**FY 2023 Comprehensive**

**Federal Annual Monitoring Evaluation (FAME) Report**

**Maine State Plan (MEOSH)**

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**Region I**

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1. **Executive Summary**

The purpose of this report is to assess the Maine State Plan’s (MEOSH’s) performance for Fiscal Year (FY) 2023 and its progress in resolving outstanding findings from previous Federal Annual Monitoring Evaluation (FAME) Reports.

FY 2023 was marked by many positive outcomes even though MEOSH had a relatively high number of staff turnovers; two of the four compliance offers were new, as well as all three of the State Plan’s 23(g) consultants. Nonetheless, MEOSH did well on most performance metrics and met most of the goals in its annual performance plan. As discussed in the previous FAME Report, FY 2023 was also notable for MEOSH achieving State Plan certification.

Additionally, in FY 2023, MEOSH met its inspection goal for the first time in many years. Realizing it would be starting the year with two new compliance officers, MEOSH reduced the goal for inspections from previous years. However, MEOSH exceeded the target even though the new inspectors faced a learning curve, which is a positive sign.

Having no findings or observations from the previous FAME Report, MEOSH focused on getting new staff up to speed. During the case file review, OSHA identified a few areas where minor adjustments are needed, and these matters were discussed with MEOSH during the closing conference. However, OSHA did not identify any trends or issues that warrant an observation or finding. Therefore, this report contains no observations and no findings.

**II. State Plan Background**

1. **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. In October 2020, the Maine Department of Labor, Bureau of Labor Standards submitted documentation attesting to the completion of all developmental steps. OSHA certified this completion on March 21, 2023.

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 2,440 employers (246 in state government and 2,194 in local government) and 82,438 workers (21,187 workers in state government and 61,251 workers in local government).**[[1]](#footnote-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 director and the program manager are the State Plan’s first-line supervisors. At full staffing, MEOSH has four compliance officers, three safety and one health. One of the safety compliance officers, the chief safety and health inspector, helps supervise the other three compliance officers and, along with the program manager, assists the Director of the Bureau with handling workplace retaliation complaints. The State Plan’s 23(g) consultation staff consists of three consultants, two safety and one health, and a compliance assistance specialist (CAS).

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 (the Board) 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 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. In FY 2023, the State Plan amended Chapter 3, requiring compliance officers to provide written abatement recommendations with each citation in order to assist employers with their abatement method.

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 2023 financial close-out forms, the State Plan’s initial federal funding award was $538,100. MEOSH contributed $715,841.16, which consisted of the 50 percent match of $538,100 plus an additional $177,741.16.Thus, in FY 2023, MEOSH’s total funding amount was $1,253,941.16. MEOSH typically exceeds the 50 percent match and did so in FY 2023 by contributing 57 percent of the total funding amount.

1. **New Issues**

None.

**III. Assessment of State Plan Progress and Performance**

1. **Data and Methodology**

OSHA has established a two-year cycle for the FAME process. FY 2023 was a comprehensive year, and as such, OSHA was required to conduct case file reviews.

**Enforcement On-site Evaluation**

From December 11 to 13, 2023, OSHA conducted an evaluation of MEOSH’s enforcement program. The entire review was conducted virtually; the State Plan provided access to the selected case files electronically, and interviews were held via Microsoft Teams. OSHA’s team consisted of four personnel who reviewed 26 safety and health inspection case files, most of which were opened and closed during FY 2023.

The selected population consisted of:

* Sixteen (16) programmed case files
* Five (5) complaint case files
* Four (4) referral case files
* One (1) fatality case file

OSHA interviewed the director, program manager, chief safety and health inspector, and the CAS. The purpose of these interviews was to discuss topics related to the operation of the State Plan, such as standard and directive adoptions, citation issuance, complaint processing, and abatement tracking.

**Workplace Anti-Retaliation Program**

The Assistant Regional Administrator held a virtual meeting on December 13, 2023, with the program manager and the chief safety and health inspector to review the State Plan’s anti-retaliation program. In FY 2023 and in FY2022, MEOSH did not have any workplace retaliation cases filed under Title 26 M.R.S.A. §570. Therefore, OSHA did not conduct a case file review.

**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)
* OSHA Information System (OIS) Reports (Scan Summary, Open Inspection, Pending Investigation, Pending Intake, Docketed Closed, Administratively Closed)
* State OSHA Annual Report (SOAR)
* State Plan Annual Performance Plan
* State Plan Grant Application
* Quarterly monitoring meetings between OSHA and the State Plan
* Full case file review

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 2023 SAMM Report and includes the FRL for each measure.

1. **Review of State Plan Performance**

**1. PROGRAM Administration**

a. Training

MEOSH adopted OSHA’s Mandatory Training Program for OSHA Compliance Personnel (TED 01-00-019). In Phase 1, the compliance officer must complete eight courses within the first three years of employment. Under Phase 2, a certain number of technical courses must be completed throughout the rest of the compliance officer’s career. By the end of FY 2023, only the chief safety and health compliance officer had taken all required courses in Phase I on schedule. Another compliance officer was nearing completion of the mandatory track, and the two newest compliance officers had completed at least half of the courses. The chief safety and health inspector, who is also a compliance officer and the State Plan’s anti-retaliation investigator, is following the guidelines for taking the required number of technical courses in Phase 2 and has completed all four courses recommended by OTI for anti-retaliation investigators. The program manager who supervises the anti-retaliation investigator has taken two of the four courses for anti-retaliation investigators and is scheduled to complete the other two courses in FY 2024. All consultants and the CAS have completed the required introductory on-site consultation course. To sum up, the State Plan is performing satisfactorily in terms of meeting the requirements of OSHA's training directive.

b. OSHA Information System

In FY 2023 and FY 2022, there were no issues identified with program staff properly utilizing OIS (e.g., entering data and information into OIS promptly, running reports to ensure proper monitoring of case files and program activities, etc.).

c. State Internal Evaluation Program Report

In FY 2023 and FY 2022, MEOSH evaluated citation issuance and developed lists of frequently used recommended abatement actions and justifications for general duty clause citations. Feedback from compliance staff indicated that these lists have helped reduce time spent on citation issuance.

d. Staffing

In FY 2022, MEOSH had only two compliance officers, both safety, on board who 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. In early FY 2023, MEOSH filled the two vacant compliance officer positions and continued for the remainder of the fiscal year fully staffed with four compliance officers, three safety and one health.

In 2022, MEOSH was fully staffed with three consultants, but in FY 2023, all three positions became vacant. One consultant left the State Plan in early FY 2023, and the other two consultants retired in January 2023. However, MEOSH filled all three consultant vacancies during FY 2023. In late FY 2022, the CAS transferred to enforcement to fill one of the two vacant compliance officer positions. A health consultant from Maine’s private sector consultation program filled the CAS vacancy in early FY 2023.

1. **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 4 pertains to gaining access to the worksite. OSHA did not identify any major issues in the five complaint files reviewed.

**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 was five work days. MEOSH’s average in FY 2023 was 3.50 work days, which was outside (below) the FRL. This outcome was positive.

Explanation: In FY 2023, MEOSH met the FRL for SAMM 1a.

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

Discussion of State Plan Data and FRL: The negotiated FRL was one work day. MEOSH did not have any data to report for this measure in FY 2023, which was acceptable.

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 2023, MEOSH did not handle any complaint investigations.

**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 was fixed for all State Plans. In FY 2023, MEOSH did not have any data to report for this measure, which was acceptable.

Explanation: The State Plan did not have any complaints or referrals pertaining to imminent danger in FY 2023.

**SAMM 4 - Number of denials where entry not obtained**

Discussion of State Plan Data and FRL: The FRL of zero was fixed for all State Plans. In FY 2023, MEOSH’s result was zero, which was acceptable.

Explanation: MEOSH did not have any denials of entry in FY 2023.

b. Fatalities

MEOSH investigated one work-related fatality in June 2023. The fatality was initially investigated by OSHA. However, OSHA eventually referred this case to MEOSH some days after it was determined it was under the State Plan’s jurisdiction. OSHA did not identify any major issues with this inspection.

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

Discussion of State Plan Data and FRL: The FRL of 100 percent was fixed for all State Plans. In FY 2023, MEOSH’s result was 100 percent, which was a positive outcome.

Explanation: In FY 2023, the State Plan met the FRL.

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 were based on

numbers negotiated by OSHA and the State Plan through the grant application. The FRL range

was from 42.75 to 47.25 for safety inspections and from 14.25 to 15.75 for health inspections; MEOSH conducted 73 safety inspections and 28 health inspections. The State Plan’s totals for both safety and health inspections were far outside (above) the FRL ranges and were positive outcomes.

Explanation: Since FY 2017, MEOSH had consistently projected annual goals of 100 safety inspections and 25 health inspections. However, due to many staff departures that have occurred over the years, certain compliance officers taking extended periods of absence, and the pandemic, MEOSH never achieved those goals.**[[2]](#footnote-2)** Therefore, in FY 2023, the State Plan lowered its goals for inspections to 45 for safety and 15 for health. In FY 2023, MEOSH was fully staffed with four compliance officers for the entire year. Even though two were relatively new and faced a learning curve, the State Plan easily achieved its revised goals for safety and health inspections.

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, prisons, 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 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 compliance officer 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 compliance officer must inspect those operations.

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

Discussion of State Plan Data and FRL: The FRL was based on a three-year national average. MEOSH’s FY 2023 average of 3.01 was outside (above) the FRL range of 1.40 to 2.10 for serious, willful, repeated, unclassified (SWRU) violations. For OTS violations, the State Plan’s average of 2.95 was outside (above) the FRL range of 0.71 to 1.07. Both results were positive.

Explanation: In FY 2023, MEOSH had a high average for both SWRU and OTS violations, which indicates that MEOSH is targeting the most hazardous worksites for inspections and that compliance officers are adept at identifying and classifying SWRU, as well as OTS, violations.

**SAMM 9 – Percent in compliance**

Discussion of State Plan Data and FRL: The FRL was based on a three-year national average. In FY 2023, the FRL range was from 25.38 percent to 38.08 percent for safety inspections and from 35.06 percent to 52.58 percent for health inspections. MEOSH’s in-compliance rate of 7.14 percent for safety inspections was outside (below) the FRL, and its in-compliance rate of 14.29 percent for health inspections was also outside (below) the FRL range. Both outcomes were positive.

Explanation: An in-compliance rate is the percentage of inspections that have been closed with no violations. Low in-compliance rates are another indication that MEOSH is targeting the most hazardous worksites and that compliance officers are proficient at identifying safety and health violations.

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 $10,000 for willful violations; if the willful violation is repeated, the employer must receive a fine of not more than $20,000. Serious and 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.**[[3]](#footnote-3)** Criminal penalties can be issued to state and local government employers who willfully violate any standard, rule, or order.

**SAMM 11- Average lapse time**

Discussion of State Plan Data and FRL: The FRL was based on a three-year national average. In FY 2023, the FRL range was from 44.18 to 66.28 work days for safety inspections and from 55.78 to 83.66 work days for health inspections. MEOSH’s averages of 37.12 work days for safety inspections and 22.29 work days for health inspections were outside (below) the FRLs. These were positive outcomes.

Explanation: Lapse time is the number of work days from the opening conference date to the earliest issuance date. According to Chapter 5 of the MEOSH FOM, the State Plan must generally issue citations within six months of the occurrence of any violations.

e. Abatement

During the FY 2023 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 inspector is required to consult with a reasonable number of workers concerning matters of safety and health in the workplace.

**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 was fixed for all State Plans. In FY 2023, MEOSH met the FRL of 100 percent for SAMM 13.

Explanation: MEOSH performed satisfactorily on this measure.

1. **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. All interested parties are allowed to participate in the hearing and introduce evidence. The Board shall affirm, modify, or vacate the citation or proposed penalty or direct other appropriate relief. Any party adversely affected by a final order or determination by the Board has the right to appeal and obtain judicial review by the Superior Court.

Employers may also request a penalty discussion to reduce the penalty amount. Before a penalty discussion is held, the establishment must certify 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 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 penalties by 90 percent if the employer certifies abatement.

1. Formal Review of Citations

The Board is an independent authority that reviews contested cases. In FY 2023 and FY 2022,

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, Chapter 375).](https://legislature.maine.gov/statutes/5/title5ch375sec0.html)

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 more stringent than the federal are deemed advisable. In the following instances, the Board has adopted standards 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 A summarizes the status of MEOSH’s standards adoptions and is followed by a brief discussion of each standard. Overall, MEOSH performed satisfactorily in FY 2023 and FY 2022 regarding standard adoptions. Although the State Plan exceeded some deadlines, OSHA is not overly concerned because MEOSH has a strong record of striving for timeliness.

**Table A**

**Status of FY 2022 and FY 2023 Federal Standards Where Adoption Was Required**

| **Standard** | **Response Due Date** | **State Plan Response Date** | **Intent to Adopt** | **Adopt Identical** | **Adoption Due Date** | **State Plan Adoption Date** |
| --- | --- | --- | --- | --- | --- | --- |
| COVID-19 Vaccination and Testing; Emergency Temporary Standard  29 CFR 1910, 15, 17, 18, 26, 28  (11/5/2021) | 11/20/2021 | N/A | N/A | N/A | 12/5/2021 | N/A |
| Updated COVID-19 Vaccination and Testing; Emergency Temporary Standard  29 CFR 1910  (11/5/2021) | 1/7/2022 | N/A | N/A | N/A | 1/24/2022 | N/A |
| Final Rule on the Department of Labor Civil Penalties for Inflation Adjustment Act – Annual Adjustment for 2022  29 CFR 1903  (1/15/2022) | 3/15/2022 | 1/26/2022 | No | N/A | 7/15/2022 | N/A |
| Occupational Exposure to COVID-19; Healthcare Emergency Temporary Standard: COVID-19 Log and Reporting Provisions  29 CFR 1910.502(q)(2)(ii), (q)(3)(ii)-(iv) and (r)  (2/14/2022) | 4/14/2022 | 2/15/2022 | No | N/A | 8/14/2022 | N/A |
| Final Rule on the Department of Labor Civil Penalties for Inflation Adjustment Act – Annual Adjustment for 2023  29 CFR 1903  (1/15/2023) | 3/15/2023 | 1/13/2023 | No | N/A | 7/15/2023 | N/A |
| Final Rule to Improve Tracking of Workplace Injuries and Illnesses  29 CFR 1904  (7/21/2023) | 9/21/2023 | 10/12/2023 | Yes | No | 1/21/2024 |  |

**COVID-19 Vaccination and Testing; Emergency Temporary Standard 29 CFR 1910, 15, 17, 18, 26, 28 (11/5/2021); Updated COVID-19 Vaccination and Testing; Emergency Temporary Standard 29 CFR 1910 (11/5/2021):** This rule was withdrawn.

**Occupational Exposure to COVID-19; Healthcare Emergency Temporary Standard: COVID-19 Log and Reporting Provisions 29 CFR 1910.502(q)(2)(ii), (q)(3)(ii)-(iv) and (r) (2/14/2022):** This rule requires employers required to keep OSHA injury and illness records under 29 CFR 1904 to continue to record work-related confirmed cases of COVID-19 on their OSHA Forms 300, 300A, and 301 or the equivalent forms. This rule is part of the Healthcare ETS. MEOSH adopted the ETS on November 15, 2021; although the ETS has expired at the federal level, it is still enforced in the State of Maine. Therefore, MEOSH is not required to adopt this rule because Maine’s Healthcare ETS remains in effect.

**Final Rules on the Department of Labor Civil Penalties for Inflation Adjustment Act – Annual Adjustment for 2022 and 2023 29 CFR 1903 (1/15/2022) (1/15/2023):** As a State and Local Government State Plan, MEOSH is not required to adopt rules pertaining to the annual adjustment of civil penalties and did not do so in FY 2023 and in FY 2022.

**Final Rule to Improve Tracking of Workplace Injuries and Illnesses 29 CFR 1904 (7/21/2023):** Under this rule, establishments with 100 or more workers in the highest-hazard industries must electronically submit information from their Form 300 Log and Form 301 Incident Report; establishments with 20 or more workers in certain high-hazard industries and establishments with 250 or more workers in industries routinely required to keep injury and illness records must continue to electronically submit information from their Form 300A Annual Summary; and establishments are required to include their legal company name in their submission.

MEOSH was nearly one month late in responding to this rule, and did not begin rulemaking until after the January 21, 2024, deadline for adoption. In past years, MEOSH has commenced rulemaking in a timely manner. Therefore, OSHA is not overly concerned with the State Plan’s delay, which appears to be a one-time occurrence. Also, adoption is scheduled to occur on June 5, 2024, during the Board’s next meeting.

b. Federal Program Change Adoption

State Plans must respond to FPCs with their intention to adopt identically, differently, or not adopt within 60 days of their effective date. State Plan adoption, either identical or different, should be accomplished within six months. Tables B through E show the status of MEOSH’s FPC adoptions in FY 2023 and FY 2022.

**Table B**

**Status of FY 2022 and FY 2023 FPCs Where Adoption Was Required**

| **FPC Directive/Subject** | **Response Due Date** | **State Plan Response Date** | **Intent to Adopt** | **Adopt Identical** | **Adoption Due Date** | **State Plan Adoption Date** |
| --- | --- | --- | --- | --- | --- | --- |
| Revised Combustible Dust National Emphasis Program  CPL 03-00-008  (1/30/2023) | 3/31/2023 | 1/31/2023 | Yes | Yes | 7/30/2023 | 1/31/2023 |
| National Emphasis Program on Warehousing and Distribution Center Operations  CPL 03-00-026  (7/13/2023) | 9/11/2023 | 8/29/2023 | Yes | Yes | 1/9/2024 | 8/29/2023 |

MEOSH responded to and adopted both FPCs timely.

**Table C**

**Status of FY 2022 and FY 2023 FPCs Where Equivalency Was Required**

| **FPC Directive/Subject** | **Response Due Date** | **State Plan Response Date** | **Intent to Adopt** | **Adopt Identical** | **Adoption Due Date** | **State Plan Adoption Date** |
| --- | --- | --- | --- | --- | --- | --- |
| Compliance Directive for Cranes and Derricks in Construction Standard  CPL 02-01-063  (2/11/2022) | 7/3/2022 | 6/27/2022 | Yes | Yes | 11/3/2022 | 11/3/2022 |
| OSHA Whistleblower Investigations Manual  CPL 02-03-011  (4/29/2022) | 10/11/2022 | 10/11/2022 | Yes | Yes | 2/11/2023 | 10/11/2022 |
| Severe Violator Enforcement Program (SVEP)  CPL 02-00-169  (9/15/2022) | 11/15/2022 | 11/10/2022 | Yes | Yes | 3/15/2023 | 11/15/2022 |
| Site-Specific Targeting (SST)  CPL 02-01-064  (2/7/2023) | 4/8/2023 | 3/3/2023 | Yes | No | 8/6/2023 | 3/3/2023 |
| National Emphasis Program – Falls  CPL 03-00-025  (5/1/2023) | 6/30/2023 | 6/27/2023 | Yes | Yes | 10/28/2023 | 6/30/2023 |
| Consultation Policies and Procedures Manual  CSP 02-00-005  (9/29/2023) | 11/28/2023 | 10/24/2023 | Yes | No | 3/27/2024 | 12/6/2023 |

MEOSH responded to and was timely in adopting all FPCs where equivalency was required. The State Plan 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’s Consultation Policies and Procedures Manual reflects differences between the State Plan and OSHA; therefore, MEOSH did not adopt this FPC identically.

**Table D**

**Status of FY 2022 and FY 2023 FPCs Where Adoption Was Encouraged**

| **FPC Directive/Subject** | **Response Due Date** | **State Plan Response Date** | **Intent to Adopt** | **Adopt Identical** | **State Plan Adoption Date** |
| --- | --- | --- | --- | --- | --- |
| OSHA’s Use of Small Unmanned Aircraft Systems  CPL 02-01-169  (12/22/2021) | 2/22/2022 | 1/3/2022 | No | N/A | N/A |
| National Emphasis Program – Outdoor and Indoor Heat-Related Hazards  CPL 03-00-024  (4/8/2022) | 6/8/2022 | 6/8/2022 | Yes | Yes | 8/1/2022 |

MEOSH responded to both FPCs timely. The State Plan did not adopt OSHA’s Use of Small Unmanned Aircraft Systems but adopted the National Emphasis Program – Outdoor and Indoor Heat-Related Hazards identically.

**Table E**

**FY 2022 and FY 2023 State-Initiated Changes**

| **State-Initiated Change** | **Adoption Date** | **Effective Date** |
| --- | --- | --- |
| MEOSH FOM, Chapter 3, Section VII, L. Abatement Assistance | 6/1/2023 | 7/1/2023 |

In FY 2023, MEOSH initiated one change to the MEOSH FOM pertaining to abatement assistance. With this change, compliance officers must provide written abatement recommendations with each citation. OSHA approved this state-initiated change on June 1, 2023.

**5. Variances**

MEOSH did not have any variances in FY 2023 or FY 2022.

**6. STATE AND LOCAL government WORKER Program**

MEOSH is a State and Local Government Only State Plan.

**7. WHISTLEBLOWER Program**

On June 1, 2018, MEOSH adopted, where applicable to state and local government workers, the regulations at [29 CFR part 1977](https://www.ecfr.gov/current/title-29/part-1977), establishing the policies and procedures for addressing discrimination against workers.

Title 26, Chapter 6, Section 570 of the M.R.S.A. (Maine’s equivalent of Section 11(c) of the OSH Act of 1970) provides that a person cannot discharge or in any manner discriminate against a worker because that worker has filed a complaint alleging an occupational safety or health hazard, has testified or is about to testify in any proceeding relating to worker safety and health, or has exercised any right under Chapter 6 of Title 26.

Section 570 further provides that a worker who believes that they have been discharged or otherwise discriminated against in violation of this section may, within 30 days after the alleged violation occurs, file a complaint with the Director of the Bureau, alleging discrimination. If, upon investigation, the director determines that the provisions of this chapter have been violated, the director shall bring an action in Superior Court for all appropriate relief, including rehiring or reinstatement of the worker to their former position with back pay. Within 90 days of the receipt of a complaint filed under this section, the director shall notify the complainant of the director's determination.

A second option for state and local government workers in Maine 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. Information pertaining to the workplace retaliation program is accessible on [MEOSH’s website](https://www.maine.gov/labor/workplace_safety/publicsector.shtml) where a complainant can file complaints electronically.

**8. Complaint About State Program Administration (CASPA)**

MEOSH did not have any CASPAs in FY 2023 or FY 2022.

**9. Voluntary Compliance Program**

MEOSH conducts educational programs for state and local government workers specifically designed to meet the regulatory requirements and needs of the state or local government employer. MEOSH administers the Safety and Health Award for Public Employers (SHAPE) Program. SHAPE is like OSHA’s Safety and Health Achievement Recognition Program (SHARP), which is administered by state 21(d) on-site consultation programs. OSHA confirmed MEOSH’s written policies and procedures for SHAPE are adequate. 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. In FY 2023, MEOSH had 88 SHAPE participants, which is five more than the total number of SHAPE participants in FY 2022. MEOSH, in conjunction with the 21(d) On-site Consultation Project, periodically hosts occupational safety and health training meetings for SHARP and SHAPE companies.

**10. STATE AND LOCAL GOVERNMENT 23(g) On-site CONSULTATION PROGRAM**

MEOSH has adopted, where applicable, [29 CFR Part 1908](https://www.ecfr.gov/current/title-29/part-1908), establishing requirements for a state and local government consultation program. The MEOSH Consultation Program generally follows OSHA's Consultation Policies and Procedures Manual, CSP 02-00-005.

In FY 2023 and FY 2022, MEOSH’s 23(g) On-site Consultation Programperformed satisfactorily. Based on data from the OIS MARC Report, the program opened 185 visits in FY 2023, which was 74 percent of the goal of 250 visits. In FY 2022, MEOSH surpassed the goal of 250 visits by conducting 273 visits (109 percent). In 2023, MEOSH's entire 23(g) consultation staff consisted of three new consultants, which made it challenging for the State Plan to meet the target for visits.

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 2023 and FY 2022. MEOSH’s percent in FY 2023 was 91.34; and in FY 2023, it was 97.77. However, both results are acceptable. In FY 2023, MEOSH had a new slate of consultants, yet its result was not significantly lower than the reference; and in FY 2022, the State Plan missed the reference by only a few percentage points.

In FY 2023 and FY 2022, MEOSH performed satisfactorily on MARC 4D, which calculates the percent of serious hazards corrected in original time or on-site. In FY 2023, MEOSH’s percentage was 80.55; and in FY 2022, its percentage was 89.87. Both results were outside (above) the reference/standard of 65 percent and were positive.

| **FY 2023-#** | **Finding** | **Recommendation** | **FY 2022-# or**  **FY 2022-OB-#** |
| --- | --- | --- | --- |
|  | None. |  |  |

| **Observation #**  **FY 2023-OB-#** | **Observation#**  **FY 2022-OB-# *or* FY 2022-#** | **Observation** | **Federal Monitoring Plan** | **Current Status** |
| --- | --- | --- | --- | --- |
|  |  | None. |  |  |

| **FY 2022-#** | **Finding** | **Recommendation** | **State Plan Corrective Action** | **Completion Date (if Applicable)** | **Current Status**  **(and Date if Item is**  **Not Completed)** |
| --- | --- | --- | --- | --- | --- |
|  | None. |  |  |  |  |

| State Plan: SAMM Number | State Plan: SAMM Name | State Plan: Data | FY 2023 Further Review Level | FY 2023 Notes |
| --- | --- | --- | --- | --- |
| 1a | Average number of work days to initiate complaint inspections (state formula) | 3.50 | 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) | 1.70 | 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) | N/A | 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) | N/A | 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% | 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) | 3.01 | +/- 20% of 1.75 | The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from 1.40 to 2.10 for SWRU. |
| 5b | Average number of violations per inspection with violations by violation type (other) | 2.95 | +/- 20% of 0.89 | The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from 0.71 to 1.07 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) | 73 | +/- 5% of  45 | 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 42.75 to 47.25 for safety. |
| 7b | Planned v. actual inspections (health) | 28 | +/- 5% of  15 | 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 14.25 to 15.75 for health. |
| 8 | Average current serious penalty in private sector - total (1 to greater than 250 workers) | N/A | +/- 25% of  $3,625.21 | 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  $2,348.03 | 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  $4,167.28 | 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  $6,052.04 | 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  $7,331.41 | 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) | 7.14% | +/- 20% of  31.73% | The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from 25.38% to 38.08% for safety. |
| 9b | Percent in compliance (health) | 14.29% | +/- 20% of  43.82% | The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from 35.06% to 52.58% 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) | 37.12 | +/- 20% of  55.23 | The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from 44.18 to 66.28 for safety. |
| 11b | Average lapse time (health) | 22.29 | +/- 20% of  69.72 | The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from 55.78 to 83.66 for health. |
| 12 | Percent penalty retained | N/A | +/- 15% of  71.84% | 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 2023 due to the transition of 11(c) data from IMIS to OIS. |
| 15 | Percent of 11(c) complaints that are meritorious | N/A\* | N/A\* | This measure is not being reported for FY 2023 due to the transition of 11(c) data from IMIS to OIS. |
| 16 | Average number of calendar days to complete an 11(c) investigation | N/A\* | N/A\* | This measure is not being reported for FY 2023 due to the transition of 11(c) data from IMIS to OIS. |
| 17 | Percent of enforcement presence | N/A | +/- 25% of  0.93% | 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 SAMM Report in OIS and the State Plan WebIMIS report run on November 14, 2023, as part of OSHA’s official end-of-year data run.

1. Source: Preliminary 2023 data from the [Bureau of Labor Statistics' Quarterly Census of Employment and Wages](https://data.bls.gov/PDQWeb/en) [↑](#footnote-ref-1)
2. The closest MEOSH ever came to achieving the goal of 125 inspections was in FY 2017 and FY 2018 when it conducted 107 inspections in each of those years. FY 2021 was the State Plan’s lowest point in terms of inspections with only 17 conducted the entire fiscal year. However, due to the pandemic, MEOSH curtailed programmed inspections during that period. [↑](#footnote-ref-2)
3. [MEOSH's penalties (Title 26, Chapter 3, Section 46)](https://legislature.maine.gov/legis/statutes/26/title26sec46.html) [↑](#footnote-ref-3)