# FY 2024 Follow-up Federal Annual Monitoring Evaluation (FAME) Report

**Massachusetts Department of Labor Standards**

**Workplace Safety and Health Program**

**(WSHP)**



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## Executive Summary

The primary purpose of this report is to assess the Massachusetts Workplace Safety and Health Program’s (WSHP’s) progress in Fiscal Year (FY) 2024 in resolving outstanding findings from the previous FY 2023 Comprehensive Federal Annual Monitoring Evaluation (FAME) Report.

In FY 2024, WSHP was still getting used to OSHA’s web-based system that stores and manages activity data. Field staff continued to take mandatory training courses, and the State Plan made significant advancements toward the completion of its developmental program. For example, WSHP successfully navigated several legislative changes through the state's regulatory process and made progress in revising two chapters of its Field Operations Manual (FOM). WSHP also did well on most performance measures, met goals for inspections and consultation visits, and stayed on track with its long-term objectives.

Having no findings in the FY 2023 Comprehensive FAME Report, the State Plan concentrated on the three observations contained in that report, all of which pertained to case file documentation. During staff meetings, WSHP conducted training on the FOM to help resolve these issues. Nonetheless, these observations have been continued in this report, because a case file review is needed to fully evaluate performance in relation to these issues. No new findings or observations were made in this report.

## State Plan Background

In 2015, Massachusetts passed legislation requiring state agencies to comply with OSHA standards. This legislation was updated on March 9, 2018, to include all state and local government employers and became effective February 1, 2019. Under the Occupational Safety and Health (OSH) Act of 1970, state and local government workers are specifically excluded from federal coverage. These state and local government workers may receive formal OSHA coverage only through an OSHA-approved State Plan.

In December 2020, the state began working with OSHA to draft a State Plan applicable only to state and local government employment. Final revisions to the Plan were completed in June 2022, and on August 18, 2022, OSHA granted Massachusetts initial approval of its developmental State and Local Government State Plan. A State and Local Government State Plan, such as WSHP, may receive initial approval even though, upon submission, it does not fully meet the criteria set forth in 29 CFR 1956.10 and 1956.11 if it agrees to meet the criteria within a three-year period (see 29 CFR 1956.2(b)). The State Plan’s developmental schedule is discussed in detail later in this report.

The Executive Office of Labor and Workforce Development, Department of Labor Standards implements Massachusetts’ State Plan through the WSHP. The WSHP Director is the State Plan designee. Staff are in the following offices throughout Massachusetts: Boston, Lawrence, Taunton, Springfield, and Westboro.

**Coverage**

According to the State Plan’s FY 2025 grant application, WSHP covered approximately 126,976 state government workers and 287,000 local government workers in FY 2024. The State Plan also covered 2,217 state government workplaces and 4,376 local government workplaces.**[[1]](#footnote-2)** Although WSHP’s coverage includes volunteers under the direction of a public employer or other public corporation or political subdivision, the State Plan’s coverage does not include students (except when employed or vocational/technical students when performing field work) or those incarcerated in public institutions. Private sector and federal government workers in the state remain under OSHA jurisdiction.

**State Plan Standards and Federal Program Changes (FPCs)**

When promulgating standards, WSHP follows its State Administrative Procedure Act and 950 CMR 20.00. The State Plan, under 454 CMR 25.00, incorporated the standards set forth under the OSH Act, including the General Duty Clause and OSHA’s occupational safety and health standards. WSHP will continue to adopt OSHA’s standards when promulgated to provide timely and effective worker protection. WSHP consults the governor’s advisory board (consisting of members from state agencies, municipal organizations, and labor unions) before promulgating occupational safety and health regulations and adopting regulations promulgated by OSHA.

**Enforcement**

In Massachusetts, 454 CMR 25.00 requires employers to comply with OSHA regulations and gives WSHP authority to enforce OSHA regulations at state and local government workplaces. Enforcement activities are conducted by industrial safety and health inspectors (ISHIs). When violations are identified, a Civil Citation and Civil Penalty is issued. However, a Civil Citation and Civil Penalty does not necessarily include a monetary fine. In FY 2024, WSHP met the goal for inspections, conducting 50 more inspections than the 139 projected.

The Massachusetts FOM (MA FOM) is based on OSHA’s FOM but reflects differences between the State Plan and OSHA. OSHA has reviewed and approved most chapters of the MA FOM, but some modifications are still in progress. For example, in FY 2024, WSHP submitted proposed modifications to Chapter 6 (Penalties and Debt Collection) and procedures for granting abatement extensions in Chapter 7 (Post-Citation Procedures and Abatement Verification).

**Consultation**

WSHP also uses the title “ISHI” for safety and health staff who conduct consultation activities. When hazards are identified, a Consultation Report is issued. Employers are required to provide documentation that corrective action was completed. ISHIs who conduct consultation activities do not share visit information with the enforcement side of WSHP. In FY 2024, WSHP met the goal for consultation visits, conducting 29 more visits than the 50 visits projected.

**Retaliation Protections**

WSHP’s Anti-Retaliation Program is modeled after OSHA’s Whistleblower Protection Program. The State Plan’s anti-retaliation provisions are contained in 454 CMR 25.07 and 29 CFR 1977. WSHP has adopted OSHA’s Whistleblower Investigations Manual. Massachusetts also has a Whistleblower’s Protection Statute, M.G.L. c. 149, § 185, that prohibits retaliation through a right of private civil action.

**Voluntary and Cooperative Programs**

WSHP provides free, voluntary occupational safety and health training and consultation services for state and local government workplaces.The State Plan administers the Safety and Health Award for Public Employers (SHAPE) Program to recognize state and local government employers with an excellent safety and health program. This program is similar to the Safety and Health Achievement Recognition Program administered by 21(d) consultation programs for private sector employers. Although there were no SHAPE participants at the end of FY 2024, WSHP's long-term objective is to recruit at least one employer by the end of FY 2027.

**Staffing**

At the end of FY 2024, the State Plan had 17 personnel. This total included four supervisors (one program supervisor in charge of all staff and three field supervisors), nine enforcement ISHIs (seven safety and two health) and four 23(g) consultation ISHIs (two safety and two health). One of the field supervisors and two safety ISHIs (equaling 1.5 full-time equivalents) allocate a portion of their time to whistleblower protection investigations.

In May 2024, OSHA announced a reduction in FY 2024 State Plan grant awards due to federal budget issues. WSHP's target for total staffing, which must be met by the conclusion of the three-year developmental period, was lowered from 20 to 19 employees in order to make up for this funding shortfall. Thus, at full staffing, WSHP will have four supervisors, 11 enforcement ISHIs, and four consultation ISHIs.

Staff are assigned across the state and do not have designated territories. ISHIs are not desginated as either “safety” or “health;” rather they are considered qualified to conduct inspections in both fields. Compliance assistance activity is assigned to either enforcement or consultation staff, depending on customer needs and geographic considerations.

**Budget**

Based on financial close-out forms, WSHP’s total funding in FY 2024 was $2,830,973. OSHA contributed $1,365,997. The State Plan matched this amount and contributed an additional $98,979 for a total State Plan contribution of $1,464,976. Thus, WSHP’s contribution amounted to 52 percent of the total funding amount.

**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 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)

There are no new or continued findings in this report.

#### Observations

There are no new observations in this report. Appendix B describes the three observations subject to continued monitoring and the related federal monitoring plans.

**Continued FY 2023 Observations**

**Observation FY 2024-01 (formerly Observation FY 2023-OB-01):** In FY 2023, in 12 of 17 (71 percent) case files that had violations cited, the violation worksheet was not included in the case file or did not adequately describe all relevant facts pertaining to the violation, as required in the MA FOM, Chapter 5.

**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 2025 comprehensive FAME and will be continued.

**Observation FY 2024-02 (formerly Observation FY 2023-OB-02):** In FY 2023, in 14 of 23 (61 percent) inspection case files, WSHP did not properly document worker interviews, as required in Chapters 3, 4, and 5 of the MA FOM.

**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 2025 comprehensive FAME and will be continued.

**Observation FY 2024-03 (formerly Observation FY 2023-OB-03):** In FY 2023, union participation in the inspection was not sufficiently documented in 11 (52 percent) of 21 case files, as required by the MA FOM, Chapter 5.

**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 2025 comprehensive FAME and will be continued.

### State Activity Mandated Measures 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 2024 SAMM Report and includes the FRL for each measure.

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

**SAMM 1a – Average number of workdays to initiate complaint inspections (state formula)**

Discussion of State Plan Data and FRL: The negotiated FRL for this measure was five workdays. WSHP’s average in FY 2024 was 6.29 workdays, which was just outside (above) the FRL.

Explanation: WSHP’s average for SAMM 1a was above the FRL, but it was not high enough to warrant concern since WSHP continued to face a learning curve in its second full year as an OSHA-approved State Plan.

**SAMM 2a** – **Average number of workdays to initiate complaint investigations (state formula)**

Discussion of State Plan Data and FRL: The negotiated FRL was one workday. WSHP’s result of 2.73 workdays was outside (above) the FRL.

Explanation: SAMM 2a pertains only to complaints that were handled by investigation (i.e., “inquiry”) and had no related inspection (MA FOM, Chapter 9). In FY 2024, WSHP’s managers were still becoming familiar with the inquiry process and, in some instances, took more than one workday to initiate the investigation. Although WSHP’s average was above the FRL, it was not high enough to 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. WSHP’s FY 2024 average of 3.11 was outside (above) the FRL range of 1.39 to 2.08 for serious, willful, repeat, or unclassified (SWRU) violations. For other-than-serious (OTS) violations, the State Plan’s average of 0.50 was outside (below) the FRL range of 0.75 to 1.12.

Explanation: OSHA would be concerned if the State Plan had a high average for OTS violations and a correspondingly low average for SWRU violations; this could indicate that WSHP was not targeting high-hazard employers and/or tended to classify some serious violations as OTS violations. For WSHP, this was not the case. In FY 2024, the State Plan’s high average for SWRU violations indicates that the most hazardous industries were targeted and that ISHIs are adept at identifying violations. Therefore, OSHA is not concerned that WSHP’s result for OTS violations was outside (below) the FRL range.

**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 2024, WSHP’s result of 50 percent was outside (below) the FRL because one of two work-related fatalities was not investigated in one workday.

Explanation: In FY 2024, the fatality that was not investigated in one workday involved a worker who was struck by a vehicle while picking up debris along a highway. The accident happened on a Saturday night, and later that night, law enforcement processed the scene and cleared the highway for regular use. The next day (Sunday), the employer informed WSHP of the fatality by email, but the message was not read until Monday morning. Since the scene was cleared several hours before WSHP learned of the fatality, the State Plan directed staff to other inspections that were deemed to be more urgent. Thus, OSHA understands why the fatality investigation did not begin in one workday. Due to the specific circumstances of this case, OSHA has decided further assessment of the State Plan’s response time to fatalities is unnecessary at this time.

**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 2024, WSHP’s result of 99.47 percent was outside (below) the FRL of 100 percent.

Explanation: In FY 2024, WSHP conducted a complaint inspection at a volunteer fire company when there were no volunteer firefighters available to take part in the walk-around and interviews. This was because the volunteers were working at their day jobs when the inspection was conducted. The State Plan’s outcome is not overly concerning because it was a unique situation involving only one of the 189 inspections conducted by WSHP in 2024.

### D. Status of Developmental Schedule

As noted earlier, WSHP was approved as a developmental State and Local Government Plan under the OSH Act of 1970 and OSHA regulations. This means although some of the criteria set forth in 29 CFR 1956.10 and 1956.11 were not fully met at the time the approval was granted, August 18, 2022, the State Plan received initial approval with the condition that they meet these criteria or “developmental steps” within three years. As such, a developmental schedule has been established for WSHP and must be completed by August 18, 2025.

The table below summarizes WSHP’s developmental schedule and notes progress in completing each step. Currently, OSHA does not foresee any obstacles to WSHP completing all developmental steps by the end of the three-year period (except for delays caused by OSHA’s review of the MA FOM).

|  |  |  |
| --- | --- | --- |
| **Step** | **Developmental Requirement** | **Status** |
| 1 | Amend 454 CMR 25.02 to clarify its rulemaking process with respect to OSHA standards.  | Completed 8/16/2024 |
| 2 | Ensure that all federal policies designated as federal program changes that are currently in effect, including all federal directives designated as “adoption required” or “equivalency required” by OSHA, are adopted or have an at least as effective alternative. | Completed 11/9/2023 |
| 3 | Amend 454 CMR 25.05 to modify variance requirements for consistency with the OSH Act.  | Completed 8/16/2024 |
| 4 | Adopt 29 CFR 1905, OSHA’s regulation governing variances. | Completed 8/16/2024 |
| 5 | Amend 454 CMR 25.05 to accurately reflect Massachusetts’ policy that citations will be issued withing 180 days of the initiation (rather than completion) of the inspection.  | Completed 8/16/2024 |
| 6 | Amend 454 CMR 25 Regulatory Authority to add a reference to authority in M.G.L. 149, s. 9, which provides the employer’s right to contest citations.  | Completed 8/16/2024 |
| 7 | Adopt 29 CFR 1908, OSHA’s regulation governing consultation, as well as the Consultation Policies and Procedures Manual and any relevant directives, during the developmental period.  | Completed 8/16/2024 |
| 8 | Complete a Massachusetts Technical Manual that is at least as effective as OSHA’s Technical Manual.  | Completed 11/4/2022 |
| 9 | Conduct hiring to achieve staffing goals outlined in the Narrative and the three-year staffing plan.  | Incomplete: WSHP has met staffing goals for consultation and the Anti-Retaliation Program. WSHP needs to hire two enforcement ISHIs to meet this requirement. |
| 10 | Reorganize staffing pattern to ensure separation of consultation and enforcement personnel, consistent with 29 CFR 1908. This will include hiring three ISHIs who will perform consultation services and be part of a separate division under separate supervision.  | Completed: Enforcement and consultation staff were separated as of 08/18/2022. The staffing level for consultation was complete as of 12/05/2022. |
| 11 | Adopt the Mandatory Training Program for OSHA Compliance Personnel Directive (TED 01-00-019). Ensure currently employed personnel and prospectively hires receive training consistent with this directive.  | Completed: WSHP adopted OSHA’s training directive as of 10/11/2022.WSHP’s compliance with the OSHA’s training directive has been satisfactory.  |
| 12 | Adopt the Mandatory Training Program for the OSHA Whistleblower Investigators Directive (TED 01-00-020). Ensure that workers who will perform whistleblower investigations are trained consistent with this directive.  | Completed 10/11/2022 |
| 13 | Complete the transition to OIS.  | Completed: WSHP began using OIS as of 10/4/2022.  |
| 14 | Develop a five-year strategic plan and annual performance plan.  | Completed 8/18/2022 |
| 15 | Once OSHA’s review of the draft MA FOM is complete, WSHP will make any updates, as necessary, to ensure that the enforcement policies in its FOM are at least as effective as those in OSHA’s FOM.  | Incomplete: In November 2022, OSHA approved the MA FOM; however, in June 2023, OSHA requested revisions. In November 2023, OSHA approved the second MA FOM. Further clarifications were identified, and WSHP decided to amend some sections of Chapter 6 (Penalties and Debt Collection) and Chapter 7 (Post Citation Procedures and Abatement Verification). WSHP submitted revisions to these two chapters to OSHA in October 2024. |

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

FY 2024 WSHP Follow-up FAME Report

|  |  |  |  |
| --- | --- | --- | --- |
| **FY 2024-#** | **Finding** | **Recommendation** | **FY 2023-# or** **FY 2023-OB-#** |
|   |  None. |   |   |

###

### Appendix B – Observations Subject to Continued Monitoring

FY 2024 WSHP Follow-up FAME Report

| **Observation #****FY 2024-OB-#** | **Observation#****FY 2023-OB-# *or* FY 2023-#** | **Observation** | **Federal Monitoring Plan** | **Current Status** |
| --- | --- | --- | --- | --- |
| FY 2024-OB-01 | FY 2023-OB-01 | In FY 2023, in 12 of 17 (71 percent) of case files that had violations cited, the violation worksheet was not included in the case file or did not adequately describe all relevant facts pertaining to the violation, as required in the MA FOM, Chapter 5. | On a quarterly basis, OSHA will review the requirements for completing the violation worksheet, as required by the MA FOM, Chapter 5. | Continued |
| FY 2024-OB-02 | FY 2023-OB-02 | In FY 2023, in 14 of 23 (61 percent) inspection case files, WSHP did not properly document worker interviews, as required in Chapters 3, 4, and 5 of the MA FOM. | During quarterly meetings, OSHA will discuss the need for WSHP to follow the MA FOM’s guidance on worker interviews.  | Continued |
| FY 2024-OB-03 | FY 2023-OB-03 | In FY 2023, union participation in the inspection was not sufficiently documented in 52 percent (11 of 21) of case files, as required by the MA FOM, Chapter 5. | During quarterly meetings, OSHA will discuss the need for WSHP to follow the MA FOM’s guidance for documenting union participation in the inspection.  | Continued |

### Appendix C - Status of FY 2023 Findings and Recommendations

FY 2024 WSHP Follow-up FAME Report

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
| **FY 2023-#** | **Finding** | **Recommendation** | **State Plan Corrective Action** | **Completion Date** | **Current Status** **and Date** |
|  | None.  |  |  |  |  |

### Appendix D – FY 2024 State Activity Mandated Measures (SAMM) Report

FY 2024 WSHP 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) | 6.29 | 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) | 4.79 | 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) | 2.73 | 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) | 1.90 | 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) | 3.11 | +/- 20% of 1.74 | The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from 1.39 to 2.08 for SWRU.  |
| 5b | Average number of violations per inspection with violations by violation type (other) | 0.50 | +/- 20% of 0.94 | The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from 0.75 to 1.12 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) | 153 | +/- 5% of Grant 121 | Since this is a State and Local Government State Plan, all inspections are in state and local government workplaces. |
| 7b | Planned v. actual inspections (health) | 36 | +/- 5% of Grant 18 | 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 115 to 127 for safety. |
| 8 | Average current serious penalty in private sector - total (1 to greater than 250 workers) | N/A | +/- 25% of $3,793.81 | 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 $2,498.51 | 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 $4,322.61 | 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 $6,114.84 | 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 $7,533.58 | 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) | 25.33% | +/- 20% of32.83% | The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from 26.27% to 39.40% for safety. |
| 9b | Percent in compliance (health) | 29.41% | +/- 20% of44.18% | The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from 35.34% to 53.01% for health. |
| 10 | Percent of work-related fatalities responded to in one workday | 50% | 100% | The further review level is fixed for all State Plans. |
| 11a | Average lapse time (safety) | 32.63 | +/- 20% of 56.02 | The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from 44.82 to 67.23 for safety. |
| 11b | Average lapse time (health) | 36.09 | +/- 20% of 67.21 | The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from 53.77 to 80.65 for health. |
| 12 | Percent penalty retained | N/A | +/- 15% of70.81% | 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 | 99.47% | 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 2024 due to the transition to the new SAMM measures starting in FY 2025. |
| 15 | Percent of 11(c) complaints that are meritorious | N/A | N/A | This measure is not being reported for FY 2024 due to the transition to the new SAMM measures starting in FY 2025. |
| 16 | Average number of calendar days to complete an 11(c) investigation | N/A | N/A | This measure is not being reported for FY 2024 due to the transition to the new SAMM measures starting in FY 2025. |
| 17 | Percent of enforcement presence | N/A | N/A | NA – This is a State and Local Government State Plan and is not held to this SAMM. |

1. Source: [Bureau of Labor Statistics' Quarterly Census of Employment and Wages](https://data.bls.gov/PDQWeb/en) [↑](#footnote-ref-2)