

**FY 2021 Comprehensive
Federal Annual Monitoring Evaluation (FAME) Report**

**Maine State Plan
(MEOSH)**



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Contents

I.	Executive Summary	1
II.	State Plan Background	1
	A. Background	1
	B. New Issues	2
III.	Assessment of State Plan Performance	3
	A. Data and Methodology	3
	B. Review of State Plan Performance	4
	1. Program Administration	4
	2. Enforcement	5
	3. Review Procedures	10
	4. Standards and Federal Program Changes (FPCs) Adoption	11
	5. Variances	16
	6. State and Local Government Worker Program	16
	7. Whistleblower Program	16
	8. Complaint About State Program Administration (CASPA)	17
	9. Voluntary Compliance Program	17
	10. State and Local Government 23(g) On-Site Consultation Program	18
	11. Status of MEOSH's Developmental Schedule	18

Appendices

Appendix A – New and Continued Findings and Recommendations.....	A-1
Appendix B – Observations and Federal Monitoring Plans.....	B-1
Appendix C – Status of FY 2020 Findings and Recommendations.....	C-1
Appendix D – FY 2021 State Activity Mandated Measures (SAMM) Report ...	D-1

I. Executive Summary

The purpose of this report is to assess the Maine State Plan's (MEOSH's) performance for Fiscal Year (FY) 2021 and its progress in resolving outstanding findings from previous Federal Annual Monitoring Evaluation (FAME) Reports.

In FY 2021, many state and local government workers in Maine continued to perform their duties at alternative worksites, such as home offices. This resulted in fewer complaint inspections than normal. To limit staff exposure to the pandemic, MEOSH conducted relatively few programmed inspections. Outreach activities and consultation visits were also curtailed.

MEOSH experienced many limitations in FY 2021, but it was also a year of significant achievement. During the fiscal year, MEOSH transitioned to an electronic case filing system and made progress in completing its developmental plan; at MEOSH's request, the state legislature made OSHA-recommended changes to the plan. Resolving issues identified in previous FAME Reports was another area of success. Two observations, one pertaining to complaints and the other to severity assessments, have been closed in this report. MEOSH also completed corrective action for the one and only finding related to case file documentation which was still on the books.

However, MEOSH's staffing level continued to be inadequate. Even before the pandemic, the State Plan had difficulty meeting inspection goals with only three compliance officers. Additionally, the chief inspector, who is both a supervisor and compliance officer, has limited time to devote to field work. The governor addressed this situation in early 2022 by including funding for an additional safety compliance officer in Maine's 2022-2023 supplemental budget.

This report contains no new or continued findings or recommendations. Appendix B is used to describe observations and related federal monitoring plans; the two observations MEOSH closed in FY 2021 are listed. Appendix C is used to describe the status of previous findings and the associated corrective actions; the one and only finding from the FY 2020 Follow-up FAME Report, which the State Plan completed, is listed. In summary, this report does not contain any findings or new observations.

II. State Plan Background

A. Background

In August 2015, MEOSH received initial approval as a developmental State and Local Government Only State Plan under the Occupational Safety and Health (OSH) Act of 1970. The Maine Department of Labor implements MEOSH, and the Director of the Department's Bureau of Labor Standards (the Bureau) is the State Plan designee. The State Plan is headquartered in Augusta.

MEOSH covers approximately 2,384 employers (236 in state government and 2,148 in local government) and 79,300 workers (24,000 workers in state government and 55,300 workers in local government).¹ Volunteers under the direction of a state or local government employer are also covered, as well as workers in county government and quasi-municipal agencies. MEOSH does not cover federal government workers, including those employed by the United States Postal Service and civilian workers on military bases. These workers are covered by OSHA, which also exercises authority over private sector employers in the state.

The MEOSH Director and the program manager are the State Plan's first-line supervisors. At full staffing, MEOSH has two safety compliance officers and one health compliance officer, as well as two safety consultants and one health consultant. One of the safety compliance officers helps the managers supervise the other two compliance officers and assists the Director of the Bureau with handling workplace retaliation complaints.

The State Plan has adopted OSHA's occupational safety and health standards. They generally follow but are not necessarily identical to OSHA's standards. MEOSH has a unique respiratory protection standard and video display terminal standard. The State Plan has also adopted Maine's standards for public safety dive team operations and driver training requirements for fire apparatuses.

MEOSH conducts workplace inspections. If violations are identified, citations and proposed assessments of penalties are issued. State and local government employers may contest citations and proposed penalties before the Board of Occupational Safety and Health (the Board). MEOSH's Field Operations Manual (FOM) is equivalent to OSHA's FOM, except that MEOSH did not adopt OSHA's penalty adjustment factors in Chapter 6, and the State Plan's informal conference proceedings in Chapter 7 differ from OSHA's.

MEOSH enforces Title 26, Chapter 6, §570 of the Maine Revised Statutes Annotated (M.R.S.A.), which outlines the provisions that an employer cannot discharge or in any manner discriminate against a worker filing a complaint, testifying, or otherwise acting to exercise rights granted by the M.R.S.A. MEOSH adopted 29 CFR 1977, Discrimination Against Employees Under the OSH Act of 1970, in FY 2019.

The State Plan's federal funding award in FY 2021 was \$515,742, which the State Plan matched. Thus, MEOSH's total funding amount in FY 2021 was \$1,031,484. In each of the last five fiscal years (FY 2016 to FY 2020), the State Plan contributed an average of \$530,000 per year over and above the 50 percent match. However, due to budgetary uncertainty brought on by the pandemic, the State Plan did not exceed the 50 percent match in FY 2021.

B. New Issues

None.

¹ Source: Center for Workforce Research and Information: <https://www.maine.gov/labor/cwri/qcew1.html>

III. Assessment of State Plan Progress and Performance

A. Data and Methodology

OSHA established a two-year cycle for the FAME process. FY 2021 was a comprehensive year, and as such, OSHA was required to conduct case file reviews.

Enforcement On-site Evaluation

From November 29 through December 2, 2021, OSHA conducted an evaluation of MEOSH's enforcement program. OSHA's team consisted of three personnel who reviewed 12 safety and health inspection files, most of which were opened and closed during FY 2021. To reduce exposure to the pandemic, OSHA reviewed the case files in electronic format and did not travel to the State Plan's headquarters. The selected population consisted of:

- Four (4) referral case files
- Four (4) complaint case files
- Three (3) fatality case files
- One (1) accident case file

Workplace Retaliation Program Case File Review

On December 13, 2021, OSHA conducted a remote evaluation of MEOSH's workplace retaliation program due to the ongoing COVID-19 pandemic. The review team consisted of the Assistant Regional Administrator and a Regional Supervisory Investigator. During the evaluation, OSHA reviewed the one investigation file MEOSH completed during FY 2021.

Monitoring Sources

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

- State Activity Mandated Measures (SAMM) Report (Appendix D)
- Mandated Activities Report for Consultation (MARC)
- State OSHA Annual Report (SOAR)
- State Plan Annual Performance Plan
- State Plan Grant Application
- OSHA Information System (OIS) Reports (Abatement Tracking, Fatality/Catastrophe, Inspection Summary, Open Inspection, and Scan Summary)
- OSHA IT Support System Reports (Case Summary, Activity Measures, Investigation Data and Length of Investigation)
- Quarterly monitoring meetings between OSHA and the State Plan
- Full case file review

SAMMs are enforcement data points that OSHA and the State Plans have agreed are important in monitoring State Plan performance. Each SAMM has an agreed-upon further review level (FRL) that can be either a single number or a range of numbers above and below the national average. State Plan SAMM data that falls outside the FRL triggers a closer look at the underlying performance of the mandatory activity. Appendix D presents the State Plan's FY 2021 SAMM Report and includes the FRL for each measure.

B. Review of State Plan Performance

1. PROGRAM ADMINISTRATION

Training

MEOSH's first-line supervisors plan the training and education program for staff. The State Plan is performing satisfactorily in terms of following OSHA Training and Education Directive 01-00-019, Mandatory Training Program for OSHA Compliance Personnel. Two of the State Plan's three compliance safety and health officers (CSHOs) have completed all the initial courses and are now taking the technical training offered by the OSHA Training Institute as prescribed by the directive. The newest CSHO, who began in August 2021, did not take any of the initial training courses in FY 2021. All consultants have completed the basic training course and are taking technical courses to enhance their ability to perform their duties. The SOAR contains a list of the training completed by each field staff member in FY 2021.

OSHA Information System

The State Plan understands the usefulness of OIS reports in monitoring case files and program activity. MEOSH properly utilizes OIS by entering data and information into the system promptly and running reports to ensure proper monitoring of case files and program activities, etc.

State Internal Evaluation Program (SIEP) Report

MEOSH did not develop a SIEP in FY 2021 because of ongoing challenges from the pandemic and the change in program managers that occurred midway through the fiscal year. With regard to SIEPs, Chapter 6 of the State Plan Policies and Procedures Manual says, "each state must periodically conduct reviews of its activities under the plan, focusing on key issues and areas of concern to the state". Since the State Plan is not required to complete an internal evaluation of its program *annually*, OSHA is not concerned that MEOSH did not develop a SIEP in FY 2021.

Staffing

MEOSH's longstanding program manager retired in July 2021 and was replaced by the 21(d) consultation program manager. In August 2021, a safety compliance officer retired and was replaced by one of MEOSH's 23(g) safety consultants. The State Plan's compliance assistance

specialist (CAS) then transferred into the safety consultant position. MEOSH did not fill the vacant CAS position before the end of FY 2021. Except for the brief period when the former safety consultant transferred into the safety compliance officer position and the CAS then became the new safety consultant, the 23(g) program was fully staffed in FY 2021.

2. ENFORCEMENT

a) Complaints

MEOSH's procedures for handling complaints are found in Chapter 9 of the MEOSH FOM, which mirrors the OSHA FOM in this regard. SAMMs 1 through 3 assess the State Plan's efficiency in handling complaint inspections.

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

Discussion of State Plan Data and FRL: The negotiated FRL for this SAMM is five days. MEOSH's average in FY 2021 was 5.75 days.

Explanation: OSHA is not concerned that MEOSH's average was a bit higher than the FRL.

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

Discussion of State Plan Data and FRL: The negotiated FRL is one work day. MEOSH's average in FY 2021 was zero.

Explanation: SAMM 2a (state formula) calculates the average number of work days from the date MEOSH receives the complaint to the date the State Plan initiates the investigation by notifying the employer of the complaint. This SAMM pertains only to complaints that have no related inspection. In FY 2021, MEOSH did not handle any complaint investigations; therefore, zero is an acceptable result.

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

Discussion of State Plan Data and FRL: The FRL of 100 percent is fixed for all State Plans. In FY 2021, MEOSH did not have any data to report for SAMM 3.

Explanation: The State Plan did not receive any imminent danger complaints or referrals in FY 2021.

SAMM 4 - Number of denials where entry not obtained

Discussion of State Plan Data and FRL: The FRL of zero is fixed for all State Plans. In FY 2021, MEOSH's result was zero.

Explanation: MEOSH did not have any denials of entry in FY 2021.

The four complaint case files reviewed for this report indicate MEOSH resolved a longstanding issue related to the CSHOs not following procedures in Chapter 9 of the MEOSH FOM to notify complainants of results of the inspection. OSHA made a finding related to this issue in the FY 2017 Comprehensive FAME Report. MEOSH gradually improved, and the finding was converted to an observation in the FY 2019 Comprehensive FAME Report. During the most recent case file review, OSHA verified that the diary sheet in each of the four complaint files, where appropriate, contained documentation that the complainant was notified of the results of the inspection. The State Plan also sends the complainant copies of the citations, along with a cover letter, and a copy of the cover letter is placed in the case file. For inspections that are in compliance, MEOSH informs the complainant by letter and includes a copy of the letter in the case file.

Observation FY 2020-OB-01 (formerly Observation FY 2019-OB-01 and Findings FY 2018-01 and FY 2017-02): None of the three complaint inspections that were not in compliance contained documentation that the complainant had been notified of the results of the inspection.

Status FY 2020-OB-01: This observation is closed.

b) Fatalities

For this report, OSHA reviewed three fatality case files, including one that was closed in FY 2020 and two that were opened in FY 2021 but not closed until FY 2022. OSHA did not identify any issues with MEOSH's fatality inspections; the case files were organized, and the inspection documentation was thorough and complete.

SAMM 10 - Percent of work-related fatalities responded to in one work day

Discussion of State Plan Data and FRL: The FRL of 100 percent is fixed for all State Plans. In FY 2021, MEOSH's result was 100 percent.

Explanation: In FY 2021, the State Plan met the FRL, which was a positive outcome.

c) Targeting and Programmed Inspections

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

Discussion of State Plan Data and FRL: The FRLs for safety and health inspections are based on numbers negotiated by OSHA and the State Plan through the grant application. The FRL range

was from 95 to 105 for safety inspections and from 23.75 to 26.25 for health inspections; MEOSH conducted 15 safety inspections and two health inspections. The State Plan's totals for both safety and health inspections were far outside (below) the FRL ranges and were not positive outcomes.

Explanation: In FY 2021, the State Plan conducted only 17 inspections, which was 14 percent of the goal of 125 inspections (100 safety and 25 health). To limit staff exposure to COVID-19, MEOSH conducted relatively few programmed inspections. In FY 2021, MEOSH opened only three programmed inspections; the remaining 14 inspections were unprogrammed (e.g., complaints, referrals, accidents, and fatalities). Before the pandemic, MEOSH averaged 58 programmed inspections per year from FY 2017 through FY 2019. In FY 2021, unprogrammed inspections were also lower than normal; from FY 2017 through FY 2019, MEOSH averaged 30 unprogrammed inspections per year.² MEOSH has committed to hiring an additional CSHO in 2022 and is no longer limiting programmed inspections. These two factors should result in higher inspection totals going forward.

For the current five-year strategic plan, which began in FY 2021, MEOSH targets the following high-hazard industries for safety inspections: fire protection, water/sewer districts, schools, police, correctional facilities, and highway construction. For health inspections, MEOSH targets high-hazard workplaces prone to serious health hazards identified by OSHA in emphasis programs. MEOSH also evaluates OSHA's national emphasis programs (NEPs) and adopts them if applicable to state and local government workplaces.

MEOSH schedules most programmed inspections by using lists (one for state government and one for local government) of all government agencies in the state. The program manager cycles through the lists so that the next agency assigned for inspection is the one where the most time has elapsed since the last time it received a programmed inspection. The CSHO prioritizes inspections of the various departments within state and local government entities based on whether they fall under one or more of the targeted industries. For example, if a local government operates a police department and/or a prison, the CSHO must inspect those operations. In FY 2021, MEOSH made little use of its inspection targeting program because programmed inspections were curtailed due to the ongoing pandemic.

d) Citations and Penalties

MEOSH's FOM describes the procedures for issuing citations and proposed penalties. As a State and Local Government Only Plan, MEOSH is not required to adopt OSHA's Interim Final Rule on Maximum Penalty Increases. The MEOSH Director has discretionary authority for civil penalties of up to \$1,000 per day for repeat and willful violations. Serious and other-than-serious (OTS) violations may be assessed a penalty of up to \$1,000 per violation, and failure-to-abate violations may be assessed a penalty of up to \$1,000 per day. Criminal penalties can be issued to state and local government employers who willfully violate any standard, rule, or order.

² Programmed and unprogrammed inspection totals are based on OIS Inspection Summary Reports.

The FY 2020 Follow-up FAME Report contained an observation that in several cases, the State Plan did not properly assess the severity of the alleged violation. This issue dates to the FY 2017 Comprehensive FAME Report where it was a finding. Over the next couple of years, MEOSH made progress in this area, and the finding was converted to an observation in the FY 2019 Comprehensive FAME Report. The FY 2021 case file review indicated proper assessment of severity in all nine case files reviewed for this issue. MEOSH resolved this observation by reviewing the guidance in Chapter 6 of the MEOSH FOM pertaining to severity assessments. Also, since this issue was first identified, the CSHOs and managers have gained more experience in assessing the severity of violations.

Observation FY 2020-OB-02 (formerly Observation FY 2019-OB-02 and Findings FY 2018-03 and FY 2017-05): In FY 2019, the State Plan did not properly assess the severity of the alleged violation in 10 (29 percent) of 34 cases that were not in compliance.

Status FY 2020-OB-02: This observation is closed.

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

Discussion of State Plan Data and FRL: The FRL is based on a three-year national average. MEOSH's FY 2021 average of 1.70 was within the FRL range of 1.42 to 2.14 for serious, willful, repeated, unclassified (SWRU) violations. For OTS violations, the State Plan's average of 1.30 was outside (above) the FRL range of 0.73 to 1.09. Both results were positive.

Explanation: OSHA would be concerned with MEOSH's performance on SAMM 5 if the State Plan had a high average for OTS violations and a comparatively low average for SWRU violations. This result could indicate that the State Plan tended to classify some serious violations as OTS violations. In FY 2021, MEOSH had a high average for OTS violations; however, the State Plan's average for SWRU violations was within the FRL range. Therefore, MEOSH's performance on SAMM 5 for SWRU and OTS violations was acceptable.

SAMM 9 – Percent in compliance

Discussion of State Plan Data and FRL: The FRL is based on a three-year national average. In FY 2021, the FRL range was from 25.32 percent to 37.98 percent for safety inspections and from 32.51 percent to 48.77 percent for health inspections. MEOSH's in-compliance rate of 18.18 percent for safety inspections was outside (below) the FRL, and its in-compliance rate of zero for health inspections was also outside (below) the FRL range.

Explanation: An in-compliance rate is the percentage of inspections that have been closed with no violations. Low in-compliance rates indicate that CSHOs are adept at identifying and citing violations. MEOSH's performance on this metric was acceptable.

SAMM 11- Average lapse time

Discussion of State Plan Data and FRL: The FRL is based on a three-year national average. In FY 2021, the FRL range was from 41.94 to 62.90 work days for safety inspections and from

52.88 to 79.32 work days for health inspections. MEOSH's averages of 57.13 work days for safety inspections and 77 work days for health inspections were within the FRLs.

Explanation: The State Plan must generally issue citations within six months of the occurrence of any violations according to the Chapter 5 of the MEOSH FOM. Lapse time is calculated as the number of work days from the opening conference date to the earliest issuance date. In FY 2021, the State Plan's averages for both safety and health were positive outcomes.

e) Abatement

During the FY 2021 case file review, OSHA did not identify any issues related to abatement. All abatement periods were appropriate, and there was adequate verification or evidence of abatement in the case files.

f) Worker and Union Involvement

Title 26, Chapter 3, Section 44a of the M.R.S.A. provides the opportunity for employer and worker representatives to accompany the MEOSH inspector for the purpose of aiding in the inspection. When there is no authorized worker representative, the inspectors are required to consult with a reasonable number of workers concerning matters of safety and health in the workplace. In FY 2021, MEOSH made sure that all initial inspections were conducted with worker walk-around representation or worker interview.

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

Discussion of State Plan Data and FRL: The FRL of 100 percent is fixed for all State Plans. In FY 2021, MEOSH met the FRL of 100 percent for SAMM 13.

Explanation: MEOSH performed satisfactorily on SAMM 13.

According to Chapter 3 of the MEOSH FOM, "CSHOs shall determine as soon as possible after arrival whether the workers at the inspected worksite are represented and, if so, shall ensure that employee representatives are afforded the opportunity to participate in all phases of the inspection." Without documentation in the case file, it cannot be determined if the CSHO made sure that worker representatives were given the opportunity to participate in all phases of the inspection. In the FY 2016 Comprehensive FAME Report, OSHA made an observation that MEOSH did not provide documentation in the case file that employee representatives were afforded the opportunity to participate in all phases of the inspection.³ Because the observation was not resolved in three years, it was converted to a finding in the FY 2019 Comprehensive FAME Report.

³ FY 2016 was a follow-up year for the FAME Reports. Because MEOSH was a new State Plan, OSHA conducted a comprehensive review of the State Plan in FY 2016.

Over the past few years, MEOSH has been reviewing the MEOSH FOM, including Chapter 3, which discusses employee representation. The managers and CSHOs have also gained more experience in case file documentation. All nine inspection case files reviewed contained documentation that the union representative either participated in the inspection or was given the opportunity to participate in all phases of the inspection.

Finding FY 2020-01 (formerly Finding FY 2019-01 and Observations FY 2018-OB-03, FY 2017-OB-05, and FY 2016-OB-04): In FY 2019, in eight (44 percent) of the 18 inspections where the union was at the workplace, the State Plan did not document whether union representatives had the opportunity to participate in all phases of the inspection.

Status FY 2020-01: This finding is completed.

3. REVIEW PROCEDURES

a) Informal Conferences

Under MEOSH's procedures, an employer may file an appeal of a citation within 15 business days of its receipt. If an appeal is filed, then the director will set up a hearing with the Board. All proposed penalties will be stayed until after the formal appeal is heard. Employers may also request a penalty discussion to reduce the penalty amount. Before a penalty discussion is held, the establishment must certify that all violations have been corrected by the abatement date listed on the citation (unless an extension is granted by the State Plan upon a written request from the employer).

If neither a formal appeal nor a penalty discussion is chosen by the worksite that received the citation, then the citation(s) will become a final order within 15 business days from the day it is received, and the full penalty amount must be paid to the state treasurer. In most cases (except for willful violations and certain serious violations), MEOSH reduces original penalty amounts by 90 percent if the employer certifies abatement.

b) Formal Review of Citations

The Board is an independent authority that reviews contested cases. In FY 2021 and FY 2020, MEOSH did not have any contested cases.

4. STANDARDS AND FEDERAL PROGRAM CHANGE (FPC) ADOPTION

a) Standards Adoption

The Board formulates and adopts rules pursuant to Title 26, Chapter 6, §565 of the M.R.S.A. for safe and healthful working conditions. The rules formulated by the Board shall, at a minimum, conform to federal standards for occupational safety and health. All federal occupational safety and health standards shall become rules of MEOSH within six months after their federal promulgation date unless an existing state standard is at least as effective. In all rulemaking, the Board follows the Maine Administrative Procedure Act (Title 5, M.R.S.A., Chapter 375).

The Board also has the authority to adopt alternative or different occupational health and safety standards where no federal standards are applicable to the conditions or circumstances or where standards that are more stringent than the federal are deemed advisable. In the following instances, the Board has adopted standards that are more stringent than current OSHA standards: respiratory protection, video display terminals, dive team operations and driving training requirements for fire apparatuses.

Emergency rulemaking procedures are outlined in the Maine Administrative Procedure Act. If OSHA promulgates an emergency temporary standard (ETS), the Board will adopt the same within 30 days of the promulgation of the federal ETS, using the emergency rulemaking procedures in the Maine Administrative Procedure Act. During the pendency of that emergency rule, the Board can separately adopt a rule using its traditional rulemaking procedures to take effect immediately when the emergency rule ends.

Table 1 summarizes the status of MEOSH’s standard adoptions and is followed by a brief discussion of each standard. Overall, MEOSH performed satisfactorily in FY 2021 and FY 2020 regarding standard adoptions. Although the State Plan exceeded some deadlines, OSHA is not overly concerned because MEOSH strives for timeliness.

**Table 1
FY 2020 and FY 2021 Federal Standards Adoption**

Standard:	Response Due Date:	State Plan Response Date:	Intent to Adopt:	Adopt Identical:	Adoption Due Date:	State Plan Adoption Date:
<i>Adoption Required</i>						
Final Rule on the Implementation of the 2020 Annual Adjustment to Civil Penalties for Inflation 29 CFR 1903 (1/15/2020)	3/15/2020	2/6/2020	No	No	7/15/2020	

Final Rule on the Beryllium Standard for General Industry 29 CFR 1910 (7/14/2020)	9/14/2020	7/30/2020	Yes	Yes	1/14/2021	12/3/2020
Final Rule on the Beryllium Standard for Construction and Shipyards 29 CFR 1915, 1926 (8/31/2020)	10/30/2020	1/27/2021	Yes	Yes	2/27/2021	3/4/2021
Final Rule on the Implementation of the 2021 Annual Adjustment to Civil Penalties for Inflation (1/15/2021)	3/16/2021	1/25/2021	No	No	7/14/2021	
Occupational Exposure to COVID-19; Healthcare Emergency Temporary Standard 29 CFR 1910 (6/21/2021)	7/6/2021	6/28/2021	Yes	Yes	7/21/2021	11/15/2021
<i>Adoption Encouraged</i>						
Final Rule on the Rules for Agency Practice and Procedures Concerning OSHA Access to Employee Medical Records 29 CFR 1913 (7/30/2020)	9/28/2020	10/8/2020	Yes	No	n/a adoption not required	11/9/2020
Final Rule on Cranes and Derricks in Construction: Railroad Roadway Work 29 CFR 1926 (9/15/2020)	11/14/2020	11/5/2020	Yes	Yes	n/a adoption not required	3/4/2021

Adoption Required

**Implementation of the 2020 Annual Adjustment to Civil Penalties for Inflation Rule
Implementation of the 2021 Annual Adjustment to Civil Penalties for Inflation Rule**

OSHA published a rule on July 1, 2016, raising its maximum and minimum penalties. This rule allows for an annual raise in penalties based on inflation. As a State and Local Government Only State Plan, MEOSH is not required to adopt OSHA’s maximum and minimum penalties rule (and did not do so) and, therefore, is not required to adopt the annual rules for adjusting civil penalties for inflation. MEOSH notified OSHA in a timely manner (i.e., within 60 days from publication of the standard in the *Federal Register*) that it did not intend to adopt these rules.

Beryllium Standards

OSHA's beryllium standards require employers to implement protective measures for workers exposed to beryllium in their workplace. MEOSH responded timely to the beryllium standard for general industry and adopted it timely. For the construction and shipyards standard, the State Plan was a few months late in responding with its intent. MEOSH adopted this standard about a month later than the due date, but not identically, because the State Plan does not cover shipyards.

Occupational Exposure to COVID-19; Healthcare Emergency Temporary Standard

OSHA determined employee exposure to SARS-CoV-2, the virus that causes COVID-19, presents a grave danger to workers in healthcare settings where people with COVID-19 are reasonably expected to be present and issued an ETS to address the hazard.

When Federal OSHA promulgates an ETS, State Plans must either amend their standards to be identical or "at least as effective as" the new standard or show that an existing state standard covering this area is "at least as effective" as the new federal standard (29 CFR 1953.b). Adoption of the ETS by State Plans must be completed within 30 days of the promulgation date of the final federal rule, and State Plans must notify Federal OSHA of the action they will take within 15 days. The State Plan standard must remain in effect for the duration of the federal ETS.

MEOSH responded timely to the Healthcare ETS. However, the State Plan was about four months late in adopting this standard because it needed time to amend legislation to remove the required 90-day waiting period for rules to become effective.⁴ OSHA is not overly concerned with MEOSH's late adoption of this ETS because the State Plan intended to remove the waiting period and did so as quickly as possible.

Adoption Encouraged

Final Rule on the Rules for Agency Practice and Procedures Concerning OSHA Access to Employee Medical Records

This rule describes internal procedures for obtaining and using personally identifiable employee medical information. MEOSH's response was a few weeks late, but the State Plan adopted an alternative version within the allowable timeframe.

Final Rule on Cranes and Derricks in Construction: Railroad Roadway Work

OSHA revised the standard for cranes and derricks in construction to provide specific exemptions and clarifications regarding the application of the standard to cranes and derricks used for railroad roadway work. The State Plan's response and adoption were both timely.

⁴ Prior to amendment, Title 26, Chapter 6, § 565 stated: [R]ules shall not become effective sooner than 90 days after the date of adoption and promulgation. The amendment removed this sentence.

Federal Program Change Adoption

Table 2 is followed by a discussion of MEOSH’s FPC adoptions. Although MEOSH exceeded some deadlines, the State Plan’s performance was acceptable in FY 2021 and FY 2020.

Table 2
FY 2020 and FY 2021 Federal Program Change Adoption

FPC Directive/Subject:	Response Due Date:	State Plan Response Date:	Intent to Adopt:	Adopt Identical:	Adoption Due Date:	State Plan Adoption Date:
<i>Adoption Required</i>						
Amputations in Manufacturing Industries NEP CPL 03-00-022 (12/10/2019)	2/10/2020	2/6/2020	Yes	Yes	6/10/2020	2/7/2020
Respirable Crystalline Silica NEP CPL 03-00-023 (2/4/2020)	4/4/2020	2/19/2020	Yes	Yes	8/4/2020	3/30/2020
<i>Equivalency Required</i>						
Field Operations Manual CPL 02-00-164 (4/14/2020)	6/13/2020	6/10/2020	Yes	No	10/11/2020	7/1/2020
Inspection Procedures for the Respirable Crystalline Silica Standards CPL 02-02-080 (6/25/2020)	8/24/2020	7/9/2020	Yes	Yes	12/22/2020	12/3/2020
Site-Specific Targeting (SST) CPL 02-01-062 (12/14/2020)	2/12/2021	2/12/2021	Yes	No	6/12/2021	10/1/2021
Consultation Policies and Procedures Manual CSP 02-00-004 (3/19/2021)	5/19/2021	4/29/2021	Yes	No	9/19/2021	5/10/2021
Inspection Procedures for the COVID-19 Emergency Temporary Standard CPL DIR 2021-02 (CPL 02) (6/28/2021)	7/13/2021	6/28/2021	Yes	Yes	7/28/2021	11/15/2021
Compliance Directive for the Excavation Standard 29 CFR 1926, Subpart P CPL 02-00-165 (7/1/2021)	8/30/2021	8/30/2021	Yes	Yes	12/28/2021	10/1/2021

Revised National Emphasis Program - Coronavirus Disease 2019 (COVID-19) CPL DIR 2021-03 (CPL 03) (7/7/2021)	7/22/2021	9/24/2021	Yes	Yes	8/7/2021	11/15/2021
<i>Adoption Encouraged</i>						
Voluntary Protection Programs Policies and Procedures Manual CSP 03-01-005 (1/30/2020)	3/30/2020	2/19/2020	No	No	n/a adoption not required	
Electronic Case File System Procedures for the Whistleblower Protection Program CPL 02-03-009 (6/18/2020)	8/18/2020	6/29/2020	Yes	No	n/a adoption not required	7/30/2020
National Emphasis Program - Coronavirus Disease 2019 (COVID-19) CPL DIR 2021-01 (CPL-03) (3/12/2021)	5/12/2021	5/10/2021	Yes	Yes	n/a adoption not required	5/10/2021
Communicating OSHA Fatality Inspection Procedures to a Victim's Family CPL 02-00-166 (7/7/2021)	9/7/2021	8/5/2021	Yes	No	n/a adoption not required	8/5/2021

Adoption Required

MEOSH responded timely with its intent and adopted both FPCs timely.

Equivalency Required

MEOSH responded timely with its intent to adopt the FPCs pertaining to crystalline silica, excavation, the Consultation Manual, and the FOM. The State Plan also adopted these FPCs timely. MEOSH responded timely to the SST directive but was about four months late in completing adoption. MEOSH did not adopt the SST directive identically because it developed its own list of targeted state and local government employers based primarily on Bureau of Labor Statistics injury and illness rates. MEOSH responded timely to the FPC for Inspection Procedures for the COVID-19 ETS but did not adopt this directive timely. For the Revised NEP for COVID-19, MEOSH's response and adoption were both late. MEOSH delayed adoption of the FPCs related to COVID-19 until it completed adoption of the Healthcare ETS.

Adoption Encouraged

MEOSH responded timely to the Voluntary Protection Programs Policies and Procedures Manual but did not adopt. The State Plan adopted alternative versions of the FPCs related to the whistleblower program and fatality victims in a timely manner. Finally, for the Coronavirus Disease FPC, MEOSH's response and adoption were timely.

5. VARIANCES

MEOSH did not have any variances in FY 2021 or in FY 2020.

6. STATE AND LOCAL GOVERNMENT WORKER PROGRAM

MEOSH is a State and Local Government Only State Plan.

7. WHISTLEBLOWER PROGRAM

In Maine, workers in state and local government establishments who believe they have been retaliated against for engaging in worker health and safety activities have two possible options under state law. The first option may be exercised under Title 26 M.R.S.A. §570, which is Maine's equivalent to §11(c) of the OSH Act. MEOSH would investigate the complaint, and a meritorious complaint would be litigated in state court by the Maine Attorney General.

A second option for state and local government workers is to file a complaint with the Maine Human Rights Commission under Title 26 M.R.S.A. §833, known as the Whistleblower's Protection Act. The commission may pursue meritorious cases in state court, but complainants have a private right of action and may request a "right to sue letter" six months after filing their complaint if the commission has not filed a lawsuit.

In FY 2021, MEOSH investigated one workplace retaliation case filed under Title 26 M.R.S.A. §570. OSHA concluded that MEOSH conducted a thorough investigation and developed the necessary evidence to support its decision to dismiss the complaint for lack of merit. MEOSH advised the complainant of appeal rights and followed all relevant procedures. In addition, the case file was properly organized.

Information pertaining to the workplace retaliation program is detailed and accessible on MEOSH's website. Complainants can file a complaint on the website.

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

Discussion of State Plan Data and FRL: The FRL of 100 percent is fixed for all State Plans. In FY 2021, MEOSH's result for this SAMM was zero.

Explanation: The one and only case that MEOSH investigated in FY 2021 was open for 372 calendar days because the State Plan encountered obstacles to investigating it in a timely manner. The complainant relocated to another state during the investigation and was also unavailable for weeks at a time. OSHA is not concerned that MEOSH did not meet the FRL for SAMM 14.

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

Discussion of State Plan Data and FRL: In FY 2021, the FRL range for SAMM 15 was from 16 percent to 24 percent. MEOSH's percent of 11(c) complaints that were meritorious was zero.

Explanation: A settlement is a positive outcome for the complainant; therefore, it is "meritorious." In FY 2021, the State Plan did not settle the one case that was pending; rather, MEOSH dismissed it for lack of merit. OSHA is not concerned with the State Plan's outcome for this metric because the SAMM is pulling data from only one case.

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

Discussion of State Plan Data and FRL: The FRL of 90 calendar days is fixed for all State Plans. In FY 2021, MEOSH's average number of calendar days to complete an investigation was 372.

Explanation: The State Plan's average of 372 calendar days resulted from the difficulties discussed under SAMM 14. Thus, OSHA is not concerned with MEOSH's performance on SAMM 16.

8. COMPLAINT ABOUT STATE PROGRAM ADMINISTRATION (CASPA)

MEOSH did not have any CASPAs in FY 2021 or FY 2020.

9. VOLUNTARY COMPLIANCE PROGRAM

MEOSH administers the Safety and Health Award for Public Employers (SHAPE) Program. Employers in SHAPE are exempt from programmed inspections for up to two years if they meet certain criteria related to inspections, violation abatements, and injury and illness rates. SHAPE is like OSHA's Safety and Health Achievement Recognition Program (SHARP), which is administered by state 21(d) on-site consultation programs. In FY 2021, MEOSH had 81 workplaces in SHAPE. During the on-site review, OSHA confirmed that MEOSH's written policies and procedures for SHAPE are adequate.

MEOSH, in conjunction with the 21(d) On-site Consultation Project, periodically hosts occupational safety and health training meetings for SHARP and SHAPE companies. MEOSH has not had any Partnerships or Alliances since it became an OSHA-approved State Plan in 2015 but is considering developing an Alliance in FY 2022.

10. STATE AND LOCAL GOVERNMENT 23(g) ON-SITE CONSULTATION PROGRAM

Based on data from the OIS MARC Report, MEOSH's 23(g) Consultation Program opened 204 visits (150 visits in local government agencies and 54 visits in state government agencies) in FY 2021. In FY 2020, MEOSH opened 131 visits (105 visits in local government and 26 visits in state government). MEOSH's goal for 23(g) consultation visits in FY 2021 and FY 2020 was 300 visits. Visit requests declined in both years due to the pandemic, which made it difficult for MEOSH to meet its goals.

MEOSH was outside (below) the reference/standard of 100 percent for MARC 4A, which calculates the percent of serious hazards corrected in a timely manner, in both FY 2021 and FY 2020. MEOSH's percent in FY 2021 was 77.13, and in FY 2020, it was 81.07. These results are not cause for concern, given the difficulties encountered by consultants in verifying hazard correction during the pandemic.

In FY 2021 and FY 2020, MEOSH performed satisfactorily on MARC 4D, which calculates the percent of serious hazards corrected in original time or on-site. In FY 2021, MEOSH's percentage was 74.47; and in FY 2020, its percentage was 75.95. Both results were outside (above) the reference/standard of 65 percent and were positive.

Over the past few years, MEOSH has been monitoring the average days lapsed between the closing conference and the written report. Based on Chapter 4 of the Consultation Policies and Procedures Manual, which MEOSH has adopted, "the Written Report must be sent to the employer no later than 20 calendar days after the closing conference is held." The State Plan's average was 13.77 calendar days in FY 2021 and 11.71 calendar days in FY 2020; both results were acceptable, based on data from the OIS Visit Metrics and Lapsed Days Report.

11. STATUS OF MEOSH'S DEVELOPMENTAL SCHEDULE

As previously mentioned, MEOSH was approved as a developmental State Plan under the OSH Act of 1970 and OSHA regulations. This means that although some of the criteria set forth in 29 CFR 1956.10 and 1956.11 were not fully met at the time the approval was granted (August 5, 2015), the State Plan received initial approval with the condition that they meet this criteria, or developmental steps, within three years. As such, a developmental schedule was established for MEOSH, with a due date for completion of August 5, 2018.

In October 2020, MEOSH submitted a revised State Plan narrative (i.e., an overall description of the State Plan and all its aspects) to OSHA indicating that it had completed all 10 steps in its developmental program. Upon review, OSHA determined that among other things, MEOSH needed to adopt OSHA's recordkeeping rule and amend its procedures so that it could adopt OSHA's ETS within 30 days of the *Federal Register* notice. Over the past several months,

MEOSH worked on making OSHA's recommended changes. The State Plan resubmitted the narrative (which includes revised completion dates for some of the steps in the developmental program) to OSHA for review in March 2022.

Status of MEOSH's Comprehensive Developmental Program
(Pending review and approval by OSHA)

Step 1: Provide a comparison of ME CMR 12-179, Chapter 6 to 29 CFR 1904.
Completed November 2021

Step 2: Adopt regulations equivalent to 29 CFR 1905, or provide citations to currently existing equivalent regulations.
Completed July 2019

Step 3: Adopt regulations equivalent to 29 CFR 1977, or provide citations to currently existing equivalent regulations.
Completed July 2019

Step 4: Enact legislation that revises 26 M.R.S.A. §§ 2 and 44.
Completed June 2015

Step 5: Provide a comparison of alternative standards that MEOSH has adopted to federal standards.
Completed November 2021

Step 6: Provide an outline of procedures for the on-site public sector consultation (29 CFR 1908) program or a timeline for their development.
Completed July 2019

Step 7: Develop a five-year strategic plan and an annual performance plan.
Completed October 2020

Step 8: Update and revise, as necessary, the MEOSH FOM.
Completed July 2020

Step 9: Develop a plan for transitioning to the OIS.
Completed September 2015

Step 10: Determine whether adoption of 29 CFR Parts 1915, 1917, and/or 1918, or equivalents, is appropriate; and if so, adopt the appropriate regulations.
Completed March 2016 (OSHA determined that the State Plan did not need to adopt OSHA's maritime standards based on the type of work performed in Maine's state and local government agencies.)

Appendix A – New and Continued Findings and Recommendations

FY 2021 MEOSH Comprehensive FAME Report

FY 2021-#	Finding	Recommendation	FY 2020-# or FY 2020-OB-#
	None.		

Appendix B – Observations Subject to New and Continued Monitoring

FY 2021 MEOSH Comprehensive FAME Report

Observation # FY 2021-OB-#	Observation# FY 2020-OB- # or FY 2020-#	Observation	Federal Monitoring Plan	Current Status
	FY 2020-OB-01 FY 2019-OB-01 FY 2018-01 FY 2017-02	None of the three complaint inspections that were not in compliance contained documentation that the complainant had been notified of the results of the inspection.		Closed
	FY 2020-OB-02 FY 2019-OB-02 FY 2018-03 FY 2017-05	In FY 2019, the State Plan did not properly assess the severity of the alleged violation in 10 (29 percent) of 34 cases that were not in compliance.		Closed

Appendix C - Status of FY 2020 Findings and Recommendations

FY 2021 MEOSH Comprehensive FAME Report

FY 2020-#	Finding	Recommendation	State Plan Corrective Action	Completion Date (if Applicable)	Current Status (and Date if Item Is Not Completed)
FY 2020-01	In FY 2019, in eight (44 percent) of the 18 inspections where the union was at the workplace, the State Plan did not document whether union representatives had the opportunity to participate in all phases of the inspection.	Follow the guidance in Chapter 3 of the MEOSH FOM to ensure that employee representatives have the opportunity to participate in all phases of the inspection and include documentation in the case file that this guidance was followed.	MEOSH's managers reviewed Chapter 3 of the MEOSH FOM with CSHOs to ensure that employee representatives have the opportunity to participate in all phases of the inspection. These opportunities are documented in the case file.	July 15, 2020	Completed

Appendix D - FY 2021 State Activity Mandated Measures (SAMM) Report

FY 2021 MEOSH Comprehensive FAME Report

SAMM Number	SAMM Name	State Plan Data	Further Review Level	Notes
1a	Average number of work days to initiate complaint inspections (state formula)	5.75	5	The further review level is negotiated by OSHA and the State Plan.
1b	Average number of work days to initiate complaint inspections (federal formula)	5.25	N/A	This measure is for informational purposes only and is not a mandated measure.
2a	Average number of work days to initiate complaint investigations (state formula)	0	1	The further review level is negotiated by OSHA and the State Plan.
2b	Average number of work days to initiate complaint investigations (federal formula)	0	N/A	This measure is for informational purposes only and is not a mandated measure.
3	Percent of complaints and referrals responded to within one workday (imminent danger)	N/A	100%	N/A – The State Plan did not receive any imminent danger complaints or referrals in FY 2021. The further review level is fixed for all State Plans.
4	Number of denials where entry not obtained	0	0	The further review level is fixed for all State Plans.
5a	Average number of violations per inspection with violations by violation type (SWRU)	1.70	+/- 20% of 1.78	The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from 1.42 to 2.14 for SWRU.
5b	Average number of violations per inspection with violations by violation type (other)	1.30	+/- 20% of 0.91	The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from 0.73 to 1.09 for OTS.
6	Percent of total inspections in state and local government workplaces	100%	100%	Since this is a State and Local Government State Plan, all inspections are in state and local government workplaces.
7a	Planned v. actual inspections (safety)	15	+/- 5% of 100	The further review level is based on a number negotiated by OSHA and the State Plan through the grant application. The

Appendix D - FY 2021 State Activity Mandated Measures (SAMM) Report

FY 2021 MEOSH Comprehensive FAME Report

SAMM Number	SAMM Name	State Plan Data	Further Review Level	Notes
				range of acceptable data not requiring further review is from 95 to 105 for safety.
7b	Planned v. actual inspections (health)	2	+/- 5% of 25	The further review level is based on a number negotiated by OSHA and the State Plan through the grant application. The range of acceptable data not requiring further review is from 23.75 to 26.25 for health.
8	Average current serious penalty in private sector - total (1 to greater than 250 workers)	N/A	+/- 25% of \$3,100.37	N/A – This is a State and Local Government State Plan. The further review level is based on a three-year national average.
	a. Average current serious penalty in private sector (1-25 workers)	N/A	+/- 25% of \$2,030.66	N/A – This is a State and Local Government State Plan. The further review level is based on a three-year national average.
	b. Average current serious penalty in private sector (26-100 workers)	N/A	+/- 25% of \$3,632.26	N/A – This is a State and Local Government State Plan. The further review level is based on a three-year national average.
	c. Average current serious penalty in private sector (101-250 workers)	N/A	+/- 25% of \$5,320.16	N/A – This is a State and Local Government State Plan. The further review level is based on a three-year national average.
	d. Average current serious penalty in private sector (greater than 250 workers)	N/A	+/- 25% of \$6,575.70	N/A – This is a State and Local Government State Plan. The further review level is based on a three-year national average.
9a	Percent in compliance (safety)	18.18%	+/- 20% of 31.65%	The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from 25.32% to 37.98% for safety.

Appendix D - FY 2021 State Activity Mandated Measures (SAMM) Report

FY 2021 MEOSH Comprehensive FAME Report

SAMM Number	SAMM Name	State Plan Data	Further Review Level	Notes
9b	Percent in compliance (health)	0%	+/- 20% of 40.64%	The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from 32.51% to 48.77% for health.
10	Percent of work-related fatalities responded to in one workday	100%	100%	The further review level is fixed for all State Plans.
11a	Average lapse time (safety)	57.13	+/- 20% of 52.42	The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from 41.94 to 62.90 for safety.
11b	Average lapse time (health)	77	+/- 20% of 66.10	The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from 52.88 to 79.32 for health.
12	Percent penalty retained	N/A	+/- 15% of 69.08%	NA – This is a State and Local Government State Plan and is not held to this SAMM. The further review level is based on a three-year national average.
13	Percent of initial inspections with worker walk-around representation or worker interview	100%	100%	The further review level is fixed for all State Plans.
14	Percent of 11(c) investigations completed within 90 days	0%	100%	The further review level is fixed for all State Plans.
15	Percent of 11(c) complaints that are meritorious	0%	+/- 20% of 20%	The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from 16% to 24%.
16	Average number of calendar days to complete an 11(c) investigation	0	90	The further review level is fixed for all State Plans.
17	Percent of enforcement presence	N/A	+/- 25% of 0.99%	N/A – This is a State and Local Government State Plan and is not held to this SAMM.

Appendix D - FY 2021 State Activity Mandated Measures (SAMM) Report

FY 2021 MEOSH Comprehensive FAME Report

SAMM Number	SAMM Name	State Plan Data	Further Review Level	Notes
				The further review level is based on a three-year national average.

Note: The national averages in this report are three-year rolling averages. Unless otherwise noted, the data contained in this Appendix D is pulled from the State Activity Mandated Measures (SAMM) Report in OIS and the State Plan WebIMIS report run on November 8, 2021, as part of OSHA's official end-of-year data run.

