishments with 250 or more employees in industries that are routinely required to keep injury and illness records, must continue to electronically submit information from their Form 300A Annual Summary; and establishments are required to include their legal company name in their submission. VOSHA was a few weeks late in responding to this rule and did not begin rulemaking until February 2024, which was after the adoption deadline of January 21, 2024.

The State Plan attributes its late start in rulemaking for the Occupational Exposure to COVID-19; Healthcare Emergency Temporary Standard: COVID-19 Log and Reporting Provisions Rule and the Final Rule to Improve Tracking of Workplace Injuries and Illnesses to oversights. This is unusual, since the State Plan has a strong track record of undertaking rulemaking in a timely manner. Nonetheless, OSHA will monitor this situation to ensure rulemaking for these two standards proceeds without further delay.

**Observation FY 2023-OB-05**: VOSHA did not begin rulemaking on two rules (Occupational Exposure to COVID-19; Healthcare Emergency Temporary Standard: COVID-19 Log and Reporting Provisions Rule and the Final Rule and the Final Rule to Improve Tracking of Workplace Injuries and Illnesses) in a timely manner and did not meet the deadlines for adopting these rules.

**Federal Monitoring Plan FY 2023-OB-05**: During quarterly meetings, OSHA will monitor VOSHA’s progress in adopting these rules.

**Status FY 2023-OB-05**: This observation is new.

b. Federal Program Change Adoption

State Plans must respond to FPCs with their intention to adopt identical, different, or not adopt within 60 days of their effective date. State Plan adoption, either identical or different, should be accomplished within six months. Tables B through D summarize the status of VOSHA’s FPC adoptions over the past two fiscal years. VOSHA performed satisfactorily in terms of responding to and adopting FPCs timely in FY 2023 and FY 2022.

**Table B**

**Status of FY 2022 and FY 2023 Federal Program Changes (FPCs) Where Adoption Was Required**

| **FPC Directive/Subject** | **Response Due Date** | **State Plan Response Date** | **Intent to Adopt** | **Adopt Identical** | **Adoption Due Date** | **State Plan Adoption Date** |
| --- | --- | --- | --- | --- | --- | --- |
| Revised Combustible Dust National Emphasis Program  CPL 03-00-008  (1/30/2023) | 3/31/2023 | 3/30/2023 | Yes | Yes | 7/30/2023 | 4/28/2023 |
| National Emphasis Program on Warehousing and Distribution Center Operations  CPL 03-00-026  (7/13/2023) | 9/11/2023 | 9/7/2023 | Yes | Yes | 1/9/2024 | 11/1/2023 |

**Table C**

**Status of FY 2022 and FY 2023 Federal Program Changes (FPCs) Where Equivalency Was Required**

| **FPC Directive/Subject** | **Response Due Date** | **State Plan Response Date** | **Intent to Adopt** | **Adopt Identical** | **Adoption Due Date** | **State Plan Adoption Date** |
| --- | --- | --- | --- | --- | --- | --- |
| Compliance Directive for Cranes and Derricks in Construction Standard  CPL 02-01-063  (2/11/2022) | 7/3/2022 | 7/5/2022 | Yes | Yes | 11/3/2022 | 7/5/2022 |
| OSHA Whistleblower Investigations Manual  CPL 02-03-011  (4/29/2022) | 10/11/2022 | 10/7/2022 | Yes | Yes | 2/11/2023 | 10/17/2022 |
| Severe Violator Enforcement Program (SVEP)  CPL 02-00-169  (9/15/2022) | 11/15/2022 | 11/14/2022 | Yes | Yes | 3/15/2023 | 11/28/2022 |
| Site-Specific Targeting (SST)  CPL 02-01-064  (2/7/2023) | 4/8/2023 | 4/3/2023 | Yes | Yes | 8/6/2023 | 4/10/2023 |
| National Emphasis Program – Falls  CPL 03-00-025  (5/1/2023) | 6/30/2023 | 5/31/2023 | Yes | Yes | 10/28/2023 | 6/30/2023 |
| Consultation Policies and Procedures Manual  CSP 02-00-005  (9/29/2023) | 11/28/2023 | 11/29/2023 | Yes | Yes | 3/27/2024 | 12/4/2023 |

**Table D**

**Status of FY 2022 and FY 2023 Federal Program Changes (FPCs) Where Adoption Was Encouraged**

| **FPC Directive/Subject** | **Response Due Date** | **State Plan Response Date** | **Intent to Adopt** | **Adopt Identical** | **State Plan Adoption Date** |
| --- | --- | --- | --- | --- | --- |
| OSHA’s Use of Small Unmanned Aircraft Systems  CPL 02-01-169  (12/22/2021) | 2/22/2022 | 2/23/2022 | No | No | N/A |
| National Emphasis Program – Outdoor and Indoor Heat-Related Hazards  CPL 03-00-024  (4/8/2022) | 6/8/2022 | 5/12/2022 | Yes | Yes | 5/16/2022 |

**Table E**

**FY 2022 and FY 2023 State-Initiated Changes**

| **State-Initiated Change** | **Adoption Date** | **Effective Date** |
| --- | --- | --- |
| None. |  |  |

**5. Variances**

VOSHA did not have any variances in FY 2023 and FY 2022.

**6. STATE AND LOCAL government WORKER Program**

**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 2023, the FRL range was from 7.76 percent to 8.57 percent. VOSHA’s percent of 5.84 percent was outside (below) the FRL range. This result was not positive.

**Explanation:** In FY 2023, VOSHA conducted 10 of 20 inspections projected in state and local government. Personnel changes and the storm interfered with enforcement activity. OSHA is not overly concerned with VOSHA’s performance on SAMM 6 due to the unique challenges that confronted the State Plan in FY 2023.

**7. WHISTLEBLOWER Program**

The Vermont Department of Labor operates VOSHA’s Anti-Retaliation Program under Title 21 V.S.A. Sec. 231. VOSHA has jurisdiction over workplace retaliation cases arising from both state and local government and private sector workers in the State of Vermont. The State Plan models its program after OSHA’s Whistleblower Protection Program and follows the OSHA Whistleblower Investigations Manual for practices and procedures.

[VOSHA’s web site](https://labor.vermont.gov/vermont-occupational-safety-and-health-administration-vosha/whistleblower-protection-program) provides many resources, including directions for filing an online complaint. A complaint filed online is either investigated or voluntarily moved into the alternative dispute resolution program. The administrative assistant schedules the mediation with the state attorney. If a case is dismissed, the complainant may appeal to the Commissioner of the Vermont Department of Labor. OSHA’s case file review did not identify any issues with the determinations reached by VOSHA.

Until July 2023, the compliance chief (who had received training as the anti-retaliation investigator) supervised the State Plan’s sole investigator. When the compliance chief resigned, the VOSHA Program Manager assumed responsibility for supervising the investigator. The current compliance chief does not have any experience with VOSHA’s Anti-Retaliation Program but plans to enroll in OTI’s whistleblower training courses in FY 2024.**[[3]](#footnote-3)**

The State Plan has a substantial backlog of retaliation complaints awaiting investigation that began accumulating even before the current investigator was hired in September 2021. By end of FY 2023, VOSHA’s backlog included 56 complaints, of which 41 (73 percent) were filed in calendar year 2020. To improve this situation, the program manager, who has prior experience as a whistleblower investigator, and has been assisting the investigator with the backlog.

**8. Complaint About State Program Administration (CASPA)**

VOSHA did not have any CASPAs in FY 2023 and FY 2022.

**9. Voluntary Compliance Program**

In FY 2023, VOSHA met the annual performance goal of maintaining the four GMVPP sites that were active in FY 2022 but did not meet the goal of recruiting one new GMVPP participant. For this report, OSHA reviewed report evaluations and annual safety and health management system (SHMS) self-evaluations of four active GMVPP sites.**[[4]](#footnote-4)** To help resolve two observations related to the GMVPP that have been on the books since the FY 2021 Comprehensive FAME Report, OSHA trained VOSHA’s GMVPP manager on the pertinent sections of the GMVPP Policies and Procedures Manual (which VOSHA adopted identical to the federal manual in May 2020). However, the State Plan did not resolve the observations and they are continued in this report.

Specifically, OSHA continued to identify annual self-evaluations that had errors in days away, restricted or transferred (DART) rates and total case incident rates (TCIRs). VOSHA should carefully review Table B-1 in each participant’s annual self-evaluation to verify the accuracy of all TCIRs and DART rates.

**Observation FY 2023-OB-01 (formerly FY 2022-OB-01 and FY 2021-OB-02)**: In FY 2023, there were errors in the calculations of the DART rates and TCIRs in three (75 percent) of four annual participant submissions reviewed.

**Federal Monitoring Plan FY 2023-OB-01**: On a quarterly basis, OSHA will emphasize the need for VOSHA to review each GMVPP site’s annual self-evaluation to identify and correct errors in DART rate and TCIR calculations.

**Status FY 2023-OB-01**: This observation is continued.

Also, GMVPP participants did not sufficiently describe the effectiveness of each of the GMVPP SHMS elements and sub-elements. VOSHA should make sure each participant follows Appendix A of the GMVPP Manual which lists the five questions each participant should answer in evaluating each element and sub-element of its SHMS.

**Observation FY 2023-OB-02 (formerly FY 2022-OB-02 and FY 2021-OB-03):** In FY 2023, three (75 percent) of four annual SHMS self-evaluations did not sufficiently evaluate the site’s safety and health management system.

**Federal Monitoring Plan FY 2023-OB-02**: On a quarterly basis, OSHA will also reinforce the need to ensure each GMVPP participant adequately evaluates all elements and sub-elements of the safety and health management system.

**Status FY 2023-OB-02**: This observation is continued.

VOSHA met the FY 2023 annual performance goal of maintaining three active Alliances. OSHA verified that VOSHA’s written policies and procedures for the voluntary and cooperative programs were adequate.

**10. STATE AND LOCAL GOVERNMENT 23(g) On-site CONSULTATION PROGRAM**

In each of the past two fiscal years, VOSHA’s state and local government consultation program projected 20 state and local government visits and conducted 16. According to VOSHA, the State Plan believes the annual goal of 20 visits is attainable but acknowledges that meeting it has been difficult. One reason is some cities and towns opt for the safety and health training offered by an insurance company that specializes in servicing municipalities. Nonetheless, the State Plan continues to persevere by marketing its 23(g) consultation services at several venues.

Although the State Plan had difficulty meeting its goal for visits in each of the past two fiscal years, MARC 4A shows that 100 percent of all hazards were corrected timely (i.e., within 14 days or less of the latest correction due date) in both fiscal years. In FY 2023 and in FY 2022, Project WorkSAFE also met the reference of 65 percent for MARC 4D, percent of serious hazards corrected (in original time or onsite). In FY 2023, 92 of 98 (93.88 percent) serious hazards were corrected in the original time or onsite; and in FY 2022, the State Plan’s percentage was 82.61 percent (38 of 46 serious hazards were corrected in original time or onsite). OSHA did not identify any concerns with VOSHA’s 23(g) on-site consultation program over the past two fiscal years.

| **FY 2023-#** | **Finding** | **Recommendation** | **FY 2022-# or**  **FY 2022-OB-#** |
| --- | --- | --- | --- |
| FY 2023-01 | The State Plan has 22 cases from FY 2023 and FY 2022 with abatement ranging from 92 days to 680 days overdue. | Follow the procedures outlined in the VOSHA FOM, Chapter 7, for Employer Failure to Submit Required Abatement Certification (Section VIII) and for The Closing of a Case File Without Abatement Certification (Section XV), where appropriate. |  |
|  |  |  |  |

| **Observation #**  **FY 2023-OB-#** | **Observation#**  **FY 2022-OB-# *or* FY 2022-#** | **Observation** | **Federal Monitoring Plan** | **Current Status** |
| --- | --- | --- | --- | --- |
| FY 2023-OB-01 | FY 2022-OB-01 and FY 2021-OB-02 | In FY 2023, there were errors in the calculations of the DART rates and TCIRs in three (75 percent) of four annual participant submissions reviewed. | 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 2023-OB-02 | FY 2022-OB-02 and FY 2021-OB-03 | In FY 2023, three (75 percent) of four annual SHMS self-evaluations did not sufficiently evaluate the site’s safety and health management system. | On a quarterly basis, OSHA will reinforce the need to ensure each GMVPP participant adequately evaluates all elements and sub-elements of the safety and health management system. | Continued |
| FY 2023-OB-03 |  | In FY 2023, VOSHA’s average lapse time for health was 102.19 days, which was outside (above) the FRL of 55.78 work days to 83.66 workdays. This result is not positive. | During quarterly meetings, OSHA will discuss the need for VOSHA to reduce average health lapse time so that it meets the FRL in SAMM 11. | New |
| FY 2023-OB-04 |  | Nine (36 percent) of 25 case files reviewed for abatement did not contain adequate documentation of abatement completion. | During quarterly meetings, OSHA will discuss the need for VOSHA to follow the procedures pertaining to abatement verification and documentation in the VOSHA FOM, Chapter 7. | New |
| FY 2023-OB-05 |  | VOSHA did not begin rulemaking on two rules (Occupational Exposure to COVID-19; Healthcare Emergency Temporary Standard: COVID-19 Log and Reporting Provisions Rule and the Final Rule and the Final Rule to Improve Tracking of Workplace Injuries and Illnesses) in a timely manner and has gone well past the deadlines for adopting these rules. | During quarterly meetings, OSHA will monitor VOSHA’s progress in adopting these rules. | New |

| **FY 2022-#** | **Finding** | **Recommendation** | **State Plan Corrective Action** | **Completion Date (if Applicable)** | **Current Status**  **(and Date if Item is**  **Not Completed)** |
| --- | --- | --- | --- | --- | --- |
|  | None. |  |  |  |  |

| State Plan: SAMM Number | State Plan: SAMM Name | State Plan: Data | FY 2023 Further Review Level | FY 2023 Notes |
| --- | --- | --- | --- | --- |
| 1a | Average number of work days to initiate complaint inspections (state formula) | 3.33 | 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) | 2.47 | 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) | 0.69 | 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) | 0.14 | 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 2023.  The further review level is fixed for all State Plans. |
| 4 | Number of denials where entry not obtained | 0 | 0 | The further review level is fixed for all State Plans. |
| 5a | Average number of violations per inspection with violations by violation type (SWRU) | 1.74 | +/- 20% of 1.75 | The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from 1.40 to 2.10 for SWRU. |
| 5b | Average number of violations per inspection with violations by violation type (other) | 0.35 | +/- 20% of 0.89 | The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from 0.71 to 1.07 for OTS. |
| 6 | Percent of total inspections in state and local government workplaces | 5.84% | +/- 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) | 124 | +/- 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) | 30 | +/- 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) | $4,270.04 | +/- 25% of  $3,625.21 | The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from $2,718.91 to $4,531.51. |
|  | **a**. Average current serious penalty in private sector  (1-25 workers) | $2,371.00 | +/- 25% of  $2,348.03 | The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from $1,761.02 to $2,935.04. |
|  | **b**. Average current serious penalty in private sector  (26-100 workers**)** | $5,789.16 | +/- 25% of  $4,167.28 | The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from $3,125.46 to $5,209.10. |
|  | **c**. Average current serious penalty in private sector  (101-250 workers) | $6,649.40 | +/- 25% of  $6,052.04 | The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from $4,539.03 to $7,565.05. |
|  | **d**. Average current serious penalty in private sector  (greater than 250 workers) | $5,897.34 | +/- 25% of  $7,331.41 | The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from $5,498.56 to $9,164.26. |
| 9a | Percent in compliance (safety) | 22.12% | +/- 20% of  31.73% | The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from 25.38% to 38.08% for safety. |
| 9b | Percent in compliance (health) | 25.93% | +/- 20% of  43.82% | The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from 35.06% to 52.58% for health. |
| 10 | Percent of work-related fatalities responded to in one workday | 83.33% | 100% | The further review level is fixed for all State Plans. |
| 11a | Average lapse time (safety) | 77.06 | +/- 20% of 55.23 | The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from 44.18 to 66.28 for safety. |
| 11b | Average lapse time (health) | 102.19 | +/- 20% of 69.72 | The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from 55.78 to 83.66 for health. |
| 12 | Percent penalty retained | 53.68% | +/- 15% of  71.84% | The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from 61.06% to 82.62%. |
| 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 2023 due to the transition of 11(c) data from IMIS to OIS. |
| 15 | Percent of 11(c) complaints that are meritorious | N/A\* | N/A\* | This measure is not being reported for FY 2023 due to the transition of 11(c) data from IMIS to OIS. |
| 16 | Average number of calendar days to complete an 11(c) investigation | N/A\* | N/A\* | This measure is not being reported for FY 2023 due to the transition of 11(c) data from IMIS to OIS. |
| 17 | Percent of enforcement presence | 0.87% | +/- 25% of  0.93% | The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from 0.70% to 1.17%. |

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 SAMM Report in OIS and the State Plan WebIMIS report run on November 14, 2023, as part of OSHA’s official end-of-year data run.

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-1)
2. Abatement means action by an employer to comply with a cited standard or regulation or to eliminate a recognized hazard identified during an inspection. [↑](#footnote-ref-2)
3. Under OSHA’s Mandatory Training Program for OSHA Whistleblower Investigators (TED 01-00-020; effective October 8, 2015), each whistleblower investigator must complete Course #1420 (Whistleblower Investigation Fundamentals Course) during the first year of their career as an investigator. Additional courses are prescribed by the directive for the second and third years of an investigator’s career. [↑](#footnote-ref-3)
4. OSHA requires each VPP participant to perform annually a self-evaluation of its safety and health management system. This self-evaluation, reflecting the most current previous calendar years’ experience, must be submitted to the participant’s OSHA Regional VPP Manager by February 15 of each year. [↑](#footnote-ref-4)