

# **FY 2014 Follow-up 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, Themes, and Progress

The purpose of this report is to assess the Vermont Occupational Safety and Health Administration's (VOSHA) activities for fiscal year (FY) 2014 and its progress in resolving outstanding recommendations from the FY 2013 Federal Annual Monitoring and Evaluation Report (FAME).

Unlike the past two fiscal years, VOSHA had a full slate of managers for the entire year in FY 2014. As discussed in the FY 2013 FAME, VOSHA's current managers (the program director and the compliance supervisor) were hired in July 2013. They replaced the interim manager who supervised VOSHA for the first half of FY 2013.<sup>1</sup>

The two new managers have a solid background in occupational safety and health, and they were able to begin taking steps to shore up the program. However, it was not all smooth sailing for this new management team in FY 2014. They encountered many challenges during the year—some of which were in the making before they came on board.

For example, one of the key findings in the FY 2013 FAME related to the fact that VOSHA had gone far beyond the six-month time frame for adopting some of OSHA's standards. Another major finding was that VOSHA had approximately 30 contested cases that were long overdue for closure. During FY 2014, VOSHA's new director had to begin the lengthy rule-making process for the standards that were overdue, and follow-up on the contested cases that had been left untended by the interim manager for well over a year.<sup>2</sup>

Over the past few years, a backlog of cases that were overdue for debt collection had been mounting. VOSHA's new managers not only had to tackle these cases, but also reinstate the debt collection policy, which had not been followed by the State Plan's administrative staff for several months. Developing a new five-year strategic plan was also a top priority for the new director.

Just as the new managers began to get their bearings, a string of personnel vacancies began to occur. VOSHA began FY 2014 with a total of nine compliance safety and health officers (CSHO), but from May through December 2014, a total of five CSHOs either resigned or retired from the program, including the two part-time discrimination investigators.<sup>3</sup>

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<sup>1</sup> The interim manager is the Director of the Workers Compensation Division, the agency within the Vermont Department of Labor that oversees VOSHA. Prior to taking on these responsibilities, he had little if any experience running an OSHA enforcement office.

<sup>2</sup> Vermont's rulemaking process is indeed lengthy, and involves four filings, a notice and public comment period, and also the completion of several forms provided by the secretary of state's office. See Vermont's Rule on Rulemaking: Code of Vermont Rules (CVR) 04-000-001.

<sup>3</sup> Three CSHOs left VOSHA before the end of FY 2014. Two more CSHOs departed in early FY 2015. Of the five CSHOs who left the program, three retired and two decided to pursue other careers.

Because of these vacancies, VOSHA conducted fewer inspections than projected, and performance was hindered in other areas. At this point, most positions have been filled, including a new full-time discrimination investigator, but the impact of this turnover will be felt into FY 2015 and beyond. It will take some time before the newly hired CSHOs complete their basic training and gain the experience needed to conduct inspections on their own.

One key vacancy that happened before the recent CSHO departures remains unfilled. This opening occurred when the compliance assistance specialist (CAS) became the VOSHA director in July 2013. Although VOSHA conducted some outreach in FY 2014, it was minimal compared to previous years.

Rather than become discouraged by all of these difficulties, management believes that progress will begin to occur on many fronts. For example, VOSHA feels that having so many new staff on board will strengthen the program in the long run. Although the new personnel face a steep learning curve, VOSHA is committed to ensuring that they become properly trained, and avoid mistakes that were made in the past.<sup>4</sup>

Another reason for a positive outlook is that the program has successfully converted to the OSHA Information System (OIS) for enforcement cases. VOSHA has had a long history of difficulties using OSHA's Integrated Management Information System (IMIS), but now that the new system is in place, the managers are confident that they will be more effective in managing performance in many areas.

VOSHA also had some notable accomplishments in FY 2014: the program completed three findings in the FY 2013 FAME, including following-up on each of the 30 contested cases mentioned earlier. The new strategic plan was developed and approved by OSHA; new debt collection procedures are up and running; and the rulemaking process was completed for some of the standards that were long overdue for adoption.

On the other hand, VOSHA continued to have problems in the following areas: using the discrimination program's IMIS to monitor cases; notifying next-of-kin of major developments related to the fatality investigation; filing contested cases with the VOSHA Review Board in a timely manner; and having high lapse times.<sup>5</sup> All of these issues have resulted in key findings in this report.

However, despite these issues, OSHA believes that there is indeed room for optimism. The new managers are gaining more expertise and confidence as they contend with each and every issue.

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<sup>4</sup> For example, two of the program's health CSHOs overlooked opportunities to conduct sampling. Also, the CSHOs who used to be the part-time discrimination investigators performed these duties for years without having proper training, and did not follow many of the procedures in the Whistleblower Investigations Manual.

<sup>5</sup> VOSHA did not meet the further review level for safety and health inspections in State Activity Mandated Measures (SAMM) #23—average lapse time from inspection open-date to issue-date.

VOSHA is beginning to benefit from having a management team that has conquered a variety of challenges, and will continue to do so in the future.

## **B. State Plan Introduction<sup>6</sup>**

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>7</sup> The program is headquartered at 5 Green Mountain Drive, Montpelier, Vermont, and has five field offices in the state.

In July 2013, the program's compliance assistance specialist (CAS) was appointed director of the VOSHA program on an interim basis, and a new occupational safety compliance supervisor was also appointed. In January 2014, the director's appointment became permanent.

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 21VSA §231 prohibits employers from discriminating against workers for exercising their rights under VOSHA's occupational safety and health statutes, and authorizes the investigation and prosecution of complaints of discrimination. An express private right of action for employees who believe discrimination or retaliation has occurred is contained in 21 VSA §232.

VOSHA does not have sufficient funding to staff at its benchmark levels for compliance officers. Since Vermont currently does not have final approval status, it is not required to maintain its allocated staffing levels to meet its benchmarks. VOSHA's public sector consultation program consists of two safety and health consultants who commit a portion of their time to provide on-site consultation services to the public sector.

Vermont 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 Federal 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 the State Plan's high-hazard targeted industries.

Vermont'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 Programs (GMVPP) and Project WorkSAFE (consultation), and the Safety and Health

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<sup>6</sup> Data used in the tables in this section are from VOSHA's FY 2015 grant application and the State Plan's grant applications from past years.

<sup>7</sup> The current commissioner was appointed to this position by the governor on January 6, 2011.

Achievement Recognition Program (SHARP). The tables below show VOSHA's funding levels from FY 2011 through FY 2014 and the number of establishments and covered workers in both the private and public sectors.

<i>FY 2011-2014 Funding History</i>						
<b>Fiscal Year</b>	<b>Federal Award (\$)</b>	<b>State Match (\$)</b>	<b>100% State Funds (\$)</b>	<b>Total Funding (\$)</b>	<b>% of State Contribution</b>	<b>De-obligated/One-Time Only/Reclaimed Funds (\$)</b>
<b>2014</b>	723,600	700,655	0	1,424,255	49	0
<b>2013</b>	680,132	680,132	0	1,360,265	50	0
<b>2012</b>	766,140	766,140	36,215	\$1,569,395	51	\$30,900 (one-time only)
<b>2011</b>	750,800	750,800	26,584	\$1,528,184	51	\$25,000 (re-claimed)

<i>Workers and Establishments Covered by VOSHA in 2014</i>			
	<b>Private Sector</b>	<b>Public Sector</b>	<b>Total</b>
<b>Employees</b>	248,754	52,603	301,357
<b>Establishments</b>	22,873	1,603	24,476

In FY 2014, VOSHA decided to discontinue the practice of having some of the CSHOs allocate part of their time to handling discrimination cases. In place of this arrangement, the State Plan filled one of the recent CSHO vacancies with a full-time discrimination investigator. By the end of March 2015, VOSHA anticipates that it will have eight CSHOs on board. Four consultants conduct both private and public sector consultation visits. The table below provides a snapshot of VOSHA's staffing level as of August 2014.

<i>Personnel Funding Breakout Table</i>			
<i>VOSHA</i>			
<i>Source: FY 2015 Grant Application</i>			
<b>VOSHA's State Plan Grant Positions</b>	<b>50/50 Funded Full-Time Equivalents (FTE) On Board as of 8/15/14</b>	<b>100% State Funded FTEs On Board as of 8/15/14</b>	<b>TOTAL</b>
<b>Managers/Supervisors (Admin)</b>	0.415	0.010	0.425
<b>First Line Supervisors</b>	0.586	0.014	0.600
<b>Safety Compliance Officers</b>	4.887	0.114	5.001
<b>Health Compliance Officers</b>	2.932	0.068	3.000
<b>Discrimination Investigator</b>	0.000	0.000	0.000
<b>Public Sector Safety Consultants</b>	0.000	0.000	0.000
<b>Public Sector Health</b>	0.220	0.005	0.225

<b>Consultants</b>			
<b>Compliance Assistance Specialist</b>	0.195	0.005	0.200
<b>Trainers</b>	0.000	0.000	0.000
<b>Clerical/Admin/Data System</b>	0.293	0.007	0.300
<b>Other (all positions not elsewhere counted)</b>	1.329	0.031	1.360
<b>Total FTE</b>	10.857	0.254	11.111

### C. Data and Methodology

OSHA has established a two-year cycle for the FAME process. This is the follow-up year and as such, comprehensive onsite case file reviews were not required for the FY 2014 FAME. For enforcement findings in the FY 2013 FAME that resulted primarily from the review of inspection case files, OSHA has decided to give VOSHA more time to focus on correcting these deficiencies, and therefore did not conduct an onsite case file review for this report. For example, findings related to case documentation, complaints and health sampling, will be assessed during the next onsite case file review.

However, OSHA has been able to determine the status of other findings and most of the observations from the FY 2013 FAME—such as those related to lapse times, standards adoption, training, the discrimination program and others—from SAMM and IMIS reports; quarterly discussions; and frequent contact with VOSHA’s managers.<sup>8</sup> VOSHA’s progress in resolving the issues that led to these findings and observations is discussed in Section III of this report.

### D. Findings and Observations

This report contains 11 findings, including 6 from the FY 2013 FAME that will be reviewed during the next onsite case file review to determine whether or not they have been fully resolved. Therefore, they have been designated as awaiting verification in this report. Five findings from the previous FAME remain open, because VOSHA did not complete the corrective action for these findings during the evaluation period. Three findings from the FY 2013 FAME were completed, and one finding from the previous FAME has been converted to an observation.

In addition to the findings, this report contains seven observations. Of this total, three are new and four are continued from the FY 2013 FAME. Two observations from the FY 2013 FAME

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<sup>8</sup> The FY 2014 SAMM and IMIS Inspection Summary report were run on November 9, 2014. The dates of other IMIS reports are provided in the narrative.

were closed, because OSHA determined that further monitoring of these issues was no longer necessary.

Appendix A lists the new and continued findings; Appendix B contains the observations subject to new and continued monitoring; and Appendix C lists the status of each of the findings and recommendations from the FY 2013 FAME.

## **II. Assessment of State Plan Performance**

### **A. Major New Issues**

The departure of five of the nine CSHOs that VOSHA had on board at the beginning of FY 2014 is the most significant new issue that arose in 2014. As discussed earlier, this situation has handicapped the State Plan in some areas, but VOSHA also sees this as an opportunity to rebuild the program. Most of the vacancies were filled in a relatively short period of time, and management is committed to ensuring that all new personnel fulfill the training requirements prescribed by OSHA.

### **B. 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 2014 annual performance plan goals, and also the goals in the strategic plan that extended from FY 2009 to FY 2014.<sup>9</sup> This assessment is based primarily on the State OSHA Annual Report (SOAR) and Bureau of Labor Statistics (BLS) data.

VOSHA met both the strategic plan and annual performance plan goals for reducing the cases with days away, restrictions and transfers (DART) rates in construction and manufacturing. However, the departure of three CSHOs hampered VOSHA's ability to meet some of the other annual performance plan goals. For example, VOSHA did not meet the goals for inspections in construction, manufacturing and the public sector, and the State Plan conducted only 296 of 350 inspections projected. Most goals related to compliance assistance in FY 2014 were not met as well, due to the fact that the program has not had a CAS since July 2013.

#### **Strategic Goal #1: Improve workplace safety and health through compliance assistance and enforcement of occupational safety and health regulations and standards.**

**Performance Goal 1.1:** By the end of the strategic plan, reduce the 2007 baseline year DART rate for construction by 15 percent. Prevent an increase in fatalities.

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<sup>9</sup> FY 2013 was originally planned to be the final year of VOSHA's five-year strategic plan, which began in FY 2009. But due to the changes in management personnel that VOSHA experienced in late FY 2012 and in FY 2013, the State Plan requested, and was granted, a one-year extension (to the end of FY 2014).

**Results:** This goal was partially met.

**Discussion:** The 2013 construction DART rate was 2.2, a 46.5 percent reduction from the 2007 baseline DART rate of 4.1, but there was one construction-related fatality in FY 2014 (compared to none in 2007).

**Performance Goal 1.1a:** Reduce the 2012 DART rate for construction by 3 percent. Reduce the number of fatalities from the previous year by five percent.

**Result:** This goal was partially met.

**Discussion:** To affect the three percent reduction in the 2012 DART rate, VOSHA planned to conduct 149 inspections in construction, but ended FY 2014 by conducting 10 fewer than planned (139). However, the construction DART rate decreased by 31 percent (from 3.2 to 2.2), even though VOSHA did not meet the goal for inspections in construction. One construction-related fatality occurred in FY 2013, and there was one fatality in construction in FY 2014 as well. Because there was no reduction in fatalities from FY 2013 to FY 2014, the goal for fatalities was not met.

**Performance Goal 1.2:** By the end of the strategic plan, reduce the 2007 baseline year DART rate for general industry by 15 percent, and reduce the number of fatalities in the baseline year (2007) by 25 percent.

**Result:** This goal was met.

**Discussion:** The 2013 DART rate of 3.0 decreased by 11.7 percent from the 2007 baseline DART rate of 3.4. The number of fatalities in FY 2014 (2) decreased by 71 percent from the baseline (7).

**Performance Goal 1.2a:** Reduce the 2012 DART for manufacturing rate by 3 percent; reduce the number of fatalities by 5 percent from the previous year.

**Result:** This goal was met.

**Discussion:** To affect a reduction in the DART rate, a goal of 165 inspections in the non-construction sector was planned, but VOSHA ended FY 2014 by conducting only 137 inspections. Although VOSHA did not meet the goal for inspections in the non-construction sector, the DART rate decreased by nine percent from 2012 to 2013 (from 3.3 to 3.0). In FY 2014 there were two non-construction fatalities compared to nine in FY 2013, so the goal for reducing fatalities by at least five percent was also met.

**Performance Goal 1.2b:** Conduct 36 inspections in public sector establishments and 20 consultation visits in the public sector.

**Result:** This goal was partially met.

**Discussion:** The goal for inspections was not met; the goal for consultation visits was met. In FY 2014, VOSHA planned to conduct 36 inspections in public sector establishments, but ended the year by conducting only 20. In Section II.C of this report, OSHA discusses this issue in more detail, and has made an observation (FY 2014-OB-#02) based on the fact that VOSHA did not meet the further review level in SAMM #11 (percent of total inspections in the public sector). In FY 2014, Project WorkSAFE conducted a total of 26 of 20 public sector consultation visits projected.

**Performance Goal 1.3:** Increase recognition programs in targeted high-hazard industries using VOSHA's current site-specific (SST) targeting list, national emphasis programs (NEP), and local emphasis programs (LEP).

**Result:** This goal was not met.

**Discussion:** VOSHA's only recognition program is Green Mountain Voluntary Protection Program (GMVPP).

**Performance Goal 1.3a:** Maintain five GMVPP sites and recruit one new GMVPP site.

**Result:** This goal was not met.

**Discussion:** The five GMVPP sites were maintained, but VOSHA was unable to recruit one new GMVPP site.

**Performance Goal 1.3b:** Maintain the four Alliances that were active in FY 2013.

**Result:** This goal was not met.

**Discussion:** VOSHA maintained only two Alliances in FY 2014. VOSHA was handicapped in its efforts to maintain Alliances and recruit one new GMVPP site by not having a CAS.

**Performance Goal 1.4: Involve 2,000 participants in VOSHA's outreach and training programs.**

**Performance Goal 1.4a:** Conduct the OSHA 10-hour course for vocational students at three schools; provide training in workplace safety and health to 200 vocational students;

provide training for electrical and plumbing apprentices; and conduct outreach to employers through trade shows, labor organizations, trade associations, Alliances, Vermont state agencies, and other groups.

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

**Discussion:** Vermont conducted 20 outreach sessions for approximately 400 stakeholders by participating in events organized by Alliance partners. However, no training was conducted for vocational students and apprentices. This has been introduced as a new observation, FY 2014-OB-#01.

### C. Highlights from the State Activity Mandated Measures (SAMM)

Data from the FY 2014 SAMM Report was reviewed for deficiencies and notable changes. Of note, VOSHA’s percentage of 6.76 for percent of total inspections in the public sector (SAMM #11) is 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.

As shown in the table below, VOSHA’s actual percent of public sector inspections (column F) was the lowest in any of the past five fiscal years. However, OSHA attributes this result to the CSHO vacancies that occurred in 2014. VOSHA has already taken action to remedy this situation by filling these vacancies and ensuring that the new hires receive the proper training. Nonetheless, OSHA believes that it is necessary to monitor VOSHA’s percentage of total inspections in the public sector to help ensure that this indicator improves. This has been introduced as a new observation, FY 2014-OB-#02.

<i>VOSHA’s Percentages of Public Sector Inspections FY 2010-FY 2014</i>						
	PROJECTED			ACTUAL		
	A	B	C	D	E	F
Fiscal Year	Total Number of Inspections	Number of Public Sector Inspections	Percent Public Sector Inspections	Total Number of Inspections	Number of Public Sector Inspections	Percent Public Sector Inspections
2014	350	36	10.29	296	20	6.8
2013	350	25	7.1	360	49	13.6
2012	400	40	10.0	306	36	11.8
2011	400	40	10.0	317	25	7.9
2010	400	40	10	366	37	10.1

Other than SAMM #11, there were no other SAMM measures related to enforcement where a significant change in year-over-year trending occurred. In the FY 2013 FAME, OSHA made findings based on the fact that VOSHA did not meet the further review level for SAMM #2 (average number of work days to initiate complaint investigations); and SAMM #23 (average safety lapse time and average health lapse time). A detailed discussion of VOSHA’s progress in resolving these findings is discussed in Section III of this report. Appendix D contains a listing of VOSHA’s results on all SAMM measures in FY 2014.

In terms of the discrimination program, VOSHA has a history of not entering data into the IMIS correctly, and therefore the SAMM data is flawed. Due to these irregularities, using the SAMM report to assess the discrimination program's performance is not effective.

### III. Assessment of State Plan Corrective Actions

VOSHA completed 3 of the 15 findings in the FY 2013 FAME; one was converted to an observation; five remain open; and six are awaiting verification. The fact that there are no new findings in this report underscores the new managers' commitment to strengthening and improving the program in the face of many challenges.

There are seven observations in this report, including three that are new and four that have been continued from the FY 2013 FAME. Two observations from the FY 2013 FAME have been closed in this report.

**Finding FY 2013-01: SAMM #2 (Average Number of Days to Initiate Complaint Investigations)** –VOSHA's FY 2012 average of 7.72 days did not meet the negotiated further review level of one day for initiating complaint investigations.

**Status: Completed.** This finding was carried over from the FY 2012 FAME, because in FY 2013, VOSHA was not entering information on non-formal complaints into the IMIS system. As a result, VOSHA had an average of zero for SAMM #2 in FY 2013.

In FY 2014, VOSHA began entering data related to non-formal complaints into the IMIS system as prescribed by the VOSHA Field Operations Manual (FOM). Throughout FY 2014, VOSHA's new managers have ensured that non-formal complaint investigations are initiated within one day, and FY 2014 quarterly SAMM reports show that VOSHA has consistently met the one-day further review level for this measure. VOSHA ended FY 2014 with an average of 0.5 days.

**Finding FY 2013-02 (FY 2014-01): Complaints** – VOSHA did not follow the procedures in Section I, Chapter 9 of the VOSHA FOM for handling non-formal complaints *that have no related inspection*. VOSHA did not record information about complaint inquiries in the IMIS system, and did not send the appropriate IMIS generated letter to employers.

**Status: Awaiting Verification.** The data for SAMM #2 indicates that VOSHA had been entering information about complaint inquiries into the IMIS system, in accordance with the VOSHA FOM. The State Plan managers have also indicated that complaint data is being entered into the OIS and that the appropriate letters are being sent to employers. During the next onsite case file review, OSHA will verify that VOSHA is following the procedures in the FOM for handling non-formal complaints.

**Finding FY 2013-03 (FY 2014-02):** Fatality Investigations – VOSHA did not meet the five-day time frame as required by the VOSHA FOM for sending the standard information letter to the next-of-kin.

**Status: Open.** VOSHA is using a checklist developed by an OSHA area office to ensure that all procedures with regard to fatalities (including notification of the next-of-kin) are handled properly. For each of the fatalities that were investigated by VOSHA in FY 2014, the State Plan provided OSHA with copies of the standard information letters that were sent to next-of-kin. OSHA compared the dates that the letters were sent to the dates that the fatality events occurred. All letters were sent within the five-day timeframe.

Although the State Plan consistently met the five-day time frame for sending the standard information letter, this finding is open, because VOSHA did not follow all of the procedures for notification of the victim’s family. For example, 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, until prompted to do so by OSHA several months after the fact.

As discussed in the VOSHA Field Operations Manual (FOM), Chapter 11, Section G, the State Plan should “provide family members or their legal representatives with a copy of...Review Commission decisions as these are issued, or as soon thereafter as possible.” VOSHA has also adopted OSHA’s directive (CPL 02-00-153—Communicating OSHA Fatality Inspection Procedures to a Victim’s Family), which states that OSHA will notify the next-of-kin when the case is closed.

**Finding FY 2013-04 (FY 2014-03):** 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 contain information on how the fatality was determined to be non-work related.

**Status: Awaiting Verification.** To correct this finding, VOSHA’s managers are reviewing all case files to ensure that all required documentation is complete. OSHA will verify the status of this finding during the next onsite case file review.

**Finding FY 2013-05 (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.<sup>10</sup>

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<sup>10</sup> FY 2013 data for SAMM #23 was used in this finding in the FY 2013 FAME. For this report, the SAMM data has been updated to reflect FY 2014 results.

**Status: Open.** VOSHA's managers tried to resolve this issue by working closely with CSHOs to improve efficiency in handling cases, but the program's lapse times actually trended upward in FY 2014. Although this finding remains open, VOSHA faced many challenges in FY 2014, and it is not surprising that this and some other issues could not be resolved during the course of the year. FY 2015, VOSHA took additional steps to remedy this issue by having field staff as well as managers participate in training offered by OSHA to improve case file management, citation issuance and other functions.

**Finding FY 2013-06 (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 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.

**Status: Awaiting Verification.** VOSHA has acknowledged that two of the three health CSHOs who were on staff in FY 2014 did not conduct any health sampling. One of these CSHOs retired from the program at the end of 2014; the other CSHO remains with the VOSHA program and is being mentored in sampling by VOSHA's managers.

Since OSHA made this finding, VOSHA has converted to the OIS, and the health CSHOs who are currently on board have been trained in the procedures for entering health sampling data into the OIS. VOSHA managers have also directed the health CSHOs to increase the frequency of sampling during compliance inspections. However, as of January 16, 2015, there was only one inspection in the OIS where sampling was performed.

OSHA will assess the extent to which VOSHA has corrected this finding in one more year during the next onsite review. At that time, there should be enough cases where sampling has been performed to determine whether CSHOs are properly and consistently entering sampling data (whether from direct reading instruments or from samples sent to the lab) into the OIS.

**Finding FY 2013-07 (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.

**Status: Awaiting Verification.** To correct this finding, VOSHA managers are reviewing all case files to ensure that abatement documentation is included. VOSHA managers are also ensuring that abatement verification provided by employers at informal conferences is noted in the case file.

VOSHA has also been working to reduce a backlog of cases that have abatements overdue for verification. In May 2014, this backlog consisted of approximately 90 inspections with at least one violation with abatement overdue. By January 2015, the number of cases decreased to 38. VOSHA is committed to eliminating this backlog and its efforts to do so are ongoing.

OSHA will determine the extent to which VOSHA has corrected this finding (and also reduced the backlog of cases with abatement overdue for verification) during the next onsite case file review.

**Finding FY 2013-08 (FY 2014-07): Informal Conferences** – In some cases, the informal conference was held after the 20 calendar-day period prescribed by state statute.

**Status: Awaiting Verification.** In June 2014, OSHA sent an area office staff member to VOSHA’s office to train the new administrative support person on how to use the IMIS, and how to track abatements, citations, and penalty payments. OSHA found that VOSHA was not entering the citation receipt date into the IMIS. This date is needed to determine when the contest period expires.

VOSHA has informed OSHA that the citation receipt date is being entered into the OIS system, and that once this date is entered, VOSHA then calculates the final order date for the citations. In the event that the employer wants a settlement agreement or decides to contest the citations, VOSHA resets the final order date and then processes the agreement or enters the contest.

In accordance with the corrective action plan for this finding, VOSHA runs a report in OIS on a weekly basis to keep track of the final order date for cases where citations have been issued. Employers who do not request an informal contest or file a notice of contest within the 20-day period receive a written notice from VOSHA stating that the proposed penalty is now final and is immediately due to VOSHA.

To determine whether VOSHA is following its policy of holding informal conferences within the 20 calendar-day period, OSHA must have access to the citation receipt date, which is maintained in the case file. Therefore, VOSHA’s progress in resolving this finding will be evaluated during the next onsite case file review.

**Finding FY 2013-09: Informal Conferences** – For several cases placed into contest by the WC director about a year ago, VOSHA is long overdue for following the procedures required by the VOSHA FOM to close these cases.<sup>11</sup>

**Status: Completed.** Of approximately 30 cases placed into contest by the interim director more than two years ago (in February and March 2013), settlement agreements have been finalized for most of the cases.<sup>12</sup> For a handful of cases, however, VOSHA requested that the review board

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<sup>11</sup> In the FY 2013 FAME, OSHA referred to the interim director (who is the director of the Worker’s Compensation Division, the agency that oversees VOSHA) as the “WC” director.

<sup>12</sup> As discussed in the FY 2013 FAME, the interim director was trying to manage two programs, and was unable to conduct informal conferences within the 20 calendar-day period for many cases. Therefore, he notified employers who had requested informal conferences their cases would be entered into contest and filed with the VOSHA Review Board. According to the interim director, this action would preserve the rights of these employers to appeal the citation or proposed penalty *before* the citation became a final order (21 V.S.A. § 226). However, once these

dismiss the citations. These requests were filed in mid-February 2015; the review board granted these requests shortly afterward, and the cases have been closed.

VOSHA decided to take this action because the program felt that further efforts to pursue these cases would not be productive. For example, most of the CSHOs who conducted these inspections are no longer working for the State Plan and are not available to answer questions or to provide additional information about these cases. Also, some of the work sites cited were temporary, and no longer exist. Because VOSHA has followed up on all of the cases that were placed into contest by the interim director two years ago, this finding is completed.

**Finding FY 2013-10 (FY 2014-08):** Contested Cases – VOSHA lost track of a fatality case that was contested by the employer, and went several months beyond the timeframe prescribed by the VOSHA Review Board for entering this fatality case into contest. As a result, VOSHA ran the risk of having its rights to participate in the contest proceedings waived by the review board or its judge.<sup>13</sup>

**Status: Open.** The employer in the fatality case referred to in this finding filed a motion in March 2014 with the VOSHA Review Board to have the case dismissed. One of the issues which prompted this motion for dismissal was VOSHA’s failure to “immediately forward the notice of contest to the VOSHA Review Board.”<sup>14</sup> Subsequently, the VOSHA Review Board ruled that the delays in this case were “unreasonable, unnecessary, and unjustified,” and concluded that the employer’s motion to dismiss the citations should be granted. VOSHA did not appeal this decision.

To remedy this finding, VOSHA’s managers are overseeing of all phases of fatality inspections. For example, in the corrective action plan for this finding, VOSHA stated that the director was reviewing all fatality inspections to ensure that all inspection and investigation procedures in the VOSHA FOM have been followed, that contested cases are sent to the review board in a timely manner, and that case files contain all required documentation.

However, this finding remains open, because three of five contested cases (which were not related to fatalities) that were filed with the VOSHA Review Board as of January 14, 2015, were not filed timely (inspections 2-4 in the table below). VOSHA must ensure that *all* contested cases—not just fatality cases—are filed timely with the review board.

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cases were filed with the review board, hardly anything was done to follow up on them for almost a year. The new management team was not even aware that these cases were on the review board docket until several months after they were hired.

<sup>13</sup> Under the terms of 21 VSA §226 (c), once the employer files the notice of contest, the commissioner must “immediately advise the review board” of the fact that the notice of contest has been filed so that the board can give the employer a hearing. VOSHA Review Board rule 2200.31(a) clarifies the meaning of “immediately” by requiring the commissioner to send the original notice of contest to the board within seven days of receipt.

<sup>14</sup> The employer also claimed that the citations were issued more than six months after the inspection, in violation of 21 VSA § 225(d).

<i>VOSHA Review Board Docket as of January 14, 2015</i>		
Inspection	Contest letter receipt date*	Date case filed with the VOSHA Review Board
1	12/23/2013	12/27/2013
2	1/2/2014	3/5/2014
3	5/2/2014	7/15/2014
4	6/30/2014	7/23/2014
5	9/17/2014	9/24/14
6	12/4/2014	12/8/2014
7	1/6/2015	1/12/2015
*The contest letter receipt dates used in this table were provided by VOSHA.		

**Finding FY 2013-11 (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—*Updating OSHA Standards Based on National Consensus Standards; Head Protection*—which was due to be adopted by July 16, 2013.

**Status: Open.** The VOSHA manager has been following Vermont’s rulemaking procedures to finalize the standards that were long overdue for adoption. In FY 2014, VOSHA completed the adoption of three standards that were listed in the FY 2013 FAME as long overdue for adoption. VOSHA intends to complete the adoption of two of the remaining standards listed as overdue in the FY 2013 FAME by the end of calendar year 2015, and one in early 2016.

<i>List of Standards not Found on List of Administrative Rules Adopted by the Vermont Department of Labor Since 2003</i>			
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	Adoption final as of 10/28/2014
Revised Standards Referenced in the Acetylene Standard	3/8/2012	11/1/2012	Adoption final as of 8/18/2014
Standards Improvement Project, Phase III	6/8/2011	12/8/2011	Anticipated adoption by 12/31/2015
Working Conditions in Shipyards—Final rule	5/2/2011	11/2/2011	Anticipated adoption by 12/31/2015
Safety Standards for Steel Erection II—Technical Amendment	5/17/2010	11/17/2010	Anticipated adoption by 1/31/2016
Hexavalent Chromium—Direct Final Rule	5/14/2010	11/14/2010	Adoption final as of 8/18/2014

*List of Standards not Found on List of Administrative Rules Adopted by the  
Vermont Department of Labor Since 2003*

Standard	Federal Register Standard Date	Adoption Due Date	Status
Acetylene—Direct Final Rule	11/9/2009	4/16/2010	Adoption final as of 8/18/2014

VOSHA has also been trying to keep pace with the adoption of standards issued by OSHA more recently, although for some, it appears the six-month timeframe will not be met. The adoption of these standards will be examined more closely in the FY 2015 comprehensive FAME. .

**Finding FY 2013-12 (FY 2014-OB-03):** Discrimination Investigations – VOSHA’s discrimination personnel need training to ensure that investigations and reports conform to the requirements of OSHA’s discrimination program as set forth in the Whistleblower Investigations Manual.

**Status: Converted to Observation.** The VOSHA supervisor and the new investigator have completed the basic whistleblower training, as recommended in this finding. In FY 2014, VOSHA also participated in a training summit for OSHA’s discrimination investigators that was held in Vermont. However, OSHA believes that VOSHA’s new investigator would benefit from having his field work and cases monitored by a senior OSHA investigator, because he is still inexperienced. In FY 2014, VOSHA was spending too much time on discrimination cases that did not merit an investigation and should have been screened out. If OSHA had reviewed the screenings prior to docketing the cases, this situation could have been avoided. OSHA will continue to monitor the program to ensure it follows the Whistleblower Investigations Manual.

**Finding FY 2013-13:** CSHO Training – VOSHA’s CSHOs are not receiving training commensurate with OSHA’s training directive.

**Status: Completed.** This finding was based on the fact that a few years ago, OSHA identified some senior CSHOs who were far beyond the time allowed by OSHA’s training directive for completing the series of basic training courses required for compliance officers. The veteran CSHOs who remained on board after the resignations and retirements that occurred in FY 2014 and in early FY 2015 have all completed the basic training courses. VOSHA is enrolling newly hired compliance officers in the basic training prescribed by OSHA’s newest training directive..

**Finding FY 2013-14 (FY 2014-10):** Debt Collection –VOSHA is not following its own debt collection policy, as described in the VOSHA FOM.

**Status: Completed.** In early FY 2015, the VOSHA managers met with the solicitor to update VOSHA’s protocol which lists the steps to be followed with regard to penalty collection once citations have been issued. VOSHA has also developed a schematic that maps out these steps. According to the VOSHA director, the program is now following these procedures and the backlog of cases overdue for debt collection that was discussed in the previous FAME is

shrinking. OSHA will assess the extent to which VOSHA is following the newly updated protocol during the next onsite case file review.

**Finding FY 2013-15 (FY 2014-11):** IMIS Reports – VOSHA management is not able to utilize IMIS reports to track enforcement and discrimination performance or verify completeness of work.

**Status: Open.** In FY 2014, VOSHA was trained on how to use the IMIS for enforcement just a few months before converting to the OIS, and appears to be running OIS reports on a regular basis to monitor performance. However, this finding remains open, because neither the VOSHA supervisor nor the CSHOs who were handling discrimination cases in FY 2014 received the training on the IMIS prescribed by OSHA.<sup>15</sup>

Furthermore, the discrimination supervisor did not have an IMIS account in FY 2014, and could not monitor whether information was being entered 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 for several months.

**FY 2013-OB-01 (FY 2014-OB-04):** VOSHA is making progress in terms of following the FOM’s procedures in Chapter 11 for investigating fatalities, but one case indicated that the CSHO did not thoroughly investigate the incident.

**Status: Continued.** OSHA discussed fatality cases with VOSHA during all quarterly meetings in FY 2014, but did not conduct an onsite inspection of fatality case files. During the next onsite case file review, OSHA will review VOSHA’s fatality investigation procedures.

**Finding FY 2013-OB-02 (FY 2014-OB-05):** VOSHA may be inspecting too many non-formal complaints related to mold, instead of investigating these complaints via phone-fax.

**Status: Continued.** In FY 2014, VOSHA showed improvement in SAMM #20(b)—percent in compliance health inspections. Although this percentage was trending upward during the first half of the year, VOSHA managed to reverse the trend in the second half of the year. VOSHA managers have indicated that they are handling more mold-related complaints via phone fax. However, because VOSHA’s end-of-year in compliance rate for health was outside the further review level of 34.1 percent, this observation is continued.

<i>VOSHA’s Percent In Compliance Comparison SAMM #20(b) Health</i>					
	<b>FY 2013 (YTD)</b>	<b>FY 2014 (1<sup>st</sup> Qtr.)</b>	<b>FY 2014 (2<sup>nd</sup> qtr. YTD)</b>	<b>FY 2014 (3<sup>rd</sup> qtr. YTD)</b>	<b>FY 2014 (YTD)</b>
	52.94	100	65.22	54.35	47.06

<sup>15</sup> The VOSHA Director also supervises the State Plan’s discrimination program.

**Finding FY 2013-OB-03 (FY 2014-OB-06):** VOSHA has not cited any violations as willful since FY 2009.

**Status: Continued.** The IMIS inspection report of November 9, 2014, and an OIS report for FY 2014 show that VOSHA cited one violation as willful in FY 2014. During quarterly meetings, the VOSHA managers indicated that they were training CSHOs on developing willful citations. Nonetheless, VOSHA requested training from OSHA in this area. As a result, OSHA partnered with VOSHA to conduct a training program in March 2015 for VOSHA's compliance staff on various enforcement topics—including developing willful violations. This observation is continued, because OSHA will monitor VOSHA's development of willful citations throughout FY 2015.

**Finding FY 2013-OB-04:** VOSHA has not consistently conformed to adopted NEP guidelines and protocols.

**Status: Closed.** Since this observation was made, OSHA has discussed NEPs with VOSHA's managers during all quarterly meetings. OSHA also conducted training on several NEPs for VOSHA's compliance staff at the training meeting in March 2015. As a result, VOSHA has become more familiar with the guidance and protocols in the NEPs that it has adopted. VOSHA is using OSHA's ListGen webpage to obtain establishment targeting lists, is making CSHOs more mindful of the need to properly code NEP inspections, and is attempting to conduct the required number of inspections.

For example, in FY 2014, VOSHA properly coded inspections under the Nursing Home and Residential Care NEP, and also conducted the required number of inspections. For amputations, isocyanates and primary metals, VOSHA successfully generated establishment targeting lists.

**Finding FY 2013-OB-05 (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.

**Status: Continued.** VOSHA has acknowledged that two of the program's three health CSHOs were overlooking opportunities to conduct sampling, and performed little, if any sampling at all. As discussed earlier, one of these CSHOs has left the program and the other is being retrained in sampling by VOSHA's managers.

The fact that VOSHA did very little sampling in FY 2014 is confirmed by a report from the Salt Lake City lab showing that samples were analyzed from only three inspections all year (all three of these inspections were conducted by the same CSHO). An OIS report run on January 16, 2015, showed only one inspection where sampling was performed since VOSHA began using the OIS last August.

**Finding FY 2013-OB-06:** VOSHA has a draft State Internal Evaluation Plan (SIEP), but it has not yet been implemented.

**Status: Closed.** Due to the personnel changes that occurred during the year, the debt collection and abatement backlogs, the time spent on rulemaking, and the closing of 30 cases that were filed with the review board, the State Plan paid little attention to the draft SIEP. Because VOSHA is still working on some of these issues, management does not feel that it can implement the draft SIEP until FY 2017. This observation is closed, because it will not be monitored in FY 2015; however, OSHA will continue to reinforce the need for a SIEP over the next few fiscal years.

## Appendix A – New and Continued Findings and Recommendations

### FY 2014 Vermont Follow-up FAME Report

FY 2014-#	Finding	Recommendation	FY 20XX-# or FY 20XX-OB-#
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. <i>(Corrective action complete; awaiting verification)</i>	FY 2013-02
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.	FY 2013-03
FY 2014-03	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 contain information on how the fatality was determined to be non-work related.	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.” <i>(Corrective action complete; awaiting verification)</i>	FY 2013-04
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.	FY 2013-05
FY 2014-05	Health Sampling Forms – Some case files where the CSHO performed sampling did not contain copies of	Ensure that copies of all health sampling forms are included in case files where appropriate, and that the	FY 2013-06

## Appendix A – New and Continued Findings and Recommendations

### FY 2014 Vermont Follow-up FAME Report

FY 2014-#	Finding	Recommendation	FY 20XX-# or FY 20XX-OB-#
	the sampling forms as required by the VOSHA FOM such as the OSHA-91 (air sampling) and OSHA-92 (noise 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.	forms are fully completed by the CSHO. <i>(Corrective action complete; awaiting verification)</i>	
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. <i>(Corrective action complete; awaiting verification)</i>	FY 2013-07
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. <i>(Corrective action complete; awaiting verification)</i>	FY 2013-08
FY 2014-08	Contested Cases – VOSHA is not consistently filing contested cases with the VOSHA Review Board within the seven-day timeframe prescribed by the board’s rules.	Ensure that all contested cases are handled in accordance with the timeframes established in the Review Board’s <i>Rules of Procedure</i> .	FY 2013-10
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.	FY 2013-11
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. <i>(Corrective action complete; awaiting verification)</i>	FY 2013-14
FY 2014-11	IMIS Reports – VOSHA’s discrimination program is not able to use IMIS reports to track performance or verify completeness of work.	Ensure that all discrimination personnel, including the supervisor, receive training on how to run and use IMIS reports for discrimination cases.	

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

FY 2014 Vermont Follow-up FAME Report

<i>Observation # FY 2014-OB-#</i>	<i>Observation# FY 20XX-OB-# or FY 20XX-#</i>	<b>Observation</b>	<b>Federal Monitoring Plan</b>	<b>Current Status</b>
FY 2014-OB-01		Since VOSHA has not had a full-time CAS, compliance assistance has been significantly curtailed.	OSHA will monitor VOSHA's outreach efforts on a quarterly basis to ensure that the program continues to render compliance assistance.	New
FY 2014-OB-02		VOSHA's percent of public sector inspections did not meet the further review level in SAMM #11.	OSHA will monitor this issue to determine if this is negatively impacting VOSHA's public sector program.	New
FY 2014-OB-03	FY 2013-12	The new discrimination investigator is inexperienced and faces a learning curve.	A senior investigator from OSHA will monitor the new investigator's cases to ensure compliance with the Whistleblower Investigations Manual.	New
FY 2014-OB-04	FY 2013-OB-01	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.	OSHA will review fatality cases during the next on-site review.	Continued
FY 2014-OB-05	FY 2013-OB-02	VOSHA may be inspecting too many non-formal complaints related to mold, instead of investigating these complaints via phone-fax.	During quarterly meetings, OSHA will monitor VOSHA's progress in improving the in compliance rate in SAMM #20 for health-related inspections.	Continued
FY 2014-OB-06	FY 2013-OB-03	VOSHA has not cited any violations as willful since FY 2009.	During quarterly meetings OSHA will discuss the development of willful citations. OSHA will also offer training to VOSHA staff on the development of willful citations.	Continued
	FY 2013-OB-04	VOSHA has not consistently conformed to adopted NEP guidelines and protocols.	OSHA will continue to monitor VOSHA's adherence to adopted NEP policy.	Closed
FY 2014-OB-07	FY 2013-OB-05	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.	OSHA will review OIS reports to monitoring sampling conducted by CSHOs.	Continued
	FY 2013-OB-06	VOSHA has a draft SIEP, but it has not yet been implemented.	OSHA will review VOSHA's progressing in implementing its SIEP at the end of the third quarter.	Closed

## Appendix C - Status of FY 2013 Findings and Recommendations

### FY 2014 VOSHA Follow-up FAME Report

FY 2013-#	Finding	Recommendation	State Plan Response/Corrective Action	Completion Date	Current Status and Date
FY 2013-01	SAMM #2 (average number of days to initiate complaint investigations) – VOSHA’s FY 2012 average of 7.72 days did not meet the negotiated further review level of one day for initiating complaint investigations.	VOSHA should review the process and policies in place to identify bottlenecks and inefficiencies.	Results for SAMM #2 indicate that VOSHA has met the one-day further review level. FY 2014 results for SAMM #2: 0.33 (10/1/2013-6/30/2014).	September 30, 2014	Completed
FY 2013-02	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 managers are now following the procedures in the VOSHA FOM for handling non-formal complaints, and are ensuring that information about complaint inquiries is entered into the OIS, and appropriate notification letters are sent to employers.	Not Completed	Awaiting verification September 30, 2014
FY 2013-03	Fatality Investigations – VOSHA did not follow all of OSHA’s procedures for notifying the fatality victim’s next-	Ensure that all procedures in the FOM, Chapter 11, Section G., Families of Victims, are followed with regard to	For fatalities that occurred in FY 2014, VOSHA has implemented the correct procedure and has sent the appropriate letter to the next-of-kin, as required by the OSHA FOM, Chapter 11, Section G.	Not Completed	Open September 30, 2014

## Appendix C - Status of FY 2013 Findings and Recommendations

### FY 2014 VOSHA Follow-up FAME Report

	of-kin of the fatality victim.	notifying the fatality victim's next-of-kin.			
FY 2013-04	Case File 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 contain information on how the fatality was determined to be non-work related.	VOSHA should 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.”	To ensure that all required forms and documents are included in inspection case files, VOSHA managers are reviewing case files using a checklist provided by an OSHA area office.	Not Completed	Awaiting verification September 30, 2014
FY 2013-05	SAMM #23 (average lapse time from inspection open-date to issue-date) – VOSHA’s	VOSHA should review the process and policies in place to identify bottlenecks and	VOSHA’s FY 2014 year-to date lapse times as of the end of the third quarter were 84.91 days for health and 66.34 days for safety. These results show an upward trend in lapse	Not Completed	Open September 30, 2014

## Appendix C - Status of FY 2013 Findings and Recommendations

### FY 2014 VOSHA Follow-up FAME Report

	FY 2013 average of 82.73 days is outside the further review level of 53.1 days for health, and the program's average of 63.84 days is outside the further review level of 43.4 days for safety.	inefficiencies so that it meets the standards in SAMM #23.	times for both safety and health. To reduce these lapse times, managers are mentoring CSHOs to improve case file management, and VOSHA has also agreed to participate in upcoming workshops that are being planned by OSHA to improve complaint processing and case file management.		
FY 2013-06	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 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.	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 directed health CSHOs to include the sampling forms in the case file and are mentoring CSHOs to increase the frequency of sampling during compliance inspections. Managers review all case files to ensure these changes are being implemented.	Not Completed	Awaiting verification September 30, 2014
FY 2013-07	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.	VOSHA should ensure that all abatement documentation is present in case files before they are closed.	VOSHA managers review all case files to ensure that abatement documentation is included. VOSHA managers also ensure that abatement verification provided by employers at informal conferences is noted in the case file. VOSHA continues to receive training from OSHA staff on abatement tracking.	Not Completed	Awaiting verification September 30, 2014
FY 2013-08	Informal Conferences –	VOSHA must adhere to	VOSHA is taking steps to institute a citation	Not Completed	Awaiting verification

## Appendix C - Status of FY 2013 Findings and Recommendations

### FY 2014 VOSHA Follow-up FAME Report

	In some cases, the informal conference was held after the 20 calendar-day period prescribed by state statute.	its own policy which requires that informal conferences be conducted within the 20 calendar-day contest period.	tracking system in OIS to ensure that the 20 calendar-day period for informal conferences is not exceeded.		September 30, 2014
FY 2013-09	Informal Conferences – For several cases placed into contest by the WC director about a year ago, VOSHA is long overdue for following the procedures required by the VOSHA FOM to close these cases.	VOSHA should follow all procedures required by the VOSHA FOM to close the cases that were placed into contest more than a year ago by the WC director. For example, where appropriate, VOSHA should conduct the informal conference with the employer; prepare the informal settlement agreement and have it signed by the employer; update the IMIS system based on any changes to citations and/or penalties; and verify completeness of abatement, etc.	VOSHA is continuing to contact the employers whose cases are still awaiting action by VOSHA, and is taking all steps necessary to close these cases.	February 2015	Completed
FY 2013-10	Contested Cases – VOSHA lost track of a fatality case that was contested by the employer, and went several months beyond the time frame prescribed by the VOSHA Review Board	VOSHA should ensure that all cases are handled in accordance with the timeframes established in the Review Board’s <i>Rules of Procedure</i> .	VOSHA has increased management oversight of all phases of fatality inspections. For example, the VOSHA director reviews all fatality inspections to ensure that all inspection and investigation procedures in the VOSHA FOM have been followed, that contested cases are sent to the Review Board timely, and that all case files contain all required documentation.	Not Completed	Open September 30, 2014

## Appendix C - Status of FY 2013 Findings and Recommendations

### FY 2014 VOSHA Follow-up FAME Report

	for entering this fatality case into contest. As a result, VOSHA ran the risk of having its rights to participate in the contest proceedings waived by the Review Board or its judge.				
FY 2013-11	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.	VOSHA must develop a plan for completing the adoption of these standards.	For standards that are overdue for adoption, the VOSHA manager has been following Vermont’s rulemaking procedures to finalize the adoption of overdue rules.	Not Completed	Open September 30, 2014
FY 2013-12	Discrimination Investigations – VOSHA’s discrimination personnel need training to ensure that investigations and reports conform to the requirements of OSHA’s discrimination program as set forth in the Whistleblower Investigations Manual.	VOSHA must ensure that all discrimination personnel complete OTI course #1420 (the basic whistleblower course), and staff should regularly participate in OSHA’s conferences and webinars that provide whistleblower training.	The VOSHA manager completed the basic whistleblower course (#1420) at the OSHA Training Institute (OTI) in June 2014. A new whistleblower investigator will be hired during the first quarter of FY 2015 and will be required to complete course #1420. VOSHA will participate in OSHA’s conferences that provide whistleblower training.	January 2015	Converted to an observation
FY 2013-13	CSHO Training – VOSHA’s CSHOs are not receiving training	VOSHA should adhere to OSHA’s training directive.	All CSHOs have either completed the basic training program required by OSHA’s training directive, or are being enrolled to take the	September 30, 2014	Completed

## Appendix C - Status of FY 2013 Findings and Recommendations

### FY 2014 VOSHA Follow-up FAME Report

	commensurate with OSHA's training directive.		courses still needed to complete the basic program. All newly hired CSHOs will be trained according to the OSHA training directive.		
FY 2013-14	Debt Collection – VOSHA is not following its own debt collection policy, as described in the VOSHA FOM.	VOSHA should implement and follow the procedures in its own debt collection protocol.	VOSHA is beginning to follow the debt collection protocol but still has many cases that are long overdue for penalty payment processing. VOSHA continues to receive training on processing penalty payments and debt collection procedures from OSHA area office staff.	Not Completed	Awaiting verification September 30, 2014
FY 2013-15	IMIS Reports – VOSHA management is not able to utilize IMIS reports to track enforcement and discrimination performance or verify completeness of work.	VOSHA should ensure that appropriate staff receives training on how to run and use IMIS reports for enforcement and whistleblower cases.	VOSHA has received training and assistance from OSHA area office personnel on how to use the IMIS system to track enforcement activities. However, VOSHA still needs training on how to use the IMIS system for the whistleblower program, and will request this training from OSHA.	Not Completed	Closed September 30, 2014

# Appendix D - FY 2014 State Activity Mandated Measures (SAMM) Report

## FY 2014 VOSHA Follow-up FAME Report

OSHA is in the process of moving operations from a legacy data system (NCR) to a modern data system (OIS). During FY 2014, federal OSHA case files were captured on OIS, while most State Plan case files continued to be processed through NCR. Vermont opened 296 enforcement inspections in FY 2014. Of those, 258 inspections were captured in NCR, while 38 were captured in OIS. 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. For FY14 we will use a format very similar to the one used for FY13. Below is an explanation of which data OSHA was able to use when calculating each metric.

- a. Measures 1 & 2 will use State Plan data for FY14 as captured in NCR and compared to the State Plan's negotiated number. Any State Plan data from OIS will not be considered due to irregularities in the algorithm between OIS and NCR.
- b. Measures 20a-b, 23, and 24 will use State Plan data for FY14 as captured in NCR and compared to the historical FY2011 national average (FY09-11). Any State Plan data from OIS will not be considered due to irregularities in the algorithm between OIS and NCR.
- c. Measures 5, 9, 11, 17, 19, 21, and 25 will use State Plan data for FY14 as tabulated manually to include both OIS and NCR data and compared to the fixed/negotiated/national numbers associated with them.
- d. Measures 13, 14 and 16 will be extracted from NCR (OIS conversion should not impact). National data will be pulled from WebIMIS for FY12-14.
- e. Measures 18a-e will use State Plan data for FY14 as captured in NCR. Any data from OIS will not be considered due to irregularities in the algorithm between OIS and NCR. Much like FY13, no national data will be available for comparison.
- f. Measure 22 will be excluded from the report (other than as a placeholder to demonstrate that it is one of the agreed upon metrics, but not one we can currently generate).
- g. Measure 4 will use State Plan data for FY 14 as captured in NCR.

U.S. Department of Labor				
Occupational Safety and Health Administration State Plan Activity Mandated Measures (SAMMs)				
State Plan: Vermont			FY 2014	
SAMM Number	SAMM Name	State Plan Data	Reference/Standard	Notes
1	Average number of work days to initiate complaint inspections	2.52	5 days	State Plan data taken directly from SAMM report generated through IMIS. The reference/standard is a negotiated number for each State Plan.

## Appendix D - Status of FY 2013 Findings and Recommendations

### FY 2014 VOSHA Follow-up FAME Report

<b>2</b>	Average number of work days to initiate complaint investigations	0.5	1 day	State Plan data taken directly from SAMP report generated through IMIS. The reference/standard is a negotiated number for each State Plan.
<b>4</b>	Percent of complaints and referrals responded to within 1 work day (imminent danger)	100.0%	100%	State Plan data taken directly from SAMP report generated through IMIS.
<b>5</b>	Number of denials where entry not obtained	0	0	State Plan data taken directly from SAMP report generated through IMIS and Open Inspection OIS report.
<b>9a</b>	Average number of violations per inspection with violations by violation type	1.96	SWR: 1.99	State Plan data taken from SAMP report generated through IMIS and the Inspection summary report generated in OIS; national data was manually calculated from data pulled from both IMIS and OIS for Fiscal Years (FY) 2012-2014.
<b>9b</b>	Average number of violations per inspection with violations by violation type	0.5	Other: 1.22	
<b>11</b>	Percent of total inspections in the public sector	6.76%	10.29%	State Plan data taken from SAMP report generated through IMIS and the Inspection summary report generated in OIS. The reference/standard is derived from the FY 14 grant application.
<b>13</b>	Percent of 11c Investigations completed within 90 calendar days	45%	100%	State Plan data taken directly from SAMP report generated through IMIS; National data was pulled from webIMIS for FY 2012-2014.
<b>14</b>	Percent of 11c complaints that are meritorious	9.09	24.8% meritorious	State Plan data taken directly from SAMP report generated through IMIS; National data was pulled from webIMIS for FY 2012-2014.
<b>16</b>	Average number of calendar days to complete an 11c investigation	272.45	90 Days	State Plan data taken directly from SAMP report generated through IMIS; National data was pulled from webIMIS for FY 2012-2014.

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### FY 2014 VOSHA Follow-up FAME Report

<b>17</b>	Planned vs. actual inspections - safety/health	208/88	263/87	State Plan data taken from SAMM report generated through IMIS and the Inspection summary report generated in OIS; the reference standard number is taken from the FY 2014 grant application. The reference/standard is a negotiated number for each State Plan.
<b>18a</b>	Average current serious penalty - 1-25 Employees	719.37		State Plan data taken directly from SAMM report generated through IMIS.
<b>18b</b>	Average current serious penalty - 26-100 Employees	672.58		
<b>18c</b>	Average current serious penalty - 101-250 Employees	1105.88		
<b>18d</b>	Average current serious penalty - 251+ Employees	1414.28		
<b>18e</b>	Average current serious penalty - Total 1 - 250+ Employees	815.42		
<b>19</b>	Percent of enforcement presence	1.73%	National Average 1.51%	Data is pulled and manually calculated based on FY 2014 data currently available in IMIS and County Business Pattern data pulled from the US Census Bureau.
<b>20a</b>	20a) Percent In Compliance – Safety	31.58	Safety - 29.1	State Plan data taken directly from SAMM report generated through IMIS; current national data is not available. Reference data is based on the FY 2014 national average, which draws from the collective experience of State Plans and federal OSHA for FY 2009-2011.
<b>20b</b>	20b) Percent In Compliance – Health	47.06	Health - 34.1	
<b>21</b>	Percent of fatalities responded to in 1 work day	100%	100%	State Plan data is manually pulled directly from IMIS for FY 2013.

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<b>22</b>	Open, Non-Contested Cases with Abatement Incomplete > 60 Days	n/a		Data not available.
<b>23a</b>	Average Lapse Time - Safety	66.34	43.4	State Plan data taken directly from SAMM report generated through IMIS; current national data is not available. Reference data is based on the FY 2011 national average, which draws from the collective experience of State Plans and federal OSHA for FY 2009-2011.
<b>23b</b>	Average Lapse Time - Health	84.91	57.05	
<b>24</b>	Percent penalty retained	62.16	66	State Plan data taken directly from SAMM report generated through IMIS; current national data is not available. Reference data is based on the FY 2011 national average, which draws from the collective experience of State Plans and federal OSHA for FY 2009-2011.
<b>25</b>	Percent of initial inspections with employee walk around representation or employee interview	100	100%	State Plan data taken from SAMM report generated through IMIS and the Inspection where Workers Involved report generated in OIS.