# FY 2022 Follow-up Federal Annual Monitoring Evaluation (FAME) Report

**Maine State Plan (MEOSH)**

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**Final Approval Date: N/A**

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**Region I**

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## Executive Summary

The primary purpose of this report is to assess the Maine State Plan’s (MEOSH’s) progress in Fiscal Year (FY) 2022 in resolving outstanding findings from the previous FY 2021 Comprehensive Federal Annual Monitoring Evaluation (FAME) Report.

Since no issues were identified in the previous report, MEOSH focused on resuming normal operations as the pandemic eased. For instance, the State Plan participated in the customary schedule of statewide training conferences and no longer curtailed programmed inspections.

MEOSH also completed all developmental aspects of its State Plan in FY 2022 and received certification in FY 2023. Steven L. Greeley, the State Plan's Director, persevered throughout this extensive process and was essential in realizing this objective.

In FY 2022, MEOSH performed well on most performance metrics but only accomplished a third of its inspection goal. This is because only two compliance officers (both safety) were able to conduct inspections. The health compliance officer was on leave for most of the year and retired in August 2022. The state assigned MEOSH an additional safety compliance officer in July 2022, but the fiscal year had almost ended by the time this post was filled. Things should begin to improve now that MEOSH is fully staffed with compliance officers. There were no other areas of concern in FY 2022.

## State Plan Background

On August 5, 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. After receiving initial approval, MEOSH worked on designated developmental steps necessary to fully meet the requirements of the OSH Act.

In October 2020, the Maine Department of Labor, Bureau of Labor Standards submitted documentation attesting to the completion of all developmental steps. After extensive review of the submissions and opportunity for correction, MEOSH submitted updated and revised documents. OSHA approved the revised State Plan and certified this completion on March 21, 2023.**[[1]](#footnote-2)** This certification attests to the fact that MEOSH has in place the structural components necessary for an effective State Plan for state and local government employees.

The Maine Department of Labor implements MEOSH, and the Director of the Department’s Bureau of Labor Standards is the State Plan designee. The State Plan is headquartered in Augusta. MEOSH covers approximately 2,390 employers (240 in state government and 2,150 in local government) and 81,247 workers (21,238 workers in state government and 60,009 workers in local government).**[[2]](#footnote-3)**

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 director and the program manager are the State Plan’s first-line supervisors. At full staffing, MEOSH has three safety compliance officers, one health compliance officer, and one compliance assistance specialist. One of the safety compliance officers helps the managers supervise the other three compliance officers and assists the Director of the Bureau with handling workplace retaliation complaints. The State Plan’s consultation staff consists of two safety consultants and one health consultant.

MEOSH 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 which adopts standards and is an independent review authority for contested cases. 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.

The State Plan 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.

Based on FY 2022 financial close-out forms, the State Plan’s initial federal funding award was $514,107. MEOSH contributed a total of $533,273 which consisted of the 50 percent match of $514,107 plus an additional $19,166. Thus, in FY 2022, MEOSH’s total funding amount was $1,047,380. MEOSH typically exceeds the 50 percent match but did not do so in FY 2021 due to budgetary uncertainty brought on by the pandemic. However, the State Plan resumed this practice in FY 2022.

**New Issues**

None.

## Assessment of State Plan Progress and Performance

### Data and Methodology

OSHA has established a two-year cycle for the FAME process. This is the follow-up year, and as such, OSHA did not perform an on-site case file review associated with a comprehensive FAME. This strategy allows the State Plan to focus on correcting deficiencies identified in the most recent comprehensive FAME. The analyses and conclusions described in this report are based on information obtained from a variety of monitoring sources, including:

* State Activity Mandated Measures (SAMM) Report
* Mandated Activities Report for Consultation
* State OSHA Annual Report
* State Plan Annual Performance Plan
* State Plan Grant Application
* Quarterly monitoring meetings between OSHA and the State Plan

### Findings and Observations

#### Findings (Status of Previous and New Items)

This report contains no new or continued findings or observations.

### State Activity Mandated Measures (SAMM) Highlights

Each SAMM has an agreed upon further review level (FRL) which can be either a single number or a range of numbers above and below the national average. State Plan SAMM data that falls outside the FRL triggers a closer look at the underlying performance of the mandatory activity. Appendix D presents the State Plan’s FY 2022 SAMM Report and includes the FRL for each measure.

OSHA is in the final stages of transitioning from the Whistleblower Application in the OSHA IT Support System (OITSS), a legacy data system, to the Whistleblower Module in the OSHA Information System (OIS), a modern data system. For FY 2022, a portion of the State Plan whistleblower data was recorded in OITSS, and a portion was captured in OIS. OSHA encountered challenges in combining the report that generates SAMMs 14, 15, and 16 from both systems. As such, OSHA will not be relying on SAMMs 14, 15, or 16 in its evaluation of the State Plans’ whistleblower programs for FY 2022.

The State Plan was outside the FRL on the following SAMMs:

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

**Discussion of State Plan Data and FRL**: The negotiated FRL for this measure is five work days. MEOSH’s FY 2022 average was 3.17 work days. This was a positive result.

**Explanation:** MEOSH met the FRL in FY 2022.

**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 2022 was 1.33 work days.

**Explanation:** SAMM 2a 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 2022, MEOSH’s result was only slightly outside (above) the FRL and does not warrant concern.

**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 2022 average of 2.14 was a bit outside (above) the FRL range of 1.42 to 2.12 for serious, willful, repeat, and unclassified (SWRU) violations. For other-than-serious (OTS) violations, the State Plan’s average of 2.77 was far outside (above) the FRL range of 0.72 to 1.08.

**Explanation:** OSHA would be concerned with the State Plan’s performance on SAMM 5 if it had a high average for OTS violations and a correspondingly low average for SWRU violations. This outcome could indicate that the State Plan tended to classify some serious violations as OTS violations. In FY 2022, MEOSH’s averages for SWRU and OTS violations were above the FRLs, which was acceptable.

**SAMM 7 - Planned v. actual inspections**

**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 37 safety inspections and four 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:** As mentioned earlier, MEOSH had only two compliance officers who conducted inspections in FY 2022. MEOSH has addressed this situation by becoming fully staffed with four compliance officers; the State Plan hired another safety compliance officer in August 2022 and a new health compliance officer a few months later. Additionally, MEOSH wasted no time in enrolling the new staff in OSHA's training program for compliance personnel so that they can get up to speed as quickly as possible.

**SAMM 9a – Percent in compliance (safety)**

**Discussion of State Plan Data and FRL:** The FRL is based on a three-year national average. In FY 2022, the FRL range was from 25.80 percent to 38.70 percent for safety inspections. MEOSH’s in-compliance rate of 9.68 percent for safety inspections was outside (below) the FRL. This was a positive result.

**Explanation:** An in-compliance rate is the percentage of inspections that have been closed with no violations. Low in-compliance rates indicate that compliance officers are adept at identifying and citing violations. It should also be noted that MEOSH’s in-compliance rate for health inspections was well within the FRL range for FY 2022.

**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 2022, MEOSH’s percent was zero.

**Explanation**: In FY 2022 MEOSH mistakenly coded a non-work-related fatality as work-related in OIS. MEOSH’s result for this SAMM should be “not applicable” because the State Plan did not conduct any work-related fatalities in FY 2022.

**SAMM 11- Average lapse time**

**Discussion of State Plan Data and FRL:** The FRL is based on a three-year national average. In FY 2022, the FRL range was from 43.66 to 65.50 work days for safety inspections and from 55.22 to 82.84 work days for health inspections. MEOSH’s averages of 42.61 work days for safety inspections and 49.50 work days for health inspections were outside (below) 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 number of work days from opening conference date to earliest issuance date. In FY 2022, the State Plan’s averages for both safety and health inspections were positive outcomes.

### Appendix A – New and Continued Findings and Recommendations

FY 2022 MEOSH Follow-up FAME Report

|  |  |  |  |
| --- | --- | --- | --- |
| **FY 2022-#** | **Finding** | **Recommendation** | **FY 2021-# or**  **FY 2021-OB-#** |
|  | None. |  |  |

### Appendix B – Observations Subject to Continued Monitoring

FY 2022 MEOSH Follow-up FAME Report

| **Observation #**  **FY 2022-OB-#** | **Observation#**  **FY 2021-OB-# *or* FY 2021-#** | **Observation** | **Federal Monitoring Plan** | **Current Status** |
| --- | --- | --- | --- | --- |
|  | None. |  |  |  |

### Appendix C - Status of FY 2021 Findings and Recommendations

FY 2022 MEOSH Follow-up FAME Report

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
| **FY 2021-#** | **Finding** | **Recommendation** | **State Plan Corrective Action** | **Completion Date** | **Current Status**  **and Date** |
|  | None. |  |  |  |  |

### Appendix D – FY 2022 State Activity Mandated Measures (SAMM) Report

FY 2022 MEOSH Follow-up 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) | 3.17 | 5 | The further review level is negotiated by OSHA and the State Plan. |
| 1b | Average number of work days to initiate complaint inspections (federal formula) | 2.00 | 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) | 1.33 | 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) | 1.00 | 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) | 100% | 100% | 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) | 2.14 | +/- 20% of  1.77 | 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 2.12 for SWRU. |
| 5b | Average number of violations per inspection with violations by violation type (other) | 2.77 | +/- 20% of  0.90 | The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from 0.72 to 1.08 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) | 37 | +/- 5% of  100 | 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 95 to 105 for safety. |
| 7b | Planned v. actual inspections (health) | 4 | +/- 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  $3,259.35 | 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  $2,145.46 | 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  $3,818.56 | 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  $5,469.60 | 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  $6,725.78 | 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) | 9.68% | +/- 20% of  32.25% | The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from 25.80% to 38.70% for safety. |
| 9b | Percent in compliance (health) | 50.00% | +/- 20% of  44.42% | The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from 35.54% to 53.30% for health. |
| 10 | Percent of work-related fatalities responded to in one workday | 0% | 100% | The further review level is fixed for all State Plans. |
| 11a | Average lapse time (safety) | 42.61 | +/- 20% of  54.58 | The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from 43.66 to 65.50 for safety. |
| 11b | Average lapse time (health) | 49.50 | +/- 20% of  69.03 | The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from 55.22 to 82.84 for health. |
| 12 | Percent penalty retained | N/A | +/- 15% of  69.97% | 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 | N/A\* | N/A\* | This measure is not being reported for FY 2022. Please see note below. |
| 15 | Percent of 11(c) complaints that are meritorious | N/A\* | N/A\* | This measure is not being reported for FY 2022. Please see note below. |
| 16 | Average number of calendar days to complete an 11(c) investigation | N/A\* | N/A\* | This measure is not being reported for FY 2022. Please see note below. |
| 17 | Percent of enforcement presence | N/A | +/- 25% of  1.64% | 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. |

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 run on November 14, 2022, as part of OSHA’s official end-of-year data run.

\*Due to the transition of 11(c) data from IMIS to OIS, SAMMs 14, 15, and 16 are not being reported for FY 2022.

1. [Link to Federal Register Notice of MEOSH certification.](https://www.federalregister.gov/documents/2023/03/21/2023-05724/maine-state-plan-for-state-and-local-government-employees-approval-of-plan-supplements-and) [↑](#footnote-ref-2)
2. Source: [Maine Department of Labor Center for Workforce Research and Information](https://gcc02.safelinks.protection.outlook.com/?url=https%3A%2F%2Fwww.maine.gov%2Flabor%2Fcwri%2Fqcew1.html&data=04%7C01%7CGrourke.Joan%40dol.gov%7Cf8c4bc803746434b973708d8bd4afb3c%7C75a6305472044e0c9126adab971d4aca%7C0%7C0%7C637467477024914070%7CUnknown%7CTWFpbGZsb3d8eyJWIjoiMC4wLjAwMDAiLCJQIjoiV2luMzIiLCJBTiI6Ik1haWwiLCJXVCI6Mn0%3D%7C1000&sdata=boFS3S%2FOq2UEQ4obu6MFKzhNg4UKYX6XgWJOJLtlne8%3D&reserved=0) [↑](#footnote-ref-3)