

FY 2016 Comprehensive Federal Annual Monitoring and Evaluation (FAME) Report

Maine State Plan (MEOSH)



Evaluation Period: October 1, 2015 – September 30, 2016

Initial Approval Date: August 5, 2015

State Plan Certification Date: N/A

Final Approval Date: N/A

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I. Executive Summary

A. State Plan Activities, Trends, and Progress

The purpose of this report is to assess the Maine State Plan's (MEOSH) activities for fiscal year (FY) 2016, the first full year that the program operated as an OSHA-approved State Plan.

On August 5, 2015, MEOSH was approved by the Occupational Safety and Health Administration (OSHA) as a state occupational safety and health plan applicable only to state and local government (SLG) workers.¹ Although MEOSH began operating as a SLG State Plan less than two years ago, the Maine Department of Labor has adopted standards and performed inspections in state and local government agencies under state law since 1971.

In some ways, MEOSH's transition to becoming an OSHA-approved State Plan has gone fairly smoothly. For example, MEOSH achieved most of its annual performance goals, including the goal for inspections, and is also on track to complete its developmental steps within the allowable three-year timeframe (by August 15, 2018).²

However, during the on-site case file review, several issues were identified with the State Plan's enforcement program, and OSHA has made findings in this report that are based on these issues.³ The most serious concern is that MEOSH did not follow the requirements in the MEOSH Field Operations Manual (FOM) for case documentation; consequently, most of the cases reviewed were missing information that is essential to supporting violations.

Aside from issues related to case documentation, OSHA determined that MEOSH classified violations as other-than-serious, when they should have been classified as serious (and vice versa). Additionally, the State Plan did not follow the guidance in the MEOSH FOM for grouping violations and assigning abatement periods.

With regard to the whistleblower protection program, MEOSH enforces a state law that is similar to OSHA's anti-retaliation statute. However, MEOSH still has a long way to go in terms of establishing key procedures that are required by OSHA's Whistleblower Investigations Manual (which MEOSH has adopted). For example, procedures for handling complaints, appeals, and settlements, etc. have not yet been developed. Formulating these procedures is time-consuming and will entail coordination with other state agencies, such as the state's attorney general; yet they are critical to running the program and should be a high priority.

¹ 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 receive formal OSHA coverage only through an OSHA-approved State Plan.

² A state and local government only (SLG) State Plan (such as MEOSH) 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 Code of Federal Regulations (CFR) 1956.2(b). The State Plan's progress in completing the developmental steps is discussed in Section V.

³ As discussed in more detail later in this report, OSHA conducted an on-site case file review at MEOSH's headquarters in December 2016.

OSHA believes that the issues that have been identified in this report are rooted in the fact that MEOSH needs more time to get up to speed, especially in terms of understanding how to use the OSHA Information System (OIS) and knowledge of the MEOSH FOM, particularly the chapters related to inspections, case file preparation and documentation, violations, informal conferences, and health sampling. The State Plan must also become familiar with the procedures prescribed in the Whistleblower Investigations Manual.

Furthermore, none of the staff have completed OSHA's mandatory training program for compliance personnel, because MEOSH is a new State Plan. Although each compliance safety and health officer (CSHO) has completed the courses prescribed by OSHA for the first year of his or her career with the program, it will be at least another few years before they have completed the entire slate of courses in the training program. It should also be noted that at the time of the on-site evaluation, neither of the first line supervisors had taken any of these initial courses.⁴

Despite these concerns, there are several indications that MEOSH is moving forward: MEOSH has reached out to OSHA for training on OIS, staff meetings have been held to discuss and review the MEOSH FOM, and MEOSH is receiving guidance from OSHA on its whistleblower protection program. Also, the State Plan has expressed a sincere willingness to learn more about the issues that have been raised in this report. These are all signs that improvement is on the horizon.

B. State Plan Introduction

The State of Maine began working on a State Plan in 2012 and submitted a draft Plan to OSHA in 2013. Final revisions to the plan were completed in December 2014, and in August 2015, Maine received initial approval as a developmental, SLG plan under the Occupational Safety and Health (OSH) Act of 1970. The Maine Department of Labor implements MEOSH and the director of the Department's Bureau of Labor Standards is the state designee. The State Plan is headquartered in Augusta and has three field offices located throughout the state.

Coverage

Approximately 2,300 state and local government employers, and more than 81,400 state and local government workers, are covered by the State Plan.⁵ Volunteers under the direction of a state or local government employer are also covered. The State Plan does not cover federal government workers, including those employed by the United States Postal Service and civilian workers on military bases. These workers are covered by OSHA, which also exercises authority over private sector employers in the state.⁶

⁴ OSHA Directive Number: TED 01-00-019, Mandatory Training Program for OSHA Compliance Personnel, effective July 21, 2014, requires that each CSHO complete a minimum of eight initial courses offered by the OSHA Training Institute (OTI) during the first three years of his/her career as a CSHO. The order and sequence of these courses are prescribed in this instruction.

⁵ The definition of state and local worker does not extend to students or incarcerated or committed individuals in public institutions.

⁶ A brief summary of MEOSH is included in the Code of Federal Regulations at [29 CFR 1952.28](#). OSHA retains the authority to promulgate, modify, or revoke occupational safety and health standards under Section 6 of the OSH Act. In the

State Plan Standards

MEOSH has adopted OSHA's occupational safety and health standards. They generally follow, but are not necessarily identical to OSHA standards. MEOSH has a unique respiratory protection standard and a video display terminal standard.

Enforcement and Whistleblower Protection Programs

MEOSH conducts workplace inspections. If violations are identified, citations and proposed assessments of penalties are issued. State and local government employers may contest citations and proposed penalties before the Board of Occupational Safety and Health (the Board).⁷ MEOSH's FOM is equivalent to OSHA's FOM, except MEOSH did not adopt OSHA's penalty adjustment factors in Chapter 6, Penalties and Debt Collection.

MEOSH enforces Title 26, Chapter 6, §570 of the Maine Revised Statutes (MRS), which outlines the provisions that an employer cannot discharge or in any manner discriminate against an employee filing a complaint, testifying, or otherwise acting to exercise rights granted by the Maine Revised Statutes. In fulfillment of the developmental steps, MEOSH plans to adopt 29 CFR 1977(Discrimination Against Employees Under the OSH Act of 1970) by September 30, 2017.

Voluntary and Cooperative Programs

MEOSH provides free, voluntary, compliance assistance occupational safety and health training and consultation for state and local government workplaces.

Informal Conferences and Appeals

The Board hears and rules on appeals from citations, notifications, and penalties issued by the enforcement unit. The appeal is presided over by a hearing officer and takes place at the Maine Department of Labor's Bureau of Labor Standards.

Funding, Covered Workers, and Staffing

The tables below show MEOSH's funding levels, the number of covered workers, and a snapshot of the Plan's staffing level as of July 1, 2016.⁸

event that federal OSHA resumes enforcement, those federal standards will be enforced. Federal OSHA also retains the authority to monitor the State Plan under Section 18(f) of the OSH Act.

⁷ The Board consists of 10 members of which 9 shall be appointed by the governor. For further details on the make-up of the Board, see Title 26 MRSA §564.

⁸ FY 2015 funding reflects that MEOSH operated from August 5 –September 30, 2015. This time period amounts to less than one-quarter of FY 2015.

Funding History FY 2015 - FY 2016 Source: DOL-E Grants/ Financial Close-out Forms						
Fiscal Year	Federal Funds Authorized (\$)	Federal Expenditure (\$)	State Match (\$)	100% State Funds (\$)	Total Funding (\$)	State Contribution (%)
2015	100,000	65,823	65,823	0.00	131,643	50
2016	400,525	400,525	400,525	130,072	931,122	57

Covered Workers FY 2015 - FY 2016 Source: FY 2015 and FY 2016 Grant Applications			
Fiscal Year	State Government	Local Government	Total
2015	23,241	58,389	81,630
2016	23,495	60,535	84,030

Personnel on Board as of July 1, 2016 Source: FY 2017 Grant Application		
MEOSH's Grant Positions	50/50 Funded Full-Time Equivalents (FTE)	100 % State Funded FTE
Manager/Supervisors (Admin.)	0.50	0.00
First Line Supervisors	0.80	0.00
Safety Compliance Officers	1.98	0.00
Health Compliance Officers	1.00	0.00
Whistleblower Investigator	0.02	0.00
State/Local Government Safety Consultants	1.50	0.50
State/Local Government Health Consultants	1.00	0.00
Compliance Assistance	1.00	0.00
Trainers	0.00	0.00
Clerical/Admin/Data System	0.25	0.00
Other (all positions not elsewhere counted)	0.20	0.00
Total State Plan FTE	8.50	0.50

C. Data and Methodology

FY 2016 was MEOSH's first full year as an OSHA-approved State Plan and as such, OSHA conducted a comprehensive evaluation of the Plan, which included an on-site review of case files.

Enforcement On-site Evaluation

From December 6-9, 2016, OSHA conducted an on-site evaluation of MEOSH at its headquarters

in Augusta, Maine. OSHA's on-site review team consisted of three personnel (a program analyst and two senior compliance officers). During this evaluation, OSHA reviewed 42 inspection case files; of this total, 10 files were related to cases that were actually referrals, but were miscoded by the program as fatality/catastrophe inspections.⁹ The remaining 32 cases were related to complaints and programmed inspections, and were randomly selected from a universe of 58 inspections that MEOSH opened and closed in FY 2016. The universe of opened and closed cases was obtained from an OIS Scan Summary Report that was run by OSHA on November 3, 2016.

OSHA conducted interviews with the director of the Workplace Safety and Health Division, the program manager, one part-time administrative support person, two CSHOs and one consultant (safety) to discuss personnel, training, inspections, standards adoption, compliance assistance and several other issues covered in this report. In January 2017, OSHA conducted interviews with representatives of two labor unions to gauge their familiarity with MEOSH and the services it provides.

In addition to interviews and the on-site case file reviews, OSHA used the following information sources to evaluate the State Plan's enforcement and state and local government consultation program: the FY 2016 State Activity Mandated Measures (SAMM) Report (Appendix D), the FY 2016 Mandated Activities Report for Consultation (MARC), and the FY 2016 State OSHA Annual Report (SOAR). OIS reports, which were run by OSHA, were also used in this report. Data was also obtained from the US Department of Labor, Bureau of Labor Statistics' (BLS) injury and illness reports.

Whistleblower Protection Program Evaluation

MEOSH did not have any retaliation complaints in FY 2016; therefore, there were no cases to review for this report. However, OSHA conducted interviews with MEOSH's first line supervisors regarding the need to establish and follow key procedures prescribed in the Whistleblower Investigations Manual for complaints, appeals, and settlements, etc. See Section III for further discussion of this matter.

D. Findings and Observations

This report contains five findings and six observations. Details of the findings and observations are further discussed in the body of the report. The findings are also listed in Appendix A, and Appendix B contains a listing of all observations. Appendix C, which provides the status of findings

⁹ MEOSH miscoded 10 referrals as fatality/catastrophe inspections in the OIS. As stated in chapter 11, page 11-4 of the MEOSH FOM, a fatality "is an employee death resulting from a work-related incident or exposure; in general, from an injury or an illness caused by or related to a workplace hazard," and a catastrophe is "the hospitalization of three or more employees resulting from a work-related incident or exposure; in general, from an injury or an illness caused by a workplace hazard." In each of the inspections that were coded in OIS as a fatality/catastrophe, there was neither a work-related death nor the hospitalization of three or more workers. All 10 of these inspections should have been coded as referrals, because in each of these incidents, there was an allegation of a potential workplace hazard or violation received from an employer, media source or other type of agency, etc. The State Plan has corrected this coding error and is following the MEOSH FOM's guidance with regard to coding referrals, fatalities and catastrophes.

from the FY 2015 Comprehensive FAME report, has been left blank since there was no report issued for FY 2015.

II. Major New Issues

None.

III. Assessment of State Plan Performance

A. STATE PLAN ADMINISTRATION

1) Training

MEOSH's first line supervisors plan the training and education program for staff. MEOSH has adopted OSHA Instruction TED 01-00-019 (Mandatory Training Program for OSHA Compliance Personnel, July 21, 2014), the directive which prescribes the requirements for training compliance officers.

All of the CSHOs have completed the mandatory training courses prescribed by OSHA for the first year of their career with the program. For example, each of the two safety CSHOs completed Course #1000 (Initial Compliance) and Course #1050 (Introduction to Safety Standards). The health compliance officer completed Course #1000 and Course #1250 (Introduction to Health Standards), but left the program in February 2017; the new CSHO will begin taking the mandatory courses in FY 2017.

In FY 2016, three of the four consultants completed OSHA Course #1500 (Introduction to On-site Consultation), and one is scheduled to complete this training in FY 2017. The two CSHOs who allocate a portion of their time to handling retaliation complaints are scheduled to complete Course #1420 (Whistleblower Investigation Fundamentals) in FY 2017.¹⁰

As of December 2016, when the on-site case file review was conducted, neither one of the first line supervisors had taken any of the OTI courses for compliance officers or whistleblower investigators. As noted earlier, OSHA believes that many of the deficiencies cited in this report are due to the entire staff needing more time to acquire the knowledge and skills needed to capably perform their duties. The first line supervisors would benefit from completing OSHA's basic training courses and, at a minimum, should complete Course #1000 (Initial Compliance) and Course #1420 (Whistleblower Investigation Fundamentals) as soon as possible.

¹⁰ Under OSHA's Mandatory Training Program for OSHA Whistleblower Investigators (TED 01-00-020; effective October 8, 2015), each whistleblower investigator must complete Course #1420 during the first year of his/her career as an investigator. Additional courses are prescribed by the directive for the second and third years of an investigator's career.

Observation FY 2016-OB-01: The first line supervisors have not taken any of the mandatory courses for compliance officers or whistleblower investigators.

Federal Monitoring Plan: OSHA will monitor the State Plan's progress in having the first line supervisors complete OSHA's basic training courses, such as Course #1000 (Initial Compliance) and Course #1420 (Whistleblower Investigation Fundamentals).

2) Funding

The General Revenue Fund of Maine provides 50 percent of MEOSH's funding for enforcement, and the remaining 50 percent is derived from federal monies. The 23(g) consultation program receives 50 percent of its funding from the state's Safety Education Training Fund and 50 percent from federal funds.

MEOSH's funding history is included in this report in the State Plan Introduction. In FY 2016, there were no state budgetary issues that affected the State Plan's performance. For example, MEOSH is fully staffed and personnel are permitted to travel to take OSHA's mandatory training courses, attend the Occupational Safety and Health State Plan Association's (OSHSPA) conferences, and participate in OSHA's family meeting.

3) Staffing

The director of the Workplace Safety and Health Division and the program manager are the State Plan's two first line supervisors. When MEOSH received initial approval in August 2015, it committed to having a fully operational enforcement staff of two safety compliance officers and one health compliance officer, and a public sector consultation staff of three safety consultants and one health consultant within six months of plan approval. As of October 2015, this staffing level was achieved by the State Plan.

Three part-time administrative assistants also support the program. Two CSHOs allocate a small portion of their time to handling retaliation complaints and investigations. With these personnel on board, MEOSH considers itself to be fully staffed, and in FY 2016, there were no major issues (such as hiring freezes or furloughs, etc.) that impacted the staffing level.

4) OSHA Information System (OIS)

At the beginning of FY 2016, MEOSH began using OIS for the first time. The CSHOs completed the webinar training offered by OSHA just as the system was being launched, but had no additional training on the system during the remainder of FY 2016. Evidently, the initial training did not adequately prepare the staff to use OIS, and to fully understand all of the information that must be entered into the forms that are included in the OIS inspection page.¹¹ For example, the staff did not enter all of the information that should be included in the violation

¹¹ The inspection page contains several tabs for each major component of the inspection activity. Some of these are further divided into sub-tabs. The main tabs are as follows: inspection, investigation, violation, citation assembly, informal settlement agreement (ISA), petition for modification of abatement (PMA), contested appealed case and safety and health Assessment.

tab of the inspection page. As a result, most of the cases reviewed by OSHA that were not in compliance (NIC) lacked key information (such as worker exposure, and descriptions of the hazardous operation, equipment, location, injury/illness, measurements and employer knowledge, etc.) that is needed to support violations.

As mentioned earlier, MEOSH has reached out to OSHA for additional training on OIS. However, MEOSH's enforcement staff not only needs more training on OIS, but must also become more familiar with the MEOSH FOM's requirements for case documentation. Learning and understanding the MEOSH FOM's requirements will lead to a better understanding of the information that must be entered into the forms in OIS. This issue is discussed in more detail under Citations and Penalties.

The program manager runs and reviews the SAMM on a quarterly basis to monitor performance in the area of enforcement, and does the same for consultation by running and reviewing the Mandated Activities Report for Consultation (MARC) and the Uncorrected Hazards Report. The program runs additional OIS reports as part of the State Internal Evaluation Plan (SIEP), as discussed below. During the on-site review, OSHA verified that there were no issues with the program's use of OIS for tracking penalty payments and debt collection.

5) State Internal Evaluation Plan (SIEP) Report

MEOSH began implementing the SIEP in FY 2017. Based on data from FY 2016 OIS reports and feedback received from OSHA during the onsite case file review, the State Plan monitors performance in the following areas: case documentation, average number of work days to initiate complaint inspections, lapsed days for the written report, and uncorrected hazards that are past due.

The managers review a small percentage of all open case files (selected randomly) to ensure that case documentation meets all of the MEOSH FOM's requirements. For the other three areas selected for monitoring, SAMM #1 (average number of workdays to initiate complaint inspections) and OIS reports for lapsed days and uncorrected hazards are run at frequent intervals and discussed with field staff.

B. ENFORCEMENT

1) Complaints

MEOSH's procedures for handling complaints are detailed in the MEOSH FOM. Any worker or a representative of a state or local government workplace who believes that a violation of an occupational safety or health standard exists that threatens physical harm, or that an imminent danger exists, may request an inspection by notifying MEOSH. Except in cases of imminent danger, the notice shall be in writing, and shall state the reason for the inspection request with reasonable particularity.

The complaint must be signed by the worker (or his representative) and a copy shall be provided to the employer no later than the time of the inspection. MEOSH shall inspect the site as soon as possible if the information gives reasonable grounds to believe that a violation or danger exists. However, if management determines that there are no reasonable grounds to believe that a violation or danger exists, the worker (or representative) shall be notified in writing of such determination.

If the complaint is deemed to be invalid by the receiving officer (i.e., no signature, not an employee, not covered by state law) notice will be sent to the complainant of the reasons. Complaints that are deemed to be valid but not covered directly by MEOSH will be forwarded to the appropriate regulating body. Verbal complaints will be handled on a case-by-case basis by the management staff and decisions to inspect or notify will be rendered based on the degree of the hazard, number of affected workers and past history. MEOSH will make every effort to formalize oral complaints, including seeking further clarification of the hazard, working conditions, locations, etc.

SAMMs #1A through #3 assess the program's efficiency in handling complaint inspections. For SAMM #1A (average number of days to initiate complaint inspections) the further review level is 5 days. In FY 2016, MEOSH's average was 5.13 days, which was 2.6 percent above the further review level. In an effort to reduce the average, MEOSH is monitoring its performance on SAMM #1A as part of the SIEP.

SAMM #2 calculates the number of days from the date the complaint was received to the date the State Plan initiates the investigation by notifying the employer of the complaint. SAMM #2 pertains only to complaints that were handled by investigation and have no related inspection.¹² In FY 2016, MEOSH did not receive any complaints that had no related inspection.

In SAMM #3, the percent of imminent danger complaints and referrals responded to in one day is calculated. In FY 2016, MEOSH did not receive any complaints of imminent danger, and referrals were miscoded in OIS by the CSHO as fatality/catastrophe inspections, as discussed earlier in this report.

Of a total of 135 inspections opened by MEOSH in FY 2016, most were programmed inspections (73 percent). Only eight complaint inspections were opened during the fiscal year (three percent).¹³

2) Fatalities

Maine's statutes require that fatalities be reported to the State Plan within eight hours after the occurrence, and that these reports shall "state as fully as possible the cause of the death and the place where the deceased person has been sent." In FY 2016, MEOSH did not investigate any work-related fatalities.

¹² OSHA's SAMM Codebook

¹³ OIS Inspection Summary Report (run date: December 14, 2016)

3) Targeting and Programmed Inspections

In the FY 2016 performance plan, MEOSH set goals for inspections and consultation visits in the industries that were identified in the strategic plan as having the most hazardous workplaces, based on the Bureau of Labor Statistics (BLS) days away, restrictions and transfers (DART) rates.

MEOSH's Targeted High-Hazard Industries	
State Government	Local Government
Police protection	Police protection
Highway, street and bridge construction	Fire protection
Administration of human resource programs (except education, public health and veterans' affairs)	Highway, street and bridge construction
Correctional facilities	Elementary and secondary schools
Colleges, universities, etc.	Correctional facilities

In FY 2016, MEOSH planned to reduce the 2013 BLS DART rates in each targeted industry by at least one percentage point through enforcement, consultation and, compliance assistance activities. As discussed in more detail in Section IV of this report, the State Plan's results were mixed.

For state and local government establishments, programmed inspections are currently assigned to CSHOs based on lists (one for state government and one for local government) of all governmental agencies in the state. The manager cycles through the lists, so that the next agency assigned for an inspection is the one where the most time has elapsed since the last time it received a programmed inspection. Federal emphasis programs are evaluated for applicability in state and local government work sites and adopted, if necessary, as part of the State Plan's targeted inspection program.

OSHA uses two SAMMs to analyze MEOSH's targeting program. SAMM #9 calculates the program's in compliance rates (i.e., the percentage of inspections that have been closed with no violations). High in compliance rates may indicate that the State Plan is not targeting worksites that are highly hazardous and prone to having serious violations. The State Plan's percentage for safety was only 3.85 percent, which met the further review level of +/- 20 percent of 28.85 percent. For health, none of the inspections were in compliance.

SAMM #5 calculates the average number of serious, willful, repeat or unclassified (SWRU) violations per not in compliance inspection. Not meeting the further review level average for SWRU violations may also indicate that the State Plan is not targeting the most hazardous worksites. MEOSH's average of 9.10 for average number of violations per SWRU violations met the further review level of +/- 20 percent of 1.87. MEOSH's results on SAMMs #5 and #9 indicate that the program is targeting the most hazardous worksites for inspections.

4) Citations and Penalties

MEOSH's FOM describes the procedures for issuing citations and proposed penalties. As noted earlier, the MEOSH FOM does not include the penalty adjustments in Chapter 6 of OSHA's FOM. In addition, since MEOSH is a state and local government State Plan, it was not required to adopt OSHA's Interim Final Rule on Maximum Penalty Increases, which became effective on August 1, 2016.

The director has discretionary authority for civil penalties of up to \$1,000 per day for repeat and willful violations. Serious and other-than-serious violations may be assessed a penalty of up to \$1,000 per violation and failure-to-correct violations may be assessed a penalty of up to \$1,000 per day. Criminal penalties can be issued to state and local government employers who willfully violate any standard, rule, or order.

MEOSH closely monitors lapse times, and in FY 2016, the State Plan performed satisfactorily on SAMM #11 (average lapse times). For safety inspections, MEOSH's average of 23.88 days met the further review level of +/- 20 percent of 45.16 days; the State Plan's average of 13.50 days for health also met the further review level of +/- 20 percent of 57.28 days.

Although MEOSH performed satisfactorily on most of the SAMMs, this does not paint the entire picture of the State Plan's overall performance with regard to enforcement. As discussed below, MEOSH's case files lacked little, if any, documentation of violations.

For example, in 34 of 36 cases reviewed that were NIC, there was no narrative in the file, and information entered into the OIS violation worksheet was scant.¹⁴ The MEOSH FOM, Chapter 5, page 5-1, states that all case files must include the inspection, narrative, and violation for all inspections that result in citations being issued.

The narrative should contain basic information such as the name of the establishment, contact information for worker representatives and anyone contacted during the inspections, as well as accurate and concise information about the employer and the worksite, and any other relevant comments or information that the CSHO believes may be helpful, based on his/her professional judgment (the MEOSH FOM, Chapter 5, page 5-1).

As discussed in the MEOSH FOM, Chapter 5, page 5-2, the violation worksheet is used to describe the observed hazardous conditions or practices, including all relevant facts, and all information pertaining to how and/or why a standard is violated. Information that specifically identifies the hazard to which workers have been or could be exposed to, should also be entered into the violation worksheet, as well as several other factors related to the violation. Because the violation worksheets were not properly completed by the CSHO in these 34 cases, violations

¹⁴ For all State Plans, the OIS narrative form has been disabled, because that tab includes OSHA's penalty adjustment factors, and they have not been adopted by all State Plans, including MEOSH. Until the on-site evaluation, MEOSH's CSHOs were not aware that they could create their own version of the narrative in Microsoft Word, and therefore did not include a narrative in any of the FY 2016 case files.

were not adequately documented; also, there was not enough information to determine if citations were issued for all apparent violations.¹⁵

In 32 of 36 cases that had violations cited, the CSHO's notes and/or photographs were not included. According to the MEOSH FOM (Chapter 5, page 5-1), "All necessary information relative to documentation of violations shall be obtained during the inspection, (including but not limited to notes, audio/videotapes, photographs, employer and employee interviews and employer maintained records). CSHOs shall develop detailed information for the case file to establish the specific elements of each violation."

In several cases, MEOSH was not using the case file activity diary sheet as prescribed by the MEOSH FOM. In Chapter 5, page 5-8, the MEOSH FOM states that all cases "shall contain an activity diary sheet, which is designed to provide a ready record and summary of all actions relating to a case. It will be used to document important events or actions related to the case. Information provided should include, at a minimum, the date of the action or event, a brief description of the action or event, and the initials of the person making the entry."

Finding FY 2016-01: MEOSH did not follow the guidance in the MEOSH FOM, Chapter 5, for documenting violations. For example, in 34 of the 36 cases (94 percent) that were NIC, the narrative was not included in the case file and the violation worksheet was incomplete, notes and/or photographs were not included in 32 of 36 cases (89 percent) that had violations cited, and in 33 of the 42 cases (79 percent), case file activity diary sheets were not being used as prescribed by the MEOSH FOM.

Recommendation: Follow the guidance in Chapter 5 of the MEOSH FOM for documenting violations and for using the case file activity diary sheet.

Sampling is another important means of documenting worker exposure to the hazard, as discussed in Chapters 3, 4 and 7 of the MEOSH FOM. In the 44 health inspections conducted by MEOSH in FY 2016, no sampling was performed by the CSHO. Although sampling is not needed in all health inspections, the fact that no sampling was conducted all year raises a red flag. In FY 2016, personnel issues arose with the State Plan's one and only health CSHO. In February 2017, the health CSHO resigned, and MEOSH filled this vacancy with a health consultant who has worked for the state's 21 (d) on-site consultation project for many years. According to the manager, this new CSHO has extensive experience in health sampling. Nonetheless, OSHA will monitor this issue in FY 2017.

Observation FY 2016-OB-02: No sampling was performed in the 44 health inspections that were conducted in FY 2016.

¹⁵ In the 34 cases that had violations cited, the only information that the CSHO entered into the violation worksheet was the alleged violation description (AVD), which alleges all of the necessary elements of a violation of a standard. From discussions with one of the State Plan's CSHOs, it appears that the program thought the AVD sufficed as the narrative for the case.

Federal Monitoring Plan: A health consultant from an OSHA area office will confer with the new CSHO to help ensure that sampling is performed when appropriate.

Finally, 19 of the 42 cases evaluated did not include documentation that the CSHO had requested the employer's OSHA 300 Logs of Work-Related Injuries and Illnesses. According to the MEOSH FOM, (Chapter 3, page 3-12) "CSHOs shall request copies of the OSHA 300 Logs, the total hours worked and the average number of employees for each year, and a roster of current employees." The MEOSH FOM, Chapter 4, page 4-4, also states that the employer's OSHA 300 Logs are one of several means of documenting worker exposure. Without documentation in the case file, it is difficult to determine if the CSHO had ever requested the logs from the employer.

Observation FY 2016-OB-03: In 19 of the 42 cases (45 percent) evaluated, there was no evidence in the case file that the CSHO had requested the employer's OSHA Forms 300.

Federal Monitoring Plan: During next year's FAME, OSHA will review case files to evaluate the extent to which this issue has been resolved.

Aside from issues related to case file documentation, OSHA also identified issues pertaining to violation classification and grouping violations. For example, OSHA determined that there were several cases that contained at least one other-than-serious violation that was misclassified by the CSHO as serious, and/or at least one serious violation that was misclassified as other-than-serious.¹⁶

Finding FY 2016-02: In 13 of the 36 inspections (36 percent) that were NIC, each contained at least one other-than-serious violation that was misclassified by the CSHO as serious. In addition, there were 7 cases (19 percent) in which the CSHO misclassified at least one serious violation as other-than-serious.

Recommendation: Follow the guidance in the MEOSH FOM, Chapter 4, for classifying serious and other-than-serious violations.

During the on-site review, it became apparent that neither the CSHOs nor the managers understood how to group citations. Combining and grouping citations is thoroughly discussed in the MEOSH FOM (Chapter 4, pages 4-25 through 4-26).

Finding FY 2016-03: Of the 36 inspections that were NIC, 16 (44 percent) had citations that were not grouped properly.

Recommendation: Follow the guidance in the MEOSH FOM, Chapter 4, for grouping violations.

¹⁶ Violations should be classified as serious when there is a "substantial probability that death or serious physical harm could result from an accident/incident or exposure relating to the violative condition" (Source: the MEOSH FOM, Chapter 4, pages 4-6). In some cases, the CSHO classified falls and electrical hazards (which could result in death or serious physical harm) as other-than-serious violations. Conversely, the program classified some hazards that did not have the potential to result in serious harm or death as serious violations.

4) Abatement

Of the 36 inspection case files that were reviewed that were NIC, OSHA identified 33 cases in which MEOSH gave the employer 60 days to abate one or more violations.¹⁷ The manager affirmed that 60 days is the usual amount of time given to employers to abate hazards. However, this policy is not in keeping with the State Plan's FOM, which states that the CSHO should assign "the shortest interval within which the employer can reasonably be expected to correct the violation."

Moreover, the MEOSH FOM (Chapter 5, page 5-3) states that "Abatement periods exceeding 30 days shall not normally be offered, particularly for simple safety violations." In these 33 cases, no justification was provided in the case file for allowing the employer to go beyond 30 days to abate the violation. According to the MEOSH FOM (Chapter 5, page 5-3), "When an initial abatement date is granted that is in excess of 30 calendar days, the reason should be documented in the case file."

Finding FY 2016-04: In 33 of 36 inspections that were NIC (92 percent), the CSHO assigned a 60-day abatement period, rather than assigning the shortest interval within which the employer can reasonably be expected to abate the hazard. In addition, the case files did not include the justification for allowing the employer to go beyond 30 days to abate the violation.

Recommendation: Follow the MEOSH FOM's guidance for assigning the shortest timeframe within which the employer can reasonably be expected to abate the hazard. In instances where the employer is allowed to exceed 30 days, provide justification in the case file.

5) Worker and Union Involvement

Worker interviews were conducted in 32 of the 42 cases reviewed; however in 28 of the 32 cases where the CSHO indicated that worker interviews were held, there were no notes or documentation of the interview. As mentioned earlier, the MEOSH FOM states in Chapter 5 that "All necessary information relative to documentation of violations shall be obtained during the inspection, (including but not limited to notes, audio/videotapes, photographs, employer and employee interviews and employer maintained records)." The MEOSH FOM (Chapter 5, page 5-6) also states that "Interview statements of employees or other individuals shall be obtained to adequately document a potential violation. Statements shall normally be in writing and the individual shall be encouraged to sign and date the statement."

Finding FY 2016-05: In 28 of the 32 cases (88 percent) where the CSHO indicated that worker interviews were held, there were no notes or documentation of the interview.

Recommendation: Follow the procedures for documenting interviews in the MEOSH FOM, Chapter 3.

¹⁷ Abatement means action by an employer to comply with a cited standard or regulation or to eliminate a recognized hazard identified by OSHA during an inspection.

For SAMM #13 (percent of initial inspections with worker walk-around representation or worker interview), MEOSH's percentage of 98.51 did not quite meet the further review level of 100 percent.¹⁸ Of the 42 cases reviewed, 16 had union representatives at the site at the time of the inspection, but in 12 of the 16 cases that had union representatives on site, there was no documentation in the case file indicating whether or not the union representative (or worker representative) was given the opportunity to participate in the inspection, the opening conference, the walk-around, the closing conference, or the informal conference.

As discussed in the MEOSH FOM (Chapter 3, page 3-14), the OSH Act provides that a representative of the employer and a representative authorized by his workers shall be given an opportunity to accompany the compliance officer "during the physical inspection of any workplace...for the purpose of aiding such inspection." The extent to which the worker representative was given the opportunity to participate in the inspection should be documented in the case file.

Observation FY 2016-OB-04: In 12 of the 16 inspections (75 percent) that had union representatives on site, the extent to which the unions or worker representatives were given the opportunity to participate in the inspection, including the opening conference, the walk-around, the closing conference or the informal conference, was not documented by the CSHO.

Federal Monitoring Plan: During next year's FAME, OSHA will review a selection of case files to evaluate the extent to which this issue has been addressed.

The director indicated that workers represented by unions are familiar with the program and the services it provides. Annually, MEOSH reaches out to union officials through various means. For example, in FY 2016, MEOSH hosted an information booth at a conference that was attended by representatives from several police and firefighters' unions. MEOSH also has contact with unions through the Safety and Health Award for Public Employers (SHAPE) program, a recognition program for state and local government employers.¹⁹ At least nine SHAPE sites are covered by a union, and the State Plan has dealt with union representatives during the SHAPE recruitment process.

Representatives from the two labor unions interviewed by OSHA knew that the Maine Bureau of Labor Standards had been enforcing the state's occupational safety and health laws for many years, but they were not aware of the program's status as a newly approved OSHA State Plan for the state and local government workforce.

¹⁸ SAMM #13 shows that of a total of 134 inspections, 132 had worker walk-around representation or worker interview(s).

¹⁹ SHAPE is discussed in more detail under the section on Voluntary Compliance Program.

C. REVIEW PROCEDURES

1) Informal Conferences

Under MEOSH's current procedures, an employer may file an appeal of a citation within 15 business days of its receipt. If an appeal is filed, then the director will set up a hearing with the Board. All proposed penalties will be stayed until after the formal appeal is heard.

Employers may also request a "penalty discussion" to reduce the penalty amount. Before a penalty discussion is held, the establishment must certify that all violations have been corrected by the abatement date listed on the citation (unless an extension is granted by the State Plan upon a written request from the employer).

If neither option (either a formal appeal or a penalty discussion) is chosen by the worksite that received the citation, then the citation(s) will become a final order within 15 business days from the day it is received, and the full penalty amount must be paid to the state treasurer.

In most cases (except for willful violations and certain serious violations), MEOSH reduces original penalty amounts by 90 percent if the employer certifies abatement. However, these procedures do not conform to the post-citation procedures that are contained in the MEOSH FOM, Chapter 7. Therefore, Chapter 7 must be revised to reflect the post-citation procedures that are actually followed.

Observation FY 2016-OB-05: The MEOSH FOM, Chapter 7, does not accurately reflect the procedures that MEOSH follows with regard to informal conferences.

Federal Monitoring Plan: On a quarterly basis, OSHA will monitor MEOSH's progress in revising Chapter 7 of the MEOSH FOM, so that it is in line with the informal conference procedures that are actually being followed.

2) Formal Review of Citations

The Board is an independent review authority for review of contested cases. In FY 2016, MEOSH had no contested cases.

D. STANDARDS AND FEDERAL PROGRAM CHANGES (FPCs) ADOPTION

1) Standards Adoption

The Board formulates and adopts rules, pursuant to Title 26, Chapter 6, Subchapter 565 of the Maine Revised Statutes for safe and healthful working conditions. The rules formulated by the Board shall, at a minimum, conform to federal standards for occupational safety and health.

All federal occupational safety and health standards shall become rules of MEOSH within six months after their federal promulgation date, unless an existing state standard is at least as

effective. In all rulemaking, the Board follows the Maine Administrative Procedure Act (Title 5 MRS, Chapter 375).

The Board also has the authority to adopt alternative or different occupational health and safety standards where no federal standards are applicable to the conditions or circumstances, or where standards that are more stringent than the federal are deemed advisable. In two instances, the Board has adopted standards that are more stringent than current OSHA standards: respiratory protection and video display terminals.

MEOSH has adopted state standards identical to federal occupational safety and health standards for general industry and construction as promulgated through September 1, 2016. As part of the developmental program (which must be completed by August 5, 2018), the Board must adopt 29 CFR 1977 (Discrimination), 29 CFR 1905 (Rules of Practice), and 29 CFR 1908 (Consultation Agreements). Section V of this report contains MEOSH's schedule for completing adoption of these standards.²⁰

The Governor of the State of Maine has the authority to establish emergency temporary standards where state and local government workers may be exposed to unique hazards for which existing standards do not provide adequate protection. Emergency rulemaking procedures are outlined in the Administrative Procedure Act.

2) OSHA or State Plan-Initiated Changes

MEOSH was timely in responding with a notice of intent for each of the FPCs listed in the table below. Adoption was also timely for all FPCs, except for the Mandatory Training Program for OSHA Whistleblower Investigators (TED 01-00-020).²¹ As discussed earlier, MEOSH committed to having its retaliation investigators complete the basic OTI course (#1420) for investigators in FY 2017. However, adoption of this FPC has been delayed, because the State Plan sought clarification from OSHA on whether its investigators needed to take the additional four courses that are prescribed by the directive, because they are primarily safety inspectors.

OSHA affirmed that the State Plan must either adopt the directive identically, or develop its own training for the investigators that is at least as effective as the federal program. MEOSH has decided to adopt the directive identically.²²

²⁰ As part of the developmental program, MEOSH was required to provide a comparison of its injury and illness reporting rule to OSHA's standard (29 CFR 1904). However, in place of its own recordkeeping rule, the State Plan decided to adopt OSHA's Final Rule to Improve Tracking of Workplace Injuries and Illnesses (or an equivalent). MEOSH plans to complete adoption of 29 CFR 1904 by the end of 2017.

²¹ The FPCs listed are those that were due to be adopted from August 5, 2015 through September 20, 2016. State Plans must respond with a notice of intent within 60 days of the date of publication in the Federal Register. FPCs must be adopted within six months of the publication date.

²² Although some State Plans view it as a hardship to send such personnel to the additional training, OSHA maintains that the courses required by the directive are relevant and necessary to the training of investigators.

FPCs Status of Adoption		
Federal Register Publication Date	FPC	Status of Adoption
03/07/2016	National Emphasis Program on Shipbreaking (CPL 03-00-020)	Not adopted (there are no shipbreaking sites under the Plan's jurisdiction)
01/28/2016	Whistleblower Investigations Manual (CPL 02-03-007)	Adopted identically as of June 2, 2016
11/19/2015	Consultation Policies & Procedures Manual, Directive (CSP-02-00-003)	Adopted identically as of February 1, 2016
10/08/2015	Mandatory Training Program for OSHA Whistleblower Investigators (TED 01-00-020)	Adoption planned for June 30, 2017
10/01/2015	Field Operations Manual Directive (CPL 02-00-159)	Adopted differently as of January 4, 2016.
08/18/2015	Alternative Dispute Resolution Process for Whistleblower Protection Program (CPL 02-03-006)	Not adopted

E. VARIANCES

MEOSH had no activity with respect to variances in FY 2015 or in FY 2016.

F. STATE AND LOCAL GOVERNMENT WORKER PROGRAM

MEOSH is a state and local government only state plan. Therefore, all of its 134 inspections were conducted in state and local government workplaces.

G. WORKPLACE RETALIATION PROGRAM

As noted earlier, MEOSH plans to follow OSHA's training directive for whistleblower investigators; the two CSHOs who function as part-time retaliation investigators are scheduled to complete the basic training course in FY 2017, and MEOSH plans to have them fulfill the directive's additional training requirements. As part of the developmental program, MEOSH must adopt 29 CFR 1977, OSHA's whistleblower regulation (or an equivalent), and is scheduled to do so by September 30, 2017. While these are positive steps, OSHA's interviews with MEOSH's first-line supervisors indicated that a lot more work needs to be done in terms of establishing key procedures that are prescribed by the Whistleblower Investigations Manual.

OSHA recommends that MEOSH begin mapping the processes for handling complaints from receipt through the various dispositions, and has provided the federal workflow chart as an example. MEOSH should also establish procedures prescribed by the Whistleblower Investigations Manual for the intake of complaints (Chapter 2), case review (Chapter 4), appeals

(Chapter 4), withdrawals (Chapter 4) and settlement agreements (Chapter 6).²³

Until MEOSH's whistleblower protection program has completed the development of these procedures, there is another avenue within the state for complaints to be addressed. The Maine Human Rights Commission, which administers a state anti-retaliation law, is a viable option for state and local government workers in Maine who believe they were retaliated against for engaging in health and safety-related protected activity.²⁴

At the present time, there is little information on the State Plan's website regarding whistleblower protection. MEOSH should update the site so that this information is visible and easily accessible. At a minimum, the website should include information on workers' rights under the anti-retaliation law administered by the Board (Title 26 Maine Revised Statutes Annotated (MRSA) §570) and also the law that is administered by the Maine Human Rights Commission (Title 26 MRSA § 833). Links to frequently-asked-questions and fact sheets on workers' rights would also be useful.

Observation FY 2016-OB-06: MEOSH has not yet begun to develop key procedures for handling retaliation cases that are prescribed by the Whistleblower Investigations Manual. Also, the State Plan's website contains little information on workers' rights under Maine's anti-retaliation statutes.

Federal Monitoring Plan: On a quarterly basis, OSHA will monitor MEOSH's progress in developing the procedures prescribed by the Whistleblower Investigations Manual and in updating the website.

H. COMPLAINT ABOUT STATE PROGRAM ADMINISTRATION (CASPA)

MEOSH had no CASPAs in FY 2015 or in FY 2016.

I. VOLUNTARY COMPLIANCE PROGRAM

Through classes at the Maine Department of Labor's Safety Works! Training Institute (STI), which is located at the State Plan's headquarters in Augusta, the CSHOs, consultants, and managers all devote a portion of their time to training workers.²⁵ The facility houses several pieces of equipment that are used to provide hands-on training on a variety of topics, including fall protection, confined spaces, forklift operation, scaffolding, electrical hazards and

²³ MEOSH adopted OSHA's Whistleblower Investigations Manual identically in June 2016.

²⁴ OSHA discovered that numerous cases of retaliation involving state and local government workplaces have been filed with the Maine Human Rights Commission under the Whistleblowers' Protection Act (Title 26 MRSA § 833) within the last three years. However, the number of safety and health-related cases could not be determined.

²⁵ The STI is funded through the State of Maine, as well as through grants from OSHA's On-site Consultation Program and the Mine Safety and Health Administration (MSHA).

ergonomics, etc. In FY 2016, the STI trained over 1,500 workers, and of this total, 337 participants were from state and local government agencies.²⁶

Work sites may request on-site training from the State Plan's 23(g) on-site consultation program. As mentioned earlier, MEOSH also administers SHAPE. Employers in SHAPE are exempted from programmed inspections for up to two years, if they meet certain criteria (related to inspections, violation abatements and injury and illness rates). SHAPE is similar to OSHA's On-site Consultation Program's Safety and Health Achievement Recognition Program (SHARP). During the onsite review, OSHA confirmed that MEOSH's written policies and procedures for SHAPE are adequate.

MEOSH, in conjunction with the state's 21(d) on-site consultation project, periodically hosts occupational safety and health training meetings for SHARP and SHAPE companies. At this time, MEOSH does not participate in Alliances or Partnerships, but by the end of FY 2017, MEOSH plans to have formed Alliances with some high schools that specialize in vocational training.

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

MEOSH's 23(g) on-site consultation project is staffed by four consultants (three safety and one health). In January 2016, the State Plan hosted OSHA's Course #1500 (Introduction to Consultation). As noted earlier, the program's 23(g) consultants conduct training at the STI. According to the SOAR, they also staffed the program's promotional booths at various state and municipal conferences that were held in Maine throughout the year.

Based on the MARC, MEOSH's 23(g) consultation project opened 365 visits (262 visits in local government agencies and 103 visits in state government agencies) in FY 2016. Based on MARC 1 (percent of initial visits in high hazard establishments), 304 of 310 initial visits (98.06 percent) were opened in high hazard establishments, which met the further review level of "not less than 90 percent."

MARC #4A (percent of serious hazards corrected in a timely manner) shows that the project identified 1,484 serious hazards; of this total, 1,405 serious hazards (95 percent) were identified in a timely manner (within 14 days of the latest correction due date). MEOSH's performance on MARC #4A is not so far off the mark that it warrants formal monitoring by OSHA, but going forward, MEOSH should meet the further review level of 100 percent. MARC #4D indicates that 1,104 serious hazards (74 percent) were corrected within the original timeframe, which met the further review level of 65 percent.

The OIS Frequently Violated Standards Report showed that in FY 2016, the State Plan's consultation project removed 57,569 workers from hazards. OSHA's standards related to hazard communication, electrical, bloodborne pathogens, emergency action plans, and personal

²⁶ This data was obtained from the FY 2016 SOAR.

protective equipment were among the project’s 10 most frequently cited standards.

IV. Assessment of State Plan Progress in Achieving Annual Performance Goals

The following is an assessment of MEOSH’s progress in meeting the FY 2016 performance goals and is based primarily on the FY 2016 SAMM, the program’s FY 2016 SOAR, and the BLS DART rates.

Based on the SAMM #7 (inspections), MEOSH opened 134 inspections (130 safety and 4 health) in FY 2016, and achieved 179 percent of the annual goal of 75 inspections. However, the CSHO miscoded several health inspections as safety in OIS and, according to the supervisor, MEOSH actually opened 44 health inspections (and 90 safety inspections) in FY 2016. Thus, the State Plan exceeded the goals for safety and health inspections by wide margins.

However, MEOSH’s projections for safety and health inspections were much lower than the number of inspections that MEOSH actually conducted. This is because MEOSH was unsure of the number of inspections it would be able to conduct during its first year as a State Plan. Now that a benchmark has been established, MEOSH was able to develop a more realistic projection for FY 2017 of a total of 125 inspections.

FY 2016 Inspection Totals Projected v. Actual			
	Projected	Actual	Percent Achieved
Safety	50	90	180
Health	25	44	176

FY 2016 was the first year of MEOSH’s current five-year strategic plan, which extends through the end of FY 2020. Under this plan, MEOSH has three broad-based goals: 1.) Improve workplace safety and health by reducing hazards, injuries, illnesses, and fatalities; 2.) Promote safety and health through compliance assistance, cooperative programs, and strong leadership; and 3.) Maximize effectiveness by strengthening internal capabilities.

In support of the broad-based strategic plan goals, MEOSH plans to reduce each targeted industry’s baseline DART rate by a total of five percentage points by the end of the five-year plan. Therefore, in FY 2016, MEOSH planned to reduce the 2013 baseline DART rate by one percentage point in each of the state and local government targeted industries. By the end of FY 2017, the goal is to reduce the baseline DART rate by two percentage points, and in FY 2018, the goal is a reduction of the baseline rate by three percentage points.

In FY 2016, MEOSH partially met the goal of reducing the DART rate in each targeted industry by one percentage point from the baseline. In two of the five targeted industries in state government, the DART rate decreased by more than one percentage point, but in the other three

industries, the DART rate increased. In local government, MEOSH also met the goal in two of the five targeted industries.

FY 2016 Performance Plan DART Rate Comparison 2013 (Baseline) v. 2015 Source: BLS							
Local Government				State Government			
Targeted High Hazard Industry	2013 (baseline) DART Rate	2015 DART RATE	Percentage Point Increase/(Decrease)	Targeted High Hazard Industry	2013 (baseline) DART Rate	2015 DART RATE	Percentage Point Increase/(Decrease)
Police Protection	6.8	5.2	(1.6)	Police Protection	6.4	4.0	(2.4)
Fire Protection	4.8	7.0	2.2	Highway, street, and bridge construction	9.2	7.3	(1.9)
Highway, Street, and Bridge Construction	10.0	4.6	(5.4)	Administration of human resource programs (except education, public health, and veterans' affairs programs)	0.7	1.4	0.7
Elementary and Secondary Schools	1.9	2.2	0.3	Correctional facilities	4.9	6.8	1.9
Correctional Facilities	2.8	3.5	0.7	Colleges, universities, and professional schools	1.3	1.6	0.3

As discussed below, MEOSH met all of the sub-goals that were aligned with meeting the annual performance goal for DART rates and the three broader strategic goals. For example, the goals for programmed inspections and consultation visits were met, as well as the goals for training workers, recruiting employers for participation in SHAPE, and emergency management. The State Plan also met the goal for ensuring that CSHOs and consultants were timely in completing all training required by OSHA.

Strategic Goal #1: Improve workplace safety and health for all workers, by reducing hazards, exposures to hazards, injuries, illnesses, and fatalities.

Annual Performance Goal 1.1: Reduce the 2013 DART rate by one percentage point in each of the state and local government targeted industries. (To avoid repetition, the extent to which MEOSH met the annual performance plan goal for DART rate reductions has been discussed above.)

Annual Performance Goal 1.1(a): Conduct a total of 30 inspections and 30 consultation visits at worksites in these industries.

Result: The goal was met.

Discussion: MEOSH exceeded goals for inspections and visits in the most hazardous industries.

Inspections and Consultation Visits in the Targeted Industries FY 2016		
	Projected	Actual
Inspections	30	83
Consultation Visits	30	320

Strategic Goal #2: Promote a safety and health culture through compliance assistance, cooperative programs, and strong leadership.

Annual Performance Goal 2.1: Reduce the 2013 DART rate by one percentage point in each of the targeted industries. (See previous discussion.)

Annual Performance Goal 2.1(a): Conduct 100 courses on occupational safety and health topics at the STI, and train a total of 300 state and local government workers in these courses.

Result: The goal was met.

Discussion: A total of 102 safety and health courses were conducted at the STI, and a total of 337 state and local government workers were trained in these courses.

Annual Performance Goal 2.1(b): Maintain the participation of 52 SHAPE sites and recruit 8 new SHAPE participants.

Result: The goal was met.

Discussion: MEOSH maintained the 52 SHAPE sites and recruited an additional 17 employers into the SHAPE program, for a grand total of 69 SHAPE participants in FY 2016.

Annual Performance Goal 2.1(c): Attend five trade shows and or conferences hosted by organizations that provide services to the state and local government workforce in Maine. The purpose of attending these conferences is to provide outreach on a variety of occupational safety and health topics.

Result: The goal was met.

Discussion: MEOSH attended five conferences in FY 2016.

Annual Performance Goal 2.1(d): Participate in six meetings that focus on compliance assistance training for state and local government workers.

Result: The goal was met.

Discussion: Staff from MEOSH attended six meetings. During these meetings, occupational safety and health topics were discussed. The State Plan also discussed developing Alliances with technical high schools during these meetings.

Strategic Goal #3: Maximize MEOSH's effectiveness and efficiency by strengthening staff capabilities and focusing on high hazard/injury rate establishments.

Annual Performance Goal 3.1: Reduce the 2013 DART rate by one percentage point in each of the targeted industries. (See previous discussion.)

Annual Performance Goal 3.1(a): Each CSHO and consultant will complete at least one safety and/or health class annually. Field staff will also attend one professional development course annually.

Result: The goal was met.

Discussion: As discussed previously, the State Plan is following OSHA's directive for training new compliance officers, and each CSHO has completed two of the basic training courses. Three of the four consultants completed the Course #1500 (Introduction to Consultation), and the newest consultant is scheduled to take this training in FY 2017. According to the manager, all staff completed professional development courses while attending various statewide conferences, but did not provide specifics on this training in the SOAR. Going forward, MEOSH should document all training completed by staff in fulfillment of the goals in the annual performance plan.

Annual Performance Goal 3.1 (b): MEOSH will support the local emergency management partnership by participating in drills and conferences with the Maine Emergency Management Association (MEMA).

Result: The goal was met.

Discussion: MEOSH attended one conference hosted by MEMA and also participated in two drills and one mock disaster that involved a flood.

V. Other Special Measures of Effectiveness and Areas of Note

As noted earlier, MEOSH was approved as a developmental plan under the OSH Act of 1970 and OSHA regulations. This means that 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 5, 2015),

the State Plan received initial approval with the condition that they meet this criteria (developmental steps) within three years. As such, a developmental schedule has been established for MEOSH, which must be completed by August 5, 2018.

The table below summarizes MEOSH’s developmental schedule, and notes the progress that has been made so far in completing each step. At this time, OSHA does not foresee any obstacles to MEOSH completing all of the developmental steps by the end of the three-year period.

MEOSH’s Developmental Schedule		
Developmental Step	Status	Comment
Provide a comparison of Code of Maine Rules (CMR) 12-179, Chapter 6 (Recording Occupational Injuries and Illnesses in the Public Sector) to 29 CFR 1904 (Recording and Reporting Occupational Injuries and Illnesses)	Incomplete	MEOSH has decided to adopt OSHA’s recordkeeping regulation (29 CFR 1904) (or an equivalent) rather than Maine’s rule (CMR 12-179). MEOSH plans to submit 29 CFR 1904 (or an equivalent) to the Board by June 30, 2017, and anticipates adoption by September 30, 2017.
Adopt regulations equivalent to 29 CFR 1905 (Rules of Practice), or provide citations to currently existing equivalent regulations	Incomplete	MEOSH has decided to adopt OSHA’s regulation for variances (29 CFR 1905) (or an equivalent). MEOSH plans to submit 29 CFR 1905 (or an equivalent) to the Board by December 31, 2017, and anticipates adoption by March 31, 2018.
Adopt regulations equivalent to 29 CFR 1977 (Discrimination Against Employees under the OSH Act of 1970), or provide citations to currently existing equivalent regulations	Incomplete	MEOSH intends to adopt 29 CFR 1977 (or an equivalent). MEOSH plans to submit 29 CFR 1977 (or an equivalent) to the Board by June 30, 2017, and anticipates adoption by September 30, 2017.
Enact revised legislation that revises 26 MRSA § 2 (Reports of Death and Injuries) and §44 (Right of Access)	Completed	
Provide a comparison of alternative standards that were adopted to federal standards	Completed	MEOSH’s standards on video display terminals and respiratory protection were reviewed and approved by OSHA.
Provide an outline of procedures for the on-site public-sector consultation (29 CFR 1908, Consultation Agreements) program or a timeline for their development	Incomplete	MEOSH intends to adopt 29 CFR 1908 (or an equivalent). MEOSH plans to submit 29 CFR 1908 (or an equivalent) to the Board by June 30, 2017, and anticipates adoption by

		September 30, 2017.
Develop a five-year strategic plan and an annual performance plan	Completed	
Update and revise, as necessary, the Maine OSHA Field Operations Manual	Incomplete	MEOSH must update Chapter 7 of the Maine FOM (Post-Citation Procedures and Abatement Verification), as discussed earlier in this report. MEOSH plans to complete this update by December 31, 2017.
Develop a plan for transitioning to the OIS	Completed	MEOSH began using OIS in September 2015.
Determine whether adoption of 29 CFR parts 1915 (Occupational Safety and Health Standards for Shipyard Employment), 1917 (Marine Terminals), and/or 1918 (Safety and Health Regulations for Longshoring), or equivalents, is appropriate, and if so, adopt the appropriate regulations.	Completed	OSHA has determined that MEOSH did not need to adopt OSHA's maritime standards based on the type of work performed in Maine's state and local government agencies.

Appendix A – New and Continued Findings and Recommendations

FY 2016 MEOSH Comprehensive FAME Report

FY 20XX-#	Finding	Recommendation	FY 20XX-# or FY 20XX-OB-#
FY 2016-01	MEOSH did not follow the guidance in the MEOSH FOM, Chapter 5, for documenting violations. For example, in 34 of the 36 cases (94 percent) that were NIC, the narrative was not included in the case file and the violation worksheet was incomplete, notes and/or photographs were not included in 32 of 36 cases (89 percent) that had violations cited, and in 33 of the 42 cases (79 percent), case file activity diary sheets were not being used as prescribed by the MEOSH FOM.	Follow the guidance in Chapter 5 of the MEOSH FOM for documenting violations and for using the case file activity diary sheet.	
FY 2016-02	In 13 of the 36 cases (36 percent) that had violations cited each contained at least one other-than-serious violation that was misclassified by the CSHO as serious. On the other hand, there were 7 cases (19 percent) in which the CSHO misclassified at least one serious violation as other-than-serious.	Follow the guidance in the MEOSH FOM, Chapter 4, for classifying serious and other-than-serious violations.	
FY 2016-03	Of the 36 cases that were NIC, 16 (44 percent) had citations that were not grouped properly.	Follow the guidance in the MEOSH FOM, Chapter 4, for grouping violations.	
FY 2016-04	In 33 of 36 cases that were NIC (92 percent), the CSHO assigned a 60-day abatement period, rather than assigning the shortest interval within which the employer can reasonably be expected to abate the hazard. In addition, the case files did not include justification for allowing the employer to go beyond 30 days to abate the violation.	Follow the MEOSH FOM's guidance in Chapter 5 for assigning the shortest timeframe within which the employer can reasonably be expected to abate the hazard. In instances where the employer is allowed to exceed 30 days, provide justification in the case file.	
FY 2016-05	In 28 of the 32 cases (88 percent) where the CSHO indicated that worker interviews were held, but there were no notes or documentation of the interview.	Follow the procedures for documenting interviews in the MEOSH FOM, Chapter 3.	

Appendix B – Observations Subject to New and Continued Monitoring

FY 2016 MEOSH Comprehensive FAME Report

Observation # FY 20XX-OB-#	Observation# FY 20XX-OB-# or FY 20XX-#	Observation	Federal Monitoring Plan	Current Status
FY 2016-OB-01		The first line supervisors have not taken any of the mandatory courses for compliance officers or whistleblower investigators.	OSHA will monitor the State Plan’s progress in having the first line supervisors complete OSHA’s basic training courses, such as Course #1000 (Initial Compliance) and Course #1420 (Whistleblower Investigation Fundamentals).	New
FY 2016-OB-02		No sampling was performed in the 44 health inspections that were conducted in FY 2016.	A health consultant from an OSHA area office will confer with the new CSHO to help ensure that sampling is performed when appropriate.	New
FY 2016-OB-03		In 19 of the 42 cases (45 percent) evaluated, there was no evidence in the case file that the CSHO had requested the employer’s OSHA 300 Logs.	During next year’s FAME, OSHA will review a selection of case files to evaluate the extent to which this issue has been resolved.	New
FY 2016-OB-04		In 12 of the 16 cases (75 percent) that had union representatives on site, the extent to which the unions or worker representatives were given the opportunity to participate in the inspection, including the opening conference, the walk-around, the closing conference or the informal conference, was not documented by the CSHO.	During next year’s FAME, OSHA will review case files to evaluate the extent to which this issue has been addressed.	New
FY 2016-OB-05		The MEOSH FOM, Chapter 7, does not accurately reflect the procedures that MEOSH follows with regard to informal conferences.	On a quarterly basis, OSHA will monitor MEOSH’s progress in revising Chapter 7 of the MEOSH FOM, so that it is in line with the informal conference procedures that are actually being followed.	New
FY 2016-OB-06		MEOSH has not yet begun to develop key procedures for handling retaliation cases that are	On a quarterly basis, OSHA will monitor MEOSH’s progress in developing the	New

Appendix B – Observations Subject to New and Continued Monitoring

FY 2016 MEOSH Comprehensive FAME Report

		prescribed by the Whistleblower Investigations Manual. Also, the State Plan's website contains little information on workers' rights under Maine's anti-retaliation statutes.	procedures prescribed by the Whistleblower Investigations Manual and in updating the website.	
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Appendix C - Status of FY 2015 Findings and Recommendations
FY 2016 MEOSH Comprehensive FAME Report

FY 20XX-#	Finding	Recommendation	State Plan Response/Corrective Action	Completion Date (if Applicable)	Current Status (and Date if Item is Not Completed)

Appendix D - FY 2016 State Activity Mandated Measures (SAMM) Report

FY 2016 MEOSH Comprehensive FAME Report

Fiscal Year 2016 is the first year since the transition from the NCR (OSHA's legacy data system) began that all State Plan enforcement data has been captured in OSHA's Information System (OIS). All State Plan and federal whistleblower data continues to be captured in OSHA's WebIMIS System. Unless otherwise noted, the data contained in this Appendix D is pulled from the State Activity Mandated Measures (SAMM) Report and State Plan WebIMIS report run on November 14, 2016, as part of OSHA's official end-of-year data runs. The further review levels for SAMMs 5, 8, 9, 11, 12, 15, and 17 have been negotiated to rely on a three-year national average. However, due to the recent transition to OIS, the further review levels for these SAMMs will rely on a one-year national average for one more year.

Appendix D - FY 2016 State Activity Mandated Measures (SAMM) Report

FY 2016 MEOSH Comprehensive FAME Report

U.S. Department of Labor				
Occupational Safety and Health Administration State Plan Activity Mandated Measures (SAMMs)				
State Plan: Maine - MEOSH			FY 2016	
SAMM Number	SAMM Name	State Plan Data	Further Review Level	Notes
1a	Average number of work days to initiate complaint inspections (state formula)	5.13	5	Further review level is negotiated by OSHA and the State Plan.
1b	Average number of work days to initiate complaint inspections (federal formula)	2.50	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)	0.00	1	Further review level is negotiated by OSHA and the State Plan.
2b	Average number of work days to initiate complaint investigations (federal formula)	0.00	N/A	This measure is for informational purposes only and is not a mandated measure.
3	Percent of complaints and referrals responded to within one workday (imminent danger)	N/A	100%	N/A – The State Plan did not receive any imminent danger complaints and referrals in FY 2016. Further review level is fixed for all State Plans.
4	Number of denials where entry not obtained	0	0	Further review level is fixed for all State Plans.

Appendix D - FY 2016 State Activity Mandated Measures (SAMM) Report

FY 2016 MEOSH Comprehensive FAME Report

5	Average number of violations per inspection with violations by violation type	SWRU: 9.10	+/- 20% of SWRU: 1.87	Further review level is based on a one-year national rate.
		Other: 1.38	+/- 20% of Other: .99	
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: 130	+/- 5% of S: 50	Further review level is based on a number negotiated by OSHA and the State Plan through the grant application.
		H: 4	+/- 5% of H: 25	
8	Average current serious penalty in private sector - total (1 to greater than 250 workers)	N/A	+/- 25% of \$2,279.03	N/A – This is a State and Local Government State Plan. Further review level is based on a one-year national rate.
	a. Average current serious penalty in private sector (1-25 workers)	N/A	+/- 25% of \$1,558.96	N/A – This is a State and Local Government State Plan. Further review level is based on a one-year national rate.
	b. Average current serious penalty in private sector (26-100 workers)	N/A	+/- 25% of \$2,549.14	N/A – This is a State and Local Government State Plan. Further review level is based on a one-year national rate.
	c. Average current serious penalty in private sector (101-250 workers)	N/A	+/- 25% of \$3,494.20	N/A – This is a State and Local Government State Plan. Further review level is based on a one-year national rate.
	d. Average current serious penalty in private sector (greater than 250 workers)	N/A	+/- 25% of \$4,436.04	N/A – This is a State and Local Government State Plan. Further review level is based on a one-year national rate.

Appendix D - FY 2016 State Activity Mandated Measures (SAMM) Report

FY 2016 MEOSH Comprehensive FAME Report

9	Percent in compliance	S: 3.85%	+/- 20% of S: 28.85%	Further review level is based on a one-year national rate.
		H: 0.00%	+/- 20% of H: 35.68%	
10	Percent of work-related fatalities responded to in one workday	N/A	100%	N/A – The State Plan did not have any work-related fatalities in FY 2016. Further review level is fixed for all State Plans.
11	Average lapse time	S: 23.88	+/- 20% of S: 45.16	Further review level is based on a one-year national rate.
		H: 13.50	+/- 20% of H: 57.28	
12	Percent penalty retained	46.36%	+/- 15% of 69.86%	Further review level is based on a one-year national rate.
13	Percent of initial inspections with worker walk around representation or worker interview	98.51%	100%	Further review level is fixed for all State Plans.
14	Percent of 11(c) investigations completed within 90 days	0%	100%	Further review level is fixed for all State Plans.
15	Percent of 11(c) complaints that are meritorious	0%	+/- 20% of 24%	Further review level is based on a three-year national average.
16	Average number of calendar days to complete an 11(c) investigation	0	90	Further review level is fixed for all State Plans.
17	Percent of enforcement presence	N/A	+/- 25% of 1.26%	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.