

**FY 2015 Comprehensive
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, Trends, and Progress

The purpose of this report is to assess the New York Public Employee Safety and Health (PESH) Bureau State Plan's activities for Fiscal Year (FY) 2015, and its progress in resolving outstanding findings and recommendations from previous FAME reports, with a focus being on the FY 2014 Follow-up FAME Report.

State legislation was passed in FY 2014 requiring safe patient handling (SPH) programs in healthcare facilities. In FY 2015, members of PESH's Healthcare Strategic Plan Committee continued to work 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.

During FY 2015, the African Ebola epidemic entered the United States (U.S.) when infected travelers and healthcare workers returned home to the states. Representatives from PESH were part of the Nursing Home Strategic Plan Taskforce who worked with various hospitals designated by New York State Department of Health to receive Ebola patients. The members met with unions and management of these various hospitals to review operating and decontamination procedures.

PESH adopted a "Best Practices" approach to firefighter training requirements and developed new outreach documents which were added to PESH's Fire Resource compact disk (CD). In addition, a factsheet was developed about the dangers associated with overhaul environments after a fire. The factsheet describes the respiratory and dermal exposures that firefighters receive when not wearing the proper personal protective equipment. Also, significant enforcement activity continues around the PESH's workplace violence prevention rule. The rule continues to be the subject of cited violations for state and local government employers in New York. In FY 2015, both of these successful initiatives were showcased on OSHA's public website.

Last year's FAME report included one finding and two observations. During the FY 2015 performance period, OSHA determined that PESH took the corrective actions necessary to address the finding; therefore, it was successfully completed. However, during the on-site case file review, OSHA noted seven new findings, most notably: PESH failing to notify the next-of-kin of the inspection results, excessive time between receipt of complaint and inspection initiation, and PESH not following procedures when granting petitions for modification of abatement (PMA) to employers.

OSHA determined that one of the two observations from the FY 2014 Follow-up FAME Report (complainant notification of inspection results) should be closed due to PESH sufficiently addressing this item. The other observation (documentation of worker interviews) was converted to a finding. Two new observations were noted during the FY 2015 evaluation period and will be closely monitored in FY 2016. The observations identified were noted in very few case files and involved missing notification to the next-of-kin of PESH's involvement in fatality investigations, and excessive abatement time

periods.

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 New York State Plan. The Acting Commissioner of Labor, Roberta Reardon, has full authority to enforce and administer all laws and rules protecting the safety and health of all state and local government 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 workplaces, 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 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 table below presents PESH’s funding history over the past five years:

FY 2011-2015 Funding History					
Fiscal Year	Federal Award (\$)	State Plan Match (\$)	100% State Plan Funds (\$)	Total Funding (\$)	Percentage of State Plan Contribution
2015	\$3,688,600	\$3,688,600	\$1,243,000	\$8,620,000	57.2%
2014	\$3,688,600	\$3,688,600	\$1,043,000	\$8,420,200	56.2%
2013	\$3,667,600	\$3,667,600	\$1,117,700	\$8,452,900	55.6%
2012	\$3,827,300	\$3,827,300	\$1,100,000	\$8,754,600	56.3%
2011	\$3,827,300	\$3,827,300	\$1,250,000	\$8,940,440	57%

The table below presents the number of PESH’s full-time and part-time staff as of July 31, 2015:

FY 2015 Staffing					
23(g) Grant Positions	Allocated FTE* Funded 50/50	Allocated FTE 100% State Plan Funded	Total	50/50 Funded FTE On Board	100% State Plan Funded FTE On Board
Managers/Supervisors (Administrative)	7.84	1.3	9.14	7.78	1.29
Safety Compliance Officers	21.45	3.55	25	13.73	2.27
Health Compliance Officers	11.15	1.85	13	9.44	1.56
Discrimination Investigator	2.15	0.35	2.50	2.15	0.35
State and Local Government Safety Consultants	9.01	1.49	10.50	6.44	1.06
State and Local Government Health Consultants	5.15	0.85	6.00	5.15	0.85
Compliance Assistance Specialist	0.86	0.14	1	0.86	0.14
Clerical	12.87	2.13	15	8.58	1.42
Other (all positions not counted elsewhere)	0.86	0.14	1	0.86	0.14
Total 23(g) FTE	71.34	11.80	83.14	54.99	9.08

*Full-Time Equivalent

C. Data and Methodology

OSHA established a two-year cycle for the FAME process. This is the comprehensive year, and as such, OSHA performed comprehensive on-site case file reviews. Monitoring of the PESH State Plan was performed by a team of OSHA personnel from both the safety and the health side and from the whistleblower 11(c) program. The team conducted the on-site case file review at PESH’s office in Albany starting on December 7, 2015 and ending on December 11, 2015. The evaluation of PESH covered FY 2015 (the period of October 1, 2014 through September 30, 2015) and included the State Activity Mandated Measures (SAMM) Report and the Mandated Activities Report for Consultation (MARC). The OSHA team reviewed a total of 135 case files broken down by the following:

- Fatality/hospitalization case files (9)
- Whistleblower case files (9)
- Consultation case files (21)
- Enforcement case files (96 total – 57 safety and 39 health – complaints, planned, and referrals)

D. Findings and Observations

This report contains seven findings (six new and one observation converted to a finding) and two new observations. PESH successfully closed its one finding from the FY 2014 evaluation.

FY 2015 Findings

OSHA found that excessive time (more than 10 days) was occurring between receipt of complaints to the initiation of the inspection. Seventy-two (72) case files with petitions for modification of abatement (PMA) were reviewed. OSHA found in 19% of the case files that PESH was accepting late PMAs from employers without an exceptional reason, and in 22% of the case files, PMAs were being granted without the required interim steps to protect exposed workers.

PESH's workplace retaliation case files lacked organization, supervisory review, and evidence that a complainant interview was conducted, as well as a Report of Investigation (ROI) in accordance with the Whistleblower Manual. In addition, OSHA found that almost half of the time, case files did not document that next-of-kin were not being notified of fatality investigation results.

Details of the FY 2015 findings and recommendations can be found in Appendix A of this report.

FY 2015 Observations

One of the two observations noted in the FY 2014 Follow-up FAME Report is closed; the other was converted to a finding. Two new observations were noted in this report.

Details of the FY 2015 observations can be found in Appendix B of this report.

Status of FY 2014 Findings

PESH was successful in closing its one finding from the FY 2014 evaluation report. Documentation that complainants were notified of the results of inspections was evident in the case files review during this evaluation period.

Details of the FY 2014 finding and recommendation can be found in Appendix C of this report.

II. Major New Issues

None

III. Assessment of State Plan Performance

A. STATE PLAN ADMINISTRATION

1) Training

PESH continues to provide compliance safety and health officers (CSHOs) the opportunity to attend the OSHA Training Institute (OTI) for needed safety and health technical training.

2) Funding

PESH did not return any 23(g) funding during FY 2014 and FY 2015.

3) Staffing (including benchmarks, furloughs, hiring freezes, etc.)

Staffing continues to remain consistent – the total FTEs allocated for PESH in FY 2014 was 84 and in FY 2015 it was 83. PESH currently has 64 FTEs onboard of which 27 fall under enforcement, 14 are under consultation (23(g) state and local government workplaces only), and the remaining 23 are managers or administrative staff. During FY 2014 and FY 2015, PESH did not experience furloughs or hiring freezes.

4) OSHA Information System (OIS)

During FY 2014, PESH transitioned from the Integrated Management Information System (IMIS) to the OSHA Information System (OIS). During FY 2015, PESH's average lapse time for citations was calculated at 41.68 days for safety – a slight decrease from 46.34 days in FY 2014 and lower than the one year OIS national rate of 42.78. The health lapse time was calculated at 67.59 days significantly lower than the 78.87 days in FY 2014 and also is lower than the one-year OIS national rate of 53.58. PESH uses OIS data for tracking purposes. PESH uses OIS data for tracking purposes (SAMM report SAMM # 11).

5) State Internal Evaluation Program (SIEP) Report

The New York State Internal Evaluation Program (SIEP) incorporates both field assessments performed by supervisors, and case file assessments performed by a program manager. PESH conducts at least one field and one case file assessment for each inspector as well as each consultant. These assessments were performed and documented in FY 2014 and FY 2015.

B. ENFORCEMENT

1) Complaints

During this evaluation period, PESH responded to 393 complaints with an average response time of 8.98 days from notification. This is a decrease from the 13.45 days in FY 2014 (SAMM report SAMM #1a). Although PESH met its established agency timeframe

based on the SAMM report, 14 of the 39 (36%) complaint case files reviewed show that inspections were not initiated within the 10-day time period.

a) Timeliness of State Plan response and notifications to complainant

Complaint Response Time

Finding 15-01

Of the 39 complaint case files reviewed, 14 (36%) case files revealed an excessive time period (more than 10 days) between receipt of the complaint and inspection initiation.

Recommendation 15-01

PESH should ensure a timely response to complaints in accordance with PESH's Field Operations Manual (FOM) Chapter IX-A.7.c(2), serious complaints should be responded to within 10 days.

b) State Plan response

Complainants were notified of the results of inspections in a timely manner based on the case file review during this evaluation period.

2) Fatalities

During FY 2015, the number of state and local government fatalities reported to PESH was 25 compared to 38 reported in FY 2014. Of the 25 fatalities reported in FY 2015, only 17 were determined to be "work-related."

Next-of-Kin Involvement

Observation 15-01

Two of nine (22%) fatality case files lacked evidence/documentation that the next-of-kin was notified of PESH's involvement.

Federal Monitoring Plan 15-01

In FY 2016, a limited number of case files will be selected randomly and reviewed to determine if these are isolated instances or if this represents a trend that requires further action.

Next-of-Kin Notification

Finding 15-02

Four out of nine (44%) fatality case files lacked evidence/documentation that next-of-kin was notified of the inspection results.

Recommendation 15-02

PESH should ensure that the next-of-kin has been notified of the results of the investigation by sending copies of the citations issued, or by sending a standard letter that the investigation is complete and that no violations of PESH standards were found.

Case file review showed that citations were issued to employers who failed to notify PESH of a fatality within eight hours. Responses to fatalities were 86% – a slight decrease from the 89% response time in FY 2014. The one fatality not inspected within one day occurred on a Saturday (PESH did not conduct the opening until Tuesday). The case file lacked documentation as to why the inspection was delayed (SAMM report SAMM #10) .

3) Targeting and Programmed Inspections

PESH conducted 1,513 inspections in FY 2015 which is 80% of the projected goal of 1,900 inspections. Safety staff conducted 1,067 inspections (79% of the goal), and the industrial hygiene staff conducted 446 inspections (81% of their goal) (NY SOAR FY 2015). PESH focused its inspection resources within the below three state and local government agencies targeted for enforcement interventions:

- County Level Police Protection – 67 inspections
- Fire Service – 78 inspections
- Residential Nursing Care/Acute Hospital Care – 17 inspections

The percent of in-compliance inspections was recorded at 22% for safety and 44% for health (SAMM report – SAMM #9).

PESH issued 2,930 violations compared to 3,732 violations issued in FY 2014 – a decrease of 802 violations. Of the 2,930 violations issued, 2,217 were serious, three were willful, four were Failure to Abate (FTA), seven were repeat, and the remaining 699 were other-than-serious (NY SOAR FY 2015).

PESH issued an average of 4.19 serious/willful/repeat (S/W/R) violations per inspection and 1.31 for other-than-serious violations per inspection. PESH continues to exceed the one-year OIS national rate of 1.92 S/W/R and .87 other-than-serious (SAMM Report – SAMM #5). During FY 2015, no significant cases were noted.

4) Citations and Penalties

PESH issued 2,930 violations compared to 3,732 violations issued in FY 2014 – a decrease of 802 violations. Of the 2,930 violations issued, 2,217 were serious, three were willful, four were FTA, seven were repeats, and the remaining 699 were other-than-serious (NY SOAR FY 2015). PESH issued an average of 4.19 serious/willful/repeat (S/W/R) violations per inspection and 1.31 for other-than-serious violations per inspection. PESH continues to exceed the one-year OIS national rate of 1.92 S/W/R and .87 other-than-serious (SAMM Report – SAMM #5).

Violations for the most part appeared to be classified and grouped appropriately. During FY 2015, PESH appropriately classified three violations as willful and seven violations as repeats. PESH does not issue monetary penalties except in cases of FTA violations. During FY 2015, PESH issued four FTAs and collected a total of \$84,592.00 in penalties (NY SOAR FY 2015).

Inadequate Evidence to Support Violations

Finding 15-03

In 19 of the 47 (40%) case files with violations, adequate evidence to support the violation was not documented in the case file. Examples of missing documentation included: hazard descriptions, worker exposure, and location of the hazard and lack of employer knowledge. The information could not be located on the violation worksheet or on the field notes.

Recommendation 15-03

PESH should ensure that inspection case files with violations are documented in accordance with PESH's FOM Chapter IV.

Since a majority of the case files lacked evidence to support violations, it was difficult to determine if citations had been issued for all apparent violations. An example of potentially missed violations include failing to issue a violation for lack of fall protection training when the field notes indicate that fall protection training was not provided. Another case file showed that the employer was issued a citation for not having a specific energy control program; however, the case file did not indicate if the annual certification of the energy control program was performed.

5) Abatement

The review of case files during this audit revealed that adequate verification/evidence of abatement was being obtained in the case files that had citations. Follow-up inspections were performed when indicated.

Petition for Modification of Abatement (PMA)

Finding 15-04

Late Petitions for Modification of Abatement (PMA) were being accepted in 14 of the 72 (19%) of case files reviewed. Also noted, PMAs were being granted without the required interim steps necessary to protect workers in 16 of the 72 (22%) of case files reviewed.

Recommendation 15-04

PESH must ensure that procedures as stated in the Field Operations Manual (FOM) Chapter III General Inspection Procedures are followed for any PMA requested.

The Regional Office received a Complaint About State Program Administration (CASPA) that alleged that late PMAs were being accepted where there were no exceptional circumstances preventing the filing of the PMA, and that PMAs were being

granted when one or more of the required interim steps were not addressed. Seventy-two (72) case files where PMAs had been accepted were reviewed during this investigation.

Excessive Abatement Periods

Observation-15-02

Abatement periods established for correction of violations were found to be excessive in 10 of the 47 (21%) case files that had citations issued. Examples of excessive abatement periods included: 10 days for a locked exit, 60 days to install emergency eyewash and 90 days to abate a recordkeeping violation.

Federal Monitoring Plan 15-02

In FY 2016, a limited number of case files will be selected randomly and reviewed to determine if these are isolated instances or if this represents a trend that requires further action.

6) Worker and Union Involvement

PESH continues to follow proper procedures outlined in their FOM with regard to appropriate notification being delivered to workers and their union representatives. Of the 103 closed case files reviewed, 87 (84%) involved unions. Union representation was involved in all aspects of the inspection process. In those few cases where the union was not available during the inspection, the case file contained documentation that contact had been made with the representative.

Worker Interview Documentation

Finding 15-05 (OB-14-02)

In 47 of the 103 case files (46%) reviewed, worker interviews were not documented. The percentage of case files lacking documentation of worker interviews increased significantly from 7% in FY 2014 and 20% in FY 2013; therefore, this was converted from an observation to a finding.

Recommendation 15-05

PESH should ensure that case files contain worker interview documentation in accordance with the Field Operations Manual (FOM) Chapter III, General Inspection Procedures.

C. REVIEW PROCEDURES

1) Informal Conferences

PESH has no first instance penalties and therefore conducted very few informal conferences. Proper procedures are followed if an informal conference is requested by an employer and if no settlement can be reached the case is turned over to the Industrial Board of Appeals (IBA). During FY 2015, four informal conferences were conducted.

2) Formal Review of Citations

Any investigation that is contested is turned over to the IBA. During FY 2014, PESH reported three new contested cases that were closed during that same period. FY 2015, PESH had four contested cases, and three of the four cases were settled prior to hearing.

D. STANDARDS AND FEDERAL PROGRAM CHANGES (FPCs) ADOPTION

In accordance with 29 CFR 1902, State Plans are required to adopt standards and Federal Program Changes (FPCs) within a six-month time frame. State Plans that do not adopt identical standards and procedures must establish guidelines which are "at least as effective as" the federal rules. State Plans also have the option to promulgate standards covering hazards not addressed by federal standards. During this period, PESH responded in a timely manner with the required notice of intent to adopt. The tables below provide a complete list of the federal directives and standards which required action during this period:

a) Standards Adoption

Standards Requiring Action	Federal Register Date	Adopted Identical	Date Promulgated
Final Rule for Electric Power Generation, Transmission & Distribution; Electrical Protective Equipment	April 2014	Yes	01/11/2015
Longshoring & Marine terminals; Vertical Tandem Lifts	May 2014	No	N/A
Occupational Injury & Illness Recording & Reporting Requirements – NAICS Update & Reporting Revisions	October 2014	Yes	Anticipate adoption early 1 st quarter FY 2016
Cranes & Derricks in Construction – Operator Certification Final Rule	October 2014	Yes	03/26/2015
Final Rule for Confined Spaces in Construction	May 2015	Yes	07/01/2015

b) Federal Program Changes (FPC) Adoption

FPCs Requiring Action and Federal Directive Number	Date of Directive	Adopted Identical	Adoption Date
OSHA Strategic Partnership Program for worker Safety and Health	11/06/2014	No	N/A
Site-Specific Targeting 2014 (SST-14)	03/06/2014	No	N/A
Shipyards Employment Tool Bag	04/01/2014	Yes	04/01/2014
Inspection Procedures for the Respiratory Protection Standard	06/26/2014	Yes	09/19/2014
Inspection Procedures for Accessing Communication Towers	07/17/2014	No	N/A
Mandatory Training Program for OSHA Compliance Personnel	07/21/2014	Yes	8/28/2014
Cranes & Derricks in Construction	10/17/2014	Yes	10/30/2014
NEP – Primary Metal Industries	10/20/2014	No	N/A
Whistleblower Investigations Manual	04/21/2015	No	N/A
Enforcement Procedures & Scheduling for Occupational Exposure to TB	06/30/2015	Yes	07/31/2015
NEP – Amputations	06/30/2015	Yes	11/09/2015
Inspection Procedures for the Haz Com Std. (HCS 2012)	07/09/2015	Yes	07/31/2015
OSHA Alliance Directive	07/29/2015	No	N/A
SGE Program Policies & Procedures Manual for OSHA VPP	07/30/2015	No	N/A
Alternative Dispute Resolution Process for Whistleblower Protection Program	08/18/2015		

E. VARIANCES

There were no variance requests received or processed during FY 2014 and FY 2015.

F. STATE AND LOCAL GOVERNMENT WORKER PROGRAM

One hundred percent (100%) of all inspections conducted by PESH occurred in the state and local government agencies during FY 2014 and FY 2015. PESH does not contain provisions for the issuance of monetary penalties for state and local government employers found not to be in-compliance with applicable standards on a first instance basis, except in cases when FTA notices are issued. If an employer incurs penalties for

violations the employer may have an informal conference with PESH, or can contest the penalties and be heard by the New York State Industrial Board of Appeals (IBA). During FY 2015, PESH conducted four informal conferences – 10 less than the 14 conducted during FY 2014.

G. WORKPLACE RETALIATION PROGRAM

PESH investigated 17 allegations of workplace retaliation during FY 2014 and 19 allegations in FY 2015. During this evaluation period, regional discrimination investigators reviewed nine case files. Of the nine case files reviewed, three were withdrawn, five were dismissed, and one was settled.

Workplace Retaliation Documentation

Finding 15-06

Seven of the nine (78%) workplace retaliation case files were not organized in accordance with the Whistleblower Manual. All nine (100%) of the case files lacked documentation of supervisory review and a Report of Investigation (ROI).

Recommendation 15-06

PESH should ensure that workplace retaliation case files adhere to the requirements in the Field Operations Manual (FOM) Chapter X Discrimination Complaints.

Workplace Retaliation Interviews

Finding 15-07

All case files (100%) lacked evidence that a complainant interview was conducted. (Note: A complainant questionnaire completed by the complainant is not a valid substitute.)

Recommendation 15-07

PESH should ensure it is following the requirements in its Field Operations Manual (FOM), Chapter X Discrimination Complaints.

H. COMPLAINT ABOUT STATE PLAN ADMINISTRATION (CASPA)

There were no CASPAs filed against PESH in FY 2014. However, in April 2015, a CASPA was submitted to OSHA alleging the following:

- Allegation #1 – Late filed PMAs are being accepted in cases where there are no exceptional circumstances preventing an employer from filing the PMA.
- Allegation #2 – District supervisors are not meeting the requirement in Part 804 to ensure that a copy of the petition has been served to the designated office of the authorized representative of affected workers.

- Allegation #3 – PMAs are being granted without requisite valid reason being provided by the employer. Valid reasons for granting PMAs normally require reasons why such additional time is necessary.
- Allegation #4 – The FOM requires when a PMA is objected to by a representative of the workers, PESH must forward the case to the IBA and provide documentation, return receipt requested, to the worker representative.

PESH submitted a response to the allegations in a timely manner. OSHA’s Regional Office conducted a “special study” which included reviewing a percentage of case files where PMAs were requested. The investigation has been completed and the results are currently under review. A finalized response will be sent to both the State Plan and the complainant.

I. VOLUNTARY COMPLIANCE PROGRAM

PESH does not have a Voluntary Compliance Program.

J. STATE AND LOCAL GOVERNMENT 23(g) ON-SITE CONSULTATION PROGRAM

During FY 2015, PESH’s state and local government on-site consultation program conducted a total of 257 visits which was 86% of the projected goal of 300 outlined in their annual Performance Plan. FY 2014, PESH conducted 324 consultation visits – 24 more than the projected goal of 300. The decrease in consultation visits during FY 2015 can be attributed to the loss of five of the 11 consultants to promotions or retirement. The percentage of visits with hazards abated within a timely manner in FY 2015 was 96% an increase from the 82% in FY 2014 (MARC Report – Measure 4a)

A total of 19 consultation case files were reviewed (12 safety and seven health). Of these, six were related to training assistance (TA). Documentation was adequate in the case files. Visits were performed in a timely manner and written reports were sent to employers after review by the supervisor.

K. REGIONAL SPECIAL STUDY

See special study description under Section H (CASPA) of this report.

IV. Assessment of State Plan Progress in Achieving Annual Performance Goals (Source: FY 2015 APP and FY 2015 SOAR)

This section focuses on PESH’s progress toward meeting its targeted performance goals. These goals were outlined in PESH’s FY 2015 Annual Performance Plan (APP) which consisted of three committees whose purpose was to select an area and identify the cause(s) of injuries, and develop strategies to reduce their occurrence and/or seriousness.

PESH’s Five-Year Strategic Plan was extended for one year in FY 2015. Below presents PESH’s goals and progress toward achieving them.

Strategic Goal: Improve workplace safety and health for all state and local government workers.

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

This is the last year for the County Level Police Protection Strategic Plan Committee and is also the last year for the CY 2010 baseline. The SH900.1 was used provided directly from the counties and was used to calculate the rates. As depicted below, the Total Recordable Incident Rate decreased 15% and the DART rate decreased 14.9% compared to the 2010 baseline year. This goal was met.

Police Service Injury and DART Rates

Year	2010 (Baseline)	2011	2012	2013	2014	% Change from Baseline
Total Recordable Incident Rate*	16	17	16.3	14.0	13.6	15% Decrease
DART Rate*	9.4	9.7	9.7	8.4	8	14.9% Decrease

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

Partnership Activity

The committee members continued to develop new partnerships. During FY 2015 members met with the NYS Association of Police Chiefs where the group is planning on presenting at the association’s annual conference in June 2016. Group members also attended and presented at the 2015 Annual Sheriff Association Conference. The PESH Information booth was also staffed at this conference providing additional opportunities to connect with the law enforcement community. The partnership with the NYS Division of Criminal Justice Services was utilized to share information contained in the group’s latest factsheets on Respiratory Protection for Law Enforcement and Fentanyl Hazards. Both factsheets were finalized in FFY 2015 and this information is now included on the committee’s updated Law Enforcement Resource CD.

Outreach

There were a total of 10 compliance assistance visits conducted during FY 2015 – a 30% increase from the 2010 baseline year and two more than the stated goal for the year. Each year the committee updates the Law Enforcement Resource CD. The CD provides education, information and resources addressing a wide variety of safety and health topics that would be applicable to police protection. New additions to this year’s CD included factsheets on Respiratory Protection and Fentanyl Hazards both of which were specifically tailed to discuss hazards unique to law enforcement. Copies of the CD can be obtained from the various district offices.

Performance Goal # 2: Decrease the Injury and Illness Rate by 1% per year in the Fire Service (NAICS 922160). Improve accuracy of Injury and Illness data.

The committee worked on data collection and staff training regarding injury and illness trends in fire service workplaces as well as hazard identification during inspections. The Bureau of Labor Statistics’ (BLS) annual reporting data was used to track firefighter illness and injuries as well as fatalities. As depicted below, the Total Recordable Incident Rate increased 32.9% and the DART rate increased 34.1% compared to the 2008 baseline year. This goal was not met.

Fire Service Injury and DART Rates

Year	2008 Baseline	2009	2010	2011	2012	2013	2014	% Change from Baseline
Total Recordable Incident Rate*	53.1	44.4	34.3	29.9	21.8	24.0	79.1	32.9 % Increase
DART Rate*	51.1	41.9	20.9	28.7	20.0	23.0	77.5	34.1% Increase

* Based on BLS data

Partnership Activity

This committee continues to work with the Fireman’s Association of the state of NY (FASNY), NYS Association of fire Chiefs (NYS AFC), and County Fire Coordinators as it relates to PESH activities. During 2015, PESH adopted a “Best Practices” approach to firefighter’s training requirements. The training recommendations were taken from the requirements for paid firefighters as prescribed by the New York State Office of Fire Prevention and Control. Committee participants were involved in the review of new outreach documents relating to the Best Practices. The final documents have since been added to the 2015 PESH Fire Resource CD.

Outreach

Committee participants completed a factsheet about the dangers associated with overhaul environments after a fire. The factsheet describes the respiratory and dermal exposures that firefighters receive when not wearing the proper personal protective equipment. Other projects included participation in two different multi-agency severe weather related exercises. During the 2015 WRECKIT Exercise committee members participated inside the New York State Office of Emergency Services, Emergency Operation Center. The exercise was used to test our response protocols and train new workers on our responsibilities at the emergency operations center.

Performance Goal 3: Reduce the Lost Work Day Rate by 1% in Residential Nursing Care (NAICS 623110) and Acute Hospital Care (NAICS 622110).

The PESH Healthcare Strategic Plan focuses on injury and illness reduction in County Nursing homes, state veterans’ homes, and public Acute Hospital Care facilities. In FY 2015, public hospitals that fall under the NAICS 622110 were added to this group as a

result of dropping residential mental health facilities (NYS Office of Mental Health (OMH)) and residential intellectual and developmental disability facilities (NYS Office for People with Developmental Disabilities (OPWDD)). The goal of the Healthcare Strategic Plan committee was to reduce the Lost Work Day rate by 1% per year or 5% over the five years of this phase.

Residential Nursing Care and Acute Hospital Care

Nursing and Residential Care Facilities (NAICS 623110)			
Measure	CY2012 Baseline	CY2013	CY2014
Lost Work Day Rate	7.8	6.2	7.0
Change	Baseline	20.5% Decrease	10.3% Decrease
General and Surgical Hospitals (NAICS 622110)			
Measure	CY2012 Baseline	CY2013	CY2014
Lost Work Day Rate	3.9	NA ¹	3.6
Change	Baseline	NA	7.7% Decrease

NA = Not Available

NA¹ = The lost workday total was not available for general and surgical hospitals for 2013.

Partnership Activity

Committee members continued to partner with the NYS Zero Lift Task Force and NYS DOH Safe Patient Handling committee to identify develop and share patient lifting strategies. During FY 2015, much of the committee member’s efforts were concentrated on planning for the 2015 Safe Patient Handling Conference. This event was scheduled for October 28 and 29, 2015 in Saratoga Springs, New York. The conference was designed to educate healthcare workers, patient advocates, union representatives, and safety and health professionals in safe patient lifting strategies.

Compliance Assistance

During FY 2015, the African Ebola epidemic came to the U.S. through infected travelers and healthcare workers returning home to the states. Nursing Home Strategic Plan members were part of the task force that worked with various hospitals designated by NYS DOH to receive Ebola patients. Strat Plan members met with unions and management at Bellevue, Upstate Medical Hospital in Syracuse, Erie County Medical Center, and Stoney Brook University Hospital to review operating and decontamination procedures.

V. Other Special Measures of Effectiveness and Areas of Note

N/A

Appendix A – New and Continued Findings and Recommendations
FY 2015 PESH Comprehensive FAME Report

FY 2015-#	Finding	Recommendation	FY 20XX-# or FY 20XX-OB-#
FY 2015-01	<i>Complaint Response Time</i> Of the 39 complaint case files reviewed, 14 (36%) case files revealed an excessive time period (more than 10 days) between receipt of the complaint and inspection initiation.	PESH should ensure responses to received complaints adhere to PESH’s Field Operations Manual (FOM) Chapter IX-A.7.c (2), and responses to serious complaints should be addressed within 10 days.	
FY 2015-02	<i>Next-of-Kin Notification</i> Four of the nine (44%) fatality case files lacked evidence/documentation that next-of-kin was notified of the inspection results.	PESH should ensure that the next-of-kin has been notified of the results of the investigation by sending copies of the citations issued, or by sending a standard letter that the investigation is complete and that no violations of PESH standards were found.	
FY 2015-03	<i>Inadequate Evidence to Support Violation:</i> In 19 of the 47 (40%) case files with violations, adequate evidence to support the violation was not documented in the case file. (Examples of missing documentation include: hazard descriptions, worker exposure, and location of the hazard and lack of employer knowledge.)	PESH should ensure that inspection case files with violations are documented in accordance with PESH’s FOM Chapter IV.	
FY 2015-04	<i>Petition for Modification of Abatement (PMA)</i> Late Petitions for Modification of Abatement (PMA) were being accepted in 14 of the 72 (19%) of case files reviewed. This was directly to a FY 2015 CASPA. Also noted, PMAs were being granted without the required interim steps necessary to protect workers in 16 of the 72 (22%) of case files reviewed.	PESH should ensure that procedures as stated in the Field Operations Manual (FOM) Chapter III, General Inspection Procedures are followed for any PMA requested.	
FY 2015-05	<i>Documentation of Worker Interviews</i> In 47 of the 103 case files (46%) reviewed, worker interviews were not documented.	PESH should ensure that case files contain worker interview documentation in accordance with the Field Operations Manual (FOM) Chapter III, General Inspection Procedures.	FY 2014-OB-02
FY 2015-06	<i>Workplace Retaliation Documentation</i> Seven of nine (78%) workplace retaliation case files did not comply with the Whistleblower Manual. All nine (100%) of the case files lacked documentation of supervisory review and a Report of Investigation (ROI).	PESH should ensure that workplace retaliation case files adhere to the requirements in the Field Operations Manual (FOM) Chapter X Discrimination Complaints.	
FY 2015-07	<i>Workplace Retaliation Interviews</i> All case files (100%) lacked evidence that a complainant interview was conducted.	PESH should ensure it is following the requirements in its Field Operations Manual (FOM), Chapter X Discrimination Complaints.	

Appendix B – Observations Subject to New and Continued Monitoring
 FY 2015 PESH Comprehensive FAME Report

Observation # FY 2015-OB-#	Observation# FY 20XX-OB-# or FY 20XX-#	Observation	Federal Monitoring Plan	Current Status
FY 2015-OB-01		<i>Next-of-Kin Involvement Letters</i> Two of nine (22%) fatality case files reviewed lacked evidence/documentation that the next-of-kin was notified of PESH's involvement.	In FY 2016, a limited number of case files will be selected randomly and reviewed to determine if these are isolated instances or if this represents a trend that requires further action.	New
FY 2015-OB-02		<i>Excessive Abatement Periods</i> Abatement periods established for correction of violations were found to be excessive in 10 of the 47 case files (21.3%) that had citations issued. (Examples of excessive abatement periods included: 10 days for a locked exit, 60 days to install emergency eyewash, and 90 days to abate a recordkeeping violation.)	In FY 2016, a limited number of case files will be selected randomly and reviewed to determine if these are isolated instances or if this represents a trend that requires further action.	New
	FY 2014-OB-01	<i>Notification to Complainant</i> Documentation that complainants were notified of the results of inspections was observed in the case files reviewed during this evaluation period.		Closed
	FY 2014-OB-02	<i>Documentation of Worker Interviews</i> In one of 15 (7%) case files, worker interviews were not documented.		Converted to a finding

Appendix C - Status of FY 2014 Findings and Recommendations

FY 2015 PESH Comprehensive FAME Report

FY 2014-#	Finding	Recommendation	State Plan Response/Corrective Action	Completion Date	Current Status
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>	<p>Ensure a timely response is provided to complainants in accordance with PESH's Field Operations Manual (FOM).</p>	<p>This issue was discussed with all PESH supervisors resulting in all complaint response letters being sent within 30 days from the closing conference date when there are no violations. For complaint inspections with identified violations, the complaint response letter is sent at the same time as the citation.</p>	May 5, 2015	Completed

Appendix D - FY 2015 State Activity Mandated Measures (SAMM) Report
FY 2015 PESH Comprehensive FAME Report

OSHA is in the final stages of moving operations from NCR, a legacy data system, to OIS, a modern data system. During FY 2015, OSHA case files and most State Plan case files were captured on OIS. However, some State Plan case files continued to be processed through NCR. 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. In addition, SAMMs 5, 8, 9, 11, 12, 15, and 17 have further review levels that should rely on a three-year national average. However, due to the transition to OIS, the further review levels for these SAMMs in this year’s report will rely on a one-year national rate pulled only from OIS data. Future SAMM year-end reports for FY 2016 and FY 2017 should rely on a two-year national average and three-year national average, respectively. All of the State Plan and federal whistleblower data is captured directly in OSHA’s WebIMIS System. See the “Notes” column below for further explanation on the calculation of each SAMM. All of the New York State Plan’s enforcement data was captured in OIS during FY 2015. The New York State Plan opened 1,292 enforcement inspections, and they were all captured in OIS.

U.S. Department of Labor				
Occupational Safety and Health Administration State Plan Activity Mandated Measures (SAMMs)				
New York - PESH			FY 2015	
SAMM Number	SAMM Name	State Plan Data	Further Review Level	Notes
1a	Average number of work days to initiate complaint inspections (state formula)	8.98	10	State Plan data is pulled only from OIS. Further review level is negotiated by OSHA and the State Plan.
1b	Average number of work days to initiate complaint inspections (federal formula)	6.68	N/A	State Plan data is pulled only from OIS. 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)	4.88	1	State Plan data is pulled only from OIS. Further review level is negotiated by OSHA and the State Plan.

Appendix D - FY 2015 State Activity Mandated Measures (SAMM) Report

FY 2015 PESH Comprehensive FAME Report

SAMM Number	SAMM Name	State Plan Data	Further Review Level	Notes
2b	Average number of work days to initiate complaint investigations (federal formula)	2.47	N/A	State Plan data is pulled only from OIS. 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%	State Plan data is pulled only from OIS. Further review level is fixed for every State Plan.
4	Number of denials where entry not obtained	0	0	State Plan data is pulled only from OIS. Further review level is fixed for every State Plan.
5	Average number of violations per inspection with violations by violation type	SWRU: 4.19	+/- 20% of SWRU: 1.92	State Plan data is pulled only from OIS. Further review level is based on a one-year national rate, pulled only from OIS.
		Other: 1.31	+/- 20% of Other: .87	
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.
7	Planned v. actual inspections – safety/health	S: 895	+/-5% of S: 1,350	State Plan data is pulled only from OIS. Further review level is based on a number negotiated by OSHA and the State Plan through the grant application.
		H: 397	+/-5% of H: 550	

SAMM	SAMM Name	State Plan	Further Review	Notes
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Appendix D - FY 2015 State Activity Mandated Measures (SAMM) Report

FY 2015 PESH Comprehensive FAME Report

Number		Data	Level	
8	Average current serious penalty in private sector - total (1 to greater than 250 workers)	N/A	+/-25% of \$2,002.86	N/A – This is a State and Local Government State Plan. Further review level is based on a one-year national rate, pulled only from OIS.
	a. Average current serious penalty in private sector (1-25 workers)	N/A	+/-25% of \$1,402.49	N/A – This is a State and Local Government State Plan. Further review level is based on a one-year national rate, pulled only from OIS.
	b. Average current serious penalty in private sector (26-100 workers)	N/A	+/-25% of \$2,263.31	N/A – This is a State and Local Government State Plan. Further review level is based on a one-year national rate, pulled only from OIS.
	c. Average current serious penalty in private sector (101-250 workers)	N/A	+/-25% of \$3,108.46	N/A – This is a State and Local Government State Plan. Further review level is based on a one-year national rate, pulled only from OIS.
	d. Average current serious penalty in private sector (greater than 250 workers)	N/A	+/-25% of \$3,796.75	N/A – This is a State and Local Government State Plan. Further review level is based on a one-year national rate, pulled only from OIS.
9	Percent in compliance	S: 22.43%	+/-20% of S: 28.47%	State Plan data is pulled only from OIS.
		H: 44.34%	+/-20% of H: 33.58%	Further review level is based on a one-year national rate, pulled only from OIS.
10	Percent of work-related fatalities responded to in one workday	85.71%	100%	State Plan data is pulled only from OIS. Further review level is fixed for every State Plan.

SAMM	SAMM Name	State Plan	Further Review	Notes
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Appendix D - FY 2015 State Activity Mandated Measures (SAMM) Report

FY 2015 PESH Comprehensive FAME Report

Number		Data	Level	
11	Average lapse time	S: 41.68	+/-20% of S: 42.78	State Plan data is pulled only from OIS.
		H: 67.59	+/-20% of H: 53.48	Further review level is based on a one-year national rate, pulled only from OIS.
12	Percent penalty retained	100.00%	+/-15% of 67.96%	State Plan data is pulled only from OIS. Further review level is based on a one-year national rate, pulled only from OIS.
13	Percent of initial inspections with worker walk around representation or worker interview	99.23%	100%	State Plan data is pulled only from OIS. Further review level is fixed for every State Plan.
14	Percent of 11(c) investigations completed within 90 days	12%	100%	State Plan data is pulled from OIS. Further review level is fixed for all State Plans.
15	Percent of 11(c) complaints that are meritorious	4%	+/-20% of 24%	State Plan data is pulled from WebIMIS. Further review level is based on a three-year national average, pulled from WebIMIS.
16	Average number of calendar days to complete an 11(c) investigation	665	90	State Plan data is pulled from OIS. Further review level is fixed for all State Plans.
17	Percent of enforcement presence	N/A	+/- 25% of 1.35%	N/A – This is a State and Local Government State Plan and is not held to this SAMM. Further review level is based on a one-year national rate, pulled only from OIS.