

FY 2016 Follow-up Federal Annual Monitoring and Evaluation (FAME) Report

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



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I. Executive Summary

A. State Plan Activities, Themes, and Progress

The purpose of this report is to assess the New York Public Employee Safety and Health (PESH) Bureau State Plan's activities for Fiscal Year (FY) 2016, and its progress in resolving outstanding findings and recommendations from previous FAME reports, with a focus being on the FY 2015 Comprehensive FAME Report.

PESH protects the health and safety of more than two million state and local government workers in New York. FY 2016 was the first year of PESH's new Five-Year Strategic Plan. Revisions from the previous Strategic Plan are reflected in the inclusion of all police departments, rather than county police and sheriffs only. PESH will continue to target fire departments and health services/nursing homes/hospitals.

In recent years, legislation was passed in New York that requires safe patient handling (SPH) programs to be implemented in state healthcare facilities. On January 1, 2016, affected state healthcare employers were required to establish a SPH committee. Members of PESH's Healthcare Strategic Plan Committee worked with healthcare facilities and task force groups to provide education regarding injuries suffered while providing residential/patient care, as well as the benefits of effective safe patient handling programs.

PESH continues to have a significant presence in state and local government workplaces through its inspection activity, partnerships, and outreach activity. PESH increased the number of consultation visits conducted during FY 2016 by 12%. PESH also conducted a total of 288 consultation visits compared to 257 visits conducted in FY 2015. PESH conducted 1,431 inspections in FY 2016 which was a 5% decline from FY 2015. The decrease in inspections can be attributed to the loss of inspection staff due to promotions, job vacancies, and turnover.

Last year's FAME report included seven findings and two observations. During the FY 2016 performance period, OSHA determined that PESH took the corrective actions necessary to address three findings: next-of-kin (NOK) notification, evidence supporting violations and documentation of worker interviews; therefore, these findings were successfully completed. Although the four remaining findings identified in the FY 2015 report improved (complaint response time, Petition for Modification of Abatement [PMA], and workplace retaliation documentation and interviews), OSHA converted these to observations for further monitoring during next year's performance period. OSHA determined that one of the two observations from the FY 2015 FAME report (NOK notification of PESH's involvement) was sufficiently addressed and could be closed. The other observation (excessive abatement periods) is being continued for further monitoring.

During the on-site case file review, OSHA identified two new observations. The new observations are regarding worker retaliation screening procedures and investigative procedures. During next year's FAME, OSHA will review a sample of case files to determine possible trends.

B. State Plan Introduction

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

PESH consists of one central office in Albany, New York, and eight district offices located in Binghamton, Syracuse, Utica, Rochester, Buffalo, White Plains, Garden City, and New York City (Manhattan). The PESH State Plan applies to all state and local government 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. However, 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 2012-2016 PESH Funding History					
Fiscal Year	Federal Award (\$)	State Plan Match (\$)	100% State Plan Funds (\$)	Total Funding (\$)	Percentage of State Plan Contribution
2016	\$3,705,200	\$3,705,200	\$1,226,400	\$8,636,800	57.1%
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%

In their FY 2016 grant application, PESH allocated for 37 enforcement staff and has 26 on board; they allocated for 16.5 safety and health consultants and have 15.5 on board. They have 2.5 whistleblower investigators on board. PESH does not meet staffing expectations (29 safety/21 health); however, as a state and local government-only State Plan PESH is not subject to required benchmark levels.

C. Data and Methodology

OSHA has established a two-year cycle for the FAME process. This is the follow-up year and as such, OSHA was not required to perform an on-site evaluation and case file review. However, the FY 2015 FAME report reported seven findings and two observations and as such, a small number of case files was selected and reviewed to determine if these were isolated instances, or if this represented a trend that required further action.

The Regional State Plan Manager, Regional Consultation Manager, and Regional Whistleblower Supervisory Investigator from the worker retaliation section conducted an on-site evaluation at PESH's Albany office on December 5 and 6, 2016. OSHA's case file review focused on the 3rd and 4th quarter of FY 2016 to determine if PESH made progress on findings from the FY 2015 FAME report shared with PESH in March of 2016. Case files were selected from a scan detail report and included: closed complaint case files with violations, fatalities, case files where employers requested PMA, and worker retaliation case files. Case files reviewed totaled 40 and were broken down as follows:

- Albany – 2
- Binghamton – 4
- Buffalo – 7
- Garden City – 0
- New York City – 11
- Rochester – 3
- Syracuse – 3
- Utica – 1
- White Plains – 3
- Worker Retaliation – 6

D. Findings and Observations

This follow-up FAME report contains no findings and seven observations. One previous observation is continued, four previous findings were converted to observations, and two new observations were identified and will be monitored until next year when OSHA conducts a comprehensive on-site case file review. Appendix B describes observations subject to continued monitoring. Appendix C describes the status of each FY 2015 recommendation in detail.

Completed FY 2015 Findings

During the FY 2016 performance period, PESH successfully addressed three findings identified in last year's FAME report. The three completed findings were:

- NOK Notification – PESH re-enforced the policy of notifying NOK of the results of the investigation and documenting in the case file with supervisors on March 30, 2016.

- Inadequate Evidence to Support Violation – Violation worksheets are reviewed by the program managers to assure that evidence to support violations is included on the violation worksheet. This was discussed with supervisors on March 30, 2016.
- Documentation of Worker Interviews – The issue of case files containing worker interview documentation in accordance with the FOM was reviewed with supervisors and field staff in each district office on March 30, 2016.

FY 2016 Observations – New Issues Identified

One of the two observations noted in last year’s report is continued, four findings were converted to observations, and two are new. The total number of observations identified in this report is seven. Four of the seven observations related to worker retaliation case files as presented below:

- Workplace Retaliation Interviews – One (16%) of the six case files reviewed lacked evidence that a complainant interview was conducted.
- Workplace Retaliation Screening Procedures – Complaints were not appropriately screened. Examples included: a complaint not being referred to OSHA when overlapping protections were alleged and a complaint not being appropriately screened for timeliness (rather than being investigated it should have been dismissed due to untimely filing).
- Workplace Retaliation Documentation – Workplace retaliation case files did not comply with the PESH Whistleblower Manual. Specifically, case files lacked documentation of supervisory review, they were not organized in a uniform/standardized manner, and they lacked an activity log (no documentation that a closing conference was conducted).
- Workplace Retaliation Confidentiality Procedures – Confidentiality procedures that protect the rights of the complainant and witnesses during investigative conferences were not in place, or that protected confidential materials in the case files.

Details can be found in Appendix B of this report.

II. Assessment of State Plan Performance

A. Major New Issues

None

B. Assessment of State Plan Progress in Achieving Annual Performance

Goals (Source: FY 2016 Annual Performance Plan and FY 2016 State OSHA Annual Report)

This section focuses on PESH’s progress toward meeting its targeted performance goals. These goals were outlined in PESH’s FY 2016 Annual Performance Plan (APP) that focus on three

committees whose purpose is to select a specific target ground, identify the cause(s) of common workplace-related injuries, and develop strategies to reduce the occurrence and/or seriousness injuries. FY 2016 is the first year of PESH’s new Five-Year Strategic Plan.

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

Performance Goal #1A: Reduce injury and illness rate by 5% in police departments over the next five years (NAICS 922120).

The Police Protection Strategic Plan Committee continued focusing its efforts on injury and illness reduction in local and county law enforcement departments throughout New York. The main goal of the Police Protection Strategic Plan is to reduce the Lost Work Day (LWD) rate by 1% per year over the next five years. This committee continues to obtain data and develop partnerships with police departments which have proved very successful. The decrease in the injury and DART rates exceeded the primary outcome measure over the past two years. As depicted below, the Total Recordable Case Rate (TCR) decreased by 17.1% and the DART rate decreased by 19.5% compared to the baseline year. The goal was met for this year.

Police Service TRC Rate and DART Rate	2012 (Baseline)	2013	2014	2015	% Change from Baseline
Total Recordable Incident Rate	16.3	14.0	13.6	13.5	17.1% decrease
DART Rate	9.7	8.4	8.0	7.8	19.5% decrease

Intermediate outcome measures which include inspections, consultation visits and outreach, and technical assistance visits were successful. During FY 2016, a total of 62 inspections were performed representing a 45% decrease from the 2012 baseline. This decline can be attributed to the loss of inspection staff due to promotions, job vacancies, and turnover. Consultation visits during the same period totaled eight – a 33% increase from the baseline. Outreach and technical assistance visits increase the most with an 833% increase from the 2012 baseline. The committee’s continued focus on building partnerships resulted in an invitation and attendance to the NYS (New York State) Sheriff’s Association’s annual conference. In addition, new partnerships were made with the NYS Police and NYS Department of Environmental Services during a project that involved respiratory protection Standard Operation Procedures (SOPs) for Special Weapons and Tactics (SWAT) teams.

Performance Goal # 1B: Reduce injury and illness rate by 5% over the next five years in the Fire Service (NAICS 922160).

This committee focused on reducing injury and illnesses for workers – both paid and volunteers who provide these services. Data was collected, and staff in this industry was trained regarding how to assess injury and illness trends, as well as identify hazards during internal inspections. The chart below depicts a significant decrease in the injury rate and the DART rate compared to the baseline year. The goal was met for this year.

Fire Service Injury and DART Rates (2012-2015)	2012 (Baseline)	2013	2014	2015	% Change from Baseline
Injury Rate	21.8	24.0	79.1	20.1	7.8% decrease
DART Rate	20.0	23.0	77.5	15.1	24.5% decrease

Intermediate outcome measures include inspections and consultation visits. There were 98 inspections in the fire service NAICS in FY 2016. Inspections in Fire Service have declined by 46% from the 2012 baseline year which can be attributed to: changes being made to the Emergency Escape and Self Rescue Ropes and System Components for Fire Fighters legislation, and the loss of inspection staff due to promotions, job vacancies, and turnover. PESH conducted 21 consultations in FY 2016 which was a 16% decrease from the 2012 baseline year.

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 2016, committee members participated on the 2016 WRECKIT Exercise design team. The exercise was based on a severe storm scenario. Committee members created an exercise health and safety plan (HASP) that was promoted on the WRECKIT website, during exercise web meetings and month New York State Emergency Management Association (NYSEMA) meetings.

Performance Goal #1C: Reduce the number of lost workdays by 5% in Residential Nursing Care (NAICS 623110) and General and Surgical Hospitals (NAICS 622110).

The Healthcare Strategic Plan Committee continued building and maintaining partnerships with organized labor (PEF and CSEA), advocacy groups (NYS Zero Lift Task Force, NYCOSH, WNYCOSH), and various healthcare facilities. Safe patient handling assistance programs and other forms of assistance are being provided to state and local government long-term care and acute healthcare facilities. The committee focused on injury and illness reduction due to patient and resident handling in county nursing homes, state veterans’ homes, and public acute hospital care facilities. The table below presents a decrease in the LWD rate compared to the baseline year. The goal was met for this year.

**Primary Outcome Measures
Number of Lost Workdays Due to Patient/Resident Handling**

Nursing and Residential Care Facilities				
Measure	2012 Baseline	2013	2014	2015
# Lost Work Days due to Resident Handling	13,375	9,749	10,530	9,842
Change	Baseline	27% decrease	21% decrease	26% decrease
General and Surgical Hospitals				
Measure	2012 Baseline	2013	2014	2015
# Lost Work Days due to Resident Handling	12,868	11,583	10,139	9,603
Change	Baseline	10% decrease	21% decrease	25% decrease

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

During FY 2016, there were 14 enforcement inspections conducted in nursing homes and acute hospital care facilities, compared to the FY 2012 baseline year when six inspections were completed. This represents a 133% increase in the number of inspections conducted. Committee members continued their partnership with the NYS Zero Lift Task Force, WNYCOSH, and NYS DOH. During FY 2016, there were four compliance assistance visits conducted which was consistent with the baseline year. By January 1, 2016, affected state and local government employers had to establish a facility-based SPH committee. By January 1, 2017, the committee had to implement a SPH program for their respective residents based on individualized risk-assessments. The 2016 SPH Conference was designed to provide tools, training, lectures, and hands-on workshops to assist employers, workers, and committee members with strategies for compliance with the Act. There were approximately 450 conference attendees that chose one of five learning tracks based on their discipline: acute care, long-term care, clinical out-patient rehabilitation, and WNYCOSH SPH modules. Awards were presented to nurses, physical therapists, occupational therapists, and nursing home administrators.

C. Highlights from the State Activity Mandated Measures (SAMMs)
(Source: Appendix D SAMM Report)

During the FY 2016 performance period, PESH conducted 1,418 inspections which was 79% of its 1,800 inspection goal. Safety staff conducted 959 inspections (74% of the 1300 inspection goal), and industrial hygiene staff conducted 459 inspections (92% of their 500 inspection goal). The decrease in inspections can be attributed to the loss of inspection staff due to promotions, job vacancies, and turnover. (SAMM 7)

As in the past, PESH continues to be above the national average of 1.87 serious/willful/repeat (S/W/R) violations per inspection. During FY 2016, PESH's average S/W/R was 4.44. Their average for other-than-serious violations per inspection was 1.27 – also above the 0.99 national average. (SAMM #5)

PESH responded to 272 complaints with an average response time of 9.49 days from notification. This number reflects a slight increase from 8.98 days in FY 2015, but is still within its established timeframe of 10 days. (SAMM #1A) During FY 2016, the number of state and local government worker fatalities reported to PESH was 18 compared to 17 reported in FY 2015. One day response to fatalities was 90% compared to the 86% in FY 2015. (SAMM #10)

III. Assessment of State Plan Corrective Actions

Seven findings and two observations were noted in last year's FAME report. PESH successfully completed corrective actions for three findings, and four other findings were converted to observations. OSHA determined that one of the two previous observations would continue to be monitored.

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.

Status Finding 15-01

PESH reviewed the policy that all complaints must be addressed within 10 days with its supervisors on March 30, 2016. Of the 20 complaint case files reviewed from FY 2016, three (15%) case files revealed an excessive time period (more than 10 days) between receipt of the complaint and inspection initiation. Although PESH showed considerable improvement in this area, due to only a sample of case files reviewed, this finding was converted to an observation until next year when OSHA conducts a full, comprehensive on-site case file review.

Finding 15-02

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

Status Finding 15-02

The policy of notifying NOK of the results of the investigation and providing documentation of this in the case file was re-enforced to supervisors on March 30, 2016. All seven (100%) of the fatality case files reviewed from FY 2016 contained documentation that NOK was notified of the inspection results. OSHA determined this item to be completed.

Finding 15-03

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

Status Finding 15-03

Violation worksheets are being reviewed by the program managers to assure that evidence to support violations is included on the violation worksheet. This was re-enforced to supervisors on March 30, 2016. All 20 (100%) of the complaint case files reviewed from FY 2016 contained adequate evidence to support the violations. OSHA determined this item to be completed.

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.

Status Finding 15-04

PESH reviewed its PMA process with its supervisors on March 30, 2016 to provide clarity on the requirements for PMA submissions and approvals. Program managers now review PMAs to assure that they meet the requirements for processing and approval. Of the seven PMA case files reviewed from FY 2016, two (29%) showed PMAs were granted without the required interim steps. Although PESH showed considerable improvement in this area, due to only a sample of case files reviewed, this finding was converted to an observation until next year when OSHA conducts a full, comprehensive on-site case file review.

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, OSHA converted this observation to a finding.

Status Finding 15-05

All 20 (100%) of the complaint case files reviewed from FY 2016 contained documentation that workers had been interviewed. OSHA determined this item to be completed.

Finding 15-06

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

Status Finding 15-06

Documentation in the workplace retaliation case files reviewed from FY 2016 did not comply with the Whistleblower Manual. Specifically:

- Four (67%) of the six case files lacked documentation of supervisory review
- All six (100%) of the case files were not organized in a uniform/standardized manner
- Three (50%) of the six case files lacked an activity log and there was no proof that a closing conference was conducted

This was converted to an observation until next year when OSHA conducts a full, comprehensive on-site case file review.

Finding 15-07

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

Status Finding 15-07

One (16%) of the six case files reviewed from FY 2016 lacked evidence that a complainant interview was conducted. Although PESH showed considerable improvement in this area, due to only a sample of case files reviewed, this finding was converted to an observation until next year when OSHA conducts a full, comprehensive on-site case file review.

Observation 15-01

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

Status Observation 15-01

All seven (100%) of the fatality case files reviewed from FY 2016 contained documentation that NOK were notified of PESH's involvement. OSHA considers this observation closed.

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.

Status Observation 15-02

Abatement was found to be excessive in six (30%) of the 20 complaint case files reviewed from FY 2016. Examples of excessive abatement periods included: 30 days to mount a fire extinguisher, 30 days to replace a missing face plate on an electrical panel, and 30 days to complete injury/illness logs. Due to only a sample of case files reviewed, this remains an observation until OSHA can reevaluate during next year's full, comprehensive on-site case file review.

Appendix A – New and Continued Findings and Recommendations
FY 2016 New York PESH State Plan Follow-up FAME Report

NY PESH had no findings in FY 2016.

Appendix B – Observations Subject to New and Continued Monitoring
FY 2016 New York PESH State Plan Follow-up FAME Report

Observation # FY 2016-OB-#	Observation# FY 2015-OB-#	Observation	Federal Monitoring Plan	Current Status
	FY 2015-OB-01	<i>Next-of-Kin (NOK) Fatality Notification Letters</i> All seven (100%) of the fatality case files reviewed contained documentation that NOK were notified of PESH's involvement.		Closed
FY 2016-OB-01	FY 2015-OB-02	<i>Excessive Abatement Periods</i> Abatement was found to be excessive in six of the 20 (30%) complaint case files reviewed.	During next year's FAME, a sample of case files will be reviewed to determine possible trends.	Continued
FY 2016-OB-02		<i>Complaint Response Time</i> Of the 20 complaint case files reviewed, three (15%) case files revealed an excessive time period (more than 10 days) between receipt of the complaint and inspection.	During next year's FAME, a sample of case files will be reviewed to determine possible trends.	New
FY 2016-OB-03		<i>Petition for Modification of Abatement (PMA)</i> Two of the seven (29%) PMA case files reviewed showed that PMAs were granted without the required interim steps.	During next year's FAME, a sample of case files will be reviewed to determine possible trends.	New
FY 2016-OB-04		<i>Workplace Retaliation Interviews/Case File Documentation</i> One of the six (16%) case files reviewed lacked evidence that a complainant interview was conducted.	During next year's FAME, a sample of case files will be reviewed to determine possible trends.	New

Appendix B – Observations Subject to New and Continued Monitoring
FY 2016 New York PESH State Plan Follow-up FAME Report

Observation # FY 2016-OB-#	Observation# FY 2015-OB-#	Observation	Federal Monitoring Plan	Current Status
FY 2016-OB-05		<i>Workplace Retaliation Screening Procedures</i> Two of the six (33%) workplace retaliation case files reviewed showed that retaliation complaints were not appropriately screened.	During next year’s FAME, a sample of case files will be reviewed to determine possible trends.	New
FY 2016-OB-06		<i>Workplace Retaliation Documentation</i> Workplace retaliation documentation did not comply with PESH’s Whistleblower Manual. Specifically: <ul style="list-style-type: none"> • Four (67%) of the six case files lacked documentation of supervisory review. • All six (100%) of the case files were not organized in a uniform/standardized manner. • Three (50%) of the six case files lacked an activity log and there was no proof of a closing conference being conducted. 	During next year’s FAME, a sample of case files will be reviewed to determine possible trends.	New
FY 2016-OB-07		<i>Workplace Retaliation Confidentiality Procedures</i> Confidentiality procedures during investigative conferences were not in place.	During next year’s FAME, a sample of case files will be reviewed to determine possible trends.	New

Appendix C - Status of FY 2015 Findings and Recommendations
FY 2016 New York PESH State Plan Follow-up FAME Report

FY 2015-#	Finding	Recommendation	State Plan Response/Corrective Action	Completion Date	Current Status
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.	This issue was reviewed with supervisors to restate the policy that all complaints must be addressed within 10 days. Complaint response time is being monitored.	March 30, 2016	Converted to an observation
FY 2015-02	<i>Next-of-Kin (NOK) Notification</i> Four of the nine (44%) fatality case files lacked evidence/documentation that NOK was notified of the inspection results.	PESH should ensure that NOK 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.	The policy of notifying NOK of the results of the investigation and documenting in the case file was re-enforced with supervisors.	March 30, 2016	Completed
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.	PESH should ensure that inspection case files with violations are documented in accordance with PESH's FOM Chapter IV.	Violation worksheets are being reviewed by the program managers to assure that evidence to support violations is included on the violation worksheet. This was also discussed with supervisors.	March 30, 2016	Completed

Appendix C - Status of FY 2015 Findings and Recommendations
FY 2016 New York PESH State Plan Follow-up FAME Report

FY 2015-#	Finding	Recommendation	State Plan Response/Corrective Action	Completion Date	Current Status
FY 2015-04	<p><i>Petition for Modification of Abatement (PMA)</i> Late PMAs were being accepted in 14 of the 72 (19%) of case files reviewed. (This was directly related 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.</p>	<p>PESH should ensure that procedures as stated in the Field Operations Manual (FOM) Chapter III, “General Inspection Procedures” are followed for any PMA requested.</p>	<p>The PMA process was reviewed with supervisors to provide more clarity on the requirements for PMA submissions and approvals. Program managers now review PMAs to assure that they meet requirements for processing and approval.</p>	March 30, 2016	Converted to an observation
FY 2015-05	<p><i>Documentation of Worker Interviews</i> In 47 of the 103 (46%) case files reviewed, worker interviews were not documented.</p>	<p>PESH should ensure that case files contain worker interview documentation in accordance with the Field Operations Manual (FOM) Chapter III, “General Inspection Procedures.”</p>	<p>The issue of case files containing worker interview documentation in accordance with the FOM was reviewed with supervisors and field staff in each district office.</p>	March 30, 2016	Completed
FY 2015-06	<p><i>Workplace Retaliation Documentation</i> Seven of nine (78%) workplace retaliation case files did not comply with PESH’s Whistleblower Manual. All nine (100%) of the case files lacked documentation of supervisory review and a Report of Investigation (ROI).</p>	<p>PESH should ensure that workplace retaliation case files adhere to the requirements in the Field Operations Manual (FOM) Chapter X “Discrimination Complaints.”</p>	<p>The review process for discrimination cases now includes a review sheet. Cases that are closed administratively will now also have a ROI to support and describe the actions to close the case.</p>	March 30, 2016	Converted to an observation

Appendix C - Status of FY 2015 Findings and Recommendations
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FY 2015-#	Finding	Recommendation	State Plan Response/Corrective Action	Completion Date	Current Status
FY 2015-07	<i>Documentation/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.	The issue of PESH staff following its retaliation complaint requirements in accordance with the FOM was reviewed with supervisors and whistleblower investigators to assure that case files contain documentation of the complainant interview.	March 30, 2016	Converted to an observation

Appendix D - FY 2016 State Activity Mandated Measures (SAMM) Report
FY 2016 New York PESH Follow-up FAME Report

Fiscal Year (FY) 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.

U.S. Department of Labor				
Occupational Safety and Health Administration				
State Plan Activity Mandated Measures (SAMMs)				
State Plan: New York - PESH			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)	9.49	10	Further review level is negotiated by OSHA and the State Plan.
1b	Average number of work days to initiate complaint inspections (federal formula)	6.54	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)	10.50	1	Further review level is negotiated by OSHA and the State Plan.
2b	Average number of work days to initiate complaint investigations (federal formula)	6.62	N/A	This measure is for informational purposes only and is not a mandated measure.
3	Percent of complaints and referrals responded to within one workday (imminent danger)	100%	100%	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 New York PESH Follow-up FAME Report

SAMM Number	SAMM Name	State Plan Data	Further Review Level	Notes
5	Average number of violations per inspection with violations by violation type	SWRU: 4.44	+/- 20% of SWRU: 1.87	Further review level is based on a one-year national rate.
		Other: 1.27	+/- 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: 959	+/- 5% of S: 1,300	Further review level is based on a number negotiated by OSHA and the State Plan through the grant application.
		H: 459	+/- 5% of H: 500	
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
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SAMM Number	SAMM Name	State Plan Data	Further Review Level	Notes
9	Percent in compliance	S: 24.69%	+/- 20% of S: 28.85%	Further review level is based on a one-year national rate.
		H: 39.68%	+/- 20% of H: 35.68%	
10	Percent of work-related fatalities responded to in one workday	90%	100%	Further review level is fixed for all State Plans.
11	Average lapse time	S: 57.90	+/- 20% of S: 45.16	Further review level is based on a one-year national rate.
		H: 97.37	+/- 20% of H: 57.28	
12	Percent penalty retained	100%	+/- 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	99.15%	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	3%	+/- 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	926	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.