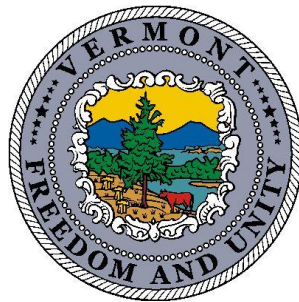


# **FY 2015 Comprehensive Federal Annual Monitoring and Evaluation (FAME) Report**

State of Vermont  
Vermont Occupational Safety and Health Administration (VOSHA)



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## **I. Executive Summary**

### **A. State Plan Activities, Trends, and Progress**

The purpose of this report is to assess the Vermont Occupational Safety and Health Administration's (VOSHA) activities for fiscal year (FY) 2015 and its progress in resolving outstanding recommendations from the FY 2014 Follow-up Federal Annual Monitoring and Evaluation Report (FAME).

In FY 2015, VOSHA's managers focused on rebuilding the program. A string of compliance safety and health officer (CSHO) vacancies that occurred at the beginning of fiscal year had initially shaken the program, and findings that were rooted in the management turnover that happened a few years ago still needed to be resolved.<sup>1</sup> For example, 11 findings from the FY 2013 Comprehensive FAME Report were either still open or were awaiting verification by OSHA in FY 2015; hardly any health sampling had been done over the past few years; and the workplace retaliation program had not been properly run for quite some time. Another challenge facing the program was the transition from the Integrated Management Information System (IMIS) to the OSHA Information System (OIS).

Fortunately, VOSHA's management team (consisting of the director and the compliance supervisor) was able to turn potential setbacks into opportunities to strengthen the effectiveness of the program. For example, all personnel vacancies were filled by May 2015, and all of the new hires were enrolled in training as quickly as possible. Although new staff faced a learning curve, they worked diligently to get up to speed. As a result, VOSHA exceeded the goal for inspections—something the managers did not anticipate at the beginning of FY 2015.

VOSHA also focused on addressing findings from previous FAME reports. All of the 11 findings in the FY 2014 Follow-up FAME Report had been continued from the FY 2013 Comprehensive FAME Report, and by the end of FY 2015, 7 of these 11 findings were corrected. For example, findings related to complaints, notification of the fatality victim's next-of-kin, health sampling forms, informal conferences, contested case filings, debt collection and the workplace retaliation program have been deemed to be completed in this report. Two findings—one that related to case file documentation (for complaint inspections) and another that pertained to timely standard adoptions—have been converted to observations.

Most of the observations in the FY 2014 Follow-up FAME Report have been closed, including one related to the fact that little if any health sampling had been performed over the past few years. The senior CSHOs who left the program were not performing health sampling—even when conditions indicated the need to do so. Since the new CSHOs have been hired, health sampling has increased significantly, as verified by the case file review and OIS reports.

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<sup>1</sup>VOSHA began FY 2014 with nine CSHOs on board. Three CSHOs left VOSHA before the end of FY 2014, and two more CSHOs departed in early FY 2015. Of the five CSHOs who left the program, three retired and two resigned to pursue other careers.

VOSHA was apprehensive about the transition from the IMIS to the OIS, which occurred at the beginning of the fiscal year. Overall, this process went smoothly, although a few bumps were encountered along the way. However, in FY 2015, VOSHA did a much better job of monitoring program performance using the OIS than when it was using the IMIS.

In FY 2015, VOSHA filled one of the CSHO vacancies with the program's first full-time workplace retaliation investigator.<sup>2</sup> Similar to the CSHOs who were recently hired, the new investigator faced a learning curve, but within a short period of time, he was enrolled in the appropriate training courses. During FY 2015, he was also mentored by one of OSHA's investigators. For the first time in several years, VOSHA now has a workplace retaliation investigator who has the skills needed to manage casework effectively.

Despite the progress that VOSHA has made on all of these fronts, this report contains two findings that are continued from the FY 2014 Follow-up FAME Report. One of these findings relates to the program closing cases without adequate documentation of abatement, and the other pertains to high lapse times for health cases.

Nevertheless, the examples of progress noted above, and the fact that VOSHA had only two findings in FY 2015 (compared to several more in previous fiscal years), are clear signs that the rebuilding process is complete. From all indications, it appears that in FY 2016, VOSHA will be able to shift its focus from rebuilding, to maintaining, a sound and effective State Plan program.

## **B. State Plan Introduction**

VOSHA has been administered by the Vermont Department of Labor, Division of Workers' Compensation and Safety, since July 1, 2005. The Vermont Department of Labor is the enforcing agency for the program. The Commissioner of Labor has the authority to issue safety and health citations, and is the program's state designee.<sup>3</sup> VOSHA is headquartered at 5 Green Mountain Drive, Montpelier, Vermont, and has five field offices in the state.

The Vermont State Plan's statutory authority is contained in Title 21 of the Vermont Statutes Annotated (VSA), §§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 VSA §231 prohibits employers from retaliating against workers for exercising 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 employees who believe that workplace retaliation or discrimination has occurred is contained in 21 VSA §232.

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<sup>2</sup> For many years, VOSHA's workplace retaliation program had been staffed by a few CSHOs who divided their time between enforcement and workplace retaliation duties, and were not fully trained to properly conduct workplace retaliation investigations. VOSHA decided to fill one of the five CSHO vacancies with one full-time staff member whose work would be devoted exclusively to workplace retaliation duties.

<sup>3</sup> The current commissioner was appointed to this position on January 6, 2011.

VOSHA does not have sufficient funding to staff at its benchmark levels for compliance officers. Since VOSHA currently does not have final approval status, it is not required to maintain its allocated staffing levels to meet its benchmarks. When the final CSHO vacancy was filled in May 2015, VOSHA became fully staffed to its allocated levels, with eight CSHOs and one full-time workplace retaliation investigator.

The State Plan also has one full-time administrative support person and two full-time managers (the director and the compliance supervisor). As discussed later in this report, most of the duties related to compliance assistance are performed by the VOSHA director. VOSHA’s state and local government consultation program consists of two safety and health consultants who commit a portion of their time to provide on-site consultation services to state and local government workplaces.

VOSHA has two unique standards: one addressing permissible exposure limits (PEL) at OSHA’s ill-fated revised levels, and one for electrical power generation, transmission and distribution. The PELs enforced by VOSHA are those issued by OSHA in 1988 and subsequently overturned in court. They are considerably stricter than OSHA’s current PELs. Construction, manufacturing, transportation and warehousing, wholesale trade, and healthcare are VOSHA’s high-hazard, targeted industries.

VOSHA’s coverage of state and local government employees is identical to that of private sector employees, including citation issuance and first instance sanctions. VOSHA also offers a number of voluntary and cooperative programs, including the Green Mountain Voluntary Protection Program (GMVPP) and Project WorkSAFE (consultation), and the Safety and Health Achievement Recognition Program (SHARP).

The tables below show VOSHA’s funding levels from FY 2013 through FY 2015, the number of establishments and covered workers, and a snapshot of personnel on board as of July 1, 2015.

FY 2013-FY 2015 Funding History Source: DOL-E Grants/ Financial Close-out Forms						
Fiscal Year	Federal Award (\$)	Federal Expenditures (\$)	State Match (\$)	100% State Funds (\$)	Total Expenditures (\$)	% of State Contribution
2015	726,900	726,900	726,900	20,600	1,474,400	51
2014	723,600	700,655	700,655	0	1,401,310	50
2013	719,500	680,132	680,132	0	1,360,265	50

Workers and Establishments Covered by VOSHA			
Source: Vermont Economic & Labor Market Information Division, Quarterly Census of Employment and Wages (QCEW) as of March 31, 2015			
	Private Ownership	State and Local Government	Total
Workers	252,081	47,723	299,804
Establishments	23,165	1,055	24,220

Personnel on Board as of July 1, 2015 Source: FY 2016 Grant Application			
VOSHA's State Plan Grant Positions	50/50 Funded Full-Time Equivalents (FTE) On Board as of 7/1/15	100% State Funded FTEs On Board as of 7/1/15	TOTAL
Managers/Supervisors (Admin)	0.425	0.000	0.425
First Line Supervisors	1.140	0.000	1.140
Safety Compliance Officers	4.800	0.000	4.800
Health Compliance Officers	3.000	0.000	3.000
Workplace Retaliation Investigator	1.000	0.000	1.000
State and Local Government Safety Consultants	0.400	0.000	0.400
State and Local Government Health Consultants	0.225	0.000	0.225
Compliance Assistance	0.860	0.000	0.860
Trainers	0.000	0.000	0.000
Clerical/Admin/Data System	0.900	0.000	0.900
Other	0.060	0.000	0.060
Total FTE	12.810	0.000	12.810

### C. Data and Methodology

OSHA has established a two-year cycle for the FAME process. This is the comprehensive year, and as such, 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 workplace retaliation program, while the other

concentrated primarily on the enforcement program. Case files were reviewed to assess the overall effectiveness of each program, and also to determine the status of findings and observations from the FY 2014 Follow-up FAME Report.

### *Enforcement On-site Evaluation*

From November 30 to December 4, 2015, OSHA conducted an on-site evaluation at VOSHA's headquarters in Montpelier, Vermont. OSHA's on-site review team consisted of five personnel (a program analyst, two compliance assistance specialists, the 21(d) consultation monitor, and an administrative assistant). A representative from OSHA's Office of State Programs also participated in the on-site review. During this evaluation, OSHA reviewed 46 inspection case files, most of which were randomly selected from a universe of the 194 inspections that were both opened and closed by VOSHA in FY 2015.

In FY 2015, three fatalities occurred, but only one was both opened and closed during the fiscal year. The event that caused the death of the worker in this one case was determined by VOSHA to be non-work related. Nevertheless, OSHA reviewed this case, and also one of the two fatality cases that had not been closed (as of the time that OSHA was on-site). In addition, five cases involving accidents were reviewed. The remaining 39 cases were related to complaints, referrals and programmed inspections; one 'No Inspection' is included in this total. The universe of opened and closed cases was obtained from an OIS Scan Summary Report that was run by OSHA on November 13, 2015.<sup>4</sup>

The percentage of case files reviewed for each category (complaints, referrals, and programmed inspections) corresponds approximately to the percentage of inspections in each of these categories in the universe of 194 case files. For example, approximately 29 percent of the 194 case files that VOSHA closed in FY 2015 were complaint inspections; therefore, approximately 29 percent of the 39 case files reviewed during the case file review were complaint inspections.

OSHA also reviewed five files related to Green Mountain Voluntary Protection Program (GMVPP) sites, two Alliance files, and the disposition of cases that had citations appealed to the VOSHA Review Board in FY 2014 and in FY 2015.

During the on-site review, OSHA conducted interviews with the VOSHA director, the occupational safety compliance supervisor, the administrative assistant, VOSHA's general counsel and also a staff attorney. The purpose of these interviews was to discuss topics related to the operation of the State Plan, such as debt collection, progress in correcting findings from the FY 2014 Follow-up FAME Report, cases filed with the review board, standard and Federal Program Change (FPC) adoptions, compliance assistance, and abatement tracking, etc.

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<sup>4</sup> The OIS Scan Summary Report of November 13, 2015, included only those cases that had both an opening conference date and a closed case date in FY 2015.

In addition to interviews and the case file review, OSHA used the following information sources to evaluate the State Plan's enforcement and state and local government consultation program: the FY 2015 State Activity Mandated Measures (SAMM) Report (Appendix D), the FY 2015 Mandated Activities Report for Consultation (MARC), and the VOSHA FY 2015 State OSHA Annual Report (SOAR).<sup>5</sup> OIS reports, which were run by OSHA, were also used in this report. Data was also obtained from Bureau of Labor Statistics (BLS) injury and illness reports as well as the State of Vermont.

#### *Workplace Retaliation Program On-site Evaluation*

An OSHA workplace retaliation investigator conducted an on-site review of VOSHA's workplace retaliation program on December 29, 2015, at the Vermont Department of Labor's offices in Montpelier, Vermont. During the on-site review, six cases were examined, which were recorded as closed on the IMIS Case Listing and IMIS Whistleblower Application from December 17, 2014 to August 10, 2015. Cases were reviewed for completeness, legal sufficiency, and agreement with data contained in the national database. The principal personnel responsible for the workplace retaliation program were interviewed, including the VOSHA Director and the workplace retaliation investigator.

#### **D. Findings and Observations**

In this report, 2 of the 11 findings in the FY 2014-Follow-up FAME are open, and therefore require corrective actions. No new findings were made in this report. Of the remaining nine findings from last year's FAME, seven were completed and two were converted to observations.

There are a total of five observations in this report: one of the five observations was continued from the FY 2014 Follow-up FAME Report; the remaining four observations are considered to be new, although two of them were converted from findings in the FY 2014 Follow-up FAME Report. The FY 2014 Follow-up FAME Report contained seven observations: one of the observations was continued in this report, as noted above, and the remaining six observations were closed.

Details of the findings and observations are further discussed in the body of the report as well as Appendices A-C of the report. The current findings are listed in Appendix A; Appendix B contains a listing of all observations (including the status of last year's observations); Appendix C lists the status of all findings that were made in the FY 2014 Follow-up FAME Report.

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<sup>5</sup> The primary focus of OSHA's monitoring of State Plans concerns the states' achievement of their strategic goals, but OSHA must also ensure that states meet the mandates set out in Section 18 of the Act and 29 CFR 1902. These include such required program elements as responding to complaints and fatalities, citing and penalizing violations, and covering state and local government employers and employees. Review of the mandated activity measures is designed to ensure that the mandated activities are being implemented at a level consistent with and as effective as the Federal program. (Source: OSHA's SAMM Codebook)



## II. Major New Issues

None.

## III. Assessment of State Plan Performance

### A. STATE PLAN ADMINISTRATION

#### 1) 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. For the CSHOs that were recently hired, VOSHA is ensuring that they complete all mandatory training requirements within the timeframe permitted by the directive.

All of the CSHOs who have worked for VOSHA for more than three years have completed the mandatory training track for compliance personnel, as prescribed by the OTI directive. VOSHA is also ensuring that these CSHOs complete the technical courses that are required once the initial training requirements have all been completed.<sup>6</sup> In FY 2015, all of VOSHA’s senior CSHOs completed at least one technical course in FY 2015, and VOSHA intends to continue this practice each year.

The table below shows the initial courses completed by each of the new CSHOs, and the workplace retaliation investigator, in FY 2015. One CSHO who was hired in May 2015 completed only one of the initial courses in FY 2015, but is scheduled to take another one in early FY 2016.

Basic Training Courses Completed by New CSHOs in FY 2015 (All courses were completed at the OTI) Source: OTI	
Health CSHO	#1000 (Initial Compliance); #1250 (Introduction to Health Standards for Industrial Hygienists)
Safety CSHO	#1000 (Initial Compliance); #1050 (Introduction to Safety Standards for Safety Officers); #1250 (Introduction to Health Standards for Industrial Hygienists)
Safety CSHO	#1000 (Initial Compliance); #1050 (Introduction to Safety Standards for Safety Officers)
Safety CSHO	#1000 (Initial Compliance)

<sup>6</sup> The directive (TED 01-00-019), provides a “two-phase approach” to CSHO Training. In Phase 1, each CSHO will be required to complete a minimum of eight initial courses offered by the OSHA Training Institute (OTI) during the first three years of his/her career as a CSHO. The order and sequence of these courses is prescribed in the directive. In Phase 2, each CSHO will be required to complete a minimum of six additional technical courses through Year 8 of their career. Beginning with Year 9, they must complete a minimum of one technical course every three years.

Workplace Retaliation Investigator	#1420 (Workplace retaliation Investigation Fundamentals); #1310 (Investigative Interviewing Techniques)
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## 2) Staffing

As mentioned in the introduction, VOSHA does not have sufficient funding to staff at its benchmark levels of 9 safety compliance officers and 13 health compliance officers. VOSHA began FY 2014 with nine CSHOs on board, but due to budgetary constraints, the program was unable to fill a vacancy that had occurred mid-way through 2014. As discussed in the previous FAME report, VOSHA has never recouped that position, and as of May 2015 (when the last of the most recent CSHO vacancies was filled), the program considers itself to be fully staffed, with eight CSHOs and one full-time workplace retaliation investigator on board. VOSHA is also operating with one full-time administrative support person and two full-time managers (the director and the compliance supervisor).

For many years, VOSHA operated with one full-time staff member whose duties were dedicated solely to compliance assistance. In July 2013, the compliance assistance specialist (CAS) was promoted to the director; since that time, VOSHA's compliance assistance duties have been handled mostly by the director, with some assistance from the compliance supervisor, and one or two CSHOs.

## 3) OSHA Information System (OIS)

VOSHA completed the transition from IMIS to OIS at the beginning of FY 2015. Overall, the transition was successful. VOSHA's compliance supervisor routinely uses the OIS Open Inspection Report to monitor citations pending, citations not received, and cases with abatement not complete, etc. The OIS Debt Collection Report is also run at frequent intervals to monitor penalty payments, and the OIS Inspection Summary Lite Report is used to monitor individual CSHO's performance.

During the on-site case file review, OSHA evaluated the program's understanding and use of OIS reports, and verified that VOSHA was using these reports effectively. In addition, CSHOs have improved significantly in the area of coding inspections with the proper emphasis codes. In IMIS, many inspections were coded incorrectly and/or were lacking the proper codes.

Some of the program's CSHOs have had difficulty entering health sampling data into the OIS. OSHA has provided assistance in this regard by referring VOSHA to a health CSHO in an OSHA area office who is proficient in this area. Later in this report, OSHA discusses a few recommendations related to VOSHA's use of the OIS for monitoring debt collection.

## 4) Funding

VOSHA’s three-year funding history is included in this report in the State Plan Introduction. As Vermont’s FY 2016 state budget was being prepared, VOSHA was among some of the state programs targeted for significant budget cuts or potential elimination, due to a budgetary shortfall. However, the program survived the budgetary process intact.

5) State Internal Evaluation Program Report (SIEP)

In the FY 2013 Comprehensive FAME Report, OSHA made an observation that VOSHA had developed a draft SIEP, but it had not yet been implemented. In the FY 2014 Follow-up FAME Report, OSHA closed this observation, because VOSHA had acknowledged that it had not devoted much time to the SIEP due to management’s focus on several other more pressing issues, and OSHA made the decision that this would therefore not be monitored in FY 2015. Now that many of these challenges have subsided, VOSHA anticipates implementing the SIEP in FY 2017. OSHA will continue to reinforce the need for a SIEP so that VOSHA follows through on implementation in FY 2017.

**B. ENFORCEMENT**

1) Complaints

SAMM #1 calculates the average number of days it takes the program to initiate complaint inspections. The negotiated further review level for this measure is five days. As shown in the table below, VOSHA’s average of 1.49 days met the further review level of 5 days in FY 2015, and has steadily improved since FY 2013.

<b>SAMM #1: Average Number of Days to Initiate Complaint Inspections</b>		
<b>FY 2013</b>	<b>FY 2014</b>	<b>FY 2015</b>
4.21	2.52	1.49

SAMM #2 calculates the average number of days to initiate investigations of complaints that have no related inspection (non-formal complaints). The negotiated further review level is one day. As shown in the table below, VOSHA had an average of zero for SAMM #2 in FY 2013. At that time, VOSHA’s management team was in flux, and VOSHA was not entering data on non-formal complaint inquiries into the IMIS system.<sup>7</sup> Therefore, OSHA made a finding to this effect in the FY 2013 Comprehensive FAME Report. This finding was continued in the FY 2014 Follow-up FAME Report, pending verification during the next on-site case file review (Finding FY 2014-01).

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<sup>7</sup> According to the FOM, Chapter 9, an “inquiry” is a “process conducted in response to a complaint or a referral that...does not involve an on-site inspection of the workplace, but rather the employer is notified of the alleged hazard(s) or violation(s) by telephone, fax, email, or by letter if necessary. The employer is then requested to provide a response, and OSHA will notify the complainant of that response by appropriate means.”

During the FY 2015 case file review, OSHA verified that VOSHA was recording data on non-formal complaint inquiries in the OIS. Therefore, Finding FY 2014-01 is completed. Also, as shown in the table below, VOSHA met the further review level of one day for SAMM #2 in FY 2014 and in FY 2015.

<b>SAMM #2: Average Number of Days to Initiate Complaint Investigations</b>		
<b>FY 2013</b>	<b>FY 2014</b>	<b>FY 2015</b>
0	.50	.03

In SAMM #3, the percent of imminent danger complaints and referrals responded to within one day is calculated. In FY 2015 and in FY 2014, VOSHA met the further review level for this measure. In each of these years, VOSHA responded to two imminent danger complaints within one day. This is an improvement since FY 2013, when VOSHA’s percent of 85.71 did not meet the further review level of 100 percent for this measure. VOSHA has had no denials of entry over the past three fiscal years; therefore, VOSHA’s result for SAMM #4 (number of denials where entry not obtained) has been zero from FY 2013 to FY 2015.

In FY 2013, OSHA identified a number of complaint-related case files that were missing at least one form of basic documentation, such as copies of letters to the complainants notifying them of the results of the inspections and printed copies of the Complaint (OSHA-7 Form). OSHA also identified fatality inspection case files that were missing required inspection records, such as the OSHA-36 Form and/or the OSHA-170 Form, and adequate information on how one fatality was determined to be non-work related.<sup>8</sup> As a result, OSHA issued a finding in the FY 2013 Comprehensive FAME Report which noted all of these deficiencies. To remedy this finding, VOSHA’s managers have been reviewing all case files using a case file documentation checklist provided by an OSHA area office. In the FY 2014 Follow-up FAME Report, this finding was awaiting verification (Finding FY 2014-03).

During the on-site review, OSHA identified 5 of 11 complaint-related case files that were missing printed copies of the Complaint (OSHA-7 Form). The printed Complaint is a document that must be contained in the case file. As discussed in Chapter 5 of VOSHA’s Field Operations Manual (FOM), “All official forms and notes constituting the basic

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<sup>8</sup> The Fatality/Catastrophe Form (FAT/CAT) (OSHA-36) is a pre-inspection form that must be completed for all fatalities or catastrophes unless knowledge of the event occurs during the course of an inspection at the establishment involved. The purpose of the FAT/CAT (OSHA-36) is to provide OSHA with enough information to determine whether or not to investigate the event. The Investigation (OSHA-170) is used to summarize the results of investigations of all events that involve fatalities, catastrophes, amputations, hospitalizations of two or more days, have generated significant publicity, and/or have resulted in significant property damage (Source: VOSHA FOM, Chapter 11). When submitting formal complaints, employees may use the Complaint (OSHA-7) to assert that an imminent danger, a violation of the Act, or a violation of an OSHA standard exposes employees to a potential physical or health harm in the workplace (VOSHA FOM, Chapter 9).

documentation of a case must be part of the case file.” OSHA verified that copies of letters to the complainants notifying them of the results of the inspections were in the case files.

In one of the two fatality cases reviewed by OSHA, the event that caused the death of the worker was determined by VOSHA to be non-work related. OSHA verified that the FAT/CAT (OSHA-36) contained adequate information on how the fatality was determined to be non-work related, and found no issues with the partial inspection that was conducted by the CSHO. Furthermore, the case file for the fatality that was deemed to be work-related included all documentation required by VOSHA’s FOM, such as the FAT/CAT and the Investigation.

These two fatality cases, along with the fact that copies of the letters to complainants were found in the case files, indicate that Finding FY 2014-03 is no longer warranted. However, continued monitoring of VOSHA’s complaint cases is needed to make sure that case files contain copies of the printed Complaint. Therefore, Finding 2014-03 is being converted to a new observation.

**Observation FY 2015-OB-01 (FY 2014-03):** Of 11 complaint files reviewed, 5 were missing printed copies of the Complaint which is a document that must be contained in the case file, in accordance with VOSHA’s FOM, Chapter 5.

**Federal Monitoring Plan FY 2015-OB-01:** During quarterly meetings, OSHA will discuss the FOM requirement that complaint files must contain copies of the printed OIS complaint.

2) Fatalities

The table below shows the number of fatality events since FY 2013. Over the past three fiscal years, the number of fatality events that were inspected has remained fairly constant.

<b>Fatality Event Comparison                      ( Work-Related v. Non-work-Related Fatality Events)                      FY 2013-FY 2015                      Sources: FY 2013-FY 2014: IMIS Fatality/Catastrophe Reports                      FY 2015: OIS Fatality/Catastrophe Report</b>		
	<b>Total Number of Fatality Events</b>	<b>Number of Fatality Events Inspected</b>
FY 2013	4	2
FY 2014	9	3
FY 2015	3	2

In addition to the fatality case documentation issues discussed above, a finding that VOSHA did not notify family members of the status of the fatality investigation was made in the FY 2013 Comprehensive FAME Report. In the FY 2014 Follow-up FAME Report, this finding was deemed to be open, because in one fatality case where the

citations were dismissed by the review board, VOSHA neglected to notify the family of this outcome and that the case had been closed (Finding FY 2014-02). To remedy this finding, the VOSHA director took over the duty of initiating all notifications of victims' family members and for logging them into a tracking sheet.<sup>9</sup>

Also, OSHA made an observation in the FY 2013 Comprehensive FAME Report that in one case, the CSHO did not follow the FOM's procedures for conducting a thorough investigation of a fatality (Observation FY 2014-OB-04). This observation was continued in the FY 2014 Follow-up FAME Report, pending the results of the FY 2015 on-site case file review.

In order to verify the status of the finding related to notification of next-of-kin (Finding FY 2014-02) and the observation that pertained to the thoroughness of a fatality investigation (Observation FY 2014-OB-04), OSHA reviewed one of the two fatality cases that was opened in FY 2015 (but not closed during that timeframe), and found that family notifications were present in the file and that they were sent in a timely manner. OSHA also verified that the investigation was conducted thoroughly. In light of these factors, Finding FY 2014-02 is completed and Observation FY 2014-OB-04 is closed.

In FY 2015, VOSHA met the further review level of 100 percent for SAMM #10 (percent of work-related fatalities responded to in one workday). In FY 2013 and in FY 2014, VOSHA met the further review level for this SAMM as well.

### 3) Targeting and Programmed Inspections

VOSHA uses data on work-related injuries and illnesses from the BLS and also state resources, such as the workers' compensation division's database, to develop its targeting strategy for worksites in construction and general industry.

The SOAR provides a complete listing of worksites targeted by VOSHA in general industry and construction in FY 2015. VOSHA did not meet the goal for targeted inspections in construction, by conducting 146 inspections of 150 projected, and attributes this mainly to conducting fewer inspections at sites where workers are at risk for exposure to one or more of the following hazards: noise, silica, hexavalent chromium, and lead. VOSHA's director noted that fewer complaints were received from workers at these sites than anticipated. On the other hand, VOSHA met the goal for inspections in non-construction industries, by conducting 170 inspections of 100 projected for the fiscal year.

In FY 2014, VOSHA adopted OSHA's directive for scheduling inspections in construction (CPL-02-00-155). VOSHA has had Local Emphasis Programs (LEPs) in falls and trenching/excavation for many years. In most cases, VOSHA adopts the

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<sup>9</sup> This tracking sheet was created by an OSHA area office and shared with VOSHA. The tracking sheet contains about 30 items that should be checked (such as whether or not the fatality liaison has been notified, the name of the next-of-kin, and the date the next-of-kin was notified, etc.) by the area office (or VOSHA) with regard to fatality investigations.

policies and procedures in OSHA's National Emphasis Programs (NEPs) identical to those in the federal program. For inspections under NEPs VOSHA uses OSHA's ListGen webpage to obtain establishment targeting lists. For example, in FY 2015, VOSHA used ListGen to generate inspection targeting lists under NEPs for noise, amputations and isocyanates.

In March 2015, OSHA conducted training on several NEPs for VOSHA's compliance staff. As a result, VOSHA has become more familiar with the guidance and protocols in the NEPs that it has adopted. For example, VOSHA's managers discuss the NEPs during staff meetings, and the program is paying closer attention to the number of inspections that need to be conducted under the NEP and the need to properly code NEP inspections in the OIS.

During the FY 2015 case file review, no trends were identified in terms of VOSHA not conforming to adopted NEP guidelines and protocols, although there was one case in which VOSHA did not follow the protocols under the Isocyanates NEP (CPL 03-00-017).<sup>10</sup> There was also one case file in which the code for inspections under the Process Safety Management NEP (CHEMNEP) was incorrectly used.

Based on the OIS Inspection Summary Report run on March 3, 2016, 45 percent of VOSHA's inspections were programmed (either program planned, program related or programmed other), and 55 percent of the State Plan's inspections were unprogrammed (complaints, fatalities, catastrophes, accidents, and referrals).<sup>11</sup> More specifically, 81 (25 percent) of the 318 inspections opened in FY 2015 were complaint inspections, and 48 inspections (15 percent) were program planned.

In order to assess VOSHA's effectiveness in targeting the most hazardous worksites, OSHA has examined data from the State Plan's FY 2015 program planned inspections. An OIS Inspection Summary Report run on March 3, 2016, shows that of 48 program planned inspections, 34 (71 percent) were not in compliance (NIC). Of the 34 NIC inspections, 33 had serious, willful, repeated, or unclassified (SWRU) violations (97 percent). As shown in the table below, VOSHA compared favorably to all State Plans on these and other metrics that can be used to evaluate targeting, with the exception of "average violations per initial inspection."

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<sup>10</sup> In this case, the CSHO did not determine potential workplace exposures to isocyanates at a site that was performing automobile painting and clear coating. According to the NEP, if the CSHO determines that a process is not active (i.e., automobile painting/clear coating), the CSHO shall return at a later date to perform sampling (Section XIII C. 1).

<sup>11</sup> Worksite safety and health inspections that have been scheduled based upon objective or neutral selection criteria are programmed inspections. The worksites are selected according to national scheduling plans or under local, regional, and national special emphasis programs (Source: FOM, Chapter 2).

Analysis of Program-Planned Inspections FY 2015 Source: OIS Inspection Summary Report (March 3, 2016)						
	Percent of programmed inspections that are NIC	Percent of NIC inspections that had SWRU violations	Percent of NIC inspections with only other-than-serious violations cited	Average violations per initial inspection	Percent of violations cited as SWRU	Percent of violations cited as other-than-serious
VOSHA	70.8	97.1	2.9	2.6	68.8	31.3
All State Plans	70.4	73.5	26.5	3.24	51.1	48.8

In addition to data from program planned inspections, OSHA has also used two SAMMs to analyze VOSHA's effectiveness in targeting. SAMM #9 calculates the percentage of inspections that have been closed, with no violations.<sup>12</sup> High in compliance rates may indicate that the State Plan is not targeting worksites that are highly hazardous and prone to having serious violations.

As shown in the table below, VOSHA's in compliance rates for both safety and health met the further review levels for this measure in FY 2015. This table also shows that VOSHA's in compliance rates have improved over the past couple of years, especially for health inspections.

SAMM #9: Percent In Compliance						
	FY 2013		FY 2014		FY 2015	
	VOSHA	Further Review Level	VOSHA	Further Review Level	VOSHA	Further Review Level
Safety	29.79%	+/- 20% of 29.1%	31.58%	+/- 20% of 29.1%	29.41%	+/- 20% of 28.47%
Health	52.94%	+/- 20% of 34.1%	47.06%	+/- 20% of 34.1%	35.38%	+/- 20% of 33.58%

In the FY 2013 Comprehensive FAME Report, OSHA made an observation that VOSHA may be inspecting too many non-formal complaints related to mold, instead of investigating these complaints via phone-fax. This observation was continued in the FY 2014 Follow-up FAME Report because VOSHA's in compliance rate for health inspections was outside the further review level, although it has improved since FY 2013. Because VOSHA has verified that more mold-related complaints are being handled via phone fax, and the in compliance rate for health met the further review level in FY 2015, Observation FY 2014-OB-05 is closed.

<sup>12</sup> Unprogrammed inspections (complaints, referrals, fatalities and catastrophes) and programmed inspections are used in this measure; however, 'No Inspections' are excluded.



SAMM #5 calculates the average number SWRU violations per NIC inspection.<sup>13</sup> Not meeting the further review level average for SWRU violations may indicate that the State Plan is not targeting the most hazardous worksites. As shown in the table below, VOSHA met the further review level average for SWRU violations in FY 2015, and has consistently done so since FY 2013. To summarize, most of the metrics for programmed inspections, together with VOSHA’s results for SAMMs #5 and #9, indicate that the program is targeting the most hazardous worksites for inspections.

SAMM #5: Average Number of Violations per NIC Inspection						
	FY 2013		FY 2014		FY 2015	
	VOSHA	Further Review Level	VOSHA	Further Review Level	VOSHA	Further Review Level
SWRU violations	1.98	+/- 20 % of 2.0	1.96	+/- 20% of 1.99	1.79	+/- 20% of 1.92
Other than Serious (Other) violations	.42	+/- 20% of .88	0.5	+/- 20% of 1.22	0.38	+/- 20% of .87

#### 4) Citations and Penalties

OSHA made a finding in the FY 2013 Comprehensive FAME Report that VOSHA’s lapse times for both safety and health were outside the further review levels of the SAMM. In FY 2014, VOSHA’s lapse times increased slightly over the program’s FY 2013 results, and the finding remained open. In order to reduce lapse times, VOSHA requires CSHOs to report cases to management that have a lapse time greater than 30 days. CSHOs must also explain why the cases remain open.

As shown in the table below, data from SAMM #11 (average lapse time) indicates that VOSHA’s lapse times have improved to the point where only the health data is outside the further review level. Although this finding is still open, it has been modified to reflect that only the lapse time for health inspections is outside the further review level.

**Finding FY 2015-01 (FY 2014-04):** SAMM #11 (average lapse time) – VOSHA’s FY 2015 average of 77.33 days for health inspections is outside the further review level average of 53.48 days.

**Recommendation FY 2015-01:** Review the processes and policies in place to identify bottlenecks and inefficiencies so that the further review level for health in SAMM #11 is met.

<sup>13</sup> Similar to SAMM #9, this measure is based on programmed, as well as unprogrammed, inspections.

SAMM #11: Average Lapse Time						
	FY 2013		FY 2014		FY 2015	
	Lapse time (days)	Further review level (days)	Lapse time (days)	Further review level (days)	Lapse time (days)	Further review level (days)
Safety	63.84	+/- 20% of 43.4	66.34	+/- 20% of 43.4	48.16	+/- 20% of 42.78
Health	82.73	+/- 20% of 53.1	84.91	+/- 20% of 57.05	77.33	+/- 20% of 53.48

Of the 37 NIC case files reviewed during the on-site evaluation, OSHA identified only 1 case where there was not enough evidence to support the violations.<sup>14</sup> However, in FY 2013, there were more cases in which evidence to support violations was not adequate. For example, in some cases, health sampling had not been performed, although evidence supporting the need to do so was found in the case file. Consequently, OSHA made an observation that “VOSHA is not consistently performing health sampling when other information in the file indicates that sampling may have been appropriate.” In the FY 2014 Follow-up FAME Report, this observation was continued.

In FY 2015, getting back on track with regard to health sampling was a top priority for VOSHA. Not only has management been mentoring CSHOs in this area, VOSHA also spent \$65,000 to upgrade its sampling and safety equipment, as discussed in the SOAR. The FY 2015 case file review indicated that sampling was conducted in all three cases where it was appropriate. Also, an OIS Sampling Scan Summary Report run on January 14, 2016, lists numerous sampling exposure assessments that were entered into the system by CSHOs in FY 2015. This is in stark contrast to a couple of years ago, when VOSHA’s health CSHOs entered hardly any health sampling assessments into the IMIS. Therefore, Observation FY 2014-OB-07 is closed.

OSHA also made a finding in the FY 2013 Comprehensive FAME Report related to health sampling forms, such as the air sampling, noise survey, and direct reading forms. In some cases, these forms were not fully completed or missing from the case file. As a corrective measure, VOSHA’s managers have been mentoring CSHOs and reviewing all case files to ensure that this issue is rectified. This finding was awaiting verification in the FY 2014 Follow-up FAME Report. In the three health case files reviewed where sampling was conducted, no issues were identified with regard to health sampling forms missing from the case files. Finding FY 2014-05 has been completed.

In 5 of the 37 NIC cases that were reviewed during the on-site, OSHA determined that one or more violations were classified as other-than-serious, when they should have been classified as serious. However, this handful of cases is not enough evidence to indicate that the State Plan has a tendency to improperly classify serious violations as other-than-serious. As shown in the table below, VOSHA’s percentages for serious and SWRU violations compared favorably to the percentages for all State Plans nationwide.

<sup>14</sup> In this particular case, the VOSHA manager deleted two citations at the informal conference based on the fact that the evidence gathered by the CSHO to support the violations was insufficient.

<b>Violation Data Comparison</b>		
<b>Source: OIS Inspection Summary Report (January 12, 2016)</b>		
	<b>VOSHA</b>	<b>State Plans</b>
Percent of NIC inspections with serious violations	84.9	66.5
Percent of NIC inspections with SWRU violations	89.6	68.5
Percent of violations cited as serious	73.2	47.6

In the FY 2013 Comprehensive FAME Report, OSHA made an observation that VOSHA had not cited any willful violations since FY 2009. This observation was continued in the FY 2014 Follow-up FAME Report, because no willful violations were cited in FY 2014. In FY 2015, VOSHA opened one inspection in which a willful violation was cited. It should also be noted that VOSHA’s four new CSHOs have demonstrated a willingness to learn proper inspection techniques, including those that must be followed to build the case for a willful violation. VOSHA’s managers are continuing to mentor CSHOs on willful violations, and are optimistic that VOSHA’s track record for citing willful violations will continue to improve in FY 2016, as these CSHOs gain more experience. In addition, none of the case files reviewed contained evidence that a willful citation should have been issued and was not. Therefore, Observation FY 2014-OB-06 is closed.

In FY 2015, VOSHA did not meet the further review level in SAMM #8 (average current serious penalty in the private sector).<sup>15</sup> As shown in Appendix D, the further review level is calculated using national data, which includes both State Plans and OSHA.<sup>16</sup>

<b>SAMM #8A: Average Current Serious Penalty in the Private Sector</b>		
<b>Employer Size</b>	<b>Average current penalty</b>	<b>Further review level</b>
1 to greater than 250 workers	\$1,043.42	+/- 25% of \$2,002.86

VOSHA’s penalties are set by statute.<sup>17</sup> For example, employers who are cited for willful

<sup>15</sup> The average current serious penalty is the proposed penalty after any adjustments have been made to the initial penalty (private-sector only). (Source: OSHA’s SAMM Codebook)

<sup>16</sup> This measure has four sub-categories, based on the size of the employer (see Appendix D). VOSHA did not meet the further review level in any of the sub-categories. In FY 2014, further review levels for this measure were not calculated, due to the transition from IMIS to OIS.

<sup>17</sup> The statute which establishes VOSHA’s penalty amounts (21 VSA § 210) can be accessed through this link: <http://legislature.vermont.gov/statutes/section/21/003/00210>.

or repeated violations may be assessed a civil penalty of \$5,000 to not more than \$70,000 for each violation; for serious and other-than-serious violations, the assessment may be up to \$7,000 for each violation. For several years, VOSHA's penalty structure (i.e., penalty adjustment factors) has been based on OSHA's FOM, which was issued in September 1994. In responding to the Federal Program Change (FPC) issued on October 1, 2015, for OSHA's latest FOM, VOSHA indicated that it plans to adopt the penalty structure described in Chapter 6 by May 1, 2016.<sup>18</sup>

VOSHA's average current penalty per serious violation in private sector (SAMM #8: 1-250+ workers) was \$1,043.42 in FY 2015. The Further Review Level (FRL) is -25% of the National Average (\$2,002.86), which equals \$1,502.14. Penalty levels are at the core of effective enforcement, and State Plans are therefore required to adopt penalty policies and procedures that are "at least as effective as" (ALAE) those contained in the FOM, which was revised on October 1, 2015 to include changes to the penalty structure in Chapter 6 – Penalty and Debt Collection.

Note that with the passage of the Bipartisan Budget Bill on November 2, 2015, OSHA is now required to raise its maximum penalties in 2016 and to increase penalties according to the Consumer Price Index (CPI) each year thereafter. State Plans are required to follow suit. As a result of this increase in maximum penalties, OSHA will be revising its penalty adjustment factors in Chapter 6 of the FOM. Following completion of the FOM revision and after State Plans have the opportunity to adopt the required changes in a timely manner, OSHA will be moving forward with conducting ALAE analysis of State Plan penalty structures, to include evaluation of average current penalty per serious violation data.

In the FY 2013 Comprehensive FAME Report, OSHA made a finding that VOSHA was not following its own debt collection policy, as prescribed in the annual instructions for the State Plan grant applications.<sup>19</sup> As discussed in that report, the program's debt collection procedures were not being followed during the months when VOSHA's management was in flux (which was prior to the hiring of the two current managers in July 2013).<sup>20</sup> To remedy this finding, VOSHA's new director worked with the solicitor to update the debt collection policy so that it could be reinstated. This finding was awaiting verification in the FY 2014 Follow-up FAME Report.

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<sup>18</sup> The State Plan has not yet committed to adopting OSHA's new penalty levels. The FOM that was updated as of October 2015 is the first one to incorporate OSHA's Interim Administrative Penalty Policy of September 27, 2010.

<sup>19</sup> Appendix H of the annual grant application instructions states that "all State recipients must assure that an effective debt collection mechanism is in place and documented in the State Plan to assure the integrity of the program through collection of assessed penalties."

<sup>20</sup> VOSHA's debt collection procedures are similar to those in the Field Operations Manual (FOM). VOSHA has not yet adopted the OSHA Field Operations Manual (FOM) that was issued under Federal Program Change (FPC) CPL-02-00-159 on October 1, 2015, but intends to do so by April 1, 2016. Thus, in FY 2015, VOSHA was using the FOM issued by OSHA in April 2011 (OSHA Instruction CPL 02-00-150, Field Operations Manual, issued April 22, 2011).

During the FY 2015 evaluation, OSHA verified that the debt collection policy had been reinstated, and that VOSHA is running the OIS Debt Collection Report periodically to monitor penalty payments. VOSHA no longer has a backlog of cases that are overdue for referral to debt collection. As a result, Finding FY 2014-10 is closed.

However, OSHA recommends that VOSHA change a few procedures for using OIS to improve efficiency. One of these recommendations pertains to debt collection letters (demand and default). In OIS, the user has the ability to generate default/demand letters for those companies whose penalty payments are overdue. During the FY 2015 evaluation, OSHA noted that VOSHA had been creating these letters outside of the system, and had not been entering the dates that the letters were mailed into the system. As a result, VOSHA's OIS Debt Collection Report did not properly reflect the status of these cases in relation to the penalty collection process. To improve penalty payment tracking, VOSHA should use the debt collection letters that can be generated in OIS.

VOSHA's debt collection policy states that in cases where the employer has been given an informal conference but defaulted on its terms, "a default letter will be sent to the employer requesting payment in full within 30 calendar days, reverting back to original penalties prior to any previous agreement." Evidently, VOSHA was not changing the penalties back to the original amount in the OIS. VOSHA should amend the penalties in the OIS before the case is referred to the solicitor for debt collection.

#### 5) Abatement

In the FY 2013 Comprehensive FAME Report, OSHA made a finding that "VOSHA did not verify abatement as timely as it should have because 7 of 31 cases that had violations were closed without having adequate documentation of abatement completion." In order to remedy this finding, VOSHA's managers have been reviewing all case files to ensure that abatement documentation is included. VOSHA's managers also ensure that when abatement verification is provided by employers at informal conferences, it is noted in the case file. In the FY 2014 Follow-up FAME Report, this finding was awaiting verification.

The results of the FY 2015 case file review indicate that improvement is still needed in this area. In 32 cases that were reviewed for abatement, 12 (37.5 percent) were closed without having adequate documentation of abatement completion. In several of these cases, the VOSHA manager made notations that the violation was abated, without having obtained adequate documentation of abatement from the employer

As discussed in Chapter 7 of VOSHA's FOM, except where the CSHO observed abatement during the on-site portion of the inspection, the employer must provide written certification of abatement (minimum level), and for the most serious violations, "the employer must submit documents demonstrating that abatement is complete." During the case file review, OSHA discussed this issue with VOSHA's managers and they are aware that adequate abatement documentation from the employer must be included in the case file before it can be closed. Nonetheless, this finding is open. No issues were identified with regard to appropriate abatement periods in the cases that were reviewed on-site.

**Finding FY 2015-02 (FY 2014-06):** In 32 cases that were reviewed for abatement, 12 (37.5 percent) were closed without having adequate documentation of abatement completion.

**Recommendation FY 2015-02:** Follow the procedures in Chapter 7 of the VOSHA FOM that pertain to abatement verification and documentation.

6) Worker and Union Involvement

Of the 45 case files reviewed where inspections were conducted, 5 of the worksites had employees that were represented by labor unions. In FY 2015, VOSHA’s percent of 99.37 was slightly outside the further review level of 100 percent for SAMM #13 (percent of initial inspections with worker walk around representation or worker interview). In FY 2013 and in FY 2014, VOSHA met the further review level of 100 percent for this measure. VOSHA’s overall performance, including its policies and procedures regarding working involvement during inspections, as well as documentation of such involvement, continue to be acceptable.

**C. REVIEW PROCEDURES**

1) Informal Conferences

VOSHA does not have penalty reduction programs, such as expedited informal settlement agreements. An OIS Inspection Summary Report run on January 20, 2016, shows that in FY 2015, 87.9 percent of the penalty modifications made by VOSHA were through informal settlement agreements. The remaining penalty modifications were made post-contest (12.1 percent). This report also shows that penalties were reduced by an average of 46.9 percent through informal settlement agreements. Looking at all State Plans nationwide, the average was 46.5 percent for the same metric.

SAMM #12 calculates the percent of penalty retained.<sup>21</sup> In FY 2015, VOSHA’s percent was 56.63, which was just outside the further review level (see the table below). To meet the further review level, VOSHA needed to have a percentage of at least 57.77. In FY 2014, VOSHA’s percent of 62.16 was well within the range (+/- 15 percent) of the further review level of 66 percent.

<b>SAMM #12: Percent Penalty Retained</b>					
<b>FY 2013</b>		<b>FY 2014</b>		<b>FY 2015</b>	
Percent	Further review level	Percent	Further review level	Percent	Further review level
91.97	66	62.16	66	56.63	+/- 15% of 67.96

<sup>21</sup> According to OSHA’s SAMM Codebook, the percent penalty retained is the “the percent of total initial penalty for non-contested violations that is retained after reductions.”

VOSHA's managers believe that the program's performance on SAMM #12 is attributable to having several new CSHOs on board who faced a learning curve with regard to violation classification. It should also be noted that in FY 2015, the program was operating under an earlier penalty structure. Going forward, VOSHA's results for this SAMM should improve as the newer CSHOs gain more experience. The FY 2015 case file review did not identify any trends that needed to be addressed in terms of penalty reductions, violations vacated/reclassified, or documentation of changes to penalties.

In the FY 2013 Comprehensive FAME Report, OSHA made a finding that in some cases, the informal conference was held after the 20 calendar-day period prescribed by state statute.<sup>22</sup> For at least half of FY 2013, VOSHA was being run by an interim manager who was trying to do the work of two full-time managers. As a result, VOSHA was unable to keep up with employers' requests for informal conferences, and many were held way beyond the 20 calendar-day timeframe. This finding was awaiting verification in the FY 2014 Follow-up FAME Report.

Since VOSHA's current managers came on board, the program's track record for holding informal conferences in a timely manner has improved significantly. Informal conferences were held timely in all but 1 of the 17 cases that were reviewed which had informal conferences. Therefore, Finding FY 2014-07 is completed.

## 2) 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...."<sup>23</sup>

In the FY 2014 Follow-up FAME Report, OSHA made a finding that VOSHA was not consistently filing contested cases with the VOSHA Review Board within the seven-day timeframe prescribed by the board's rules.<sup>24</sup> This was another problem that occurred during the time that VOSHA did not have full staffing at the managerial level. A review

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<sup>22</sup> The Vermont State Plan follows OSHA's procedures with regard to contested cases, except for the fact that the employer has 20 calendar-days from receipt of the citation and notification of penalty to contest the citation, penalty, and/or abatement date. See 21 Vermont Statutes Annotated (V.S.A.) §226. Enforcement. OSHA allows the employer 15 workdays (FOM, Chapter 7).

<sup>23</sup> Vermont Occupational Safety and Health Review Board, *Rules of Procedure*, §2200.2b. The Board.

<sup>24</sup> As stated in the Vermont Occupational Safety and Health Review Board's *Rules of Procedure*, § 2200.32, "The Commissioner shall, within 7 days of receipt of a notice of contest, transmit the original to the Board, together with copies of all relevant documents." The review board's procedures also state that "Failure to file any pleading pursuant to these rules when due may, in the discretion of the Board or its judge, constitute a waiver of the right to further participate in the proceedings." Vermont Occupational Safety and Health Review Board, "*Rules of Procedure*" § 2200.38: Failure to File.

of the 12 cases that had citations appealed to the review board in FY 2015 indicates that all were filed within 7 days of the receipt of the employer’s notice of contest.<sup>25</sup> Therefore, Finding FY 2014-08 is completed.

OSHA reviewed the status of 17 cases that had citations appealed to the review board over the past two fiscal years (6 cases from FY 2014 and 11 cases from FY 2015). In about half of the cases (8 of 17), a settlement was reached before a hearing was held; in 3 cases, the hearing officer affirmed the citations; and in 3 other cases, VOSHA withdrew the citations after the cases were placed into contest. There were also three cases that were either pending a decision or a hearing at the time of the on-site review. OSHA determined that no action was needed by VOSHA with regard to State Plan defense, quality of decisions or procedural issues. The VOSHA Review Board’s decisions can be obtained in their entirety through the board’s website.<sup>26</sup>

**D. STANDARDS AND FEDERAL PROGRAM CHANGES (FPC) ADOPTIONS**

*FPCs*

Of the FPCs that had adoption due dates in FY 2014 and FY 2015, VOSHA was late in responding to only one (CPL-02-00-157 Shipyard Employment “Tool Bag” Directive) and late in adopting only one as well (CPL-02-01-055 Maritime Cargo Gear Standards and 29 CFR Part 1919 Certification). When new FPCs and standards are adopted, 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.

VOSHA FEDERAL PROGRAM CHANGE LOG (excluding standards)								
Directive	Date	Response Due Date	Date State E-mailed Response	Adoption Required	Intent Required	Intent to Adopt	Adopt Identical	Adoption Date
CPL-03-00-018 2015 725 REVISION - National Emphasis Program - Primary Metal Industries	10/20/2014	12/20/2014	12/17/2014	YES	YES	YES	YES	2/1/2015

<sup>25</sup> The source of this information is documentation provided by the VOSHA Review Board’s general counsel.

<sup>26</sup> <http://vosha.board.vermont.gov/decisions/index>



<b>VOSHA FEDERAL PROGRAM CHANGE LOG (excluding standards)</b>								
<b>Directive</b>	<b>Date</b>	<b>Response Due Date</b>	<b>Date State E-mailed Response</b>	<b>Adoption Required</b>	<b>Intent Required</b>	<b>Intent to Adopt</b>	<b>Adopt Identical</b>	<b>Adoption Date</b>
CPL-02-01-057 2015 724 Compliance Directive for Cranes and Derricks in Construction Standard	10/17/2014	12/20/2014	12/16/2014	NO	YES	YES	YES	3/1/2015
TED-01-00-019 Mandatory Training Program for OSHA Compliance Personnel	7/21/2014	9/21/2014	9/3/2014	NO	YES	YES	YES	10/1/2014
CPL-02-01-056 Inspection Procedures for Accessing Communication Towers	7/17/2014	9/17/2014	9/3/2014	NO	YES	YES	YES	10/1/2014
CPL-02-00-158 Inspection Procedures for the Respiratory Protection Standard	6/26/2014	9/5/2014	8/6/2014	NO	YES	YES	YES	9/1/2014
CPL- 02-00-157 Shipyard Employment “Tool Bag” Directive	4/1/2014	6/1/2014	6/26/2014	NO	YES	YES	YES	7/1/2014
CPL-02-14-01— Site Specific Targeting 2014 (SST-14)	3/6/2014	4/2/2014	3/27/2014	YES	YES	YES	YES	5/1/2014
CPL-03-02- 003—Directive Subject: OSHA Strategic Partnership for Worker Safety and Health	11/6/2013	1/14/2014	1/3/2014	NO	YES	YES	YES	2/1/2014
CPL-02-01- 055—Maritime Cargo Gear Standards and 29 CFR Part 1919 Certification	9/30/2013	12/30/2013	12/27/2013	NO	YES	YES	YES	7/1/2014

VOSH A FEDERAL PROGRAM CHANGE LOG (excluding standards)								
Directive	Date	Response Due Date	Date State E-mailed Response	Adoption Required	Intent Required	Intent to Adopt	Adopt Identical	Adoption Date
CPL-02-00-155— Inspection Scheduling for Construction	9/6/2013	11/5/2013	11/1/2013	NO	YES	YES	YES	11/1/2013
CPL-03-00-017 NEP— Occupational Exposure to Isocyanates	6/20/2013	8/20/2013	8/8/2013	YES	YES	YES	YES	10/1/2013

### *Standards*

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 at 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 rule making process.<sup>27</sup>

As shown in the table below, VOSH A responded timely to the standards that had adoption due dates in FY 2014 and in FY 2015, but did not adopt any of these standards within the six-month time frame.<sup>28</sup>

VOSH A STANDARD ACTIONS LOG								
Standard	Federal Register Date	Response Due Date	Date State E-mailed Response	Adoption Required	Intent Required	Adoption Due Date	Adopt Identical	Effective Date
1926 Cranes and Derricks in Construction - Operator	9/26/2014	11/26/2014	11/14/2014	NO	YES	3/26/2015	YES	5/15/2015

<sup>27</sup> The first filing is the pre-filing with the Interagency Committee on Administrative Rules (ICAR). This begins the rulemaking process. The second filing is the proposed rule with the Office of the Secretary of State. This begins the notice and public comment period. The third filing is the final proposed rule, which is filed with the Office of the Secretary of State and the Legislative Committee on Administrative Rules (LCAR). This signals the end of the notice and public comment period. After the LCAR review, the fourth and last filing is the adopted rule (filed with both the Office of the Secretary of State and LCAR), which marks the beginning of the minimum 15-day period required by statute [3 VSA § 845(d)] for the effective date of the rule. See Vermont’s rule on rulemaking; Code of Vermont Rules (CVR) 04-000-001: <https://www.sec.state.vt.us/administrative-rules/rule-on-rulemaking.aspx> .

<sup>28</sup> 29 Code of Federal Regulations (CFR) 1953.4(b)(3): When there is a change in the Federal program which requires State action, OSHA shall advise the States. This notification shall also contain a date by which States must adopt a corresponding change or submit a statement why a program change is not necessary. This date will generally be six months from the date of notification....”

VOSHA STANDARD ACTIONS LOG								
Standard	Federal Register Date	Response Due Date	Date State E-mailed Response	Adoption Required	Intent Required	Adoption Due Date	Adopt Identical	Effective Date
Certification – Final Rule								
1904 Occupational Injury and Illness Recording and Reporting Requirements – NAICS Update and Reporting Revisions	9/18/2014	11/19/2014	11/19/2014	YES	YES	3/19/2015	YES	8/26/2015
1910, 1926 Final Rule for Electric Power Generation, Transmission and Distribution; Electrical Protective Equipment	4/11/2014	6/11/2014	4/14/2014	YES	YES	1/11/2015	YES	3/4/ 2015

In the FY 2013 Comprehensive FAME Report, OSHA made a finding that VOSHA had seven standards that were overdue for adoption. As shown in the table below, some of these standards were due to be adopted as far back as 2010. This finding remained open in the FY 2014 Follow-up FAME Report, as VOSHA continued to work on the adoption process for these standards.

By the end of FY 2015, four of the seven standards had been adopted; one was adopted as of February 2016, and VOSHA continues to work on the two standards for which adoption remains to be completed (see table below).

Status of Standards Cited in the FY 2013 Comprehensive FAME Report as Overdue for Adoption			
Standard	Federal Register Standard Date	Adoption Due Date	Status
Updating OSHA Standards Based on National Consensus Standards; Head Protection	11/16/2012	7/16/2013	Adopted 11/11/2014
Revised Standards Referenced in the	3/8/2012	11/1/2012	Adopted 8/18/2014

<b>Status of Standards Cited in the FY 2013 Comprehensive FAME Report as Overdue for Adoption</b>			
<b>Standard</b>	<b>Federal Register Standard Date</b>	<b>Adoption Due Date</b>	<b>Status</b>
Acetylene Standard			
Standards Improvement Project, Phase III	6/8/2011	12/8/2011	Rulemaking for this standard is in the early stages. VOSHA is preparing a filing with ICAR. Adoption is anticipated to be completed by 9/30/2016
Working Conditions in Shipyards—Final rule	5/2/2011	11/2/2011	VOSHA is preparing for a hearing on this rule before LCAR. Adoption is anticipated to be completed by 5/31/2016
Safety Standards for Steel Erection II—Technical Amendment	5/17/2010	11/17/2010	Adopted 2/20/2016
Hexavalent Chromium—Direct Final Rule	5/14/2010	11/14/2010	Adopted 8/18/2014
Acetylene—Direct Final Rule	11/9/2009	4/16/2010	Adopted 8/18/2014

Because the director has had to devote a considerable amount of time to the overdue standards, a finding is not appropriate with regard to VOSHA’s lateness in adopting OSHA’s newer standards (i.e., those standards that were due in FY 2014 and in FY 2015). However, monitoring of VOSHA’s standard adoption process is necessary to ensure that the program follows through on completing the adoption of the overdue standards, and that *all* standards are adopted within in the six-month time frame. Therefore, Finding FY 2014-09 (the finding in the FY 2014 Follow-up FAME Report that related to VOSHA having several standards overdue for adoption) has been converted to an observation.

**Observation FY 2015-OB-02 (FY 2014-09):** In FY 2014 and FY 2015, VOSHA did not complete the adoption of OSHA’s standards within the six month timeframe, and the adoption of two standards that were due in FY 2011 is in process, but not yet complete.

**Federal Monitoring Plan FY 2015-OB-02:** During quarterly meetings, OSHA will monitor VOSHA’s progress in completing the adoption of the standards that are overdue, and will also monitor adoption of new standards.

## **E. VARIANCES**

VOSHA had no variances in FY 2014 or in FY 2015. VOSHA has acceptable procedures for evaluating and issuing variances.

## **F. STATE AND LOCAL GOVERNMENT WORKER PROGRAM**

An observation that VOSHA did not meet the further review level in the SAMM for percent of state and local government inspections was introduced in the FY 2014 Follow-

up FAME Report. In that report, OSHA noted that VOSHA’s percentage of 6.76 was outside the further review level of 10.29 percent. VOSHA’s FY 2014 percentage was also much lower than the FY 2013 result of 13.52 percent.

VOSHA attributed the FY 2014 result for this measure to the CSHO vacancies that began occurring in that year. As of May 2015, VOSHA had filled all CSHO vacancies and enrolled new staff in training, whenever possible. This strategy has paid off, because in FY 2015, VOSHA clearly met the further review level of 10.0 percent with a percentage of 11.39 percent. Therefore, Observation FY 2014-OB-02 is closed.

The OIS Inspection Summary Report of January 20, 2016, shows that of 318 inspections conducted in FY 2015, 37 were conducted in state and local government (SLG) workplaces (4 inspections in state government and 33 inspections in local government). A total of 25 inspections in the SLG sector were projected for the year.

Percentages of State and Local Government (SLG) Sector Inspections FY 2013-FY 2015						
	PROJECTED			ACTUAL		
	A	B	C	D	E	F
Fiscal Year	Total Number of Inspections	Number of SLG Sector Inspections	Percent SLG Sector Inspections	Total Number of Inspections	Number of SLG Sector Inspections	Percent SLG Sector Inspections
2015	250	25	10.0	318	37	11.64
2014	350	36	10.29	296	20	6.8
2013	350	25	7.1	360	49	13.6

According to data provided by the State of Vermont, there are approximately 1,055 SLG workplaces in the State of Vermont, which represents approximately 5 percent of the total of all workplaces (private and SLG sector) in the state—23,165.<sup>29</sup> Therefore, in FY 2015, VOSHA’s percentage of SLG sector inspections (11.64 percent) exceeded the percentage of all worksites in the state that are in the SLG sector (5 percent).

## G. WORKPLACE RETALIATION PROGRAM

Overall, OSHA noted continued improvement in the VOSHA workplace retaliation program, largely due to the knowledge and experience gained by the workplace retaliation investigator over the past year. At the end of FY 2014, VOSHA had a backlog of cases, which included 14 cases older than 90 days, but by the end of FY 2015, 13 of these cases were closed.

VOSHA’s merit rate of three percent was notably low in FY 2015, and the investigator has not been trained on effective methods of obtaining settlements. However, he is

<sup>29</sup> Source: Vermont Economic & Labor Market Information Division, Quarterly Census of Employment and Wages (QCEW) as of March 31, 2015.

scheduled to receive training on settlements in August 2016 at the OSHA/VOSHA annual training conference.

In FY 2014, the supervisor did not have a WebIMIS account (the data system used to track retaliation cases), and could not monitor whether information was being entered into the system correctly. Also, the program did not enter administratively closed screenings into the system, and some cases in the system were assigned to investigators who had left the program several months prior. OSHA made a finding in the FY 2014 Follow-up FAME Report that VOSHA's management was not using WebIMIS reports to track performance or verify completeness of work (Finding FY 2014-11).

OSHA recommended that the workplace retaliation investigator and the supervisor receive training on how to run and use WebIMIS reports for workplace retaliation cases. In FY 2015, VOSHA complied with this recommendation; the workplace retaliation investigator and the supervisor have received WebIMIS accounts and training, and as a result, WebIMIS entries have improved significantly in FY 2015. Therefore, Finding FY 2014-11 is closed.

OSHA has also closed Observation FY 2014-OB-03, which pertained to the new investigator being "inexperienced and facing a learning curve." In FY 2015, the new VOSHA investigator worked closely with a senior OSHA investigator for several months. In that time, he developed the skills needed to manage his casework independently, with guidance from his supervisor. Therefore, no further monitoring of this issue is required.

To ensure that VOSHA's workplace retaliation program continues to improve, OSHA has issued two new observations. One is based on the fact VOSHA is not using activity/telephone logs in the case files, and the other pertains to delays in the screening and investigative processes. OSHA will monitor these issues in FY 2016 (see Appendix B).

**Observation FY 2015-OB-03:** None of the six case files reviewed contained activity/telephone logs, failing to capture valuable information as required by the Whistleblower Investigations Manual, Chapter, 5, IV, A.

**Federal Monitoring Plan FY 2015-OB-03:** OSHA will provide VOSHA with a sample telephone log/case activity sheet and monitor VOSHA's use of the form to ensure compliance with the Whistleblower Investigations Manual.

**Observation FY 2015-OB-04:** Three of six workplace retaliation case files reviewed showed that at key points the screening and investigation processes were delayed because the investigator was unable to get supervisory approvals in a timely manner.

**Federal Monitoring Plan FY 2015-OB-03:** OSHA will work with the VOSHA supervisor on implementing best practices for reducing delays in obtaining supervisory approvals at various points in the investigation. Further, OSHA and VOSHA will work together to ensure that the retaliation investigator receives sufficient supervisory support.

In FY 2015, VOSHA did not meet the further review level in any of the three SAMMs that relate to the workplace retaliation program. However, OSHA does not have enough data to determine whether or not this is a trend. First, the investigator is new to the job, and second, the FY 2014 data is flawed. This is because VOSHA was not consistently entering data into the IMIS before FY 2015. In the next FAME, OSHA will have two years-worth of SAMM data, and at that time, will assess trends in performance on the SAMMs.

## H. COMPLAINT ABOUT STATE PLAN ADMINISTRATION (CASPA)

VOSHA had no CASPAs in FY 2014 or in FY 2015.

## I. VOLUNTARY COMPLIANCE PROGRAM

In July 2013, the compliance assistance specialist (CAS) became the VOSHA director. Since then, the VOSHA director has been conducting most of the CAS activities, with some of the duties shared by the compliance supervisor and a few CSHOs.<sup>30</sup> In FY 2013—when the VOSHA director was the full-time CAS for at least half of that year—approximately 2,900 workers participated in VOSHA’s outreach activities. This total decreased to 1,200 participants in FY 2014; consequently, OSHA introduced an observation in the FY 2014 Follow-up FAME Report that compliance assistance had been significantly curtailed, due to the program not having one staff member dedicated solely to CAS duties.

In developing the FY 2015 annual performance goal for the number of outreach participants, the director was uncertain of the number of workers that the program could reach, given the fact that he was conducting most of the outreach activities, in addition to performing his regular duties. Therefore, VOSHA planned to involve only 350 participants in outreach in FY 2015. However, VOSHA ended up exceeding this goal, by involving approximately 1,100 workers in outreach, as noted in the SOAR.

<b>VOSHA’s Outreach Data</b> Source: VOSHA’s SOARs		
<b>Fiscal Year</b>	<b>No. of Outreach Activities</b>	<b>No. of Workers Involved</b>
2015	42	1,100
2014	20	1,200
2013	95	2,900

<sup>30</sup> After the CAS became the VOSHA Director, the State of Vermont 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.

In addition to training and outreach, the VOSHA director also oversees VOSHA's voluntary compliance programs, such as Alliances and the GMVPP, and in FY 2015, these programs ran fairly smoothly. Two of the four Alliances that VOSHA had in FY 2014 remained active. The other two became inactive due to circumstances beyond VOSHA's control.<sup>31</sup> In FY 2015, the program also maintained five active GMVPP sites, and completed the recertification of one site in FY 2015.<sup>32</sup>

However, given the fact that VOSHA's CAS duties are being handled mostly by the director (in addition to his regular duties), and not a full-time CAS, OSHA will continue to monitor VOSHA's outreach and compliance assistance programs. Observation FY 2014-01 is continued in this report, to ensure that the program provides sufficient outreach to workers in Vermont.

**Observation FY 2015-OB-05 (FY 2014-OB-01):** Since VOSHA's outreach activities have been performed mostly by the director in addition to his regular duties, compliance assistance has been curtailed.

**Federal Monitoring Plan FY 2015-OB-05:** OSHA will monitor VOSHA's CAS activities on a quarterly basis to ensure that the program continues to provide the highest level of compliance assistance possible.

During the FY 2015 on-site review, OSHA verified that VOSHA's written policies and procedures for the voluntary and cooperative programs were adequate. However, OSHA noted that outreach activity data is maintained by the VOSHA director in a hand-written log. Although not a requirement, OSHA recommends that VOSHA consider using the OIS Compliance Assistance Module to track outreach activities, rather than using the hand-written log. Using OIS will also enhance VOSHA's ability to maintain and report accurate totals of outreach participants.

## **J. STATE AND LOCAL GOVERNMENT SECTOR 23(g) ON-SITE CONSULTATION PROGRAM**

In FY 2015, Vermont's SLG sector consultation project (Project WorkSAFE) projected a total 20 SLG sector visits and exceeded this goal, by conducting 23 SLG sector visits (12 in local government and 11 in state government).

**Project WorkSAFE Statistics**  
**Source: MARC**  
**(Latest Run date: January 21, 2016)**

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<sup>31</sup> For example, one of the organizations became part of another agency and the other chose to discontinue its participation in the Alliance.

<sup>32</sup> The recertification process usually entails a three-day visit by VOSHA to the VPP site. During this visit, VOSHA conducts a walk-around, formal interviews with management and workers, informal interviews with workers, and a program review. (Source CSP 03-01-003: Voluntary Protection Programs (VPP): Policies and Procedures Manual; [https://www.osha.gov/OshDoc/Directive\\_pdf/CSP\\_03-01-003.pdf](https://www.osha.gov/OshDoc/Directive_pdf/CSP_03-01-003.pdf))



Fiscal Year	No. of Visits Projected	No. of Visits Opened	No. of Hazards Identified/ Percent Serious
2015	20	23	134/96
2014	20	26	116/100
2013	20	32	286/100

The Mandated Activities Report for Consultation (MARC) which was run by OSHA on January 21, 2016, shows that VOSHA corrected 100 percent of all hazards identified in FY 2015 in a timely manner (either on-site or within the original timeframe) (MARC #4A).<sup>33</sup> As shown in the table below, VOSHA has a strong track record of meeting the 100 percent reference/standard for MARC #4A.

MARC #4A: Percent of Serious Hazards Corrected in a Timely Manner (within 14 days of the latest correction due date) FY 2013-FY 2015								
FY 2013			FY 2014			FY 2015		
Number Corrected Timely	Percent	Total Serious Hazards	Number Corrected Timely	Percent	Total Serious Hazards	Number Corrected Timely	Percent	Total Serious Hazards
286	100	286	116	100	116	129	100	129

The OIS End-of-Year Consultation Metrics report (run on January 21, 2016, for FY 2015) shows that Project WorkSAFE identified a total of 139 hazards (134 serious and 5 other-than-serious) and removed 3,162 employees from risk.<sup>34</sup> The project's average number of serious hazards identified per initial visit was 7.4, which compares favorably to the national average of 3.56. Of the total number of serious hazards identified in Vermont's SLG sector worksites in FY 2015, 55 (41 percent) were in SLG sector establishments with 25 employees or less, and the remaining 79 (59 percent) were in SLG sector establishments of 26-100 employees.

#### IV. Assessment of State Plan Progress in Achieving Annual Performance Goals

The following is an assessment of VOSHA's progress in meeting each of the FY 2015 annual performance plan goals, and also the goals in the strategic plan that extends from FY 2015 to FY 2019. This assessment is based primarily on OIS data, the State OSHA Annual Report (SOAR) and BLS data. In FY 2015, VOSHA not only met the goal for inspections, but met most other annual performance plan goals, and is on track for meeting the long-term strategic goals by the end of FY 2019.

<sup>33</sup> Data in MARC #4A is based on closed cases only.

<sup>34</sup> Data in this report is based on open and closed cases.

### *Inspections*

Based on the OIS Inspection Summary Report of January 20, 2016, VOSHA conducted 318 inspections (240 safety and 78 health) in FY 2015, and exceeded the annual performance goal of 250 inspections.<sup>35</sup> Anticipating that the program would begin the year below the normal staffing level, and that newly hired CSHOs would face a learning curve, VOSHA lowered its projection for inspections in FY 2015, compared to the previous year.

However, VOSHA moved quickly to fill positions and enroll the new hires in the initial training program. As a result, VOSHA was able to exceed its own expectations by conducting 318 inspections, which is 127 percent of the goal of 250 inspections. In FY 2016, the goal was increased to 300 total inspections.

<b>Inspection Total Comparison (FY 2013-FY 2015)</b>			
	<b>Projected</b>	<b>Actual</b>	<b>Percent Achieved</b>
FY 2015	250	318	127
FY 2014	350	296	85
FY 2013	350	360	103

In SAMM #7 (planned v. actual inspections), VOSHA met the further review levels for safety and health inspections in FY 2015. In FY 2014, the further review levels were not met for either safety or health, due to the departure of three senior CSHOs during that year.

<b>Planned v. Actual Inspections FY 2013-FY 2015</b>						
	<b>FY 2013</b>		<b>FY 2014</b>		<b>FY 2015</b>	
	Actual	Further Review Level	Actual	Further Review Level	Actual	Further Review Level
Safety	255	250	208	263	238	+/- 5% of 173
Health	100	100	88	87	78	+/- 5% of 77

### *Annual Performance Plan and Strategic Plan Goals*

FY 2015 was the first year of VOSHA's current five-year strategic plan, which ends in FY 2019. Under this plan, VOSHA has two broad-based (strategic) goals: 1.) Ensure that

<sup>35</sup> This total is slightly higher than the total of 316 inspections in SAMM #7, due to the later run date of the OIS Inspection Summary Report. The FY 2015 SAMM used in this report was run on November 12, 2015.

workplaces are safe and healthy; and 2.) Improve workplace safety and health through compliance assistance.

In support of the broad-based strategic plan goals, VOSHA plans to achieve a 15 percent reduction in the baseline BLS total recordable case (TRC) rates for construction and general industry by the end of the five-year plan.<sup>36</sup> In FY 2015, VOSHA planned to achieve a three percent reduction in the baseline rates. The table below shows VOSHA’s annual performance goals for reducing TRC rates in construction and general industry.

<b>Annual Performance Goals for TRC Rates in Construction and General Industry</b>					
<b>Construction</b> 2012 Baseline TRC rate: 7.9			<b>General Industry</b> 2012 Baseline TRC rate: 6.4		
Fiscal Year	Goal (Percent reduction from baseline)	Goal (TRC rate)	Fiscal Year	Goal (Percent reduction from baseline)	Goal (TRC rate)
2015	3	7.7	2015	3	6.2
2016	6	7.4	2016	6	6.0
2017	9	7.2	2017	9	5.8
2018	12	7.0	2018	12	5.6
2019	15	6.7	2019	15	5.4

In FY 2015, VOSHA was successful in reducing the baseline TRC rates for both construction and general industry by more than three percent, based on 2014 BLS data (the latest available): the baseline TRC rate for construction decreased from 7.9 to 5.9, and the baseline TRC rate for general industry decreased from 6.4 to 6.0.

VOSHA also met most of the sub-goals that were aligned with meeting the annual performance goal for TRC rates in construction and general industry, as well as the broader strategic goals. As discussed below, goals were met for inspections in targeted industries, outreach and also the GMVPP. However, VOSHA did not meet annual performance goals for Alliances.

**Strategic Goal #1: Ensure that workplaces are safe and healthy.**

**Annual Performance Goal 1.1:** By the end of FY 2015, reduce the baseline TRC rate for construction by 3 percent (from 7.9 to 7.7).

**Result:** The goal was met.

**Discussion:** The baseline TRC rate for construction decreased from 7.9 to 5.9.

**Annual Performance Goal 1.1a:** Conduct inspections in at the most hazardous worksites in construction.

<sup>36</sup> In the current five-year strategic plan, VOSHA is using TRC rates from 2012 as baselines.

**Result:** The goal was met.

**Discussion:** VOSHA planned to conduct inspections in residential construction, roofing, commercial construction, highway work zones, and at worksites at risk for hazards related to lead, noise and silica. Goals were met in most categories, as detailed in the SOAR.

**Annual Performance Goal 1.2:** By the end of FY 2015, reduce the baseline TRC rate for general industry by 3 percent (from 6.4 to 6.2).

**Result:** The goal was met.

**Discussion:** The baseline TRC rate for general industry decreased from 6.4 to 6.0.

**Annual Performance Goal 1.2a:** Conduct inspections at the most hazardous worksites in general industry.

**Result:** The goal was met.

**Discussion:** VOSHA planned to conduct inspections at worksites in various industries, such as food processing, granite and concrete, and at sites where employers are exposed to amputation hazards, etc. Goals were met in most categories.

## **Strategic Goal #2: Improve safety and health through compliance assistance.**

**Annual Performance Goal 2.1:** In FY 2015, reduce the baseline TRC rates in construction and general industry by three percent.

**Result:** This goal was met.

**Discussion:** As discussed above, the baseline TRC rate for general industry decreased from 6.4 to 6.0 and from 7.9 to 5.9 for construction.

**Annual Performance Goal 2.1a:** Recognize excellence in safety and health management through the GMVPP; maintain five sites in the program.

**Result:** The goal was met.

**Discussion:** In FY 2015, VOSHA maintained the active participation of five sites in the GMVPP. One of the five sites was successfully renewed and a potential site is being mentored by one of the current GMVPP sites.

**Annual Performance Goal 2.1b:** Maintain relationships with organizations that cover worksites where workers are exposed to serious hazards. Maintain four Alliances.

**Results:** The goal was not met.

**Discussion:** Two of the four Alliances that VOSHA had in FY 2014 became inactive during FY 2015, but this was due to circumstances that were beyond the control of the VOSHA program. VOSHA ended FY 2015 with two active Alliances.

**Annual Performance Goal 2.1c:** Maintain a high level of employer and worker participation in VOSHA's outreach and training programs. Involve approximately 350 participants in outreach.

**Result:** The goal was met.

**Discussion:** As discussed earlier, the VOSHA director continues to conduct most of the CAS duties, with some assistance from the compliance supervisor. VOSHA's FY 2015 goal of only 350 outreach participants was much lower than the goal set in previous years when the program had a full-time CAS. However, VOSHA ended up exceeding this goal, by involving approximately 1,100 participants in outreach.

To ensure that VOSHA provides sufficient outreach, OSHA has continued the observation from the FY 2014 Follow-up FAME Report that VOSHA's outreach activities have been curtailed since the program has not had a full-time CAS. See Observation FY 2015-OB-05 in Appendix B.

## **V. Other Special Measures of Effectiveness and Areas of Note**

N/A

## Appendix A – New and Continued Findings and Recommendations

### FY 2015 VOSHA Comprehensive FAME Report

<b>FY 20XX-#</b>	<b>Finding</b>	<b>Recommendation</b>	<b>FY 20XX-# or FY 20XX-OB-#</b>
FY 2015-01	SAMM #11 (average lapse time) – VOSHA’s FY 2015 average of 77.33 days for health inspections is outside the further review level average of 53.45 days.	Review the processes and policies in place to identify bottlenecks and inefficiencies so that the further review level for health in SAMM #11 is met.	FY 2014-04
FY 2015-02	Abatement – In 32 cases that were reviewed for abatement, 12 (37.5 percent) were closed without having adequate documentation of abatement completion.	Follow the procedures in Chapter 7 of the VOSHA FOM that pertain to abatement verification and documentation.	FY 2014-06

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

FY 2015 VOSHA Comprehensive FAME Report

Observation # FY 20XX-OB-#	Observation# FY 20XX-OB-# or FY 20XX-#	Observation	Federal Monitoring Plan	Current Status
FY 2015-OB-01	FY 2014-03	Of 11 complaints files reviewed, 5 were missing printed copies of the OIS Complaint, which is a document that must be contained in the case file, in accordance with VOSHA's FOM, Chapter 5.	During quarterly meetings, OSHA will discuss the FOM requirement that complaint files must contain copies of the printed OIS Complaint.	Converted from Finding
FY 2015-OB-02	FY 2014-09	In FY 2014 and FY 2015, VOSHA did not complete the adoption of OSHA's standards within the six month timeframe, and the adoption of two standards that were due in FY 2011 is in process, but not yet complete.	During quarterly meetings, OSHA will monitor VOSHA's progress in completing the adoption of the standards that are overdue, and will also monitor adoption of new standards.	Converted from Finding
FY 2015-OB-03		None of the six workplace retaliation case files reviewed contained activity/telephone logs, failing to capture valuable information as required by the Whistleblower Investigations Manual, Chapter, 5, IV, A.	OSHA will provide VOSHA with a sample telephone log/case activity sheet and monitor VOSHA's use of the form to ensure compliance with the Whistleblower Investigations Manual.	New
FY 2015-OB-04		Three of six workplace retaliation case files reviewed showed that at key points the screening and investigation process was delayed because the investigator was unable to get supervisory approvals in a timely manner.	OSHA will work with the VOSHA supervisor on implementing best practices for reducing delays in obtaining supervisory approvals at various points in the investigation. Further, OSHA and VOSHA will work together to ensure that the retaliation investigator receives sufficient supervisory support.	New
FY 2015-OB-05	FY 2014-OB-01	Since VOSHA's outreach activities are performed mostly by the director in addition to	OSHA will monitor VOSHA's CAS activities on a quarterly basis to ensure that	Continued

		his regular duties, compliance assistance has been curtailed.	the program continues to provide the highest level of compliance assistance possible.	
	FY 2014-OB-02	VOSHA's percent of public sector inspections did not meet the further review level in SAMM #6.		Closed
	FY 2014-OB-03	The new workplace retaliation investigator is inexperienced and faces a learning curve.		Closed
	FY 2014-OB-04	VOSHA is making progress in terms of following their FOM's procedures in Chapter 11 for investigating fatalities, but one case indicated that the CSHO did not thoroughly investigate the incident		Closed
	FY 2014-OB-05	VOSHA may be inspecting too many non-formal complaints related to mold, instead of investigating these complaints via phone-fax.		Closed
	FY 2014-OB-06	VOSHA has not cited any violations as willful since FY 2009.		Closed
	FY-2014-OB-07	Case file review indicates that VOSHA may not be consistently performing health sampling when other information in the file indicates that sampling may have been appropriate.		Closed



## Appendix C - Status of FY 2014 Findings and Recommendations

### FY 2015 VOSHA Comprehensive FAME Report

FY 20XX- #	Finding	Recommendation	State Plan Response/Corrective Action	Completion Date	Current Status and Date
FY 2014-01	Complaints – VOSHA did not follow the procedures in Section I, Chapter 9 of the VOSHA FOM for handling non-formal complaints <i>that have no related inspection</i> . VOSHA did not record information about complaint inquiries in the IMIS system, and did not send the appropriate IMIS generated letter to employers.	Ensure that staff and supervisors are following OSHA’s policy.	VOSHA has implemented proper procedures and is currently following Section 1, Chapter 9 of the OSHA FOM.	September 30, 2015	Completed
FY 2014-02	Fatality Cases – VOSHA did not follow all of the procedures in the VOSHA FOM and OSHA’s directive for notifying family members of the status of the fatality investigation.	Ensure that staff and supervisors are following all required procedures in the FOM and OSHA’s directive related to notification of fatality victim’s family members.	The VOSHA manager is responsible for initiating all next-of-kin notifications and for logging them into a tracking sheet. This procedure ensures that all required notifications are sent to the recipients in a timely manner.	September 30, 2015	Completed

## Appendix C - Status of FY 2014 Findings and Recommendations

### FY 2015 VOSHA Comprehensive FAME Report

FY 2014-03	<p>Case Documentation – A number of case files reviewed related to complaints and fatalities that did not contain some inspection records required by the VOSHA FOM. For example, all complaint case files reviewed were missing one or more of the following required inspection records: the complainant notification of inspection results (where appropriate); the OSHA-7; and copies of the informal settlement agreement signed by the employer (where appropriate). Some fatality cases did not include the OSHA-36 and/or the OSHA-170. In one fatality case that was not inspected, the OSHA-36 did not</p>	<p>Follow the guidance in Chapter 5 of the VOSHA FOM which states that “All official forms and notes constituting the basic documentation of a case must be part of the case file.”</p>	<p>VOSHA managers continue to review all case files – including fatalities – using a checklist provided by a Region I area office.</p>	Not Completed	Converted to observation
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## Appendix C - Status of FY 2014 Findings and Recommendations

### FY 2015 VOSHA Comprehensive FAME Report

	contain information on how the fatality was determined to be non-work related.				
FY 2014-04	SAMM #23 (Average Lapse Time from Inspection Open-Date to Issue-Date) – VOSHA’s FY 2014 average of 84.91 days is outside the further review level of 57.05 days for health, and the program’s average of 66.34 days is outside the further review level of 43.4 days for safety.	Review the process and policies in place to identify bottlenecks and inefficiencies so that the further review levels in SAMM #23 are met.	On a weekly basis, CSHOs must report cases to management that have a lapse time greater than 30 days. CSHOs must explain why the cases remain open. VOSHA managers mentor CSHOs on caseload management. These procedures have helped reduce lapse times.	Not Completed	Open
FY 2014-05	Health Sampling Forms – Some case files where the CSHO performed sampling did not contain copies of the sampling forms as required by the VOSHA FOM such as the OSHA-91(air sampling) and OSHA-92 (noise	Ensure that copies of all health sampling forms are included in case files where appropriate, and that the forms are fully completed by the CSHO.	VOSHA’s managers have mentored health CSHOs on sampling. All required sampling forms are now included in case files when appropriate, as verified by VOSHA’s manager.	September 30, 2015	Completed

## Appendix C - Status of FY 2014 Findings and Recommendations

### FY 2015 VOSHA Comprehensive FAME Report

	survey) forms, or the forms were not fully completed. In addition, some health inspection case files should have contained copies of the OSHA-93 (direct reading) form, but did not.				
FY 2014-06	Abatement – In FY 2013, VOSHA did not verify abatement as timely as it should have because 7 of 31 cases that had violations were closed without having adequate documentation of abatement completion.	Follow all procedures in Chapter 7 of the VOSHA FOM that pertain to abatement verification and documentation.	VOSHA managers now review all case files to ensure that abatement documentation is included and also ensure that abatement verification provided by employers at informal conferences is noted in the case file. VOSHA is now in compliance with the procedures that pertain to abatement documentation and verification in the FOM, Chapter 7.	Not Completed	Open
FY 2014-07	Informal Conferences – In some cases, the informal conference was held after the 20 calendar-day period prescribed by state statute.	Follow the policy in the FOM which requires that informal conferences be conducted within the 20 calendar-day contest period.	To ensure that informal conferences are conducted within the 20 calendar-day period, VOSHA tracks all dates related to citation issuance by running the open inspection report in OIS.	September 30, 2015	Completed
FY 2014-	Contested Cases –	Ensure that all	The VOSHA manager is now		

## Appendix C - Status of FY 2014 Findings and Recommendations

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08	VOSHA is not consistently filing contested cases with the VOSHA Review Board within the seven-day timeframe prescribed by the board's rules.	contested cases are handled in accordance with the timeframes established in the Review Board's <i>Rules of Procedure</i> .	reviewing all contested cases to ensure that they are submitted to the Review Board within the seven-day timeframe.	September 30, 2015	Completed
FY 2014-09	Standard Adoption – VOSHA has at least seven standards that are currently overdue for adoption, including the one standard that was issued in FY 2013— <i>Updating OSHA Standards Based on National Consensus Standards; Head Protection</i> —which was due to be adopted by July 16, 2013.	Complete the rulemaking procedures for the standards that are overdue for adoption.	VOSHA has adopted four of the seven standards that are overdue and is working on adopting the three that remain outstanding.	Not Completed	Converted to observation
FY 2014-10	Debt Collection – VOSHA is not following its own debt collection policy, as described in the VOSHA FOM.	Implement and follow the procedures in VOSHA's debt collection protocol.	VOSHA has implemented proper procedures and is now following its debt collection policy.	September 30, 2015	Completed

## Appendix C - Status of FY 2014 Findings and Recommendations

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FY 2014-11	WebIMIS Reports – VOSHA’s workplace retaliation program is not able to use WebIMIS reports to track performance or verify completeness of work.	Ensure that all workplace retaliation personnel, including the supervisor, receive training on how to run and use WebIMIS reports for workplace retaliation cases.	The VOSHA manager and investigator have completed the basic workplace retaliation training and are running WebIMIS reports to track performance and completeness of work.	September 30, 2015	Completed
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## Appendix D - FY 2015 State Activity Mandated Measures (SAMM) Report

### FY 2015 VOSHA Comprehensive FAME Report

OSHA is in the final stages of moving operations from NCR, a legacy data system, to OIS, a modern data system. During FY 2015, OSHA case files and most State Plan case files were captured on OIS. However, some State Plan case files continued to be processed through NCR. The SAMM Report, which is native to IMIS, a system that generates reports from the NCR, is not able to access data in OIS. Additionally, certain algorithms within the two systems are not identical. These challenges impact OSHA’s ability to combine the data. In addition, SAMMs 5, 8, 9, 11, 12, 15, and 17 have further review levels that should rely on a three-year national average. However, due to the transition to OIS, the further review levels for these SAMMs in this year’s report will rely on a one-year national rate pulled only from OIS data. Future SAMM year-end reports for FY 2016 and FY 2017 should rely on a two-year national average and three-year national average, respectively. All of the State Plan and federal whistleblower data is captured directly in OSHA’s WebIMIS System. See the Notes column below for further explanation on the calculation of each SAMM.

All of the Vermont State Plan’s enforcement data was captured in OIS during FY 2015. The Vermont State Plan opened 316 enforcement inspections, and they were all captured in OIS.

## U.S. Department of Labor

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

State Plan: <b>Vermont - VOSHA</b>			FY 2015	
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)	1.86	5	State Plan data is pulled only from OIS.  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)	1.49	N/A	State Plan data is pulled only from OIS.  This measure is for informational purposes only and is not a mandated measure.

## Appendix D - FY 2015 State Activity Mandated Measures (SAMM) Report

### FY 2015 VOSHA Comprehensive FAME Report

<b>2a</b>	Average number of work days to initiate complaint investigations (state formula)	.64	1	State Plan data is pulled only from OIS.  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)	.03	N/A	State Plan data is pulled only from OIS.  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 workday (imminent danger)	100%	100%	State Plan data is pulled only from OIS.  Further review level is fixed for every State Plan.
<b>4</b>	Number of denials where entry not obtained	0	0	State Plan data is pulled only from OIS.  Further review level is fixed for every State Plan.
<b>5</b>	Average number of violations per inspection with violations by violation type	SWRU: 1.79	+/- 20% of SWRU: 1.92	State Plan data is pulled only from OIS.  Further review level is based on a one-year national rate, pulled only from OIS.
		Other: 0.38	+/- 20% of Other: .87	
<b>6</b>	Percent of total inspections in state and local government workplaces	11.39%	+/- 5% of 10%	State Plan data is pulled only from OIS.  Further review level is based on a number negotiated by OSHA and the State Plan through the grant application.
<b>7</b>	Planned v. actual inspections	S: 238	+/- 5% of S: 173	State Plan data is pulled only from OIS.  Further review level is based on a number negotiated by OSHA and the State Plan through the grant application.
		H: 78	+/- 5% of H: 77	
<b>8</b>	Average current serious penalty in private sector - total (1 to greater than 250	\$1,043.42	+/- 25% of \$2,002.86	State Plan data is pulled only from OIS.  Further review level is based on a one-year national rate,



## Appendix D - FY 2015 State Activity Mandated Measures (SAMM) Report

### FY 2015 VOSHA Comprehensive FAME Report

	workers)			pulled only from OIS.
	<b>a.</b> Average current serious penalty in private sector (1-25 workers)	\$864.62	+/- 25% of \$1,402.49	State Plan data is pulled only from OIS. Further review level is based on a one-year national rate, pulled only from OIS.
	<b>b.</b> Average current serious penalty in private sector (26-100 workers)	\$900.69	+/- 25% of \$2,263.31	State Plan data is pulled only from OIS. Further review level is based on a one-year national rate, pulled only from OIS.
	<b>c.</b> Average current serious penalty in private sector (101-250 workers)	\$2,367.61	+/- 25% of \$3,108.46	State Plan data is pulled only from OIS. Further review level is based on a one-year national rate, pulled only from OIS.
	<b>d.</b> Average current serious penalty in private sector (greater than 250 workers)	\$1,522.30	+/- 25% of \$3,796.75	State Plan data is pulled only from OIS. Further review level is based on a one-year national rate, pulled only from OIS.
<b>9</b>	Percent in compliance	S: 29.41%	+/- 20% of S: 28.47%	State Plan data is pulled only from OIS.
		H: 35.38%	+/- 20% of H: 33.58%	Further review level is based on a one-year national rate, pulled only from OIS.
<b>10</b>	Percent of work-related fatalities responded to in one workday	100.00%	100%	State Plan data is pulled only from OIS. Further review level is fixed for every State Plan.
<b>11</b>	Average lapse time	S: 48.16	+/- 20% of S: 42.78	State Plan data is pulled only from OIS.
		H: 77.33	+/- 20% of H: 53.48	Further review level is based on a one-year national rate, pulled only from OIS.
<b>12</b>	Percent penalty retained	56.63%	+/- 15% of	State Plan data is pulled only from OIS.

## Appendix D - FY 2015 State Activity Mandated Measures (SAMM) Report

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			67.96%	Further review level is based on a one-year national rate, pulled only from OIS.
<b>13</b>	Percent of initial inspections with worker walk around representation or worker interview	99.37%	100%	State Plan data is pulled only from OIS.  Further review level is fixed for every State Plan.
<b>14</b>	Percent of 11(c) investigations completed within 90 days	30%	100%	State Plan data is pulled from OIS.  Further review level is fixed for all State Plans.
<b>15</b>	Percent of 11(c) complaints that are meritorious	3%	+/- 20% of 24%	State Plan data is pulled from WebIMIS.  Further review level is based on a three-year national average, pulled from WebIMIS.
<b>16</b>	Average number of calendar days to complete an 11(c) investigation	370	90	State Plan data is pulled from OIS.  Further review level is fixed for all State Plans.
<b>17</b>	Percent of enforcement presence	1.86%	+/- 25% of 1.35%	State Plan data is pulled from OIS.  Further review level is based on a one-year national rate, pulled only from OIS.