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

**State of Michigan**

**Michigan Occupational Safety and Health Administration**



**Evaluation Period: October 1, 2021 – September 30, 2022**

**Initial Approval Date: October 3, 1973]**

**Program Certification Date: January 16, 1981**

**Final Approval Date: None**

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## Executive Summary

The primary purpose of this report is to assess the State Plan’s progress in Fiscal Year (FY) 2022, in resolving outstanding findings from the previous FY 2021 Comprehensive Federal Annual Monitoring Evaluation (FAME) Report. This report also assesses the current performance of the Michigan Department of Labor and Economic Opportunity – Occupational Safety and Health Administration (MIOSHA) 23(g) compliance program in the context of agreed upon monitoring measures.

The FY 2021 Comprehensive FAME report identified two new findings and three new observations. All are continued in this report. A summary of findings is found in Appendix A, New and Continued Findings and Recommendations. A summary of observations is found in Appendix B, Observations and Federal Monitoring Plans. Appendix C, Status of FY 2021 Findings and Recommendations, includes the State Plan’s corrective actions.

The MIOSHA Strategic Management Plan for FY 2019 to FY 2023 established three strategic goals: 1) Help assure improved workplace safety and health for all workers, as evidenced by fewer hazards, reduced exposures, and fewer injuries, illnesses and fatalities; 2) Promote employer and worker awareness of, commitment to, and involvement with safety and health to effect positive change in the workplace culture; and, 3) Strengthen public confidence through continued excellence in the development and delivery of MIOSHA’s programs and services.

In the FY 2022 State OSHA Annual Report (SOAR), MIOSHA provided information that outlines their accomplishments toward meeting their five-year strategic management plan. OSHA reviewed and analyzed the information to assess MIOSHA’s progress in meeting performance plan goals. All but four of the annual performance goals have been met or exceeded. For a more comprehensive look at this data, see MIOSHA’s SOAR.

MIOSHA awarded 19 Consultation Education and Training Division (CET) grants to nonprofit groups to enhance safety and health training and to support worker safety and health across the state. The state continued the MIOSHA Workplace Improvement to Safety and Health (MIWISH) matching grant program for 59 small employers to enable them to purchase safety equipment and equipment related training, resulting in $979,602 being invested in the safety and health of workers. The MIOSHA training institute continued to serve Michigan employers with more than 33,845 participants having received training since the inception of the institute. Outreach continued to be at the forefront of the MIOSHA program in 2022 through seven partnerships, 19 alliances, and 12 new and renewed Partnerships and Alliance agreements.

OSHA held quarterly monitoring meetings with MIOSHA during FY 2022, at which time OSHA reviewed and discussed the State Activity Mandated Measures (SAMM) report and the State Indicators Report (SIR) with State Plan management. The FY 2022 SAMM is Appendix D of this report.

## State Plan Background

The Michigan Department of Labor and Economic Opportunity (LEO) is responsible for the state’s regulatory services and programs that protect and promote the labor market including the MIOSHA program. The divisions within MIOSHA include General Industry Safety and Health (GISHD); Construction Safety and Health (CSHD); Appeals; Consultation, Education and

Training (CET); and Technical Services (TSD). Enforcement of safety and health rules, adoption of standards, consultation services, and other OSHA activities are conducted within these five divisions. MIOSHA’s CET division administers the private sector on-site consultation program funded under a 21(d) grant.

The mission of MIOSHA is to help protect the safety and health of Michigan workers with the overall mission to reduce workplace fatalities, injuries, and illnesses. MIOSHA aims to do this through a combination of compliance, education and training, and consultation activities supported by standards promulgation, data management, and administrative functions. MIOSHA has historically focused its efforts on the most hazardous industries and occupations.

Susan Corbin was appointed Acting Director of LEO in October of 2020 and Director in August of 2021. Barton Pickelman is MIOSHA’s Director, and each of the five divisions has a division director. MIOSHA benchmarks include 56 safety and 45 health compliance officers. At the start of FY 2022, funding was allocated for 45 safety and 32 health full-time equivalent (FTE) compliance officers. MIOSHA’s FY 2022 grant included funding totaling $23,595,900, which includes a $1,971,500 overmatch. There were no furloughs or hiring freezes affecting MIOSHA during 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
* State Information Report (SIR)
* Mandated Activities Report for Consultation (MARC)
* State OSHA Annual Report (SOAR)
* State Plan Annual Performance Plan (APP)
* State Plan Grant Application
* Quarterly monitoring meetings between OSHA and the State Plan

### Findings and Observations

#### Findings (Status of Previous Items)

The State Plan made progress to address the previous two findings and three observations from the FY 2021 Comprehensive FAME Report. This follow-up FAME report contains no new findings or observations. Appendix A describes the continued findings and recommendations. Appendix B describes observations subject to continued monitoring and the related federal monitoring plan. Appendix C describes the status of each FY 2021 finding and recommendation in detail.

**Continued Findings**

**Finding FY 2022-01 (FY 2021-01):** MIOSHA State Plan has failed to adopt OSHA’s initial FY 2016 maximum and minimum penalty increase and subsequent annual penalty amount increases.

**Status:** December 2022 marked six years since the first deadline passed for adoption and the Michigan State Plan has not yet completed the legislative changes to increase maximum penalties. As of January 15, 2023, the Michigan Legislature had not yet promulgated a standard to adopt OSHAs maximum penalties. This finding remains open.

**Finding FY 2022-02 (FY 2021-02):** When a whistleblower complainant does not return a signed statement within a specified time, MIOSHA closes the complaint as withdrawn contrary to the OSHA Whistleblower Investigations Manual (WIM).

**Status**: A case file review is necessary to gather the facts needed to evaluate performance in relation to this finding. This finding will be a focus of next year’s on-site case file review during the FY 2023 comprehensive FAME. This finding remains open.

#### Continued FY 2022 Observations

**FY 2022-OB-1 (FY 2021-OB-01):** Five of the fatality case files reviewed for FY 2021 did not include a copy of the fatality report and/or the investigation report. Two of 20 (10%) did not contain a

copy of the fatality report. Four of 20 (20%) did not contain a copy of the investigation report.

**Status:** A case file review is necessary to gather the facts needed to evaluate performance in relation to this observation. This observation will be a focus of next year’s on-site case file review during the FY 2023 comprehensive FAME. This observation is continued.

**FY 2022-OB-2 (FY 2021-OB-02):** Four of 20 (20%) fatality casefiles reviewed for FY 2021

did not contain an initial and/or results letter to the next-of-kin.

**Status:** A case file review is necessary to gather the facts needed to evaluate performance in relation to this observation. This observation will be a focus of next year’s on-site case file review during the FY 2023 comprehensive FAME. This observation is continued.

**FY 2022-OB-3 (FY 2021-OB-03):** In the case of whistleblower complaints referred from OSHA, MIOSHA maintains a practice of entering MIOSHA’s receipt date as the filing date rather than the date the complaint was filed with OSHA.

**Status:** A case file review is necessary to gather the facts needed to evaluate performance in relation to this observation. This observation will be a focus of next year’s on-site case file review during the FY 2023 comprehensive FAME. This observation is continued.

### State Activity Mandated Measures (SAMM) Highlights

Each SAMM has an agreed upon 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 State Activity Mandated Measures (SAMM) Report and includes the FRLs for each measure.

It should be noted that 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 OIS, a modern data system. For FY 2022, a portion of the State Plan whistleblower data was recorded OITSS, and a portion was captured in OIS. OSHA encountered challenges in combining the report that generates SAMM 14, 15, and 16 from both systems. As such, OSHA will not be relying on SAMMs 14, 15, or 16 in the evaluation of the State Plans’ whistleblower programs for FY 2022.

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

**SAMM 5a – Average number of violations per inspection with violations by violation type (SWRU)**

Discussion of State Plan Data and FRL: 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. MIOSHA had 1.25 SWRU violations per inspection.

Explanation: The total number of violations per inspection irrespective of violation classification (serious, willful, repeat, or other) is 2.61, which meets the national average of 2.66, so the issue may be one of violation classification rather than hazard identification. MIOSHA may be classifying violations as other-than-serious that nationally would be classified as serious. The Michigan State Plan will evaluate its policies and training on citation classification.

**SAMM 5b: Average number of violations per inspection with violations by**

**violation type (other)**

Discussion of State Plan Data and FRL: 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 other-than-serious (OTS). MIOSHA had 1.36 OTS violations per inspection.

Explanation: The Michigan State Plan value of 1.36 is in line with the value of 1.40 for all State Plan RIDs. As mentioned in the Explanation for SAMM 5a, the issue may be one of violation classification rather than violation identification. The Michigan State Plan will evaluate its policies and training on citation classification.

**SAMM 7a: Planned v. actual inspections (safety)**

Discussion of State Plan Data and FRL: 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 3,078 to 3,402 for safety. MIOSHA conducted 2,657 safety inspections.

Explanation: The Michigan State Plan started FY 2022 with 35 Workplace Safety Representative (WSR) full-time equivalent (FTE) positions. Michigan included funding to fill 10 vacant WSR FTEs. During FY 2022, 10 WSR FTEs were filled, but 11 WSR FTEs were lost due to transfer and resignations. This resulted in a 24.4% vacancy rate. Michigan conducted 2,657 safety inspections. This is 82.0% of the projected inspection goal of 3,240.

Given the high vacancy rate, the Michigan State Plan has increased its efforts to fill the WSR vacancies. Strategies include increased marketing of available employment opportunities at MIOSHA, as well as instituting a $5,000 hiring bonus.

**SAMM 7b: Planned v. actual inspections (health)**

Discussion of State Plan Data and FRL: 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 824 to 911 for health. MIOSHA conducted 942 health inspections.

Explanation: The Michigan State Plan exceeded the number negotiated in the grant application because it was closer to being fully staffed on the health side.

**SAMM 8: Average current serious penalty in private sector**

Discussion of State Plan Data and FRL: The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from $2,444.51 to $4,074.19. MIOSHA’s average current serious penalty in the private sector was $1,247.66.

Explanation: MIOSHA has been working with the Michigan state legislature since 2016 to increase the maximum penalties in the Michigan Occupational Safety and Health Act to match those of OSHA. In 2017, MIOSHA found a bill sponsor in the state Senate, but the bill never made it to a vote prior to the end of the legislative session. Each year since, the agency has attempted to acquire a sponsor for the necessary legislation. In FY 2023, MIOSHA has attempted to find a sponsor, this time using the FY 2021 FAME finding as impetus and urgency for the legislation. Draft bill language has been written and submitted to MIOSHA’s legislative liaison. In addition, to educate stakeholders, MIOSHA has conducted outreach on the importance of aligning the maximum penalties with OSHA. When the legislation is passed, signed by the Governor, and becomes effective, the average penalties will increase. Note Finding FY 2022-01 (previously FY 2021-01) related to maximum penalties is continued.

**SAMM 10: Percent of work-related fatalities responded to in one workday**

Discussion of State Plan Data and FRL: The further review level is fixed at 100% for all State Plans. MIOSHA responded to 98% of work-related fatalities in one workday.

Explanation: The Michigan State Plan responded to 49 of 50 work-related fatalities within one workday. The one fatality that was not opened within one workday of MIOSHA notification was opened within two workdays. On that one fatality, the deadline was missed due to a question about whether MIOSHA had jurisdiction over the traffic fatality. The agency has since retrained staff on the jurisdictional issue.

**SAMM 11a: Average lapse time (safety)**

Discussion of State Plan Data and FRL: 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. MIOSHA’s average lapse time for safety was 29.99 days.

Explanation: The average lapse time for safety at the Michigan State Plan indicates that it performs safety inspections in a time-efficient manner.

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

Discussion of State Plan Data and FRL: The further review level is fixed at 100% for all State Plans. MIOSHA had walk-around representation or worker interviews for 99.44% of inspections.

Explanation: Workers were represented during the walkaround and/or at least one worker was interviewed in 3,579 of 3,599 inspections (99.44%) conducted by the Michigan State Plan. This percentage exceeded the value for all State Plan RIDs (98.39%), all federal OSHA RIDs (95.53%), and the national average (96.98%). For the 20 inspections without worker walkaround representation or worker interviews, half were coded incorrectly. The coding errors have been fixed, and staff have been retrained on proper coding. For the remaining inspections, several had legitimate reasons for no worker walkaround representation or worker interviews: there was only one employee, and the employee died; there were only two employees, and both died; no one was at the worksite; or the employees refused to participate either in the walkaround or interviews. When staff could have had workers represented in the walkaround or could have conducted employee interviews, staff were retrained on the proper procedures.

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

FY 2022 MIOSHA Follow-up FAME Report

|  |  |  |  |
| --- | --- | --- | --- |
| **FY 2022-#** | **Finding** | **Recommendation** | **FY 2021** |
| FY 2022-01 | MIOSHA did not adopt OSHA’s initial FY 2016 maximum and minimum penalty increase and subsequent annual penalty amount increase | MIOSHA should continue to work with its legislative officials to pass legislation to adopt OSHA’s maximum penalties | FY 2021-01 |
| FY 2022-02 | When a whistleblower complainant does not return a signed statement within a specified time, MIOSHA closes the complaint as withdrawn contrary to the OSHA Whistleblower Investigations Manual (WIM) | In accordance with the OSHA WIM, MIOSHA modified its 10-Day non-cooperation Letter to reflect that if a complainant fails to respond to the investigator’s requests for cooperation in the timeline provided, will cause the complaint to be dismissed due to lack of cooperation on the complainant’s part. If non-cooperation persists after the timeline provided, the determination letter to the complainant will state that the complaint is dismissed due to “lack of cooperation”, and it will inform the complainant of their right to appeal that determination. Staff were trained on the new procedure in September 2022. | FY 2021-02 |

### Appendix B – Observations Subject to Continued Monitoring

FY 2022 MIOSHA Follow-up FAME Report

| **Observation #**  **FY 2022-OB-#** | **Observation#**  **FY 2021-OB-#** | **Observation** | **Federal Monitoring Plan** | **Current Status** |
| --- | --- | --- | --- | --- |
| FY 2022-OB-01 | FY 2021-OB-01 | Five of the fatality case files reviewed for FY 2021 did not include a copy of the fatality report and/or the investigation report. Two of 20 (10%) did not contain a  copy of the fatality report. Four of 20 (20%) did not contain a copy of the investigation report. | During next year’s comprehensive FAME, case files will be reviewed to determine if this item was addressed. | Continued |
| FY 2022-OB-02 | FY 2021-OB-02 | Four of 20 (20%) fatality casefiles reviewed for FY 2021 did not contain an initial and/or results letter to the next- of-kin. | During next year’s comprehensive FAME, case files will be reviewed to determine if this item was addressed. | Continued |
| FY 2022-OB-03 | FY 2021-OB-03 | In the case of whistleblower complaints referred from OSHA, MIOSHA maintains a practice of entering MIOSHA’s receipt date as the filing date rather than the date the complaint was filed with OSHA. | During next year’s comprehensive FAME case files will be reviewed to determine if this item was addressed. | Continued |

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

FY 2022 MIOSHA Follow-up FAME Report

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
| **FY 2021-#** | **Finding** | **Recommendation** | **State Plan Corrective Action** | **Completion Date** | **Current Status**  **and Date** |
| FY 2021-01 | MIOSHA did not adopt OSHA’s initial FY 2016 maximum and minimum penalty increase and subsequent annual penalty amount increases. | Ensure the MIOSHA penalty structure follows the most recent OSHA practices. | December 2022 marked six years since the first deadline passed for adoption and the Michigan State Plan has not yet completed the legislative changes to increase maximum penalties. Draft bill language has been written and submitted to MIOSHA’s legislative liaison for the 2023 legislative session. | Not Completed | Open  January 15, 2023 |
| FY 2021-02 | When a whistleblower complainant does not return a signed statement within a specified time, MIOSHA closes the complaint as withdrawn contrary to the OSHA Whistleblower Manual (WIM) | Ensure whistleblower complaints are not closed if the complainant does not return a signed statement in the allotted time frame. | MOSHA modified its 1-day non-cooperation letter to reflect that if a complainant fails to respond to the investigator’s requests for cooperation in the timeline provided this will cause the complaint to be dismissed due to lack of cooperation. If non-cooperation persists after the timeline provided, the determination letter to the complainant will state that the complaint is dismissed due to lack of cooperation and it will inform the complainant of their right to appeal. | September 30, 2022 | Awaiting Verification  September 30, 2022 |

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

FY 2022 MIOSHA Follow-up FAME Report

| SAMM Number | SAMM Name | State Plan Data | Further Review Level | Notes |
| --- | --- | --- | --- | --- |
| 1a | Average number of workdays to initiate complaint inspections (state formula) | 7.26 | 10 | The further review level is negotiated by OSHA and the State Plan. |
| 1b | Average number of workdays to initiate complaint inspections (federal formula) | 4.50 | N/A | This measure is for informational purposes only and is not a mandated measure. |
| 2a | Average number of workdays to initiate complaint investigations (state formula) | 3.85 | 8 | The further review level is negotiated by OSHA and the State Plan. |
| 2b | Average number of workdays to initiate complaint investigations (federal formula) | 3.52 | 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) | 1.25 | +/- 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) | 1.36 | +/- 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 | 3.14% | +/- 5% of  2.99% | 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 2.84 % to 3.14%. |
| 7a | Planned v. actual inspections (safety) | 2,657 | +/- 5% of  3,240 | 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 3,078 to 3,402 for safety. |
| 7b | Planned v. actual inspections (health) | 942 | +/- 5% of  868 | 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 824.60 to 911.40 for health. |
| 8 | Average current serious penalty in private sector - total (1 to greater than 250 workers) | $1,247.96 | +/- 25% of  $3,259.35 | The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from $2,444.51 to $4,074.19. |
|  | **a**. Average current serious penalty in private sector  (1-25 workers) | $537.00 | +/- 25% of  $2,145.46 | The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from $1,609.10 to $2,681,83. |
|  | **b**. Average current serious penalty in private sector  (26-100 workers**)** | $1,451.92 | +/- 25% of  $3,818.56 | The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from $2,863.92 to $4,773.20. |
|  | **c**. Average current serious penalty in private sector  (101-250 workers) | $1,869.14 | +/- 25% of  $5,469.60 | The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from $4,102.20 to $6,837.00. |
|  | **d**. Average current serious penalty in private sector  (greater than 250 workers) | $3,188.92 | +/- 25% of  $6,525.78 | The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from $5,044.34 to $8,407.23. |
| 9a | Percent in compliance (safety) | 29.51% | +/- 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) | 41.11% | +/- 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 | 98% | 100% | The further review level is fixed for all State Plans. |
| 11a | Average lapse time (safety) | 29.99 | +/- 20% of  54.28 | 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) | 65.11 | +/- 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 | 62.42% | +/- 15% of  69.97% | The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from 59.47% to 80.47%. |
| 13 | Percent of initial inspections with worker walk-around representation or worker interview | 99.44% | 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 | 2.02% | +/- 25% of  1.64% | The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from 1.23% to 2.05%. |

NOTE: The national averages in this report are three-year rolling averages. Unless otherwise noted, the data contained in this Appendix D are 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) from IMIS to OIS, SAMMs 14, 15, and 16 are not being reported for FY 2022.