

# **FY 2014 Follow-up Federal Annual Monitoring and Evaluation (FAME) Report**

**State of New York  
Public Employee Safety and Health (PESH) Bureau**



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## **I. Executive Summary**

### **A. State Plan Activities, Themes, and Progress**

The purpose of this report is to assess the New York Public Employee Safety and Health (PESH) Bureau State Plan activities for Fiscal Year (FY) 2014, and its progress in resolving outstanding findings and recommendations from previous FAME reports, with a focus being on the FY 2013 Comprehensive FAME Report.

PESH continues to have a significant presence in the workplace through its inspection activity, partnerships, and outreach activity. PESH was one of the first State Plans to transition from the Integrated Management Information System (IMIS) to the OSHA Information System (OIS). This transition impacted the number of inspections PESH conducted. PESH conducted 1,740 inspections in FY 2014 which was 92% of its 1,900 inspection goal.

Over the past year, state legislation was passed requiring safe patient handling programs in healthcare facilities. Members of PESH's Healthcare Strategic Plan Committee have actively worked with healthcare facilities and task force groups to educate all involved about injuries suffered while providing residential/patient care and the benefits to all when effective safe patient handling programs are implemented. The committee assisted in developing a video that demonstrates the many applications of safe patient handling technology.

Last year's FAME report included two findings and four observations. During the FY 2014 performance period, OSHA determined that PESH took the corrective actions necessary to address the findings; therefore, these findings are successfully completed. However, during the on-site case file review at the PESH New York City office, OSHA noted a substantial increase in the percentage of case files showing excessive time to respond to complainants; therefore, the FY 2014 FAME report includes one new finding that was converted from a previous observation related to this issue.

During the FY 2014 FAME, observations were evaluated by OSHA selecting a limited number of case files to review to determine if these were isolated instances or represented a trend that required further action. This review resulted in OSHA closing one of the four observations from FY 2013 (abatement periods were found to be reasonable in all the case files where citations were issued).

OSHA determined that two observations from the FY 2013 FAME should be continued for further monitoring. These observations are related to missing complainant notification of the inspection results and not documenting worker interviews. Although PESH has shown considerable improvement and the overall trend seems to have improved regarding these two observations, due to only a sample of case files reviewed, these will be continued until OSHA conducts a full, comprehensive on-site case file review.

## B. State Plan Introduction

PESH is responsible for protecting the health and safety of more than two million state and local government workers in New York. The New York Department of Labor has been designated as the agency responsible for administering the State Plan throughout New York. The Acting Commissioner of Labor, Mario J. Musolino, has full authority to enforce and administer all laws and rules protecting the safety and health of all state and local government sector workers in the state and its political subdivisions. In addition to the State Plan’s enforcement responsibilities, PESH provides free on-site consultation and training services to state and local government sector agencies, upon request.

PESH consists of one central office in Albany, New York and eight district offices located in: Binghamton, Syracuse, Utica, Rochester, Buffalo, White Plains, Garden City, and New York City (Manhattan). The PESH State Plan applies to all state and local government sector employers in the state, including: state, county, town, and village governments, as well as public authorities, school districts, and paid and volunteer fire departments.

Private sector enforcement is retained under federal jurisdiction while private sector consultative services are provided by the New York State Department of Labor-Division of Safety and Health (NYSDOL-DOSH) Consultation Services Bureau under Section 21(d) of the OSH Act. PESH adopted all applicable OSHA safety and health standards either identically or through alternative means.

The PESH ACT does not allow for the issuance of “first instance” monetary penalties for state and local government employers found in violation of PESH standards. Per diem penalties can be assessed when failure-to-abate (FTA) notices are issued.

The New York State Plan contributes more than 50% of the required match. The table below shows PESH’s funding levels from FY 2010 through FY 2014.

<b>FY 2010-2014 Funding History</b>						
<b>FY</b>	<b>Federal Award (\$)</b>	<b>State Match (\$)</b>	<b>100% State Funds (\$)</b>	<b>Total Funding (\$)</b>	<b>% of State Contribution</b>	<b>Deobligated/ One-Time Only/Reclaimed Funds (\$)</b>
<b>2014</b>	\$3,688,600	\$3,688,600	\$1,043,000	\$8,420,200	56.2%	0/\$29,195/0
<b>2013</b>	\$3,667,600	\$3,667,600	\$1,117,700	\$8,452,900	55.6%	0/16,300/0
<b>2012</b>	\$3,827,300	\$3,827,300	\$1,100,000	\$8,754,600	56.3%	0/0/0
<b>2011</b>	\$3,827,300	\$3,827,000	\$1,250,000	\$8,905,300	57.0%	0/0/35,140
<b>2010</b>	\$3,827,300	\$3,827,300	\$1,250,700	\$8,905,300	61.6%	0/154,200/0

Staffing continues to remain consistent. The table below shows the number of full-time and part-time staff as of August 15, 2014:

<b>FY 2014 Staffing</b>					
<b>23(g) Grant Positions</b>	<b>Allocated FTE* Funded 50/50</b>	<b>Allocated FTE 100% State Funded</b>	<b>Total</b>	<b>50/50 Funded FTE On Board as of 08/15/14</b>	<b>100% State Funded FTE On Board as of 08/15/14</b>
<b>Managers/Supervisors (Administrative)</b>	7.96	1.18	9.14	6.16	0.91
<b>Safety Compliance Officers</b>	22.65	3.35	26	17.42	2.58
<b>Health Compliance Officers</b>	13.07	1.93	15	12.20	1.80
<b>Public Sector Safety Consultants</b>	8.71	1.29	10	6.10	0.90
<b>Public Sector Health Consultants</b>	5.23	0.77	6	4.36	0.64
<b>Compliance Assistance Specialist</b>	0.87	0.13	1	0.87	0.13
<b>Clerical</b>	13.94	2.06	16	10.45	1.55
<b>Other (all positions not counted elsewhere)</b>	0.87	0.13	1	0.87	0.13
<b>Total 23(g) FTE</b>	<b>73.30</b>	<b>10.84</b>	<b>84.14</b>	<b>58.43</b>	<b>8.64</b>

\*Full-Time Equivalent

### **C. Data and Methodology**

OSHA has established a two-year cycle for the FAME process. This is the follow-up year and as such, OSHA was not required to perform an on-site evaluation and case file review. However, the FY 2013 FAME report reported four observations and as such, a small number of case files were selected and reviewed to determine if these were isolated instances, or if this represented a trend that required further action.

The Regional State Plan Manager conducted an on-site evaluation at PESH's New York City office on January 16, 2015. The evaluation period covered the 3<sup>rd</sup> and 4<sup>th</sup> quarters (April 1, 2014 through September 30, 2014) of FY 2014. Case files were selected from a micro-to-host report and included all offices, complaints only, union/non-union as well as case files with and without violations. The micro-to-host report produced a total of 91 complaint inspections during that time period. Fifty-one (51) were closed. A total of 15 case files were reviewed and were broken down by office as shown below:

- Albany – 1
- Binghamton – 1
- Buffalo – 2
- Garden City – 1
- New York City – 5
- Rochester – 1

- Syracuse – 1
- Utica – 2
- White Plains – 1

## **D. Findings and Observations**

The FY 2014 Follow-Up FAME Report contains one finding (converted from a previous observation) and two observations. OSHA is continuing two observations from FY 2013 for further monitoring until a comprehensive case file review is conducted, and has closed one observation. Appendix A describes new and continued findings and recommendations. Appendix B describes observations subject to continued monitoring. Appendix C describes the status of each FY 2013 recommendation in detail.

### Completed FY 2013 Findings/Recommendations

During the FY 2014 performance period, PESH successfully addressed both findings reported in last year's FAME report. The two completed findings were:

- 1) **Inadequate Evidence to Support Violations:** PESH conducted staff training at the district office level in January 2014, and this was re-enforced with staff during a statewide training session on June 17, 2014.
- 2) **Consultation 33 (Rev 12/96) "Safety and Health Program Assessment Worksheet" not Utilized:** Chapter IX of the Consultation Policies and Procedure Manual (CPPM) has been marked as "Reserved" until the time that consultation staff is trained on the appropriate use of Form 33, and PESH adopts the changes in 29 CFR1908, Consultation Agreements (which included the use of Form 33 for consultation visits).

### New FY 2014 Finding (Converted from FY 2013 Observation)

There was one new finding in FY 2014 regarding PESH's response time to complainants. OSHA found that the response time was excessive in 47% (seven of 15) of case files reviewed which is a substantial increase from the 20% of case files identified in FY 2013 related to this specific issue. Examples included: documentation in case files ranging from three months up to eight months from the closing conference to the time the complainant was notified of the results of the inspection. The majority of the case files reflecting this issue were identified during case file review at the New York City office.

## **II. Assessment of State Plan Performance**

### **A. Major New Issues**

#### **Significant Legislative/Programmatic Changes**

State legislation was passed this year to require safe patient handling programs in health care facilities. This legislation was passed as a New York State Department of Health law. The first action under the law will be the establishment of a state workgroup by January 1, 2015 to develop resources and material on safe patient handling. The workgroup will submit a report by July 15, 2015 identifying best practices in developing a program. Healthcare facilities will be required to establish safe patient handling committees by January 1, 2016 followed by the establishment of a safe patient handling program by January 1, 2017. The program developed by the healthcare facilities will need to incorporate on-going and yearly training for healthcare workers and will have to undergo an annual review for effectiveness.

#### **Workplace Violence**

Significant enforcement activity continues around the State Plan's workplace violence prevention rule. The rule has been in place for over five years now and continues to be the subject of the most frequently cited violations for state and local government employers in New York. PESH completed a large outreach initiative involving all municipalities and fire departments across the state. The purpose was to provide general information on the bureau and to stress how state and local government employers can get assistance with reaching compliance for any of the rules enforced by the bureau. This consisted of 12 outreach sessions in various parts of the state. These sessions also included a discussion of a topic of concern to the fire service agencies, the state's Emergency Escape and Self-Rescue Ropes and System Components for Firefighters rule. This is a rule that was initiated in 2010 and requires fire department to perform an assessment to determine circumstance where firefighters will need emergency escape equipment and to then provide the appropriate equipment to firefighters. The reviews on these outreach sessions were very positive.

#### **High Profile Inspection**

A highly publicized case involving two New York volunteer fire departments being cited for violations resulted from the line-of-duty death of one firefighter and the treatment and release of three other firefighters. The employer of the deceased was responding to a mutual aid call in January 2013. Initially, weather and site conditions created difficulties for the first responding department. Difficulties finding water created a short supply and staging on the side of a hill reduced the capacity of the portable pond, which led to multiple water shortages at critical times during the fire. Firefighters' safety and health were further compromised by a breakdown in communication, command, and by the departments not following their own written plans and procedures.

The employer of the deceased had been previously cited for failure to conduct and document medical examinations under two previous PESH inspections. The deceased was not cleared to

perform interior structural firefighting which led to a repeat violation under this investigation. An additional repeat violation was issued for firefighters' fit testing being outdated. Other violations were also issued for a worker being allowed to wear a tight-fitting face piece respirator with facial hair and for fire brigade officers' training not being more comprehensive than the general membership. The host department received citations under both the Fire Brigade Standard and the Respiratory Protection Standard.

**B. Assessment of State Plan Progress in Achieving Annual Performance Goals** (Source: FY 2014 APP and FY 2014 SOAR)

This section focuses on PESH's progress toward meeting its targeted performance goals. These goals were outlined in PESH's FY 2014 Annual Performance Plan (APP) which consisted of three committees whose purpose is to select a sector and identify the cause(s) of injuries, and develop strategies to reduce their occurrence and/or seriousness in the sector. FY 2014 was the fifth year of PESH's current Five-Year Strategic Plan.

**Strategic Goal:** Improve Workplace Safety and Health for all State and Local Government Sector Workers.

**Performance Goal #1:** Reduce Injury and Illness Rate by 1% in County Level Police Protection. (NAICS 922120)

The Police Protection Strategic Plan Committee, in its third year, continued focusing its efforts on obtaining SH 900.1 data and developing partnerships with the county level police departments. These efforts have proved very successful. The decrease in the injury and DART rates exceeded the primary outcome measure for FY 2014.

As depicted below, the Total Recordable Case Rate decreased 12.5% and the DART Rate decreased 10.6% compared to the baseline year.

**Police Service Injury and DART Rates**

Year	2010 (Baseline)	2011	2012	2013	% Change from Baseline
Total Recordable Incident Rate*	16	17	16.3	14.0	12.5% Decrease
DART Rate*	9.4	9.7	9.7	8.4	10.6% Decrease

\*Based on SH900.1s collected by the committee.

Intermediate outcome measures which include inspections and consultation visits were also successful. There were a total of 89 inspections performed during the 2014 FY which is a 43% increase from the 2010 baseline. There were a total of eight consultations performed during the same period which is a 50% increase from the baseline.

Along with the continued development of partnerships, the committee members felt their interactions and relationships with the police protection contacts had greatly improved. The 2013 injury and illness data was more quickly obtained with fewer issues than in previous years. During this year, committee members enhanced their relationships with face-to-face meetings.

Many of the committee participants reported dramatic improvements in the relationships with their police sector contacts following these in-person meetings. The committee completed a Bloodborne Hazard Advisory factsheet on electroshock weapon projectile such as taser products. The factsheet is distributed during conferences and consultation and is included on the updated 2014 Law Enforcement Resource compact disk (CD).

**Performance Goal # 2:** Decrease the Injury and Illness Rate by 1.0%/ Year, Improve Accuracy of Injury and Illness Data. (NAICS 922160 Fire Service)

This committee continued to work on reducing injury and illnesses for workers – both paid and volunteers who provide these services. Data continues to be collected, and staff in this industry was trained regarding how to assess injury and illness trends, as well as identify hazards during internal inspections.

The chart below depicts a significant decrease in the injury rate and the DART rate compared to the baseline year.

**Fire Service Injury and DART Rates (2008-2012)**

Year	2008 Baseline	2009	2010	2011	2012	2013
Injury Rate*	53.1	44.4	34.3	29.9	21.8	**
DART Rate*	51.1	41.9	20.9	28.7	20.0	**

\* Based on BLS data

\*\*2013 BLS Injury data were not available at the time of this report.

In 2012, legislation relating to Emergency Escape and Self Rescue Ropes and System Components for firefighters was amended to require employers to assess the risk of entrapment at elevations to their interior firefighters and provide equipment and training to address that particular risk. During FY 2014, considerable outreach and technical assistance was provided in an effort to facilitate compliance. Updated resources were added to the 2014 Fire Service Resource CD, and a training video was added to the PESH website intended to help volunteer fire departments and municipalities comply with the rule. Several committee participants were involved in the development of new resources for the amended legislation. A training video was added to the PESH website to help volunteer fire departments and municipalities comply with the rule.

Intermediate outcome measures which include inspections and consultation visits was also successful. There were 78 inspections in the fire service NAICS in FY 2014. Although inspections in Fire Service have declined by 16% from the 2008 baseline year, this decline can be attributed to the changes being made to the Emergency Escape and Self Rescue Ropes and System Components for Fire Fighters legislation. Now that the Code Rule changes are complete, it is expected the number of inspections in this NAICS will increase. PESH conducted 33 consultations in FY 2014 which was a 43% increase from the 2008 baseline year.

**Performance Goal #3:** Reduce the Lost Work Day Rate by 1.0% in Residential Nursing Care (NAICS 623110) and Residential Mental Health. (NAICS 623220)

The Healthcare Strategic Plan Committee focused on reducing the DART rate in county nursing homes, state-operated veterans' homes, and most recently, residential facilities operated by the New York State Office of Mental Health (OMH).

The charts below depict a decrease in the Lost Work Day Rate compared to the baseline year.

**Nursing Care Facilities (NAICS 623110)**

Measure	Baseline CY 2008	CY 2009	CY 2010	CY 2011	CY 2012	CY 2013
Lost Work Day Rate	8.8	8.4	8.8	7.7	7.8	6.2
Change	Baseline	4.5% Decrease	0	12.5% Decrease	11.4% Decrease	29.5% Decrease

\*Lost Work Day Rate = # cases resulting in lost time x 200,000 / total # work hours (based on SH900.1)

**Residential Mental Health (NAICS 623220)**

SFY 2008 -2009	SFY 2009 -2010	SFY 2010 - 2011	SFY 2011 - 2012	SFY 2012-2013
4.2	4.6	4.6	4.5	3.9
(Baseline)	9.5% Increase	9.5% Increase	7.1% Increase	7.1% Decrease

SFY = State Fiscal Year (April-March)

\*\*Lost Work Day Rate = # incidents resulting in lost time x100/Full Time Equivalents based on the NYS Government Workers' Compensation Annual Report.

Reducing occupational injuries in long-term care has been a priority from the beginning of the PESH Strategic Plan in 1998. The log of work-related injuries and illnesses has been collected from the onset for every public nursing home and entered into a database. The data shows that the majority of injuries fall into three groups: musculoskeletal injuries related to resident handling; workplace violence; and slips, trips, and falls.

The committee has been involved in conducting Nursing Home National Emphasis Program (NEP) inspections, which focus on these three causes of injury. Eight NEP inspections have been conducted since the beginning of the program, resulting in two general duty violations (resident handling), two hazard alert letters (resident handling), and numerous other violations. Members of this committee have been active in the New York State Zero Lift Task Force. The task force has a dual purpose: to educate healthcare workers, managers/administrators, lay people, and politicians about the injuries suffered while providing residential/patient care and the benefits to the patient, HCW, and organizations when effective safe patient handling programs are implemented.

The second focus is to have legislation passed in New York requiring healthcare facilities to implement effective safe patient handling programs. PESH Strategic Plan Committee members have been involved in the task force's educational campaign. Members of the strategic plan committee, in partnership with Kaleida Health, developed a safe patient handling video that demonstrates the many applications of safe patient handling technology. This can be seen at <http://labor.ny.gov/workerprotection/safetyhealth/safe-patient-handling.shtm> or a copy can be requested by contacting PESH.

In addition, this committee is working on a safe patient handling vendor guide. Safe patient handling legislation was passed in spring 2014. This committee plans to assist healthcare facilities covered by this legislation meet the requirements of this new law.

During FY 2014, the committee conducted three nursing home NEP inspections resulting in a number of serious and other-than-serious violations being issued. They also followed-up on violations issued as a result of the NEP inspections conducted in the previous year. A comprehensive safety and health consultation was conducted at one of the OMH facilities.

This committee has also reached out to the New York State OMH. After initially focusing on recordkeeping, the focus switched to on-site assessments. Three facilities were selected based on their injury rate. Management was contacted and it was decided consultation visits would be scheduled at these three facilities. The purpose of the consultations would be both injury reduction and regulatory compliance.

### **C. Highlights from the State Activity Mandated Measures (SAMM)**

(Source: Appendix D SAMM report 01-27-2015 and NY SOAR FY 2014 report)

PESH conducted 1,740 inspections in FY 2014 which is 92% of its 1,900 inspection goal. Safety staff conducted 1,320 inspections (98% of the goal), and industrial hygiene staff conducted 420 inspections (76% of their goal). PESH was one of the first State Plans to transition from IMIS to OIS and this transition had a substantial impact on the number of inspections conducted. (NY SOAR FY 2014)

As in the past, PESH continues to be above the national average of 1.99 serious/willful/repeat (S/W/R) violations per inspection. During FY 2014, PESH's average S/W/R was 4.26. Their average for other-than-serious violations per inspection was 1.15, slightly below the 1.22 national average. (SAMM #9a & #9b)

#### Complaints

PESH responded to 292 complaints with an average response time of 13.45 days from notification. This number reflects a decrease from 24.73 days in FY 2013 and 18.17 days in FY 2012. (SAMM #1)

During FY 2014, PESH and the region renegotiated the reference number for SAMM #1 (average number of work days to initiate complaint inspections). The reference number originally was 30 days serious hazards/120 other than serious hazards. Ten (10) days is the number that was renegotiated as the reference for SAMM #1.

#### Fatalities

During FY 2014 the number of state and local government sector fatalities reported to PESH was 38 compared to 26 reported in FY 2013. Of the 38 fatalities reported in FY 2014, only 27 were determined to be "work-related." One day response to fatalities was 89% compared to the 93% in FY 2013. (SAMM #21)

### III. Assessment of State Plan Corrective Actions

Two findings and four observations were noted in last year's FAME report. PESH successfully completed corrective actions for both findings. OSHA determined that two of the four previous observations would continue to be monitored. One observation was converted to a finding and the other observation is closed.

#### **Finding 13-01:**

In 23 of the 71 (32%) case files with violations reviewed, worker exposure information was not documented on the OSHA 1b or listed on the field notes.

#### **Status Finding 13-01:**

PESH conducted staff training at the district office level in January 2014 and this was re-enforced with staff during a statewide training session on June 17<sup>th</sup>. All of the findings and observations from the FY13 FAME were reviewed with corrective action to be taken including appropriate case file documentation. OSHA determined this item to be completed.

#### **Finding 13-02:**

Of the 11 case files reviewed, 100% did not contain a Consultation 33 (Rev. 12/96) form "Safety and Health Program Assessment Worksheet" in accordance with PESH's Consultation Policies and Procedures Manual, Chapter IX.

#### **Status Finding 13-02:**

Chapter IX of the Consultation Policies and Procedure Manual has been marked as "Reserved" until that time that consultation staff is trained in the appropriate use of Form 33 and PESH adopts the changes in 29 CFR1908, Consultation Agreements, which includes the use of Form 33 for consultation visits. It was an omission that this chapter of the CPPM had not been marked as "Reserved." OSHA determined this item to be completed.

#### **Observation 13-01:**

In seven of the 29 (24%) complaint files reviewed, documentation that the complainant was notified of inspections results, either by letter or phone, was missing in the case file.

#### **Status Observation 13-01:**

A sample of case files was randomly selected and reviewed to determine if this is an isolated instance or if it represents a trend that requires further action. Of the 15 case files reviewed, two (13%) were found to lack documentation that the complainant was notified of the results of the inspections, either by letter or phone. Although PESH showed considerable improvement in this area, due to only a sample of case files reviewed, this observation will continued to be monitored until OSHA can conduct a full, comprehensive on-site case file review.

#### **Observation 13-02:**

In six of the 29 (20%) complaint files reviewed, where the complainant was notified of inspection results, the amount of time it took PESH to respond to the complainant was excessive.

Examples included: documentation in one case file of 60 days from the closing conference to the time the complainant was notified of the results of the inspection, while another case file showed the complainant was notified 90 days after the inspection.

**Status Observation 13-02:**

In seven of the 15 (47%) complaint files reviewed, where the complainant was notified of the inspection results, the amount of time it took PESH to respond to the complainant was excessive. During this year's case file review, OSHA found that the response time was excessive in 47% (seven of 15) of case files reviewed which is a substantial increase from the 20% of case files identified in FY 2013 related to this specific issue. Examples included: documentation in case files ranging from three months up to eight months from the closing conference to the time the complainant was notified of the results of the inspection. This issue was noted primarily in the New York City office's case files. OSHA has elevated this observation to a finding.

**Observation 13-03:**

Abatement periods established for correction of violations were found to be excessive in 14 of the 71 (20%) case files that had citations issued. Examples of excessive abatement periods included: 30 and/or 60 days for egress violations, 90 days to obtain a material safety data sheet for disinfectants, and 45 days for a cracked duplex receptacle cover.

**Status Observation 13-03:**

A sample of case files was randomly selected and reviewed to determine if this was an isolated instance or if it represented a trend that required further action. Of the 15 case files reviewed, all 15 case files with violations had appropriate abatement periods established. OSHA considers this observation to be closed.

**Observation 13-04:**

In 22 of the 109 (20%) case files reviewed, worker interviews were not documented.

**Status Observation 13-04:**

A sample of case files was randomly selected and reviewed to determine if this was an isolated instance or if it represented a trend that required further action. Of the 15 case files reviewed, one (7%) was found to lack documentation that worker interviews were conducted. Although PESH showed considerable improvement in this area, due to only a sample of case files reviewed, this observation will continued to be monitored until OSHA can conduct a full, comprehensive on-site case file review.

## Appendix A – New and Continued Findings and Recommendations

### FY 2014 New York PESH State Plan Follow-up FAME Report

FY 2014-#	Finding	Recommendation	FY 2013-OB-#
FY 2014-01	<p><i>Complaint Processing Response Time:</i> In seven of 15 (47%) complaint files reviewed where the complainant was notified of inspection results, the amount of time it took PESH to respond was excessive. Examples included: documentation in case files ranging from three months up to eight months from the closing conference to the time the complainant was notified of the results of the inspection. The majority of these case files were from the New York City office.</p>	Ensure a timely response is provided to complainants in accordance with PESH’s Field Operations Manual (FOM).	FY 2013-OB-02

**Appendix B – Observations Subject to New and Continued Monitoring**  
**FY 2014 New York PESH State Plan Follow-up FAME Report**

Observation # FY 2014-OB-#	Observation# FY 2013-OB-#	Observation	Federal Monitoring Plan	Current Status
FY 2014-OB-01	FY 2013-OB-01	<p><i>Notification to Complainant:</i>            In two of the 15 (13%) complaint files reviewed, documentation showing that the complainant was notified of the inspection results, whether by letter or phone, was missing in the case file.</p>	<p>During next year’s FAME, a sample of case files will be reviewed to determine possible trends.</p>	Continued
	FY 2013-OB-02	<p><i>Complaint Processing Response Time:</i>            In seven of the 15 (47%) complaint files reviewed where the complainant was notified of inspection results, the amount of time it took PESH to respond was excessive.</p> <p>Examples included: documentation in case files ranging from three months up to eight months from the closing conference to the time the complainant was notified of the results of the inspection. The majority of these case files were from the New York City office.</p>		Converted to a Finding
	FY 2013-OB-03	<p><i>Excessive Abatement Periods:</i>            In all case files where citations were issued, established abatement periods for correcting violations were reasonable.</p>		Closed
FY 2014-OB-02	FY 2013-OB-04	<p><i>Documentation of Worker Interviews:</i>            In one of the 15 case files (7%) reviewed it appeared worker interviews were not documented.</p>	<p>During next year’s FAME, a sample of case files will be reviewed to determine possible trends.</p>	Continued

**Appendix C - Status of FY 2013 Findings and Recommendations**  
**FY 2014 New York PESH State Plan Follow-up FAME Report**

FY 2013-#	Finding	Recommendation	State Plan Response/Corrective Action	Completion Date	Current Status
<b>FY 2013-01</b>	<i>Inadequate Evidence to Support Violations</i> In 23 of the 71 (32%) case files reviewed with violations, worker exposure information was not documented on the OSHA 1b or listed on the field notes.	Ensure that inspection case files are documented in accordance with FOM and all other applicable New York enforcement policies and procedures.	Staff training was conducted at the district office level in January 2014 and this was re-enforced with staff during a statewide training session on June 17, 2014.	June 17, 2014	Completed
<b>FY 2013-02</b>	<i>Case File Documentation</i> Of the 11 case files reviewed, 100% did not contain a Consultation 33 (Rev. 12/96) form "Safety and Health Program Assessment Worksheet" in accordance with PESH's Consultation Policies and Procedures Manual, Chapter IX.	Ensure that consultation case files are documented in accordance with PESH's CPPM, Chapter IX.	Chapter IX of the Consultation Policies and Procedure Manual (CPPM) has been marked as "Reserved" until that time that consultation staff is trained in the appropriate use of Form 33 and PESH adopts the changes in 29 CFR1908, Consultation Agreements, which included the use of Form 33 for consultation visits.  It was an omission that this chapter of the CPPM had not been marked as "Reserved."	August 22, 2014	Completed

## Appendix D - FY 2014 State Activity Mandated Measures (SAMM) Report

### FY 2014 New York PESH State Plan Follow-up FAME Report

OSHA is in the process of moving operations from a legacy data system (NCR) to a modern data system (OIS). During FY 2014, federal OSHA case files were captured on OIS, while most State Plan case files continued to be processed through NCR. New York opened 1,722 enforcement inspections in FY 2014. Of those, 1594 inspections were captured in NCR, while 128 were captured in OIS. The SAMM Report, which is native to IMIS (a system that generates reports from the NCR), is not able to access data in OIS. Additionally, certain algorithms within the two systems are not identical. These challenges impact OSHA's ability to combine the data. Below is an explanation of which date OSHA was able to use when calculating each metric:

- a. Measures 1 & 2 will use State Plan data for FY14 as captured in NCR and compared to the State Plan's negotiated number. Any State Plan data from OIS will not be considered due to irregularities in the algorithm between OIS and NCR.
- b. Measures 20a-b, 23, and 24 will use State Plan data for FY14 as captured in NCR and compared to the historical FY2011 national average (FY09-11). Any State Plan data from OIS will not be considered due to irregularities in the algorithm between OIS and NCR.
- c. Measures 5, 9, 11, 17, 19, 21, and 25 will use State Plan data for FY14 as tabulated manually to include both OIS and NCR data and compared to the fixed/negotiated/national numbers associated with them.
- d. Measures 13, 14 and 16 will be extracted from NCR (OIS conversion should not impact). National data will be pulled from WebIMIS for FY12-14.
- e. Measures 18a-e will use State Plan data for FY14 as captured in NCR. Any data from OIS will not be considered due to irregularities in the algorithm between OIS and NCR. Much like FY13, no national data will be available for comparison.
- f. Measure 22 will be excluded from the report (other than as a placeholder to demonstrate that it is one of the agreed upon metrics, but not one we can currently generate).
- g. Measure 4 will use State Plan data for FY 14 as captured in NCR.

<b>U.S. Department of Labor</b>				
<b>Occupational Safety and Health Administration State Plan Activity Mandated Measures (SAMMs)</b>				
<b>State Plan: New York</b>			<b>FY 2014</b>	
<b>SAMM Number</b>	<b>SAMM Name</b>	<b>State Plan Data</b>	<b>Reference/ Standard</b>	<b>Notes</b>
1	Average number of work days to initiate complaint inspections	13.45	10 days	State Plan data taken directly from SAMM report generated through IMIS. The reference/standard is a negotiated number for each State Plan.
2	Average number of work days to initiate complaint investigations	5	1 day	State Plan data taken directly from SAMM report generated through IMIS. The reference/standard is a negotiated number for each State Plan.

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<b>4</b>	Percent of complaints and referrals responded to within 1 work day (imminent danger)	100.0%	100%	State Plan data taken directly from SAMM report generated through IMIS.
<b>5</b>	Number of denials where entry not obtained	0	0	State Plan data taken directly from SAMM report generated through IMIS and Open Inspection OIS report.
<b>9a</b>	Average number of violations per inspection with violations by violation type	4.26	SWR: 1.99	State Plan data taken from SAMM report generated through IMIS and the Inspection summary report generated in OIS; national data was manually calculated from data pulled from both IMIS and OIS for Fiscal Years (FY) 2012-2014.
<b>9b</b>	Average number of violations per inspection with violations by violation type	1.15	Other: 1.22	
<b>11</b>	Percent of total inspections in the state and local government sector	100.00%	100.00%	State Plan data taken from SAMM report generated through IMIS and the Inspection summary report generated in OIS. The reference/standard is derived from the FY 14 grant application.
<b>13</b>	Percent of 11c Investigations completed within 90 calendar days	29%	100%	State Plan data taken directly from SAMM report generated through IMIS; National data was pulled from webIMIS for FY 2012-2014.
<b>14</b>	Percent of 11c complaints that are meritorious	28.57	24.8% meritorious	State Plan data taken directly from SAMM report generated through IMIS; National data was pulled from webIMIS for FY 2012-2014.
<b>16</b>	Average number of calendar days to complete an 11c investigation	331	90 Days	State Plan data taken directly from SAMM report generated through IMIS; National data was pulled from webIMIS for FY 2012-2014.
<b>17</b>	Planned vs. actual inspections - safety/health	1308/414	1350/550	State Plan data taken from SAMM report generated through IMIS and the Inspection summary report generated in OIS; the reference standard number is taken from the FY 2014 grant application. The reference/standard is a negotiated number for each State Plan.
<b>18a</b>	Average current serious penalty - 1 -25 Employees	0		State Plan data taken directly from SAMM report generated through IMIS.
<b>18b</b>	Average current serious penalty - 26-100 Employees	0		

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<b>18c</b>	Average current serious penalty - 101-250 Employees	0		
<b>18d</b>	Average current serious penalty - 251+ Employees	0		
<b>18e</b>	Average current serious penalty - Total 1 - 250+ Employees	0		
<b>19</b>	Percent of enforcement presence	n/a	National Average 1.51%	Data is pulled and manually calculated based on FY 2014 data currently available in IMIS and County Business Pattern data pulled from the US Census Bureau.
<b>20a</b>	20a) Percent In Compliance – Safety	19.17	Safety - 29.1	State Plan data taken directly from SAMM report generated through IMIS; current national data is not available. Reference data is based on the FY 2014 national average, which draws from the collective experience of State Plans and federal OSHA for FY 2009-2011.
<b>20b</b>	20b) Percent In Compliance – Health	60.77	Health - 34.1	
<b>21</b>	Percent of fatalities responded to in 1 work day	89%	100%	State Plan data is manually pulled directly from IMIS for FY 2013.
<b>22</b>	Open, Non-Contested Cases with Abatement Incomplete > 60 Days	n/a		Data not available.
<b>23a</b>	Average Lapse Time - Safety	46.34	43.4	State Plan data taken directly from SAMM report generated through IMIS; current national data is not available. Reference data is based on the FY 2011 national average, which draws from the collective experience of State Plans and federal OSHA for FY 2009-2011.
<b>23b</b>	Average Lapse Time - Health	78.87	57.05	
<b>24</b>	Percent penalty retained	0	66	State Plan data taken directly from SAMM report generated through IMIS; current national data is not available. Reference data is based on the FY 2011 national average, which draws from the collective experience of State Plans and federal OSHA for FY 2009-2011.
<b>25</b>	Percent of initial inspections with employee walk around representation or employee interview	99.9	100%	State Plan data taken from SAMM report generated through IMIS and the Inspection where Workers Involved report generated in OIS.