

**FY 2019 Comprehensive  
Federal Annual Monitoring Evaluation (FAME) Report**

Vermont Occupational Safety and Health Administration  
(VOSHA)



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## **I. Executive Summary**

The purpose of this report is to assess the Vermont State Plan's (VOSHA's) performance for Fiscal Year (FY) 2019 and its progress in resolving outstanding findings from previous Federal Annual Monitoring Evaluation (FAME) Reports.

In FY 2019, personnel changes occurred in the compliance supervisor and the workplace retaliation investigator positions. Although these changes affected VOSHA's performance in a few areas, the State Plan ended the year with some notable achievements: VOSHA exceeded the goal for inspections and played a major role in a statewide emergency exercise.

This report contains no new findings. However, some new issues surfaced with regard to violation documentation, severity assessments, and targeting; thus, OSHA has made three new observations in this report. The FY 2018 Follow-up FAME Report contained two observations that were continued from previous years and were pending the results of the FY 2019 case file review; VOSHA resolved the observation for low penalty retention but not the one pertaining to the OSHA 300 Logs.

Similar to the past few years, VOSHA had budgetary concerns in FY 2019. The State Plan has been working to secure additional state funding not only to preserve operations at their current level, but also to hire a full-time compliance assistance specialist (CAS). For several years, the program manager has been shouldering most of the compliance assistance responsibilities; hiring a CAS will enable him to devote more time to managing the State Plan.

Appendix A describes the new and continued findings and recommendations. Because this report contains no new findings, it has been left blank. Appendix B describes the observations and the related federal monitoring plans; thus, this appendix lists one closed observation, one continued observation, and three new observations. Appendix C describes the status of previous findings with associated completed corrective actions. Since there were no findings in the previous FAME Report, Appendix C is blank. Thus, this report contains four observations, one continued and three new.

## **II. State Plan Background**

### **A. Background**

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

VOSHA's statutory authority is contained in Title 21 of the Vermont Statutes Annotated (V.S.A.) §§201-232. Under these statutes, VOSHA conducts workplace inspections, issues citations and penalties, and provides administrative and judicial review processes for employers seeking to contest citations and/or penalties. Title 21 V.S.A. §231 prohibits employers from retaliating against workers who exercise their rights under VOSHA's occupational safety and

health statutes and authorizes the investigation and prosecution of complaints of workplace retaliation. An express private right of action for workers who believe that workplace retaliation or discrimination has occurred is contained in 21 V.S.A. §232.

In 1978, the U.S. Court of Appeals, in *AFL-CIO v. Marshall*, ordered OSHA to create a formula to set enforcement staffing benchmark levels for each State Plan. Meeting these staffing benchmark levels is a requirement for a State Plan to attain final approval status. VOSHA does not have final approval status and, due to a limited state budget, cannot allocate the amount 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) and one workplace retaliation investigator. A program technician also supports the State Plan.

VOSHA's state and local government consultation program consists of two safety and health consultants who commit a portion of their time to providing on-site consultation services to state and local government workplaces. As mentioned above, the program manager carried out several of the compliance assistance duties in FY 2019.

In FY 2019, VOSHA covered approximately 310,500 workers, including 261,500 private sector workers and 49,000 state and local government workers. There were approximately 24,596 private sector establishments and approximately 1,029 state and local government worksites in the state in FY 2019.<sup>1</sup>

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

VOSHA 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 those issued by OSHA in 1988 and subsequently overthrown in court. They are considerably stricter than OSHA's current PELs.

VOSHA began FY 2019 with base level funding of \$726,900; this total increased to \$741,200 due to a base level funding adjustment. As in past years, the State of Vermont matched the federal funding award in FY 2019. In recent State OSHA Annual Reports (SOARs), VOSHA has indicated that it does not have the funds needed to fill the CSHO vacancy that has been on the books since FY 2017.

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<sup>1</sup> Vermont Economic & Labor Market Information Division, Quarterly Census of Employment and Wages (QCEW)

## **B. New Issues**

None.

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

## **A. Data and Methodology**

OSHA established a two-year cycle for the FAME process. FY 2019 was a comprehensive year, and as such, OSHA was required to conduct on-site evaluations and case file reviews. OSHA conducted two separate on-site reviews at VOSHA's headquarters in Montpelier, Vermont. One of these on-site evaluations focused on evaluating the State Plan's enforcement program while the other focused primarily on the workplace retaliation program.

### **Enforcement On-site Evaluation**

From October 15 through 18, 2019, OSHA conducted an on-site evaluation of VOSHA's enforcement program. OSHA's on-site review team consisted of six personnel: a program analyst, one area director, one assistant area director, the Region's Voluntary Protection Programs (VPP) Manager, a safety specialist, and a CSHO. The OSHA review team conducted an opening conference on October 15, 2019, with the Vermont Commissioner of Labor, the Director of the Workers' Compensation and Safety Division, the VOSHA Program Manager, the Vermont Department of Labor's General Counsel, and the compliance supervisor.

During this evaluation, OSHA reviewed 43 safety and health inspection files, most of which were randomly selected from a universe of the 168 inspections that VOSHA opened and closed during FY 2019. OSHA also reviewed two fatality case files in February 2020 because none of the fatality cases opened in FY 2019 had been closed when the on-site evaluation was conducted in October. Thus, OSHA reviewed 45 case files for this report.

The selected population included:

- Twenty-one (21) programmed inspection case files
- Fourteen (14) complaint case files
- Six (6) referral case files
- Two (2) fatality inspection case files
- One (1) follow-up inspection case file
- One (1) unprogrammed-related case file

OSHA also reviewed eight files related to GMVPP sites, two Alliance files, and the disposition of 27 cases that had citations appealed to the VOSHA Review Board in FY 2018 and FY 2019.

During the on-site review in October 2019, OSHA conducted interviews with the program manager, the occupational safety compliance supervisor, the administrative assistant, VOSHA's general counsel, 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 the observations from the FY 2018 Follow-up FAME Report, cases filed with the review board, standard and federal program change (FPC) adoptions, complaint processing, compliance assistance, and abatement tracking, etc.

All of the staff mentioned above, as well as administrative and field staff, attended the closing conference, which was held on October 18, 2019. During this meeting, OSHA summarized issues and best practices identified during the case file review, and there was a friendly exchange of questions, information, and suggestions that benefited both OSHA and the State Plan.

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

From January 15 through 24, 2020, a regional supervisory investigator and another investigator conducted a review of the State Plan's workplace retaliation cases that VOSHA provided to OSHA electronically. OSHA conducted the opening conference on January 16, 2020, with VOSHA's compliance and whistleblower supervisor. During the review, OSHA interviewed the state's general counsel responsible for handling the State Plan's workplace retaliation cases and examined 10 docketed/completed cases and nine screened case files from FY 2019. OSHA reviewed the cases for completeness, legal sufficiency, and agreement with data contained in the OSHA IT Support System (OITSS). OSHA held a closing conference with the VOSHA Program Manager on January 24, 2020, to discuss and summarize issues identified during the case file review.

### **Monitoring Sources**

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

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

Each SAMM has an agreed-upon further review level (FRL) which can be either a single number or a range of numbers above and below the national average. State Plan SAMM data that falls outside the FRL triggers a closer look at the underlying performance of the mandatory activity. Appendix D presents the State Plan's FY 2019 SAMM Report and includes the FRL for each measure.

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

### **1. PROGRAM ADMINISTRATION**

#### **a) Training**

In 2014, VOSHA adopted TED 01-00-019, the directive issued by the OSHA Training Institute (OTI) that prescribes OSHA's policies and procedures for training compliance officers. Five of VOSHA's seven CSHOs have completed phase one of the directive, which requires CSHOs to complete a minimum of eight initial courses offered by OTI during the first three years of his or her career as a CSHO.

Two of the five senior CSHOs are now following phase two, which requires each CSHO to complete a minimum of six additional technical courses through the eighth year of their career. The other three senior CSHOs have been with the State Plan for more than nine years. Thus, they are following phase three of the directive, which requires CSHOs to complete a minimum of one technical course every three years. The two safety compliance officers who began working for the State Plan in early FY 2019 have completed two of the mandatory training track courses.

The compliance supervisor—who began working for VOSHA as a CSHO in February 2018 and then became the workplace retaliation investigator in July of that year—has completed several courses that are part of the mandatory training track for CSHOs, as well as training courses for workplace retaliation investigators. VOSHA plans to have the compliance supervisor complete all of OSHA's courses for safety compliance personnel and workplace retaliation investigators. The new workplace retaliation investigator was hired in the fourth quarter of FY 2019 and, therefore, was not able to complete the initial training course for whistleblower investigators offered by OTI until early FY 2020.<sup>2</sup>

Overall, VOSHA has performed satisfactorily in ensuring that all staff are taking the training needed to provide them with the requisite knowledge, skills, and abilities to perform their job. A complete listing of training completed by all CSHOs in FY 2019 is included in the VOSHA SOAR.

#### **b) OSHA Information System**

OSHA conducted a training for the new compliance supervisor soon after her appointment to discuss the use of OIS reports to monitor program performance. Although VOSHA had resolved an observation from the FY 2017 Comprehensive FAME Report pertaining to the State Plan not running and reviewing OIS reports frequently enough to properly monitor enforcement activities, OSHA wanted to make sure that this issue did not resurface.

In FY 2019, the VOSHA managers said that they were running and reviewing OIS reports on a

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<sup>2</sup>Based on OSHA's mandatory training program for whistleblower investigators (TED 01-00-020), each whistleblower investigator will be required to complete Whistleblower Investigation Fundamentals, Course #1420, offered by OTI during the first year of his or her career as a whistleblower investigator.

monthly basis although OSHA had recommended that VOSHA run and review OIS reports at least bi-weekly. An OIS Open Inspection Report run in January 2020 indicated that abatement was long overdue for a few inspections that had citations issued in FY 2019. This was because VOSHA had extended the abatement due dates for these inspections and did not update OIS accordingly. OSHA has encouraged the managers to run and review OIS reports more frequently to identify issues such as this, and the State Plan indicated that it would comply with this suggestion.

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

VOSHA implemented its most recent SIEP in FY 2017 to evaluate the State Plan's procedures for ensuring that cases contain adequate documentation of abatement before they are closed. This SIEP also evaluated VOSHA's procedures for pursuing abatement in cases transferred to debt collection. In FY 2018, VOSHA used the same SIEP to continue to evaluate these issues. Because of this two-year evaluation, the State Plan identified some procedural flaws and developed corrective measures to address the problems it was having with abatement. VOSHA has not yet developed another SIEP; rather, the State Plan will consider developing a new SIEP based on issues raised in this report.

#### d) Staffing

VOSHA began FY 2018 with seven CSHOs and one workplace retaliation investigator, but during the course of the year, the investigator and one CSHO resigned. VOSHA transferred one of its CSHOs into the workplace retaliation investigator position. Thus, toward the end of FY 2018, VOSHA still had two vacant CSHO positions but was able to fill both of them in early FY 2019.

The longstanding compliance chief retired at the end of March 2019, and VOSHA selected the workplace retaliation investigator to fill this position. The State Plan hired a new workplace retaliation investigator in the fourth quarter of FY 2019. Thus, as of September 30, 2019, VOSHA's staff consisted of two first-line supervisors, one workplace retaliation investigator, one program technician, five safety compliance officers, and two health compliance officers.

## 2. ENFORCEMENT

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

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

Discussion of State Plan data and FRL: The negotiated FRL for this measure is five days. VOSHA's FY 2019 average was 3.21 days.



Explanation: VOSHA met the FRL in FY 2019.

**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 2019 was 2.15 work days, which was outside (above) the FRL.

Explanation: A review of VOSHA's results for SAMM 2a in each of the four quarters of FY 2019 shows that the State Plan's highest average (6.00 work days) occurred in the third quarter, which was also the quarter in which the workplace retaliation investigator began her new job as the compliance chief. At this time, she was becoming familiar with her new duties and functioning as the workplace retaliation investigator. By the end of the fourth quarter, VOSHA's average was still outside (above) the FRL but had decreased to 1.94 work days.

VOSHA has a solid record of coming close to meeting the FRL for SAMM 2a, and it is apparent that the change in the compliance chief's position caused the increase in the State Plan's average in the third quarter. For example, in FY 2017, VOSHA's end-of-year average for SAMM 2a was 1.05 work days; in FY 2016, the State Plan's average was 1.12 work days; and in FY 2015, its average was .64 work days. Therefore, VOSHA's FY 2019 result for SAMM 2a is not cause for concern.

**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 2019, VOSHA's result was 100 percent.

Explanation: VOSHA had one complaint of imminent danger in FY 2019 and responded within one work day.

During the case file review, OSHA identified no major concerns with VOSHA's handling of complaints. However, a few of the 14 complaint cases were missing VOSHA's letter to the complainant. During the closing conference, OSHA suggested that VOSHA follow the guidance in Chapter 9 of the VOSHA FOM, which discusses the procedures for notifying complainants of the results of an inspection.

**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 2019, VOSHA's result was zero.

Explanation: VOSHA did not have any denials of entry in FY 2019.

## b) Fatalities

In FY 2019, the State Plan investigated three work-related fatalities, one of which involved a flagger in a work zone. In FY 2016, VOSHA implemented a local emphasis program (LEP) for work zones because two of the five work-related fatalities that occurred that year involved flaggers. This LEP remains in effect and seems to be effective; although one fatality occurred in a work zone in FY 2019, there were no fatalities in work zones in FY 2017 or in FY 2018.

OSHA did not evaluate the inspection of the work zone fatality but reviewed the other two fatality cases—one related to a skid steer accident and the other involving a worker struck by a tree branch. In one of the inspections, the CSHO documented interviews with the workers but should have obtained more information regarding the training provided by the employer, conditions on other days, and supervision on site, etc. The review board upheld the citations for this case, but the CSHO could also have done a better job documenting the employer's knowledge of the violative condition.<sup>3</sup> On the other hand, the other inspection contained worker interviews that were thorough and well-documented, and OSHA had no concern with the CSHO's development of employer knowledge. Although OSHA identified a few issues with these two fatality inspections, they are not overly concerning.

### **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 2019, VOSHA's result was 100 percent.

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

## c) Targeting and 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 2019, VOSHA planned to conduct 205 safety inspections and 45 health inspections. The FRL range was from 194.75 to 215.25 for safety and from 42.75 to 47.25 for health. In FY 2019, VOSHA conducted 225 safety inspections and 75 health inspections; both of these totals were outside (above) the FRL range, which were positive outcomes.

Explanation: VOSHA met the FRL for safety inspections and for health inspections in FY 2019.

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<sup>3</sup> Based on Chapter 4 of the VOSHA FOM, whether the employer knew, or could have known, of the violative condition is one of four factors that must be addressed when determining whether a violation is to be classified as serious.

Each year, VOSHA obtains randomized lists of high-hazard safety and health employers from OSHA's Office of Statistical Analysis to schedule programmed inspections in non-construction workplaces. In December 2018, VOSHA adopted OSHA's Site-Specific Targeting Directive (SST-16), which uses employer-submitted Calendar Year 2016 OSHA Form 300A data to target non-construction workplaces that have 20 or more workers. Similar to the high-hazard safety and health lists, OSHA's Office of Statistical Analysis provided VOSHA with the SST-16 list; the State Plan completed all inspections on this list by April 2019.

For programmed inspections in construction, VOSHA uses OSHA's Construction Inspection Targeting Application (C-Targeting Application).<sup>4</sup> The State Plan also conducts programmed inspections at construction sites that 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.<sup>5</sup> VOSHA covers inspections of smaller construction sites under its emphasis programs on residential construction and falls.

In addition to the LEP for work zones, VOSHA has had LEPs in 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.

VOSHA randomly selects workplaces for programmed inspections in local government 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; these include the Department of Buildings and General Services, the Agency of Human Services, and the Agency of Transportation. Similar to local government sites, state agencies that have had a programmed inspection in the last five years are exempt from programmed inspections. However, an OIS Scan Summary Report shows that in FY 2019, VOSHA did little in terms of targeting high-hazard employers in state government for inspections. OSHA is concerned with this issue and addresses it in this report as Observation FY 2019-OB-04.

SAMM 9, percent in compliance, calculates the State Plan's in-compliance rates (i.e., the percentage of inspections that have been closed with no violations). High in-compliance rates could indicate that the State Plan is not targeting worksites that are highly hazardous and prone to having serious violations.

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<sup>4</sup> This list follows the parameters outlined in OSHA's directive, CPL 02-00-025 ([https://www.osha.gov/pls/oshaweb/owadisp.show\\_document?p\\_table=DIRECTIVES&p\\_id=1594](https://www.osha.gov/pls/oshaweb/owadisp.show_document?p_table=DIRECTIVES&p_id=1594)). Each year, OSHA updates the high-hazard safety and health industry lists with new Bureau of Labor Statistics and OIS data.

<sup>5</sup> The C-Targeting Application uses F.W. Dodge reports on construction projects to produce monthly inspection lists that are posted on a website available to participating State Plans upon request. This system uses a computer-based methodology to select construction projects for inspection on a neutral basis when they are 30 to 60 percent complete. Selected sites represent a broad range of construction projects. However, the Dodge data does not include projects valued under \$50,000; therefore, supplementing the C-Targeting list, as VOSHA does, is a sound practice.

## **SAMM 9 – Percent in compliance**

Discussion of State Plan data and FRL: The FRL is based on a three-year national average. In FY 2019, the FRL range was from 24.24 percent to 36.36 percent for safety and from 28.90 percent to 43.35 percent for health. In FY 2019, VOSHA's in-compliance rate of 35.96 percent for safety inspections was within the FRL range; however, the State Plan's in-compliance rate of 23.33 percent for health inspections was outside (below) the FRL range, which is a positive result.

Explanation: VOSHA's results for SAMM 9 indicate that the State Plan is performing satisfactorily in terms of targeting the most hazardous work sites for inspections.

SAMM 5 is another indicator of the State Plan's effectiveness in targeting high-hazard employers.

## **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 2019 average of 1.42 was slightly outside (below) the FRL range of 1.43 to 2.15 for serious, willful, repeat, or unclassified (SWRU) violations. For other-than-serious (OTS) violations, the State Plan's average of 0.69 was outside (below) the FRL range of 0.78 to 1.16.

Explanation: In FY 2019, the State Plan's averages were not far enough outside any of the FRL ranges to warrant concern. 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 had a tendency to classify some serious violations as OTS violations. For VOSHA, this was not the case; however, during the case file review, OSHA questioned whether VOSHA should have classified a couple of violations as serious rather than OTS, and OSHA determined that the State Plan classified one violation as serious that should have been classified as willful.

### **d) Citations and Penalties**

#### *Citations*

In FY 2019, VOSHA had a strong enforcement presence in the state.

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

Discussion of State Plan data and FRL: The FRL is based on a three-year national average. The FRL range in FY 2019 was from 0.92 percent to 1.54 percent, and VOSHA's total enforcement presence was 1.75 percent, which was outside (above) the FRL range. This was a positive result.

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 result shows that the State Plan is adequately covering high-hazard sites in the private sector with enforcement activity.

VOSHA also performed satisfactorily with regard to timeliness of citation issuance.

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

Discussion of State Plan data and FRL: The FRL is based on a three-year national average. In FY 2019, the FRL range was from 38.08 work days to 57.13 work days for safety and from 45.78 work days to 68.68 work days for health. VOSHA's averages were 43.70 work days for safety and 63.53 work days for health; both results were well within the acceptable range.

Explanation: Lapse time is calculated as the number of work days from the opening conference date to the earliest issuance date. Over the past few years, VOSHA has consistently met the safety and health FRLs for SAMM 11.

Although VOSHA performed well on SAMMs 17 and 11, OSHA identified some issues related to violation documentation during the on-site case file review. For example, the State Plan did not resolve an observation for case files missing documentation of the OSHA 300 Logs. In the FY 2017 Comprehensive FAME Report, OSHA determined that 19 (40 percent) of 47 cases did not contain documentation that the CSHO had reviewed the logs. This observation was continued in the FY 2018 Follow-up FAME Report, pending the outcome of the FY 2019 onsite case file review.

Chapter 5 of the VOSHA FOM states that the CSHO should obtain "employer maintained records" during the inspection. Over the past few years, VOSHA's managers have been reviewing case files to make sure that they contain all required documentation, such as the OSHA 300 Logs. However, during the FY 2019 on-site review, 13 (33 percent) of 39 cases where the employer employed 10 or more workers did not contain copies of the logs or documentation, such as a notation in the OIS Narrative, that the CSHO had requested and reviewed the logs. Furthermore, for each of these 13 cases, the CSHO did not enter data from the logs into OIS. Chapter 3 of the VOSHA FOM states that "at the start of each inspection, the CSHO shall review the employer's injury and illness records (including the employer's OSHA 300 logs, 300A summaries, and 301 incident reports) for three prior calendar years [and] enter the employer's data into OIS. This shall be done for all general industry, construction, maritime, and agriculture inspections and investigations."

**Observation FY 2019-OB-01: (formerly Observations FY 2018-OB-01 and FY 2017-OB-02):** In FY 2019, in 13 (33 percent) of the 39 cases, where the employer employed 10 or more workers, there was no documentation that the CSHO had requested and reviewed the OSHA 300 Logs. In addition, the CSHO did not enter information from the logs into OIS.

**Federal Monitoring Plan FY 2019-OB-01:** On a quarterly basis, OSHA will monitor the State Plan's progress in requesting and reviewing the OSHA 300 Logs and entering information from the logs into OIS.

**Status FY 2019-OB-01:** This observation is continued.

Additionally, OSHA determined that in 12 (33 percent) of the 36 inspections that were not in compliance, the CSHO did not properly document worker interviews. In some of these cases, the CSHO referenced workers and employers who were contacted but did not include notes on these interviews in the case file. Chapter 5 of the VOSHA FOM states that the CSHO shall obtain all necessary information for documenting violations, such as “employer and employee interviews,” during the inspection.

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

**Federal Monitoring Plan FY 2019-OB-02:** On a quarterly basis, OSHA will monitor the State Plan’s progress in documenting violations by taking notes on worker interviews, as discussed in Chapter 5 of the VOSHA FOM.

**Status FY 2019-OB-02:** This observation is new.

The on-site case file review also indicated that the State Plan was having problems with severity assessments; in 12 (33 percent) of the 36 cases that were not in compliance, the CSHO did not document the severity of the violation, or the CSHO did not correctly apply the assessment of the severity to the hazard. For example, the CSHO assigned moderate severity to a chemical hazard that could potentially result in permanent loss of vision. In another case, the CSHO assigned medium severity to a fall hazard where the distance was greater than 12 feet. The CSHO should have assigned high severity to these violations because both could result in “death from injury or illness; injuries involving permanent disability; or chronic, irreversible illnesses” as discussed in Chapter 6 of the VOSHA FOM. Additionally, documentation of the severity assessment should be included in the case file because it is “information pertaining to how and/or why a standard is violated,” as discussed in Chapter 5 of the VOSHA FOM.

**Observation FY 2019-OB-03:** In 12 (33 percent) of 36 cases that were not in compliance, the CSHO did not document the severity assessment or incorrectly applied the severity assessment to the cited hazard.

**Federal Monitoring Plan FY 2019-OB-03:** On a quarterly basis, OSHA will monitor the State Plan’s progress in following the guidance in Chapter 5 of the VOSHA FOM for documenting severity and in Chapter 6 of the VOSHA FOM for correctly applying the severity assessment to the cited violation.

**Status FY 2019-OB-03:** This observation is new.

Finally, a couple of case files that were not in compliance did not contain specific information about the hazard, such as measurements taken, location of the hazard, and frequency of worker exposure to the hazard. Chapter 5 of the VOSHA FOM provides instructions to determine the minimum level of documentation necessary to prepare an inspection case file and states that this type of documentation should be recorded on the OIS Violation Worksheet.

## *Penalties*

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

Prior to VOSHA's adoption of this rule, the State Plan's penalties were set by the state's penalty statute (21 V.S.A. § 210) that had been in place for many years. For example, employers who were cited for willful or repeated violations were assessed a civil penalty of \$5,000 to not more than \$70,000 for each violation; for serious and OTS violations, the assessments were up to \$7,000 for each violation.

### **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 2019, for employers having one to greater than 250 workers, VOSHA's average of \$2,817.41 was within the FRL range, which was from \$2,153.97 to \$3,589.95.

Explanation: In FY 2019, VOSHA met the FRL for SAMM 8 for employers having one to greater than 250 workers. Also, VOSHA's average was within the FRL range for each of the sub-categories in SAMM 8 based on employer size (see Appendix D). Before adopting OSHA's rule on maximum penalty increases, VOSHA typically did not meet the FRL for SAMM 8.

#### e) Abatement

During the on-site case file review, OSHA determined that in all but a couple of cases, the case file contained adequate documentation of abatement. As mentioned earlier, VOSHA's most recent SIEP focused on evaluating policies and practices to ensure that cases were not being closed without adequate documentation of abatement. From the most recent case file review, it appears that VOSHA's efforts in this regard have been successful. Other than in a few cases, no issues were identified with abatement periods, use of extensions, and overall timeliness.

#### f) Worker and Union Involvement

Under 21 V.S.A. § 206, employers and worker representatives have the opportunity to accompany the CSHO to aid in the inspection. When there is no authorized worker representative, the CSHO is required to consult with a reasonable number of workers concerning matters of safety and health in the workplace. VOSHA's policies and procedures regarding

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<sup>6</sup> The following is a link to VOSHA's current penalty statute:  
<https://legislature.vermont.gov/statutes/section/21/003/00210>

worker involvement during inspections continue to be acceptable. However, OSHA is concerned that the CSHOs are not taking notes on worker interviews and including the notes in the case file. See Observation FY 2019-OB-02.

Although the CSHOs did not consistently document violations by including worker interview notes in their case files, the State Plan's performance on SAMM 13 indicates that CSHOs did interview or include workers in their initial inspections over the last two years.

### **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 2019, VOSHA's result was 100 percent.

Explanation: VOSHA performed satisfactorily on this SAMM.

## **3. REVIEW PROCEDURES**

### **a) Informal Conferences**

VOSHA does not have penalty reduction programs, such as expedited informal settlement agreements. The OIS Inspection Summary Report shows that in FY 2019, 93 percent of the penalty modifications made by VOSHA were through informal settlement agreements. In FY 2018, 99 percent of penalty modifications made by the State Plan were through informal settlement agreements.

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

Discussion of State Plan data and FRL: The FRL is based on a three-year national average. In FY 2019, VOSHA's percent penalty retained of 62.21 was well within the FRL range of 56.42 percent to 76.33 percent.

Explanation: Over the past few years, the State Plan's managers have mentored CSHOs on violation documentation and violation classification to improve penalty retention. As a result, VOSHA's percent penalty retained improved and was within the FRL range for SAMM 12 in FY 2019. The OIS Inspection Summary Report also confirms VOSHA's improvement in the area of penalty retention; in FY 2019, the average penalty reduction rate was 43.3 percent, compared to 52.7 percent in FY 2018.

**Observation FY 2018-OB-02 (formerly Observations FY 2017-OB-04 and FY 2016-OB-01):** In FY 2018, VOSHA's percent penalty retained (SAMM 12) of 48.09 was outside the acceptable range (or range of acceptable data not requiring further review) of 56.79 percent to 76.83 percent.

**Status FY 2018-OB-02:** This observation is closed.



VOSHA improved with regard to penalty retention, but in FY 2019, the State Plan vacated a relatively high number of violations for private sector inspections during the informal conference. Based on the data in SIR 5A, the State Plan's percent of violations vacated (pre-contest) for private sector inspections was 4.43. This percent was outside (above) the FRL of 2.65 percent, which is the national average (i.e., the average of all State Plan and federal percentages).<sup>7</sup> This was not a positive result.

Additionally, SIR 6A, percent of violations reclassified (pre-contest) indicates that VOSHA has been reclassifying a relatively high number of violations. In FY 2019, VOSHA's percent of 10.42 for SIR 6A was outside (above) the FRL of 3.11 percent. Again, this was not a positive result. The case file review did not indicate that VOSHA had serious problems with violation classification; however, seeking improvement in this area, as well as in the area of violation documentation, will help ensure that fewer violations end up being reclassified or vacated during informal conferences.

In a few of the 20 case files reviewed for informal conferences, the State Plan did not adequately document the reason why changes to penalties and violation classifications were made during the informal conference. VOSHA should be mindful of Chapter 8 of the VOSHA FOM, which states that "as the citation(s) are discussed, the AD must thoroughly document what was stated by all parties (employers, employee representatives, and AD)."

Additionally, in a few case files, VOSHA did not enter the date the employer requested the informal conference on the case activity diary sheet. By recording this information on the diary sheet, VOSHA will align more closely with Chapter 5 of the VOSHA FOM, which states, "Diary entries...should be dated in chronological order to reflect a timeline of the case development. Information provided should include, at a minimum, the date of the action or event, a brief description of the action or event, and the initials of the person making the entry."

#### b) Formal Review of Citations

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

OSHA reviewed the statuses of 27 cases that had citations appealed to the review board over the past two fiscal years (19 cases from FY 2019 and 8 cases from FY 2018).<sup>8</sup> In the majority of the cases, 21 (78 percent) of 27, a settlement was reached before a hearing was held. In most of the cases that were settled prior to having 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. In five (24 percent) of the 21 cases that settled before a hearing was held, at least one of the original citations was reclassified; and at least one citation was withdrawn in three (14 percent) of the 21 cases.

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<sup>7</sup> The FRLs for all SIR metrics discussed in this report are the average of all State Plan and federal percentages. Additionally, all SIR metrics in this report pertain to private sector inspections only.

<sup>8</sup> The source of this information is documentation provided by the VOSHA Review Board's general counsel.

In one of the six cases that did not settle prior to a hearing, VOSHA withdrew the one and only citation that had been issued in that case. In two of the six cases, VOSHA was awaiting hearing dates; in another case, a tentative settlement was in place; in another, settlement discussions were ongoing; and in the final case, a hearing had been held, and VOSHA was awaiting the ruling from the review board.

OSHA determined that no action was needed by VOSHA with regard to State Plan defense, quality of decisions, or procedural issues.<sup>9</sup> However, the State Plan's SIR shows that in FY 2019, VOSHA has had mixed results with regard to violations vacated and penalty reductions granted during contest proceedings. Data from SIR 5B, percent of violations vacated after contest had been filed, show that in FY 2019, VOSHA's percent of 5.26 was outside (below) the FRL of 13.98 percent; this was a positive result. With regard to SIR 6B, percent of penalty retention after contest had been filed, the State Plan's percent of 57.37 in FY 2019 was outside (below) the FRL of 62.54, which was not positive. As mentioned earlier, shoring up violation documentation and violation classification will improve the State Plan's ability to sustain penalties and violations during informal conferences and contest proceedings.

#### **4. STANDARDS AND FEDERAL PROGRAM CHANGE (FPC) 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.<sup>10</sup> Table 1 summarizes the status of VOSHA's standard adoptions and is followed by a discussion of each standard.

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<sup>9</sup> The VOSHA Review Board's decisions can be obtained in their entirety through the board's website: <http://voshaboard.vermont.gov/decisions/index>.

<sup>10</sup> <http://voshaboard.vermont.gov/decisions/index>

**Table 1  
Status of FY 2019 Federal Standards Adoption**

<b>Standard</b>	<b>Response Due Date</b>	<b>State Plan Response Date</b>	<b>Intent to Adopt</b>	<b>Adopt Identical</b>	<b>Adoption Due Date</b>	<b>State Plan Adoption Date</b>
Final Rule on the Standards Improvement Project - Phase IV, 29 CFR 1904, 1910, 1915, 1926 (5/14/2019)	7/13/2019	7/11/2019	Yes	Yes	11/14/2019	
Final Rule on the Implementation of the 2019 Annual Adjustment to Civil Penalties for Inflation, 29 CFR 1902, 1903 (1/23/2019)	3/23/2019	1/7/2019	Yes	Yes	7/23/2019	2/1/2019
Final Rule on Crane Operator Certification Requirements, 29 CFR Part 1926 (11/9/2018)	1/9/2019	1/3/2019	Yes	Yes	5/9/2019	1/4/2020
Final Rule on Occupational Exposure to Beryllium, 29 CFR 1910, 1915, 1926 (1/9/2017)	3/9/2017	3/6/2017	Yes	Yes	7/9/2018	11/28/2018

**Standards Improvement Project - Phase IV Rule**

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

VOSHA notified OSHA in a timely manner (i.e., within 60 days from publication of the standard in the *Federal Register*) of its intent to adopt this rule; however, the State Plan has gone far beyond the allowable timeframe (i.e., six months from the effective date identified in the final *Federal Register* notice) for adopting this standard. Under the Vermont Administrative Procedures Act, VOSHA would have to undertake 14 separate rulemakings, one for each of the 14 provisions that SIP-IV revises; as noted above, each rulemaking process is lengthy and involves multiple filings and hearings.<sup>11</sup>

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<sup>11</sup> In addition, the Vermont Administrative Procedures Act requires the Secretary of State to publish proposed rules in newspapers of record and charge the adopting agency the actual cost thereof. See the below link, specifically Subsection (d). According to the rules clerk, that charge is around \$2,200.  
<https://legislature.vermont.gov/statutes/section/03/025/00839>

To remedy this situation, VOSHA plans to adopt the latest version of each body of OSHA’s standards—such as recordkeeping, general industry, maritime, and construction—in its entirety. This plan entails adopting four rules (one at a time), rather than 14, and it has been approved by the Vermont Secretary of State, the agency that oversees rulemaking in Vermont.

### **Implementation of the 2019 Annual Adjustment to Civil Penalties for Inflation Rule**

VOSHA responded timely to the Final Rule on the Implementation of the 2019 Annual Adjustment to Civil Penalties for Inflation and was able to complete adoption before the due date of July 23, 2019. This is because VOSHA adopted OSHA’s Final Rule on Maximum Penalty Increases, which allows for a raise in maximum penalties each year according to the consumer price index.

### **Crane Operator Certification Requirements Rule**

On November 9, 2018, the Department of Labor published a *Federal Register* notice on the Final Rule on Crane Operator Certification Requirements, effective December 10, 2018. The amendments to OSHA’s cranes standard in this final rule require employers to permanently implement evaluations of crane operators, whereas the previous evaluation duty had been temporary with a fixed end date. These evaluations must be documented and include more specificity than the previous temporary employer duty to assess and train operators. State Plans were required to adopt an “at least as effective” standard or amendment to their existing standards or show that they already have an existing “at least as effective” standard within six months of the standard’s publication date, i.e. by May 9, 2019.

VOSHA responded to this rule within the 60-day timeframe but did not complete adoption until January 4, 2020, which was well beyond the adoption due date of May 9, 2019. Because of state-mandated changes to the procedures for filing administrative rules, VOSHA experienced a significant setback in adopting this rule. The forms VOSHA used to file this rule had been in effect before these changes took place, but as it turned out, they were not acceptable under the new procedures. Thus, the State Plan had to refile the rule with the Vermont Secretary of State, which delayed adoption by several months. VOSHA’s delay in adopting this rule is not cause for concern because VOSHA has resolved the issue with the forms, and it is unlikely to re-occur.

### **Beryllium Rule**

On January 9, 2017, OSHA adopted new standards addressing occupational beryllium exposure in general industry, construction, and shipyards. State Plans were required to adopt an “at least as effective as” rule within six months of promulgation, or by July 9, 2017. However, on June 27, 2017, OSHA published a notice of proposed rulemaking to revoke the ancillary provisions applicable to the construction and shipyard sectors but retain the new PELs. Several State Plans, including VOSHA, delayed promulgation pending completion of the second rulemaking. The State Plan began the rulemaking process for this standard in early FY 2018 and completed it in November 2018. Given the unusual circumstances of the rulemaking for the beryllium rule, VOSHA’s delay in adopting this rule is not cause for concern.

b) Federal Program Change (FPC) Adoption

**Table 2**  
**Status of FY 2019 Federal Program Change (FPC) Adoption**

<b>FPC Directive/Subject:</b>	<b>Response Due Date:</b>	<b>State Plan Response Date:</b>	<b>Intent to Adopt:</b>	<b>Adopt Identical:</b>	<b>Adoption Due Date:</b>	<b>State Plan Adoption Date:</b>
<b><i>Adoption Required</i></b>						
National Emphasis Program on Trenching and Excavation CPL 02-00-161 (10/1/2018)	11/30/2018	11/26/2018	Yes	Yes	4/1/2019	5/1/2019
<b><i>Equivalency Required</i></b>						
Confined and Enclosed Spaces and Other Dangerous Atmospheres in Shipyard Employment CPL 02-01-061 (5/22/2019)	7/21/2019	8/1/2019	Yes	Yes	11/22/2019	9/2/2019
Shipyard Employment "Tool Bag" Directive CPL 02-00-162 (5/22/2019)	7/21/2019	7/29/2019	Yes	Yes	11/22/2019	9/2/2019
Enforcement Guidance for Personal Protective Equipment (PPE) in Shipyard Employment CPL 02-01-060 (5/22/2019)	7/21/2019	8/1/2019	Yes	Yes	11/22/2019	9/2/2019
Site-Specific Targeting 2016 (SST-16) CPL 02-18-01 (10/16/2018)	12/15/2018	12/3/2018	Yes	Yes	4/16/2019	12/17/2018
<b><i>Adoption Encouraged</i></b>						
Alternative Dispute Resolution (ADR) Processes for Whistleblower Protection Programs CPL 02-03-008 (2/4/2019)	4/5/2019	4/5/2019	Yes	Yes	n/a - adoption not required	7/1/2019

VOSHA responded timely (i.e., within 60 days) to three of the six FPCs listed in the table above and adopted five of the six FPCs within the allowable six-month timeframe. Overall, VOSHA performed satisfactorily in terms of adopting FPCs in a timely manner. When the State Plan adopts new FPCs and standards, VOSHA's managers provide copies of them to field staff and

request that they become familiar with their requirements. In addition, new FPCs and standards are reviewed and discussed during staff meetings.

## 5. VARIANCES

VOSHA did not have any variances in FY 2019 or FY 2018.

## 6. STATE AND LOCAL GOVERNMENT WORKER PROGRAM

As noted earlier, VOSHA's coverage of state and local government workers is identical to that of private sector workers, including citation issuance and first instance sanctions. In FY 2019, VOSHA conducted 28 inspections in state and local government workplaces. This total exceeded the State Plan's goal of 26 inspections. In FY 2018, VOSHA conducted 29 inspections in state and local government workplaces, which also exceeded the goal of 26 inspections.

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

Discussion of State Plan data and FRL: The FRL is based on a number negotiated by OSHA and the State Plan through the grant application. In FY 2019, the FRL range for SAMM 6 was from 7.98 percent to 8.82 percent. VOSHA's percent was 8.67.

Explanation: VOSHA was within the FRL range for SAMM 6 in FY 2019.

However, OSHA is concerned that VOSHA opened only two inspections in state government, and only one of the inspections was programmed. The transition from the former compliance chief to the new one may have shifted the State Plan off course in terms of enforcement activity in state government. OSHA will monitor this issue to ensure that VOSHA places a greater emphasis on conducting inspections, including programmed inspections, in state government.

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

**Federal Monitoring Plan FY 2019-OB-04:** On a quarterly basis, OSHA will discuss enforcement activity with VOSHA to ensure that the State Plan conducts a sufficient number of inspections, including programmed inspections, at workplaces in state government.

**Status FY 2019-OB-04:** This observation is new.

## 7. WHISTLEBLOWER PROGRAM

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

The VOSHA Program Manager oversees the workplace retaliation program, and in FY 2019, the State Plan expanded the role of the current compliance chief to include supervision of the workplace retaliation investigator. Two state attorneys provide legal guidance on workplace retaliation issues and handle all appeals.

VOSHA's workplace retaliation program performed satisfactorily in many areas in FY 2019. For example, proper documentation was present in the files to support the determinations made for each respective case; settlements were consistent with the guidelines set in the Whistleblower Investigator's Manual; VOSHA's withdrawal rates were appropriate; and determinations reached in each case were based on substantive evidence in the case file and sound legal reasoning.

The State Plan recently adopted OSHA's FPC for Alternative Dispute Resolution Processes. In June 2019, staff from VOSHA attended OSHA's Course 2720, Whistleblower Complaint Resolution, at OTI. Since FY 2017, VOSHA has created a settlement template form that closely resembles the federal form. The previous investigator had easily settled several cases with the use of this form, and the current investigator is currently settling two cases using this template.

Similar to the past two FAME Reports, there are no findings or observations pertaining to VOSHA's workplace retaliation program in this report. However, OSHA identified one workplace retaliation complaint that VOSHA's general counsel did not act upon in a timely manner. This case involved a business owner who had left the state; other than an unsuccessful attempt to contact this employer, the general counsel went nine months without taking substantive action on this case. During this time, the general counsel should have attempted to determine whether the complaint was suitable for litigation by researching the State of Vermont's statute of limitation for filing the complaint, interviewing all parties, and conducting additional fact-finding, such as document requests and/or subpoenas.

SAMMs 14, 15, and 16 are based on data pulled from the OITSS, the electronic system that stores key information on workplace retaliation cases. VOSHA enters data into the OITSS correctly, but OSHA noted that VOSHA was entering the OITSS docket date well after the investigator had initially determined that the case would be "screened in." VOSHA now understands that the investigator should docket the case in OITSS as soon as a complainant makes a prima facie allegation.

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

Discussion of State Plan data and FRL: The FRL of 100 percent is fixed for all State Plans. In FY 2019, VOSHA completed zero percent of its investigations within 90 days of receipt.

Explanation: OSHA is not concerned with VOSHA's performance on this measure for FY 2019. As discussed above, a new whistleblower investigator came on board in July 2019 after the position had been vacant for over 90 days, and this made it impossible for the State Plan to achieve the 90-day completion goal.

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

Discussion of State Plan data and FRL: The FRL is based on a three-year national average. For FY 2019, the FRL range was from 18.4 percent to 27.6. VOSHA's merit rate in FY 2019 was 40 percent; this result was far outside (above) the FRL range and was positive.

Explanation: Over the past two fiscal years, SAMM 15 is not been indicative of VOSHA's overall performance due to the small sample size. The dramatic increase in the merit rate from FY 2018, when the merit rate was only six percent, to FY 2019 is attributable to a litigation referral that occurred in FY 2019 and a significant increase in settlements. Because VOSHA now has stability in the whistleblower investigator's position, OSHA anticipates that the State Plan's results for this SAMM will be more in line with the FRL in FY 2020. Therefore, VOSHA's performance on SAMM 15 does not warrant concern.

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

Discussion of State Plan data and FRL: The FRL of 90 days is fixed for all State Plans. In FY 2019, VOSHA's average was 290 calendar days.

Explanation: VOSHA's average increased by 172 calendar days in FY 2019 because a backlog of cases accumulated during the three-month period when VOSHA did not have a full-time investigator. This period extended from the time the former investigator was promoted to the compliance chief position (April 2019) to when a new investigator was hired (July 2019). VOSHA is likely to improve once the new hire gains more experience; thus, OSHA is not concerned with VOSHA's performance on SAMM 16.

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

VOSHA did not have any CASPAs in FY 2019 or in FY 2018.

## **9. VOLUNTARY COMPLIANCE PROGRAM**

Since July 2013, the program manager has been conducting most of the State Plan's compliance assistance activities, with some of the duties shared by the previous compliance supervisor and a few CSHOs.<sup>12</sup> In FY 2017, the program manager delegated most of the responsibility for

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<sup>12</sup> After the CAS became the VOSHA Director, the State Plan rescinded the full-time equivalent position that had been occupied by the CAS. In FY 2006, VOSHA and several other State Plans accepted specific funding from OSHA for a CAS. In order to maintain this direct funding, VOSHA must continue to have a CAS. However, the CAS duties may be shared by more than one staff member.



running the GMVPP to a CSHO who has expertise in both safety and health. As noted earlier, VOSHA is considering hiring a full-time CAS to free up time for the program manager to focus on other duties associated with running the State Plan.

In FY 2019 and FY 2018, VOSHA maintained seven sites in the GMVPP. During the on-site review, OSHA reviewed the 2018 Annual Self-Evaluations for each of the State Plan's GMVPP sites. Most of the self-evaluations were satisfactory, but in a few instances, OSHA identified errors in the calculations of the site's Bureau of Labor Statistics' days away/restricted or transfer (DART) rates and/or total recordable case (TRC) rates. Additionally, in some of the self-evaluations, the participant did not provide sufficient information regarding how it evaluated the various elements and sub-elements of its safety and health management system. Thus, VOSHA should review Table B-1 in each site's self-evaluation to identify and correct errors in DART rate and TRC rate calculations. VOSHA should also make sure that each participant follows Attachment A, Annual VPP Participant Submission (effective 12/1/2019), which lists the five questions that each participant should answer in evaluating each element and sub-element of its safety and health management system.<sup>13</sup>

VOSHA had two active Alliances in FY 2019 and met the FY 2019 annual performance goal of maintaining two active Alliances. During the year, VOSHA conducted outreach that supported each Alliance agreement. No other issues were identified during the on-site review of VOSHA's GMVPP or Alliances, and 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, Project WorkSAFE, projected 20 state and local government visits. However, according to the MARC, the program conducted only 15 visits in FY 2019 and 11 visits in FY 2018. In FY 2019, due to retirements, the consultation program's staffing level was down for most of the year by one consultant. To help boost requests for consultation visits, VOSHA conducted three training sessions at municipal public works departments throughout the state in FY 2019. Approximately 20 local governments attended these three trainings, and the program has received several requests for consultation visits based on those trainings.

Although Project WorkSAFE had difficulty meeting its goal for inspections in each of the past two fiscal years, the MARC shows that the program made sure that 100 percent of all hazards were corrected in a timely manner either on-site or within the original timeframe (MARC 4A). As discussed in previous FAME Reports, VOSHA has a long track record of meeting the 100 percent reference/standard for MARC 4A. The MARC also shows that in FY 2019, VOSHA corrected 100 percent of serious hazards within the original timeframe or onsite. Thus, the

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<sup>13</sup> This form replaces Appendix C of OSHA Instruction/Directive CSP 03-01-003: Voluntary Protection Programs (VPP): Policies and Procedures Manual, April 18, 2008.

program met the reference/standard of 65 percent for MARC 4D, percent of serious hazards corrected (in original time or onsite).

Other than Project WorkSAFE not meeting the goals for consultation visits in FY 2019 or FY 2018, OSHA has not identified any concerns with VOSHA's 23(g) on-site consultation program. Because the program's ability to meet its goal for consultation visits was hampered by retirements, and since it has already taken steps to promote the program among high-hazard employers, OSHA has no concerns with this program.

**Appendix A – New and Continued Findings and Recommendations**  
FY 2019 VOSHA Comprehensive FAME Report

<b>FY 2019-#</b>	<b>Finding</b>	<b>Recommendation</b>	<b>FY 2018-# or FY 2018-OB-#</b>
	None.		

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

### FY 2019 VOSHA Comprehensive FAME Report

Observation # FY 2019-OB-#	Observation# FY 2018-OB-# or FY 2018-#	Observation	Federal Monitoring Plan	Current Status
FY 2019-OB-01	FY 2018-OB-01 FY 2017-OB-02	In FY 2019, in 13 (33 percent) of the 39 cases, where the employer employed 10 or more workers, there was no documentation that the CSHO had requested and reviewed the OSHA 300 Logs. In addition, the CSHO did not enter information from the logs into OIS.	On a quarterly basis, OSHA will monitor the State Plan’s progress in requesting and reviewing the OSHA 300 Log and entering information from the logs into OIS.	Continued
FY 2019-OB-02		In 12 (33 percent) of 36 inspections that were not in compliance, the CSHO did not follow the guidance in Chapter 5 of the VOSHA FOM for documenting violations by taking notes on worker interviews and including them in the case file.	On a quarterly basis, OSHA will monitor the State Plan’s progress in documenting violations by taking notes on worker interviews, as discussed in Chapter 5 of the VOSHA FOM.	New
FY 2019-OB-03		In 12 (33 percent) of 36 cases that were not in compliance, the CSHO did not document the severity assessment or incorrectly applied the severity assessment to the cited hazard.	On a quarterly basis, OSHA will monitor the State Plan’s progress in following the guidance in Chapter 5 of the VOSHA FOM for documenting severity and in Chapter 6 of the VOSHA FOM for correctly applying the severity assessment to the cited violation.	New
FY 2019-OB-04		In FY 2019, VOSHA conducted only two inspections in state government, which is a relatively low number. Furthermore, only one inspection was programmed, which indicates that the State Plan did little in terms of targeting high-hazard employers in state government for inspections.	On a quarterly basis, OSHA will discuss enforcement activity with VOSHA to ensure that the State Plan conducts a sufficient number of inspections (including programmed inspections) at workplaces in state government.	New
	FY 2018-OB-02 FY 2017-OB-04 FY 2016-OB-01	In FY 2018, VOSHA’s percent penalty retained (SAMM 12) of 48.09 was outside the acceptable range (or range of acceptable data		Closed

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

FY 2019 VOSHA Comprehensive FAME Report

		not requiring further review) of 56.79 percent to 76.83 percent.		
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## Appendix C - Status of FY 2018 Findings and Recommendations

FY 2019 VOSHA Comprehensive FAME Report

FY 2018-#	Finding	Recommendation	State Plan Corrective Action	Completion Date (if Applicable)	Current Status (and Date if Item is Not Completed)
	None.				

## Appendix D - FY 2019 State Activity Mandated Measures (SAMM) Report

### FY 2019 VOSHA Comprehensive FAME Report

U.S. Department of Labor				
Occupational Safety and Health Administration State Plan Activity Mandated Measures (SAMMs)				
State Plan: Vermont – VOSHA			FY 2019	
SAMM Number	SAMM Name	State Plan Data	Further Review Level	Notes
<b>1a</b>	Average number of work days to initiate complaint inspections (state formula)	3.21	5	The further review level is negotiated by OSHA and the State Plan.
<b>1b</b>	Average number of work days to initiate complaint inspections (federal formula)	2.70	N/A	This measure is for informational purposes only and is not a mandated measure.
<b>2a</b>	Average number of work days to initiate complaint investigations (state formula)	2.15	1	The further review level is negotiated by OSHA and the State Plan.
<b>2b</b>	Average number of work days to initiate complaint investigations (federal formula)	0.26	N/A	This measure is for informational purposes only and is not a mandated measure.
<b>3</b>	Percent of complaints and referrals responded to within one work day (imminent danger)	100%	100%	The further review level is fixed for all State Plans.
<b>4</b>	Number of denials where entry not obtained	0	0	The further review level is fixed for all State Plans.
<b>5</b>	Average number of violations per inspection with violations by violation type	SWRU: 1.42	+/- 20% of SWRU: 1.79	The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from 1.43 to 2.15 for SWRU and
		Other: 0.69	+/- 20% of Other: 0.97	

## Appendix D - FY 2019 State Activity Mandated Measures (SAMM) Report

### FY 2019 VOSHA Comprehensive FAME Report

				from 0.78 to 1.16 for OTS.
<b>6</b>	Percent of total inspections in state and local government workplaces	8.67%	+/- 5% of 8.40%	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 7.98% to 8.82%.
<b>7</b>	Planned v. actual inspections – safety/health	S: 225	+/- 5% of S: 205	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 194.75 to 215.25 for safety and from 42.75 to 47.25 for health.
		H: 75	+/- 5% of H: 45	
<b>8</b>	Average current serious penalty in private sector - total (1 to greater than 250 workers)	\$2,817.41	+/- 25% of \$2,871.96	The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from \$2,153.97 to \$3,589.95.
	<b>a.</b> Average current serious penalty in private sector (1-25 workers)	\$2,047.49	+/- 25% of \$1,915.86	The further review level is based on a three-year national



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				average. The range of acceptable data not requiring further review is from \$1,436.89 to \$2,394.82.
	<b>b.</b> Average current serious penalty in private sector (26-100 workers)	\$3,128.52	+/- 25% of \$3,390.30	The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from \$2,542.73 to \$4,237.88.
	<b>c.</b> Average current serious penalty in private sector (101-250 workers)	\$3,334.50	+/- 25% of \$4,803.09	The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from \$3,602.31 to \$6,003.86.
	<b>d.</b> Average current serious penalty in private sector (greater than 250 workers)	\$5,743.85	+/- 25% of \$5,938.59	The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from \$4,453.94 to \$7,423.23.
<b>9</b>	Percent in compliance	S: 35.96%	+/- 20% of S: 30.30%	The further review level is based on a three-year national average. The range of acceptable data not requiring further review is
		H: 23.33%	+/- 20% of H: 36.12%	

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				from 24.24% to 36.36% for safety and from 28.90% to 43.35% for health.
<b>10</b>	Percent of work-related fatalities responded to in one work day	100%	100%	The further review level is fixed for all State Plans.
<b>11</b>	Average lapse time	S: 43.70	+/- 20% of S: 47.61	The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from 38.08 to 57.13 for safety and from 45.78 to 68.68 for health.
		H: 63.53	+/- 20% of H: 57.23	
<b>12</b>	Percent penalty retained	62.21%	+/- 15% of 66.38%	The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from 56.42% to 76.33%.
<b>13</b>	Percent of initial inspections with worker walk around representation or worker interview	100%	100%	The further review level is fixed for all State Plans.
<b>14</b>	Percent of 11(c) investigations completed within 90 days	0%	100%	The further review level is fixed for all State Plans.
<b>15</b>	Percent of 11(c) complaints that are meritorious	40%	+/- 20% of 23%	The further review level is based on a three-year national average. The range of acceptable data not requiring further review is

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				from 18.40% to 27.60%.
<b>16</b>	Average number of calendar days to complete an 11(c) investigation	290	90	The further review level is fixed for all State Plans.
<b>17</b>	Percent of enforcement presence	1.75%	+/- 25% of 1.23%	The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from 0.92% to 1.54%.

**Appendix E - FY 2019 State OSHA Annual Report (SOAR)**

**FY 2019 State OSHA Annual Report (SOAR)**

**STATE OF VERMONT  
STATE OSHA ANNUAL REPORT  
(SOAR)**

October 1, 2018 through September 30, 2019



**Prepared By:**

**State of Vermont  
Department of Labor  
Division of Workers' Compensation and Safety  
VOSHA**

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## Appendix E - FY 2019 State OSHA Annual Report (SOAR)

### I. Executive Summary:

The Vermont Occupational Safety and Health Administration (VOSHA) submits this State OSHA Annual Report (SOAR) to the Federal Occupational Safety and Health Administration (OSHA) for evaluation of the Vermont State Plan. The SOAR covers the time period of October 1, 2018 through September 30, 2019.

VOSHA, and Project WorkSAFE, the state's OSHA consultation program, are administered by the Vermont Department of Labor, Division of Worker's Compensation and Safety.

In FY 2019, VOSHA continued to grapple with budgetary difficulties. However, the staffing situation was fairly stable. As anticipated, the longtime VOSHA Compliance Supervisor retired in the third quarter of FY 2019. VOSHA promoted from within and hired the workplace retaliation investigator to fill this position. In the fourth quarter of FY 2019, VOSHA filled the vacant workplace retaliation investigator's position. Thus, by the start of FY 2020, VOSHA was at the expected staffing level.

However, VOSHA continues to operate with one less health compliance safety and health officer (CSHO) than it had on board at the beginning of FY 2017. Prior to FY 2017—when a series of staff turnovers began—VOSHA typically operated with nine field staff, which included eight CSHOs and one workplace retaliation investigator. Currently, VOSHA is operating with only eight field staff (one workplace retaliation investigator and seven CSHOs). In addition, the VOSHA Program Manager conducts most of the duties of the compliance assistance specialist (CAS), and has done so since the time he was promoted from the CAS position to the manager's position, which was about seven years ago. Compliance staff also handle a small portion of the compliance assistance duties.

The relative stability in staffing in FY 2019 was welcome and, even though we were compelled to have staff away at more training, the State Plan was still able to maintain its priorities in terms of investigating complaints, severe incidents, and referrals. In all VOSHA exceeded its performance objectives. Since FY 2019 was the second year in a row that VOSHA exceeded its performance goals, the State Plan planned to conduct 25 more inspections in FY 2020 than were projected in FY 2019. The following table reflects the current VOSHA staffing pattern. It should also be noted that the table below does not reflect that the VOSHA Program Manager performs the function of the compliance assistance specialist (CAS), conducting training and outreach throughout the state.

- The following is VOSHA's staffing after the start of FY 2020:
  - Director of Workers Compensation and Safety: 1
  - VOSHA Program Manager: 1
  - VOSHA Compliance Supervisor: 1
  - VOSHA Program Technician II (formerly Administrative Assistant): 1
  - VOSHA Safety Compliance Officers: 4
  - VOSHA Health Compliance Officers: 2
  - VOSHA Health/Safety Compliance Officer: 1
  - VOSHA 11(c) Whistleblower Investigator: 1
  - Total; 11 \*NOTE: The Director of Workers Compensation and Safety is not a dedicated VOSHA FTE

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The consultation and enforcement programs continue to operate with no structural changes. Although the consultation and enforcement programs do not share personnel and maintain separate officers in different locations, the two programs share common goals to ensure workplace safety and health in the State of Vermont. Therefore, the VOSHA and Project WorkSAFE managers continue to work closely together to develop strategies for achieving these goals.

VOSHA continues to ensure that training is provided to CSHOs from both the OSHA Training Institute (OTI) as well as other training sources. Below is a list of the training that was completed in FY 2019 by the staff who are currently on board. The staff person listed as Safety Compliance Supervisor was the whistleblower investigator for part of the year. In addition, while the two Safety Compliance Officers listed below have not completed their basic training, they remain on track to do so.

- Safety Compliance Officer;
  - Course 1000 – Initial Compliance
  - Course 1410 – Inspection Techniques and Legal Aspects
- Safety Compliance Officer;
  - Course 1000 – Initial Compliance
  - Course 1410 – Inspection Techniques and Legal Aspects
- Safety Compliance Supervisor;
  - Course 1420 – Whistleblower Investigation Fundamentals
  - Course 9500 – Coaching CSHO's
  - Course 1410 – Inspection Techniques and Legal Aspects
  - Course 2720 – Whistleblower Complaint Resolution
- Industrial Hygiene/Safety Compliance Officer;
  - Course 1900 – Recordkeeping for Compliance Officers
- Senior Industrial Hygienist;
  - Course 1900 – Recordkeeping for Compliance Officers

VOSHA will continue to explore training opportunities for all staff in 2020 and will ensure that new hires take the training courses required by OSHA's Mandatory Training Program for Compliance Personnel (TED: 01-00-019).

### Compliance Assistance Activities:

In FY 2019, VOSHA participated in an emergency drill with the Vermont Department of Emergency Management. While this drill—known as CAT4 (short for a Storm of Category 4 magnitude)—was actually conducted in early FY 2020, the bulk of the planning took place during FY 2019. This exercise enabled VOSHA to continue to test and modify its responsibilities in an actual statewide emergency. A significant development in which VOSHA was included was the creation and trial of the “Multi Agency Resource Center” or MARC. This initiative, which is headed by the Vermont Agency of Human Services, consists of a physical location, staffed with various agencies and non-profit organizations. The “staffing up” of a MARC is intended to be as close to an actual event as possible and is intended to be used by citizens affected by a

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catastrophic event will be able to get to and receive services that could be critical to their ability to cope with such an event.

VOSHA decided that it would engage in the safety aspect of constituents dealing with such an event. As a result we equipped a “go kit” with safety equipment to be given out, such as hearing protection, safety glasses, nitrile gloves, NIOSH N95 respirators (and the associated Appendix - D).

In addition, VOSHA outfitted a file box with pertinent OSHA FACT Sheets on such critical information as Disaster Cleanup and Recovery, Mold Cleanup During Disasters, Chain Saw Safety, and Generator Safety, VOSHA believes its role in this initiative could be very important in both affecting safety of those (workers and other) confronting clean-up in disaster situations but also to be able to extend services more directly to areas of impact.

In conducting post event review we found that taking part in the MARC model was an efficient way of getting VOSHA’s resources to areas where they were most needed. Another important advantage of this model is that the communication with fellow state and federal agencies as well as other stakeholders was direct and timely since they are already there. It should be noted that this does not replace VOSHA’s traditional responsibilities in the Emergency Operations Center, it only enhances it.

In addition to the above discussed CAT4 statewide emergency drill, VOSHA remained committed to three key state agency committees in which it serves as a legislatively appointed entity or representative of the Vermont Department of Labor.

- 1) State Emergency Response Committee (SERC): This is a statewide committee that meets bi-monthly at the State Emergency Operations Center (SEOC) in Waterbury. This bi-monthly meeting encompasses the Vermont Department of Public Safety and Homeland Security, VOSHA, Agency of Natural Resources, Vermont Department of Agriculture and Health, among others, and the various Local Emergency Planning Commissions (LEPCs) from around the state. This meeting is usually attended by the VOSHA Manager
- 2) State Elevator Board: This committee consists of the Vermont Department of Public Safety, Fire Prevention Division, various elevator inspection and regulatory entities as well as VOSHA. These monthly meetings are usually attended by the VOSHA Compliance Supervisor
- 3) Vermont Fire Service Training Counsel: This committee, which meets quarterly, concentrates on fire service training for volunteers as well as professional fire fighters. The meetings usually include the Director of Fire Service Training, The Vermont Agency of Natural Resources, VOSHA and representatives of local volunteer and professional fire services.

Participation in the above committees is important as it fulfills VOSHA’s role in statewide safety and health as compelled by the State Legislature.

VOSHA still maintains two active Alliances with the following entities:

- Vermont Safety and Health Council
- Vermont Rural Water Association

The GMVPP is still the only formal partnership program that VOSHA recognizes. Therefore, VOSHA places a high value on maintaining the integrity of this program. The VOSHA Program



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Manager continues to manage this program with the help of a CSHO, who serves as coordinator. In FY 2019, VOSHA anticipated receiving one new mobile worksite application from a construction company. However, during the application process, environmental issues developed and temporarily caused a stoppage in work at the construction site. For this reason VOSHA decided that the application should be submitted in FY 2020 during the next construction season. VOSHA currently has seven GMVPP sites, all of which are related to work in general industry.

There is a possibility that a long time GMVPP partner will be closing their VT operations in the next few years. While we have not had conversations with the management team yet, they could discontinue participation at any time.

Outreaches: In FY 2019 VOSHA conducted 80 outreaches. The VOSHA Manager carried out 68 outreaches, the Compliance Supervisor conducted 3 outreaches and the Safety and Health Compliance Officer was responsible for 9 outreaches. Many of the outreaches conducted by the VOSHA Manager were in the form of conference calls dealing with planning of the CAT4 statewide emergency drill. There were seven of these conference calls in the course of FY 2019.

VOSHA estimates that in FY 2019 there was total of 2,719 attendees and affected employees in formal outreaches. While this number is slightly lower than in FY 2018, it does not include GMVPP site visits that were counted in the FY 2018 SOAR.

For additional compliance assistance specialist (CAS) activities, VOSHA uses the services of the Project WorkSAFE administrative assistant for disseminating information to stakeholders, organizing training and outreach materials, and organizing information on the VOSHA website. VOSHA accounts for this staff member's time conducting CAS activities at a .1 full-time equivalent (FTE).

In FY 2014 VOSHA submitted a five-year strategic plan. FY 2019 reflects the fifth and final year of performance in that plan. VOSHA submitted a new five-year strategic plan in 2019 with the FY 2020 grant application.

### New Equipment

After significant capital investment in safety and industrial hygiene sampling equipment in previous fiscal years, VOSHA concentrated its efforts on maintaining the equipment we have and planning for future purchases, including trying out the next generation of dash cameras for use by the CSHOs.

### Rulemaking

In FY 2019, VOSHA initiated rulemaking for two rules. VOSHA is expected to complete adoption of both of those rules in FY 2020.

Rules not currently adopted but expected to be completed in FY 2020, are as follows:

- Final Rule on Crane Operator Certification Requirements 29 CFR Part 1926 (Adoption due date: 5/9/2019; VOSHA anticipates adoption by 1/1/2020). NOTE: Due to changes mandated by the Vermont Secretary of State for filing administrative rules, VOSHA

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needed to resubmit the forms used to file this rule. While VOSHA was aware that these changes were coming, we thought that we would be able to advance our rule with the previously filed forms. This was not the case and VOSHA needed to refile. As a result of that refiling, the adoption was delayed.

- Final Rule on the Tracking of Workplace Injuries and Illnesses 29 CFR Part 1904 (Adoption due date: 2/1/2020). VOSHA anticipates meeting this due date.

### Staffing

VOSHA promoted the workplace retaliation investigator to the compliance supervisor's position around the end of the third quarter. VOSHA subsequently recruited and hired a new workplace retaliation investigator. Other than these personnel changes, the staffing situation at VOSHA was stable in FY 2019.

VOSHA is seeking overmatch funding from the Vermont State Legislature to reinstate the Compliance Assistance Specialist (CAS) position. This would allow a more concentrated effort in this area and free up the VOSHA Manager to focus on management issues within the department.

### Inspections

VOSHA conducted 305 inspections in FY 2019. Of this total, 230 were classified as safety and 75 were classified as health. VOSHA conducted 28 inspections in state and local government, and 124 inspections in construction. Of 426 violations issued in FY 2019, 283 were classified as serious and 143 were classified as other than serious.

VOSHA continues to find value in the requirement that employers mandatorily report injuries that require hospitalization of one or more employees, amputations, loss of an eye. We find that these incidents help to more directly focus our resources in problematic areas.

	Projected FY 2019			Actual FY2019		
	Safety	Health	Total	Safety	Health	Total
<b>TOTAL INSPECTIONS</b>	208	42	250	232	76	308
Private Sector	196	33	229	209	71	280
Public Sector	12	9	21	23	5	28
<b>TOTAL CONSTRUCTION INSPECTIONS</b>	140	15	155	115	20	135
Commercial Construction	25	5	30	28	0	28
Highway, Street, Bridge and Work Zones	25		25	11	0	11
Roofing	25		25	16	0	16
Residential Construction	30		30	31	0	31
Noise/Silica/Chrome VI/lead		10	10	0	20	20
Trenching/Excava	25		25	16	0	16

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tion								
Cranes/Powered Industrial Trucks	10		10			13	0	13
<b>TOTAL NON-CONSTRUCTION INSPECTIONS</b>	73	22	95			117	56	173
Food Processing	2	3	$\frac{10}{5}$			7	3	10
Lumber and Wood Products	5	2	7					
Amputations	23		23			30	5	35
Inspections at worksites mandatorily reporting injury/illness incidents	20	5	25			32	2	34
Combustible Dust		1	1			0	2	2
PSM								
PIT	10		10			18	3	21
Public Sector	12	9	21			23	5	28
Granite/Concrete	1	1	2			2	2	4
Nursing Homes		1	1			1	0	1

**\*NOTE:** VOSHA conducted a total of 38 inspections not coded in the above emphasis areas.

### I. Summary of Annual Performance Plan Results

FY 2019 was the final year of VOSHA's Strategic Plan. As a function of the FY 2020 Grant Application, VOSHA has submitted and received approval for a new five-year Strategic Plan. In the tables below, VOSHA compares Calendar Year (CY) 2018 Total Reportable Case (TRC) Rate to CY 2012 baseline TRC rates.

<b>STRATEGIC GOAL #1: Insure Workplaces are Safe and Healthy</b>		
<b>GOAL</b>	<b>FY 2019 Strategic Plan Outcome/Number of Inspections Conducted</b>	<b>COMMENT</b>
<b>Compliance Inspection Activities (Construction)</b>		
Performance Goal 1.1—By the end of 2019 reduce the rate		The strategic plan goal was met (exceeded).

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of workplace injuries and illnesses in construction by 15%, from 7.9 as recorded in baseline year 2012, to 6.7 by year FY 2019.	VOSHA achieved its strategic goal of a 15% reduction in the TRC rate for VT. The ending TRC rate was 5.1 for CY 2018, which represents a reduction of 35% from the 2012 baseline rate of 7	
Conduct 60 residential and commercial building inspections	59 safety inspections	The annual performance plan goal was not met.
Conduct 25 highway, street and bridge construction and work zone inspections	11 safety inspections	The annual performance plan goal was not met.
Conduct 25 roofing inspections	16 safety inspections	The annual performance plan goal was not met.
Conduct 30 inspections at worksites in Residential Construction	31 safety inspections	. The annual performance plan goal was met (exceeded).
Conduct 10 inspections for health related exposures in construction including Noise/Silica/Chromium VI/Lead	21 inspections (one safety and 20 health)	The annual performance plan goal was met (exceeded).

<b>STRATEGIC GOAL #1: Insure Workplaces are Safe and Healthy CONTINUED</b>		
<b>GOAL</b>	<b>FY2019 OUTCOME</b>	<b>COMMENT</b>
<b>Compliance Inspection Activities (General Industry)</b>		
Performance Goal 1.2—By the end of FY 2019, reduce the rate of workplace injuries and illnesses in	The CY 2012 TRC rate of 6.4 decreased to 5.1 in CY 2018, which represents a reduction of 19%.	The strategic plan goal was met (exceeded).

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general industry by 15%, from 6.4 as recorded in baseline year 2012, to 5.4 by year 2019		
Conduct 5 food processing inspections	10 inspections (seven safety and three health)	The annual performance plan goal was met (exceeded).
Conduct 7 lumber and wood products manufacturing inspections	No inspections were conducted	The annual performance plan goal was not met.
Conduct 20 inspections where there are amputation hazards	35 inspections (30 safety and 5 health)	The annual performance plan goal was met (exceeded).
Conduct 2 inspections in the granite and concrete industry	Four inspections (two safety and two health)	The annual performance plan goal was met (exceeded).
Conduct 25 inspections establishments in targeted NAIC's/SIC's	34 inspections (32 safety and two health)	The annual performance plan goal was met (exceeded).
Conduct 21 Inspections of public sector worksites	28 inspections (23 safety and five health)	The annual performance plan goal was met (exceeded).
Conduct 10 inspections in workplaces where Powered Industrial Trucks (PIT's) are in use	21 inspections (18 safety and three health)	The annual performance plan goal was met (exceeded).
Conduct 1 inspections of Nursing Homes	One inspection	The annual performance plan goal was met.

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Conduct 1 inspections in workplaces with combustible dust hazards.	Two health inspections	The annual performance plan goal was met (exceeded).
<b>Strategic Goal #2: Improve Workplace Safety and Health through compliance Assistance, Alliances and Partnerships</b>		
<b>Goal</b>	<b>FY 2019 Outcome</b>	<b>Comment</b>
Performance Goal 2.1- Maintain recognition of excellence in safety and health management through the Green Mountain VPP	VOSHA continued to support the current GMVPP sites by conducting meetings with prospective sites, reviewing annual reports and conducting onsite visits. While VOSHA planned to conduct a GMVPP initial onsite visit in FY 2019, the visit had to be postponed (due to reasons other than safety or health related) and the State Plan decided to conduct the visit in FY 2020. However, in FY 2019, VOSHA maintained the eight VPP sites that were active in FY 2018.	The annual performance plan goal was partially met.
Performance Goal 2.2- Maintain relationships with organizations that cover targeted, high hazard areas, through the VOSHA Alliance Program	VOSHA continued to service two active Alliances. These Alliances were with 1) Vermont Rural Water Association and 2) Vermont Safety and Health Council. VOSHA continues an active and rewarding relationship with these two organizations, including a number of outreaches. On December 12, 2018, VOSHA renewed the Alliance with the	The annual performance plan goal was met.

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	<p>Vermont Rural Water Association. After a few years with only two Alliances, VOSHA is entering conversations with another stakeholder organization to explore the possibility of another Alliance. We expect a decision in FY 2020.</p>	
<p>Performance Goal 2.3- Maintain a reduced schedule of service to Participants in VOSHA's outreach and training programs</p>	<p>In FY 2019 VOSHA conducted 80 outreaches involved approximately 2,719 employees/stakeholders. This total exceeded the FY 2019 goal of 700 outreach participants and represents approximately 100% of the outreach achieved when VOSHA employed a full time CAS. Note: The number of outreaches includes several conference calls for the purpose of planning and preparing for the CAT4 event. This factor was at play in the increase of outreach events reflected in FY 2019.</p>	<p>The annual performance plan goal was met.</p>

### Green Mountain Voluntary Protection Program

Company	Status	Last Approval Date	New Renewal Date	Original Approval Date
GMVPP site 1	STAR	04/28/2017	10/31/2022	10/22/2007
GMVPP site 2	STAR	4/18/2017	10/10/2022	8/22/2007
GMVPP site 3	STAR	1/22/2015	01/22/2020	5/16/2006
GMVPP site 4	STAR	4/30/2018	4/30/2023	7/14/2008
GMVPP site 5	STAR	05/03/2017	05/03/2022	12/27/2013
GMVPP site 6	STAR	12/14/2017	9/11/2020	9/11/2017
GMVPP site 7	STAR	10/08/2018	10/08/2021	10/08/2018

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### Alliances

Company or organization	Status	Date signed
Alliance partner 1	Active	12/12/2018
Alliance partner 2	Active	06/29/2015

### II. Progress Toward Strategic Plan Accomplishments

Vermont's BLS TRC rates for the period 2015 – 2019 have been reduced for all NAICS divisions as follows:

Year	All	Private sector	Manufacturing	Construction	State and Local Government
2012 (baseline)	5.1	5.0	6.4	7.9	5.6
2015	5.1	5.0	6.0	5.9	5.3
2016	4.6	4.6	5.4	5.9	5.0
2017	4.7	4.6	5.1	4.2	4.8
2018	4.5	4.6	4.8	4.6	5.3
2019	4.7	4.7	5.2	5.1	5.5
<b>Percent reduction from baseline year 2012</b>					
	-8%	-6%	-19%	-35%	-2%

The stability in the compliance staff enabled staff to become more comfortable with their responsibilities and each other. It showed in the increase in inspection numbers. As a result VOSHA proposed a slight increase in the inspection numbers in FY 2020 as we believe there will be continued improvement in the abilities of the staff.

With that said, VOSHA still faces serious funding shortfalls and has reached out to both the current VT State administration and Legislature for permission to overmatch the Federal Grant, which continues to lag with no consequential increases for many years and the minimal increases that were awarded were quickly absorbed by corresponding increases in the states cost of operating the OSHA Information System (OIS).

The new workplace retaliation investigator was hired in the fourth quarter. Therefore, we are training this person and expect and anticipated her taking the basic training course for whistleblower investigators at OTI in February 2020. VOSHA's workplace retaliation program screened 55 complaints, docketed 11 new cases, and closed 48 cases. Ten of those closed cases were from FY 2018 but closed in FY 2019; three cases were settled, three were withdrawn, three were dismissed, and one case was found to have merit. VOSHA currently has 20 open cases.

### III. Mandated Activities

In FY 2019, VOSHA worked diligently to improve a critical deficiency in SAMM 12, which was one of the very few areas in which VOSHA's performance was deficient. We have significantly improved this area (Penalty Retention) and it is now within the further review level.



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### IV. Special Measures of Effectiveness/Special Accomplishments

A notable accomplishment as previously mentioned in this report was VOSHA's "evolving role" in the State Emergency Response network. While we traditionally fill the role of State Emergency Operations Center (SEOC) Safety Officer, we also had a chance to take part in the MARC. As discussed earlier, VOSHA believes this model to be a valuable fit for the type of service we can provide. VOSHA believes the ability to operate within this framework will improve our ability to provide services in a potential statewide emergency. As was mentioned previously, the actual event happened at the very beginning of FY 2020, but the bulk of the planning leading up to the event happened in FY 2019.

### V. Adjustments or Other Issues

In FY 2019, VOSHA worked diligently for improvement in two vital areas, 1) Penalty retention and 2) Abatement verification.

- 1) Penalty retention: In working to improve penalty retention, VOSHA addressed a key observation in the FY 2018 FAME report. VOSHA realizes that this observation will be rectified in the FY 2019 FAME. However, we also acknowledge that more work needs to be done in this area to ensure that our performance is more than just marginally acceptable.
- 2) Abatement Verification: VOSHA has been working to improve performance in this area. Efforts in improved tracking have also been augmented by efforts to be clearer and more direct on abatement expectations as noted in negotiated settlement agreements. We have learned through this process that regular tracking is only part of the equation. The other important part of the equation is to make sure that abatement expectations are clearly outlined including methods of abatement and timeframes for completion. VOSHA acknowledges that this is a "work in progress;" however we believe we are much better than we have been in the past.

### VI. State Internal Evaluation Program (SIEP) Report

In FY 2019, VOSHA received an onsite, comprehensive FAME audit. Because of the comprehensive nature of the audit, VOSHA will look to the results of the audit, then plan to conduct a SIEP report in FY 2020.