

# **FY 2017 Comprehensive Federal Annual Monitoring Evaluation (FAME) Report**

## **Maine State Plan (MEOSH)**



**Evaluation Period: October 1, 2016 – September 30, 2017**

Initial Approval Date: August 5, 2015

State Plan Certification Date: N/A

Final Approval Date: N/A

**Prepared by:  
U. S. Department of Labor  
Occupational Safety and Health Administration  
Region I  
Boston, Massachusetts**



## Contents

I.	Executive Summary.....	1
II.	State Plan Background.....	2
	A. Background.....	2
	B. Major New Issues.....	3
III.	Assessment of State Plan Performance.....	3
	A. Data and Methodology.....	3
	B. Review of State Plan Performance .....	5
	1. Program Administration.....	5
	2. Enforcement.....	8
	3. Review Procedures.....	18
	4. Standards and Federal Program Changes (FPCs) Adoption.....	20
	5. Variances.....	25
	6. State and Local Government Worker Program.....	25
	7. Whistleblower Program.....	25
	8. Complaint About State Program Administration (CASPA).....	27
	9. Voluntary Compliance Program.....	27
	10. State and Local Government 23(g) On-Site Consultation Program.....	28
	11. Status of Developmental Schedule.....	29

## Appendices

Appendix A – New and Continued Findings and Recommendations.....	A-1
Appendix B – Observations and Federal Monitoring Plans.....	B-1
Appendix C – Status of FY 2016 Findings and Recommendations.....	C-1
Appendix D – FY 2017 State Activity Mandated Measures (SAMM) Report.....	D-1
Appendix E – FY 2017 State OSHA Annual Report (SOAR).....	E-1

## I. Executive Summary

The purpose of this report is to assess the Maine State Plan (MEOSH)'s performance for Fiscal Year (FY) 2017 and its progress in resolving outstanding findings from the previous Federal Annual Monitoring Evaluation (FAME) Report.

MEOSH became an Occupational Safety and Health Administration (OSHA)-approved developmental State Plan in August 2015 and is the newest of the nation's 28 State Plans. In the FY 2016 Comprehensive FAME Report, which was MEOSH's first FAME Report, most of the findings were related to MEOSH being a new State Plan and needing more time to become familiar with the MEOSH Field Operations Manual (FOM) and the OSHA Information System (OIS).

In FY 2017, MEOSH began addressing the areas of concern that were noted in the FY 2016 FAME Report by holding staff meetings to review the MEOSH FOM, enlisting guidance from a nearby OSHA Area Office, and ensuring that compliance safety and health officers (CSHOs) were on schedule for taking the courses in OSHA's basic training track for compliance personnel.

While MEOSH was working on finding its bearings as a new State Plan, some challenges arose. For example, MEOSH conducted its first work-related fatality investigations, which were lengthy and complex. In addition, the health CSHO left the State Plan in February 2017. MEOSH filled this vacancy with a consultant from Maine's 21(d) On-site Consultation Project, but this new CSHO faced a learning curve with regard to enforcement and was not able to conduct any health inspections in FY 2017.

Despite having to focus on many issues, MEOSH corrected the finding relating to improperly grouping violations, and the observation related to CSHOs not requesting the OSHA 300 Log has been closed. In FY 2017, MEOSH took steps to establish procedures that are essential for running the whistleblower protection program, but more work needs to be done in this regard.

Although MEOSH has made some improvements since last year, it did not resolve a key finding from last year's report which related to the CSHO not adequately documenting violations. This report identifies new issues, as well, some of which pertain to complaint inspections, notification of fatality victims' next-of-kin, severity and probability assessments, abatement, and the use of OIS for monitoring enforcement activities.

In spite of the fact that many of the findings and observations from the previous FAME Report have not been resolved, OSHA has reached the same conclusion as in last year's report, which is that MEOSH still faces a learning curve as a new State Plan and needs more time to gain knowledge and expertise. Given the staff's eagerness to learn, MEOSH will soon be operating as effectively as many of its peers.

Of the five findings in the FY 2016 Comprehensive FAME Report, three have been continued in this report; one has been completed, and one has been converted to an observation. Thus, this report contains a total of nine findings (the three that were continued and six new ones). Of the

six observations in the previous FAME Report, five have been continued, and one has been closed. There are also two new observations in this report, which make a total of seven open observations in this report.

Appendix A describes the new and continued findings and recommendations. Appendix B describes observations subject to continued monitoring and the related federal monitoring plans. Appendix C describes the status of previous findings with associated completed corrective actions.

## II. State Plan Background

### A. Background

In August 2015, Maine received initial approval as a developmental State and Local Government Only State 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 Plan designee. The State Plan is headquartered in Augusta and has two field offices located throughout the state.

#### *Coverage*

Approximately 2,400 state and local government employers and nearly 83,000 state and local government workers are covered by the State Plan.<sup>1</sup> 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.<sup>2</sup>

#### *State Plan Standards*

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

---

<sup>1</sup> The definition of state and local worker does not include students or incarcerated or committed individuals in public institutions. The source of this data is the Maine Department of Labor, Center for Workforce Research and Information.

<sup>2</sup> 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 event that OSHA resumes enforcement, those federal standards will be enforced. OSHA also retains the authority to monitor the State Plan under Section 18(f) of the OSH Act.

and proposed penalties before the Board of Occupational Safety and Health (the Board).<sup>3</sup> MEOSH's FOM is equivalent to OSHA's FOM, with the following exceptions: MEOSH did not adopt OSHA's penalty adjustment factors in Chapter 6, and the State Plan's informal conference proceedings in Chapter 7 differ from OSHA's. Thus MEOSH is drafting an equivalent version of this chapter.

MEOSH enforces Title 26, Chapter 6, §570 of the Maine Revised Statutes (M.R.S.), which outlines the provisions that an employer cannot discharge or in any manner discriminate against a worker filing a complaint, testifying, or otherwise acting to exercise rights granted by the M.R.S. In fulfillment of the developmental steps, MEOSH plans to adopt 29 CFR 1977, Discrimination Against Employees Under the OSH Act of 1970, by August 5, 2018.

#### *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. A hearing officer presides over the appeal, which takes place at the Maine Department of Labor's Bureau of Labor Standards.

### **B. Major New Issues**

None

## **III. Assessment of State Plan Progress and Performance**

### **A. Data and Methodology**

OSHA established a two-year cycle for the FAME process. FY 2017 is a comprehensive year, and as such, OSHA was required to conduct two on-site evaluations.<sup>4</sup> One of the on-site evaluations focused on the State Plan's workplace retaliation program while the other concentrated primarily on the enforcement program. Case files were reviewed to assess the overall effectiveness of each program and also to determine the status of the findings and observations from the FY 2016 FAME Report.

---

<sup>3</sup> The Board consists of 10 members, of which nine shall be appointed by the governor. For further details on the make-up of the Board, see Title 26, Maine Revised Statutes Annotated (M.R.S.A.) §564.

<sup>4</sup> MEOSH's first full year as an OSHA-approved State Plan was in FY 2016, and OSHA conducted a comprehensive review of the State Plan in that year. So that MEOSH is on the same cycle as all other State Plans with regard to the FAME Reports, OSHA conducted a comprehensive review of the State Plan in FY 2017, as well.

### *Enforcement On-site Evaluation*

From November 27-December 1, 2017, OSHA conducted an on-site evaluation of MEOSH at its headquarters in Augusta, Maine. OSHA's on-site review team consisted of five personnel: a program analyst, an Area Director, and Assistant Area Director, a compliance officer, and an administrative support person. The OSHA review team held an opening conference on November 27, 2017, with the director of the Workplace Safety and Health Division ("director"), the program manager, two CSHOs, and the MEOSH administrative support person.

During this evaluation, OSHA reviewed 44 inspection case files. Except for one fatality inspection (which was opened in FY 2017 but not closed until early FY 2018), all cases were randomly selected from a universe of 79 inspections that MEOSH opened and closed in FY 2017. The universe of opened and closed cases was obtained from an OIS Scan Summary Report that was run by OSHA on October 24, 2017.

During the week-long evaluation of the enforcement program, OSHA conducted interviews with the MEOSH staff mentioned above to discuss personnel, training, inspections, standards adoption, compliance assistance, and several other issues covered in this report. OSHA held the closing conference with the State Plan on December 1, 2017. During this meeting, OSHA discussed the issues that were identified during the case file review, and there was a friendly exchange of questions, information, and suggestions that benefited both OSHA and the State Plan.

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:

- State Activity Mandated Measures (SAMM) Report (Appendix D)
- Mandated Activities Report for Consultation (MARC)
- OIS Reports (e.g., Scan Summary, Inspection Summary, Fatality/Catastrophe, Open Inspection, and Abatement Tracking)
- State OSHA Annual Report (SOAR) (Appendix E)
- State Plan Annual Performance Plan
- State Plan Grant Application
- Quarterly monitoring meetings between OSHA and the State Plan

Each SAMM has an agreed-upon further review level (FRL) which can be either a single number or a range of numbers above and below the national average. This range of numbers is also known as the FRL range or the acceptable range. State Plan SAMM data that fall outside the FRL triggers a closer look at the underlying performance of the mandatory activity. Appendix D presents the State Plan's FY 2017 SAMM Report and includes the FRL for each measure.

### *Whistleblower Protection Program Evaluation*

MEOSH did not have any workplace retaliation cases in FY 2016 or FY 2017. The State Plan

received one workplace retaliation complaint in FY 2017, but it was handled as an enforcement case instead of a workplace retaliation investigation. Under Maine's workplace retaliation statute (Title 26, Chapter 6, §570), MEOSH has the authority to issue a citation and did so in this case.

Although no workplace retaliation cases were reviewed, OSHA conducted interviews with MEOSH's first-line supervisors who oversee the program, the CSHO who functions as a part-time investigator, and the assistant attorney general who is responsible for providing legal advice and handling litigation in retaliation cases. Procedures for merit cases and appeals and other aspects of the program, such as training and its visibility, were discussed during these interviews.

OSHA also interviewed personnel from the Maine Human Rights Commission, which administers a robust state workplace retaliation law which also covers state and local government workers who believe they were retaliated against for engaging in health- and safety-related protected activity.

## **B. Review of State Plan Performance**

### **1. PROGRAM ADMINISTRATION**

#### **a) Training**

MEOSH's first-line supervisors plan the training and education program for staff. The State Plan has also 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.

In the FY 2016 Comprehensive FAME Report, OSHA determined that MEOSH's staff were not familiar with the MEOSH FOM's requirements for case file documentation; consequently, MEOSH staff were not aware of all of the information that the CSHO needed to enter into the forms that are included in the OIS Inspection Page. In response to OSHA's concern, the program manager conducted a four-day training session for all staff on the MEOSH FOM, which focused on case file documentation, classifying and grouping violations, and other issues that were cited as findings or observations in the FY 2016 Comprehensive FAME Report. For more information on training completed by MEOSH staff in FY 2017, see the SOAR (Appendix E).

In the FY 2016 Comprehensive FAME Report, OSHA made an observation that neither of the first-line supervisors had taken any of OSHA's mandatory courses for compliance officers or workplace retaliation investigators. In FY 2017, the program manager completed half of the initial compliance course, but was unable to complete the entire course due to personal circumstances. The program manager is scheduled to re-take the initial compliance course in April 2018; he also plans to enroll in Course #1420, Whistleblower Investigation Fundamentals, as well. However, since neither of the first-line supervisors completed any of OSHA's mandatory courses for compliance supervisors or workplace retaliation investigators in FY 2017, this observation is continued.

**Observation FY 2017-OB-01 (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 FY 2017-OB-01:** On a quarterly basis, 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.

**Status FY 2017-OB-01:** This observation is continued.

b) 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. As discussed in the previous FAME Report, the initial training did not adequately prepare the staff to use OIS.

In FY 2017, staff from an OSHA Area Office met with the program manager and the CSHOs to review OIS, but these meetings happened infrequently due to scheduling conflicts, training commitments, and other circumstances. During the FY 2017 on-site evaluation, MEOSH acknowledged that it was running the MARC and the OIS Uncorrected Hazards Report to monitor the 23(g) consultation program, but other than the SAMM Report, MEOSH was not using any reports to monitor program performance in the area of enforcement.

**Observation FY 2017-OB-02:** Other than the SAMM Report, MEOSH did not run OIS reports to ensure proper monitoring of case files and program activities in the area of enforcement.

**Federal Monitoring Plan FY 2017-OB-02:** On a quarterly basis, OSHA will review OIS reports and discuss them with the State Plan to ensure proper monitoring of enforcement activities.

**Status FY 2017-OB-02:** This observation is new.

c) State Internal Evaluation Program (SIEP) Report

MEOSH began implementing the SIEP in FY 2017. Based on data from the SAMM Report, the MARC, and feedback from the FY 2016 Comprehensive FAME Report, the State Plan monitors performance in the following areas:

- Case file management
- Average number of work days to initiate complaint inspections (SAMM 1A)
- Average lapsed days between closing conference and written report (based on the OIS Report on Written Report Lapsed Days)
- Percent of serious hazards corrected in a timely manner (MARC 4D)

The SIEP calls for management to review a small percentage of all open case files (selected randomly) to ensure that case file documentation meets all of the MEOSH FOM's requirements. According to the SOAR, management reviewed all inspection case files opened in FY 2017 to ensure that such things as diary sheets, field notes, worker interviews, penalty assessments, and



background information to support the citations were all included in the case file.

However, the SIEP does not indicate the number or type of documentation deficiencies that were identified and states only that “any discrepancies with case files were communicated to the inspector.” So that MEOSH can track progress in this area, OSHA suggests that the SIEP include the number and type of issues with case file documentation that were identified by the manager.

In FY 2017, MEOSH’s average of 17 days did not meet the negotiated five-day FRL for SAMM #1, which calculates the average number of workdays to initiate complaint inspections. Since becoming an OSHA-approved State Plan, MEOSH has attempted to conduct an on-site inspection for every complaint but now recognizes that doing so has made it difficult for the three CSHOs to initiate complaint inspections within five days. According to the SIEP, MEOSH plans to reduce the average in SAMM #1 by handling some complaints by phone/fax, rather than by conducting on-site inspections.<sup>5</sup> MEOSH also notes in the SIEP that “numerous” accident investigations and two fatality inspections (compared to no fatality inspections in FY 2016) contributed to the delay in initiating complaint inspections.

The other two areas selected for monitoring—the average lapse days between the closing conference and the written report and the percent of serious hazards corrected in a timely manner—pertain to the 23(g) consultation program. The program manager frequently runs OIS reports for these two metrics and discusses the results with field staff.

#### d) Staffing

The director 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 state and local government consultation staff of three safety consultants and one health consultant within six months of plan approval. By October 2015, the State Plan had achieved this staffing level.

Three part-time administrative assistants also support the program. The program manager and a safety CSHO allocate a small portion of their time to handling retaliation complaints and investigations. In FY 2016 and FY 2017, there were no major issues that impacted the staffing level. As mentioned earlier, a health CSHO left the program in February 2017; MEOSH filled this position with a new CSHO who had formerly worked for Maine’s 21(d) On-site Consultation Project.

---

<sup>5</sup> Chapter 9 of the MEOSH FOM states that “If the complaint or referral does not meet the criteria for initiating an onsite inspection, an inquiry will be conducted. OSHA will promptly contact the employer to provide notification of the complaint or referral and its allegation(s) and fax or email a confirming letter. The employer will be advised of what information is needed to answer the inquiry and encouraged to respond by fax or email.”

## 2. ENFORCEMENT

### a) Complaints

MEOSH's procedures for handling complaints are detailed in the MEOSH FOM (which mirrors the OSHA FOM in this regard). SAMMs #1 through #3 assess the program's efficiency in handling complaint inspections. As stated earlier, the negotiated FRL for SAMM #1A, average number of days to initiate complaint inspections, is 5 days. In FY 2016, MEOSH's average was 5.13 days, which was slightly above the FRL. In FY 2017, the State Plan's average increased to 17 days. Again, MEOSH attributes this increase to the fact that the CSHOs had to conduct two fatality investigations in FY 2017, both of which were time-consuming. In addition, MEOSH had been inspecting nearly all complaints that were received. During the on-site evaluation, OSHA recommended that MEOSH follow the guidance in Chapter 9 of the MEOSH FOM to conduct an inquiry, rather than an on-site inspection.

**Finding FY 2017-01:** MEOSH's average of 17 days did not meet the negotiated FRL of 5 days in SAMM #1A (state formula).

**Recommendation FY 2017-01:** Implement procedures to meet the negotiated FRL of five days, such as following the guidance in Chapter 9 of the MEOSH FOM to conduct inquiries, when appropriate.

**Status FY 2017-01:** This finding is new.

Next, 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. This SAMM pertains only to complaints that were handled by investigation and have no related inspection; the negotiated FRL is one day.<sup>6</sup> In both FY 2016 and FY 2017, MEOSH's result for SAMM #2 was zero because the State Plan did not investigate any complaints; rather, the State Plan inspected all complaints, as previously discussed.

Also, in SAMM #3, the percent of imminent danger complaints and referrals responded to in one day is calculated, and the FRL is 100 percent. MEOSH did not receive any complaints of imminent danger over the past two fiscal years. Similarly, the State Plan had no denials of entry in either FY 2016 or FY 2017 and, therefore, met the FRL of zero for SAMM #4.

Of the 10 case files related to complaints that were reviewed during the on-site evaluation, OSHA determined that there was no evidence in seven (70 percent) of the cases that MEOSH informed the complainant of the results of the inspection. According to Chapter 9 of the MEOSH FOM, "After the inspection, the Area Office will send the individual a letter addressing each information item, with reference to the citation(s) or a sufficiently detailed explanation for why a citation was not issued." In FY 2017, MEOSH was still not up to speed on the MEOSH FOM's requirements for handling complaints.

---

<sup>6</sup> Source: OSHA's SAMM Codebook

**Finding FY 2017-02:** In seven (70 percent) of 10 complaint cases reviewed, MEOSH did not follow the procedures in Chapter 9 of the MEOSH FOM to notify complainants of the results of the inspection.

**Recommendation FY 2017-02:** Follow the guidance in Chapter 9 of the MEOSH FOM to send a letter to the complainant. Ensure that a copy of the letter or documentation that the letter was sent (such a notation on the case diary sheet) is in the case file.

**Status FY 2017-02:** This finding is new.

The case file review also indicated that the OIS Narrative Form contained little to no information regarding the complaint investigation. In six (60 percent) of the 10 complaint cases reviewed, there was no discussion whatsoever of the complaint items in the narrative. Chapter 5 of the MEOSH FOM states that the OIS Narrative Form should include, among several other things, “A discussion clearly addressing all items on any applicable Complaint or Referral.” For consolidation purposes, this issue and others related to the State Plan not following the requirements in Chapter 5 of the MEOSH FOM for case documentation are covered under Finding FY 2017-06 (FY 2016-02) in this report.

#### b) Fatalities

MEOSH had no work-related fatality investigations in FY 2016, but in FY 2017, the State Plan investigated two such incidents. In both of these cases, there was no documentation that MEOSH had contacted the families of victims (i.e., next-of-kin). According to Chapter 11 of the MEOSH FOM, “Family members of employees involved in fatal or catastrophic occupational injuries or illnesses shall be contacted early in the investigation and given the opportunity to discuss the circumstances of the injury or illness.” The MEOSH FOM also states that “The standard information letter will normally be sent to the individual(s) listed as the emergency contact on the victim’s employment records (if available) and/or the otherwise determined next of kin within 5 working days of determining the victim’s identity....”

**Finding FY 2017-03:** In each of the two fatality inspections that MEOSH conducted in FY 2017, the State Plan did not follow the requirements in Chapter 11 of the MEOSH FOM to contact and involve families of victims.

**Recommendation FY 2017-03:** Follow the guidance in Chapter 11 of the MEOSH FOM to contact and involve victims’ families.

**Status FY 2017-03:** This finding is new.

In FY 2017, MEOSH met the FRL of 100 percent for SAMM #10, which calculates the percent of work-related fatalities responded to in one workday. The FRL of 100 percent is fixed for all State Plans. Again, the State Plan had no work-related fatalities in FY 2016.

#### c) Targeting and Programmed Inspections

In FY 2016, MEOSH met its goal for inspections by conducting a total of 134 safety and health inspections, compared to the 75 inspections projected for that year. As noted in the previous FAME Report, MEOSH’s projections for safety and health inspections in FY 2016 were much lower than the number of inspections that MEOSH actually conducted because MEOSH was unsure of the number of inspections it would be able to conduct during its first year as a State

Plan. As a result, MEOSH increased the goal to 125 inspections for FY 2017, but the State Plan's year-end total of 107 inspections did not meet this goal.

SAMM #7 compares the planned number of inspections to the actual number of inspections conducted. The FRL range for this SAMM is based on a number negotiated by OSHA and the State Plan through the grant application. In FY 2016, the FRL range for safety inspections was from 47.50 inspections to 52.50 inspections; MEOSH met the FRL by conducting 90 safety inspections. With regard to health inspections, the FRL range in FY 2016 was from 23.75 inspections to 26.25 inspections. The State Plan was successful in meeting the FRL with 44 health inspections. In FY 2017, the safety FRL range was from 95 inspections to 105 inspections; MEOSH met the FRL by conducting 98 safety inspections. For the second consecutive year, the health FRL range was from 23.75 inspections to 26.25 inspections. However, MEOSH conducted only nine health inspections in FY 2017. This low number is attributed to the fact that a health CSHO, whose performance did not match the expectations of the State Plan, resigned in February 2017, and a new CSHO was hired a few months later.

Over the past two fiscal years, MEOSH's total number of inspections in state workplaces has been much lower than the total number of inspections that the State Plan has conducted in local government. In FY 2016 and FY 2017, the percentages of state workers who were covered by MEOSH were 39 percent and 37 percent, respectively.<sup>7</sup> These percentages are much higher than the percentages of inspections that MEOSH conducted at state workplaces in each of the past two fiscal years. Only 10 (seven percent) of 134 inspections were conducted in state government workplaces in FY 2016, compared to 124 (93 percent) in local government workplaces. MEOSH conducted six (six percent) of 109 inspections in state government workplaces versus 103 (94 percent) in local government workplaces in FY 2017. The fact that the MEOSH's total number of inspections in state workplaces is disproportionately lower than the number of inspections in local government is included in Finding FY 2017-04, which appears later in this section.

Next, according to Chapter 1 of the MEOSH FOM, State Plans must have formal written policies and procedures for all aspects of their compliance program, including targeting. As part of its targeting program, MEOSH evaluates National Emphasis Programs and adopts them if they are applicable to state and local government workplaces.

MEOSH also targets workplaces that fall under one or more of the five most hazardous industries in either state or local government. In the Five-Year Strategic Plan, MEOSH has identified these industries using the Bureau of Labor Statistics (BLS) days away, restrictions and transfers (DART) rates. Police protection; highway, street, and bridge construction; and correctional facilities are among the most hazardous industries for both the state government and the local governments. Also, while colleges and universities are one of the most hazardous industries for the state government, elementary and secondary schools make the list for local governments. Finally, fire protection and the administration of human resources programs round out the five most targeted high-hazard industries for local and state government, respectively.

---

<sup>7</sup> These percentages were calculated using the data for covered workers in Section II of this report.

In FY 2017, MEOSH planned to conduct a total of 125 inspections in the targeted industries (15 in state government and 110 in local government). Based on the FY 2017 SOAR, MEOSH conducted eight inspections in the targeted state government industries and 100 inspections in the targeted local government industries.<sup>8</sup> MEOSH counts both unprogrammed inspections and programmed inspections as targeted inspections, as long as the inspection is conducted in one or more of the high-hazard industries. In terms of consultation, MEOSH exceeded the goal for visits in the state and local government by conducting a total of 332 visits, compared to a total of 125 projected visits in state and local government combined.

MEOSH schedules most programmed inspections by using 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. The CSHO prioritizes inspections of the various departments within state and local government entities based on whether they fall under one or more of the targeted industries. For example, if a local government operates a police department and/or a correctional facility, the CSHO must inspect those operations.

However, most of the inspections that MEOSH conducted in the targeted industries were unprogrammed (e.g., complaints, referrals, and accidents), rather than programmed, activities. An OIS Scan Summary Report shows that MEOSH conducted only one programmed inspection in the state government in FY 2017, compared to just four programmed inspections in the state government the previous fiscal year. Meanwhile, the State Plan conducted 94 programmed inspections in local governments in FY 2016 and 67 in FY 2017.

The director points out that in FY 2017, all of the unprogrammed inspections at state workplaces were time-consuming and that these inspections left little time for conducting programmed inspections at state workplaces. According to Chapter 2 of the MEOSH FOM, complaints and referrals take priority over programmed inspections when assigning staff resources for inspections.

Nonetheless, MEOSH's ratio of state government inspections to local government inspections is too low, and the ratio of programmed inspections in state government to programmed inspections in local government is also too low. This indicates that MEOSH's enforcement efforts are much more focused on local government than state government.

**Finding FY 2017-04:** MEOSH's ratio of state government inspections to local government inspections is too low, and the State Plan is focusing its targeting efforts mainly on local government employers rather than on state government workplaces. In FY 2017, only six (six percent) of 109 total inspections were conducted at state workplaces, and only one (1.5 percent) of 68 programmed inspections was conducted in state government.

---

<sup>8</sup> In the FY 2017 SOAR, MEOSH indicates that the State Plan conducted eight inspections in the targeted industries in state government. However, the OIS Scan Summary Report (February 16, 2018) shows that a total of only six inspections were conducted in state government in FY 2017. These six inspections include one accident, one programmed, one referral, and three complaints.

**Recommendation FY 2017-04:** Increase the number of inspections in state government so that the number of inspections at state workplaces is not disproportionately lower than the number of inspections in local government. Likewise, increase the number of programmed inspections in state government.

**Status FY 2017-04:** This finding is new.

In addition to the BLS data discussed earlier, OSHA uses two SAMMs to analyze the effectiveness of a State Plan's targeting programs. First, SAMM #9 calculates the program's in-compliance rates (i.e., the percentage of inspections that have been closed with no violations). The FRL is based on a two-year national average. High in-compliance rates may indicate that the State Plan is not targeting worksites that are highly hazardous and prone to having serious violations. For the last two fiscal years, the MEOSH's percentages for SAMM #9 have been so low that they were outside their respective FRL ranges. In FY 2017, the State Plan's in-compliance rate for safety inspections was only 12.37 percent, far outside the FRL range of 23.62 percent to 35.44 percent. For health, the in-compliance rate was 11.11 percent, compared to an FRL range of 28.62 percent to 42.94 percent. In FY 2016, the State Plan's percentage of 3.85 for safety was also much lower than the FRL range of 23.08 percent to 34.62 percent. For health, none of the inspections were in compliance.

Next, SAMM #5 calculates the average number of serious, willful, repeat, or unclassified (SWRU) violations per not-in-compliance (NIC) inspection. Not meeting the FRL, which is based on a two-year national average, for SWRU violations may also indicate that the State Plan is not targeting the most hazardous worksites. In both FY 2016 and FY 2017, MEOSH's averages were much higher than the FRL ranges. In FY 2016, the State Plan had an average of 9.10 SWRU violations per NIC inspection while the FRL range was from 1.50 to 2.24. In FY 2017, MEOSH's average was 8.25, compared to an FRL range of 1.46 to 2.20.

At first glance, SAMMs #5 and #9 seem to indicate that the State Plan is performing over and above expectations in terms of targeting the most hazardous workplaces for enforcement activity. However, OSHA determined that many of the violations cited by MEOSH—including many serious violations—were not supported by the documentation that was included in the case file. Therefore, it is difficult to draw conclusions regarding the effectiveness of MEOSH's targeting program based on the data in these two SAMMs. This issue is discussed in more detail in the next section of this report.

#### d) Citations and Penalties

MEOSH's FOM describes the procedures for issuing citations and proposed penalties. As a State and Local Government Only Plan, MEOSH is not required to adopt OSHA's Interim Final Rule on Maximum Penalty Increases, which became effective in August 2016. MEOSH's FOM also does not include the penalty adjustments in Chapter 6 of OSHA's FOM (CPL 02-00-160, effective date: August 2, 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.

Although MEOSH's FOM, Chapter 6, does not reflect OSHA's maximum penalties and OSHA's penalty adjustment factors, MEOSH's penalty chapter mirrors OSHA's FOM in many respects. For example, the MEOSH FOM and OSHA's FOM state in Chapter 6 that "the gravity of the violation is the primary consideration in determining penalty amounts. It shall be the basis for calculating the basic penalty for serious and other-than-serious violations. To determine the gravity of a violation, the severity of the injury or illness which could result from the alleged violation, and the probability that an injury or illness could occur as a result of the alleged violation, should be assessed."

Of 34 cases files reviewed on-site that had citations issued, OSHA determined that there were 19 (56 percent) in which MEOSH did not properly assess the severity and probability of one or more alleged violations. For example, OSHA determined that a violation for handling fertilizer did not warrant an assessment of high severity.<sup>9</sup> In another example, the CSHO classified an employer's failure to report a hospitalization as a serious violation and assessed the severity and probability as high/greater. This violation should have been cited as other-than-serious, and the severity and probability should have been assessed as minimal/lesser.

In eight health cases, the CSHO cited a total of 161 serious violations but did not assess the severity and probability for any of these violations. The director points out that the health CSHO who conducted these eight inspections is no longer with MEOSH; he also acknowledges that MEOSH needs more training in this area.

**Finding FY 2017-05:** In 19 (56 percent) of the 34 cases that had citations issued, the CSHO did not properly assess the severity and probability of the alleged violation.

**Recommendation FY 2017-05:** Follow the guidance in Chapter 6 of the MEOSH FOM to assess the severity and probability of the alleged violation.

**Status FY 2017-05:** This finding is new.

In the FY 2016 FAME Report, OSHA made a finding that MEOSH was classifying some violations as serious when the violations should have been classified as other-than-serious (and vice versa).<sup>10</sup> In some of the cases reviewed, there was not enough information to determine whether or not the violation was correctly classified. During the most recent case file review, OSHA determined that this issue has not been resolved.

**Finding FY 2017-06 (FY 2016-02):** In 17 of 34 inspections (50 percent) that were reviewed for violation classification, there was at least one violation that was not properly classified as either

---

<sup>9</sup> Chapter 6 of the MEOSH FOM provides a full description of the factors that should be considered when assessing severity and probability. For example, high severity is used for potential injuries and illnesses that could result in death, permanent injury, or chronic illness.

<sup>10</sup> 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: MEOSH FOM, Chapter 4)

serious or other-than-serious, and/or there was not enough documentation to determine if the violation was correctly classified.

**Recommendation FY 2017-06:** Follow the guidance in Chapter 4 of the MEOSH FOM to classify serious and other-than-serious violations.

**Status FY 2017-06:** This finding remains open.

Also in the FY 2016 Comprehensive FAME Report, OSHA made a finding that MEOSH did not follow the guidance in the MEOSH FOM for documenting violations. During the most recent case file review, OSHA determined that adequate evidence to support violations was missing in 26 (76 percent) of the 34 cases that had one or more violations cited. Specifically, these 26 cases included 15 in which the OIS Violation did not adequately describe the hazard to which the worker was exposed, six complaint inspections in which there was no discussion of the complaint items in the narrative, and one fatality case that was missing a narrative. Chapter 5 of the MEOSH FOM requires that all case files include the inspection, narrative, and violation for all inspections that result in citations being issued. The same chapter also states that “A separate *[OIS] Violation (OSHA-1B)* should normally be completed for each alleged violation,” and it should “specifically identify the hazard to which employees have been or could be exposed.”

Also included in these 26 cases are the eight health inspections that had a total of 161 serious violations cited. However, none of these cases contained the documentation needed to support classifying the violations as serious. According to Chapter 4 of the MEOSH FOM, the CSHO shall make “a determination of whether the violation is serious,” and must “document...the type of hazard exposure,...the most serious injury or illness that could reasonably be expected to result from the potential hazardous exposure,...the potential for death or physical harm, [and] whether the employer knew, or with the exercise of reasonable diligence could have known, of the presence of the hazardous condition.”

As mentioned earlier with regard to targeting, data from the SAMM and OIS Inspection Summary Reports indicate that MEOSH not only has a high percentage of inspections in which violations are cited, it also shows that the State Plan is citing a high number of violations per inspection, many of which are violations that have been classified as serious. However, the results of the on-site evaluation show that many of the violations that MEOSH cites are not adequately documented in the case files. OSHA is concerned that if the violations are not supported by the documentation in the case file, then the citations may be called into question and/or need to be vacated.

Therefore, the finding that MEOSH did not follow the guidance in the MEOSH FOM for documenting violations is continued. As with most of the other issues identified in this report, the State Plan needs more training on the requirements in the MEOSH FOM and in completing OIS inspection forms, such as the OIS Inspection, Violation, and Narrative.

**Finding FY 2017-07 (FY 2016-01):** MEOSH did not follow the guidance in Chapters 4 and 5 of the MEOSH FOM to document violations. Adequate evidence to support violations was missing in 26 (76 percent) of the 34 cases that had violations.

**Recommendation FY 2017-07:** Follow the guidance in Chapters 4 and 5 of the MEOSH FOM to document violations.



**Status FY 2017-07:** This finding remains open.

In the FY 2016 Comprehensive FAME Report, OSHA discussed how sampling is another important means of documenting worker exposure to the hazard, as explained in Chapters 3, 4, and 7 of the MEOSH FOM. In the same report, OSHA made an observation that no sampling was performed in the 44 health inspections that were conducted in FY 2016. In response to this observation, MEOSH noted that the job performance of the health CSHO who was on board in FY 2016 and for part of FY 2017 was not satisfactory and that the CSHO was not performing sampling.

In FY 2017, MEOSH's new health CSHO did not conduct any health inspections independently and also did not perform any sampling. Therefore, OSHA will continue to monitor the new health CSHO's progress in conducting health sampling and will arrange for a health CSHO from an OSHA Area Office to provide training to MEOSH CSHOs on sampling.

**Observation FY 2017-OB-03 (FY 2016-OB-02):** The new health CSHO did not perform health sampling in FY 2017.

**Federal Monitoring Plan FY 2017-OB-03:** A health CSHO from an OSHA Area Office will confer with the new CSHO to help ensure that sampling is performed when appropriate.

**Status FY 2017-OB-03:** This observation is continued.

Aside from the issues discussed in this section thus far, there are signs that MEOSH is moving forward. For example, the previous FAME Report contained an observation that MEOSH was not including documentation that the CSHO had requested the employer's OSHA 300 Logs of Work-Related Injuries and Illnesses. During the onsite review, OSHA identified only a few cases in which the CSHO did not document that the logs had been requested. This is a much smaller number than the 19 cases that were identified in the previous FAME Report as having this problem. Therefore, Observation FY 2016-OB-03 is closed.

Also, OSHA determined that Finding FY 2016-03, which related to MEOSH having a relatively high number of citations that were not grouped properly, is closed. In the FY 2016 FAME Report, OSHA identified 16 cases in which the citations were not properly grouped, but in FY 2017, OSHA identified only a few. From discussions with the managers, it appears that the CSHOs have become knowledgeable of the MEOSH FOM's guidance for grouping citations as a result of the training provided by managers in March 2017.

Moreover, MEOSH closely monitors SAMM #11, which calculates average lapse times. With low averages over the past two fiscal years, the State Plan has performed satisfactorily for this SAMM. For safety inspections, MEOSH's average of 37.13 days was within the FRL range of 36.23 days to 54.35 days in FY 2017; the State Plan's low average of 17.63 days for health inspections was outside the FRL range of 44.82 days to 67.24 days. In FY 2016, MEOSH's average of 23.88 days for safety inspections was also below the FRL range of 36.13 days to 54.91 days. Similarly, the State Plan's health average of 13.50 days was below the FRL range of 45.82 days to 68.74 days.

e) Abatement

In the FY 2016 Comprehensive FAME Report, OSHA made a finding that 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, as required by Chapter 5 of the MEOSH FOM. In addition, the case files did not include the justification for allowing the employer to go beyond 30 days to abate the violation.<sup>11</sup>

In FY 2017, it appears that MEOSH still had a tendency to assign abatement periods longer than the time needed by the employer to reasonably abate the hazard. For example, OSHA identified five cases in which MEOSH assigned 70-day abatement periods and did not justify the reason for allowing the employer to go beyond 30 days to abate the violations. OSHA also identified one case in which MEOSH assigned a 60-day abatement period without proper justification in the case file. In addition to these six cases, OSHA identified four in which the employer was assigned a 30-day abatement period, but from the information in the case file, it appears the employer could have abated the hazard while the CSHO was on-site or shortly thereafter.

**Finding FY 2017-08 (Finding FY 2016-04):** In 10 (29 percent) of 34 cases that OSHA reviewed for abatement, the CSHO did not follow the requirement in Chapter 5 of the MEOSH FOM to assign the shortest interval within which the employer can reasonably be expected to abate the hazard. In addition, six (18 percent) of the 34 case files did not include the justification for allowing the employer to go beyond 30 days to abate the violation, as required by Chapter 5 of the MEOSH FOM.

**Recommendation FY 2017-08:** Follow the guidance in Chapter 5 of the MEOSH FOM to assign 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.

**Status FY 2017-08:** This finding remains open.

OSHA also identified a few cases in which MEOSH did not follow the requirements in the MEOSH FOM for abatement documentation. For example, in two instances, the cases were closed without verification that abatement for all violations had had been completed. According to Chapter 7 of the MEOSH FOM, the employer must submit documentation showing that the abatement has been completed.

In two other cases that contained citations for high-gravity serious violations, there was no abatement documentation. Chapter 7 of the MEOSH FOM states that “More extensive documentation of abatement is required for the most serious violations. When a violation requires abatement documentation, in addition to certifying abatement, the employer must submit documents demonstrating that abatement is complete.” Chapter 7 also states that “Generally...all high gravity serious violations will require abatement documentation.”

---

<sup>11</sup> According to Chapter 5 of the MEOSH FOM, “Abatement periods exceeding 30 days shall not normally be offered, particularly for simple safety violations.....” The MEOSH FOM also states that “[w]hen an initial abatement date is granted that is in excess of 30 calendar days, the reason should be documented in the case file.”

Although OSHA did not identify a high percentage of cases in which MEOSH did not follow the MEOSH FOM with regard to abatement verification, the State Plan should be mindful of the MEOSH FOM's requirements in the future.

An OIS Abatement Tracking Report showed that MEOSH had four employers with high lapse times for numerous open hazards (i.e., hazards that have remained unabated from the opening conference date to the report run date). The total number of hazards with open abatement is 89, and the average number of days lapsed for these 89 hazards is 239 days. The program manager indicated that abatement for one of the cases had been received, and due to an oversight, the abatements had not been closed in OIS. In another case, the program manager acknowledged that he lost track of the citation issuance date for the case; consequently, the citations were issued near the end of the six-month timeframe. For the other two cases, OSHA made informal recommendations to help ensure receipt of the abatement in a timely manner.

OSHA's main concern with these cases is that MEOSH has not been reviewing OIS reports periodically to track abatement and citation issuance. By running the OIS Open Inspection Report and the OIS Abatement Tracking Report on a weekly basis, MEOSH can avoid losing track of inspections that are awaiting citation issuance or have long overdue abatements.<sup>12</sup> See Observation FY 2017-OB-02.

#### f) Worker and Union Involvement

Title 26, Chapter 3, Section 44a of the M.R.S. provides the opportunity for employer and worker representatives to accompany the MEOSH inspector for the purpose of aiding in the inspection. When there is no authorized worker representative, the inspectors are required to consult with a reasonable number of workers concerning matters of safety and health in the workplace.

In both FY 2016 and FY 2017, MEOSH met the FRL of 100 percent for SAMM #13, percent of initial inspections with worker walk around representation or worker interview. However, in the FY 2016 FAME Report, OSHA determined that in 88 percent of the cases where the CSHO indicated that worker interviews were held, there were no notes or documentation of the interview. According to Chapter 5 of the MEOSH FOM, "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)."

In FY 2017, MEOSH improved with regard to documentation of worker interviews. In 34 cases where the CSHO indicated that worker interviews were held, OSHA determined that 10 (29 percent) did not contain notes or documentation of the interview. Recognizing that MEOSH has improved in this area, Finding FY 2016-05 is being converted to an observation.

---

<sup>12</sup> The OIS Abatement Tracking Report lists all inspection violations that are not abated. The OIS Open Inspections Report is broken into multiple tabs. The Citations Pending tab lists all open inspections that do not contain issued violations. The inspection number turns red when the inspection is 90 days past the opening conference date. The Abatement Not Complete tab provides a list of inspections having issued citations with abatement action pending. Citation items that are contested are not included until the contest is resolved.

**Observation FY 2017-OB-04 (Finding FY 2016-05):** In 34 cases where the CSHO indicated that worker interviews were held, OSHA determined that 10 (29 percent) did not contain notes or documentation of the interview.

**Federal Monitoring Plan FY 2017-OB-04:** On a quarterly basis, OSHA will discuss the need to document worker interviews with MEOSH's managers.

**Status FY 2017-OB-04:** This observation is new.

OSHA also determined that in six (26 percent) of the 23 inspections where the union was at the workplace, the CSHO did not document whether the union representative was given the opportunity to participate in all phases of the inspection, such as the opening and closing conferences, the walk-around, and the penalty discussion, etc. According to Chapter 3 of the MEOSH FOM, "CSHOs shall determine as soon as possible after arrival whether the workers at the inspected worksite are represented and, if so, shall ensure that employee representatives are afforded the opportunity to participate in all phases of the inspection." Without documentation in the case file, OSHA could not determine if the CSHO ensured that worker representatives were given the opportunity to participate in the inspection.

**Observation FY 2017-OB-05 (FY 2016-OB-04):** In six (26 percent) of the 23 inspections where the union was at the workplace, the CSHO did not document whether union representative were given the opportunity to participate in all phases of the inspection.

**Federal Monitoring Plan FY 2017-OB-05:** On a quarterly basis, OSHA will review the need for the CSHO to document whether union representatives were given the opportunity to participate in all phases of the inspection.

**Status FY 2017-OB-05:** This observation is continued.

### **3. REVIEW PROCEDURES**

#### **a) 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 a formal appeal nor 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 Chapter 7 of the MEOSH FOM. In the FY 2016 Comprehensive FAME Report, OSHA made an observation that

Chapter 7 of the MEOSH FOM does not accurately reflect the procedures that MEOSH follows with regard to informal conferences and recommended that the State Plan revise this chapter to reflect the post-citation procedures that are actually followed.

As discussed later in this report, the State Plan must update and revise, as necessary, the MEOSH FOM. To date, MEOSH has not completed the revision of Chapter 7, and until the State Plan does so, this developmental step shall remain incomplete. The director acknowledges that he still needs more time to complete this project. Therefore, this observation has been continued.

**Observation FY 2017-OB-06 (FY 2016-OB-05):** Chapter 7 of the MEOSH FOM does not accurately reflect the procedures that MEOSH follows with regard to informal conferences.

**Federal Monitoring Plan FY 2017-OB-06:** 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.

**Status FY 2017-OB-06:** This observation is continued.

Next, SAMM #12 calculates the percent penalty retained. MEOSH did not meet the FRL in either FY 2016 or FY 2017 because as previously mentioned, in most cases, MEOSH reduces original penalty amounts by 90 percent if the employer certifies abatement. In FY 2016, the State Plan had a penalty retention rate of 46.36 percent while the FRL range was from 59.38 percent to 80.34 percent. MEOSH's penalty retention rate in FY 2017 was even lower at 28.94 percent, compared to an FRL range of 57.32 percent to 77.56 percent.

As discussed above, employers may file an appeal of a citation or request a penalty discussion to reduce the penalty amount. However, OSHA determined that in seven (21 percent) of 34 cases that had citations for serious violations, MEOSH dismissed the penalty for one or more citations that were issued to the employer. In other words, MEOSH dismissed the penalty before the citation was sent to the employer; therefore, the employer did not have to file a formal appeal of the citation or request a penalty discussion. In addition, MEOSH did not document the justification for dismissing the penalty.

**Finding FY 2017-09:** In seven (21 percent) of 34 cases that had citations for serious violations, MEOSH dismissed one or more proposed penalties before the citations were issued to the employer. This practice is not in keeping with MEOSH's policy which requires employers to either file a formal appeal or request a penalty discussion in order to receive a penalty reduction.

**Recommendation FY 2017-09:** MEOSH should follow its policy which requires employers to either file a formal appeal or request a penalty conference in order to receive a penalty reduction.

**Status FY 2017-09:** This finding remains open.

#### b) Formal Review of Citations

The Board is an independent review authority for review of contested cases. In FY 2016 and FY 2017, MEOSH had no contested cases.

#### 4. STANDARDS AND FEDERAL PROGRAM CHANGE (FPC) ADOPTION

##### a) Standards Adoption

The Board formulates and adopts rules pursuant to Title 26, Chapter 6, §565 of the M.R.S. 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, M.R.S., 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.

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.

MEOSH has adopted state standards identical to federal occupational safety and health standards for general industry and construction as promulgated through September 7, 2017. The table below summarizes the status of MEOSH's standard adoptions in FY 2016 and FY 2017 and is followed by a brief discussion of each standard.

<b>Standard Adoptions FY 2016 – FY 2017</b> <b>Source: State Plan Automated Tracking Application</b>					
Standard	<i>Federal Register Date</i>	Response Due Date	Date State E-mailed Response	Adoption Due Date	Adoption Date
Final Rule on the Implementation of the 2017 Annual Adjustment to Civil Penalties for Inflation 1903.2560.2575	1/18/2017	3/18/2017	2/28/2017	MEOSH did not adopt this rule.	Not applicable
Final Rule on Occupational Exposure to Beryllium 1910.1915.1926	1/9/2017	3/9/2017	2/28/2017	7/9/2017	9/7/2017
Final Rule on Walking-Working Surfaces and Personal Protective Equipment (Fall	11/18/2016	1/18/2017	1/11/2017	5/18/2017	9/7/2017

Standard Adoptions FY 2016 – FY 2017 Source: State Plan Automated Tracking Application					
Standard	<i>Federal Register Date</i>	Response Due Date	Date State E-mailed Response	Adoption Due Date	Adoption Date
Protection Systems) 29 CFR PART-1910					
Interim Final Rule on Maximum Penalty Increases <i>Standard Number:</i> 1902,1903	7/1/2016	9/1/2016	8/31/2016	MEOSH did not adopt this rule.	Not applicable
Final Rule to Improve Tracking of Workplace Injuries and Illnesses 29 CFR PART-1902,1904	5/12/2016	7/12/2016	8/28/2016	11/14/2016	6/2018 (anticipated adoption date)
Final Rule for Occupational Exposure to Respirable Crystalline Silica 1910,1915,1926	3/25/2016	5/25/2016	5/23/2016	9/26/2016	9/1/2016

### **Maximum Penalty Increase and Final Rule on the Implementation of the 2017 Annual Adjustment to Civil Penalties for Inflation**

With the passage of the Bipartisan Budget Bill on November 2, 2015, OSHA raised its maximum penalties effective August of 2016. As required by law, OSHA then increased maximum penalties annually, on January 1, 2017, and January 1, 2018, according to the consumer price index. State and Local Government Only State Plans were not required to adopt either the initial increase or subsequent annual increases, and MEOSH did not do so.

### **Silica Standard**

On March 25, 2016, OSHA published a *Federal Register* Notice on the Final Rule for Occupational Exposure to Respirable Crystalline Silica. OSHA’s silica standard consists of two separate standards, one for general industry and maritime and one for construction, to tailor the standards to the circumstances in these sectors. The construction standard went into effect on September 23, 2017. The general industry/maritime standard is still expected to have an enforcement date of June 23, 2018. OSHA rolled out the construction standard with a 30-day compliance assistance initiative and then on October 23, 2017, began enforcing fully under the Interim Enforcement Guidance Memo for the Respirable Crystalline Silica in Construction Standard.

State Plans were required to adopt an “at least as effective as” rule within six months of promulgation, or by September 26, 2016. State Plans were also required to have an effective date by the date of state promulgation or the federal effective date, whichever is later. On September 1, 2016, MEOSH adopted OSHA’s silica standard. Similar to OSHA, MEOSH began

full enforcement of the construction standard on October 23, 2017, and is expected to have an enforcement date of June 23, 2018, for the general industry standard.<sup>13</sup>

### **Beryllium Standard**

On January 9, 2017, OSHA adopted new standards addressing occupational beryllium exposure in general industry, construction, and shipyards. State Plans were required to adopt an “at least as effective as” rule within six months of promulgation, or by July 9, 2017. However, on June 27, 2017, OSHA published a notice of proposed rulemaking to eliminate all of the new provisions for construction and shipyard industries, except for the new permissible exposure limits. In addition, OSHA asked for comment on extending the current compliance dates for construction and shipyards for an additional year. OSHA will not enforce the provisions of the January 9, 2017, construction and shipyard standards that it has proposed to revoke while the current rulemaking is underway.

Given the unusual circumstances of this rulemaking, in which substantive changes have been proposed to a standard within six months following its initial promulgation, several State Plans, have delayed promulgation pending completion of the second rulemaking. MEOSH adopted the beryllium standard as of September 7, 2017, but will not enforce the provisions of the January 9, 2017, construction and shipyard standards that OSHA has proposed to revoke while the current rulemaking is underway.

### **Walking -Working Surfaces and Personal Protective Equipment Standard**

On November 18, 2016, OSHA adopted the Final Rule on Walking-Working Surfaces and Personal Protective Equipment (Fall Protection Systems). State Plans were required to adopt an “at least as effective as” rule within six months of promulgation, or by May 18, 2017. MEOSH adopted this standard on September 7, 2017, which was about four months later than the adoption due date of May 18, 2017. Although MEOSH begins all rulemaking with the intention of meeting the six-month deadline, delays may occur during the process that the State Plan has no power to prevent. As a result, standard adoption may take longer than the six-month timeframe, as was the case with this standard and the beryllium standard.

### **Electronic Reporting Rule**

On May 12, 2016, OSHA published the Final Rule to Improve Tracking of Workplace Injuries and Illnesses, effective January 1, 2017. The rule required all affected employers to submit 300A log summaries in OSHA’s Injury Tracking Application by the specified due date of July 1, 2017. This deadline was subsequently pushed back to December 15, 2017.

In its Fall 2017 Regulatory Agenda, OSHA announced that it intends to issue a proposal to reconsider, revise, or remove provisions of the Improve Tracking of Workplace Injuries and Illnesses Final Rule, 81 FR 29624 (May 12, 2016). State Plans were required to adopt an “at

---

<sup>13</sup> In Maine, there are no state and or local government employers engaged in maritime activities. Thus, MEOSH will not adopt the maritime standard.



least as effective as” rule within six months of promulgation, or by November 14, 2016. However, given OSHA’s intent to issue a proposed rule to reconsider, revise, or remove provisions of the Improve Tracking of Workplace Injuries and Illnesses Rule, a number of State Plans, have delayed adoption until this additional rulemaking is complete.

MEOSH delayed adoption of the electronic reporting rule due to its initial uncertainty as to whether it would adopt the rule identically or develop an equivalency. Also, the State Plan inadvertently missed the deadline for placing this proposed rule on the Maine Department of Labor’s annual regulatory agenda, which further delayed adoption.<sup>14</sup> MEOSH plans to adopt this rule identically, and it is on track for submission to the Board by March 2018; the anticipated adoption date is June 2018.

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). MEOSH planned to submit these three rules to the Board for consideration in FY 2017, but similar to the situation that occurred with the injury and illness tracking rule, the State Plan missed the deadline in 2016 for placing these rules on the regulatory agenda for FY 2017. Consequently, MEOSH plans to adopt these rules in FY 2018. MEOSH’s schedule for completing adoption of these standards is discussed later in this report with regard to the developmental schedule.<sup>15</sup>

b) Federal Program Change (FPC) Adoption

The table below summarizes the status of MEOSH’s FPC adoptions in FY 2016 and in FY 2017.

<b>FPC Adoptions                      FY 2016 – FY 2017                      Source: State Plan Automated Tracking Application</b>					
Directive	Date	Response Due Date	Date State E-mailed Response	Adopt Identical	Adoption Date
CPL 02-01-058: Enforcement Procedures and Scheduling for Occupational Exposure to Workplace Violence	1/10/2017	3/10/2017	3/10/2017	YES	9/18/2017
CPL-02-00-160: OSHA Field Operations Manual Directive	8/2/2016	10/1/2016	9/30/2016	NO	10/31/2016
CPL 03-00-020: National Emphasis Program on	3/7/2016	5/6/2016	3/16/2016	MEOSH did not adopt.	Not applicable

<sup>14</sup> MEOSH was not aware of a section in the state’s Administrative Procedure Act (Title 5, M.R.S.A., §8060) which requires a state agency to submit a list of proposed rules “prior to the next regulatory agenda due date.” In other words, in order for MEOSH’s proposed rules on discrimination, variances, consultation agreements, and recordkeeping to have been considered by the board in 2017, MEOSH would have had to place them on the department’s regulatory agenda in 2016. The rules for silica, beryllium, and walking-working surfaces were not affected because they fall under construction and/or general industry. Each year, MEOSH routinely places OSHA’s entire body of construction and general industry standards on the department’s regulatory agenda.

<sup>15</sup> 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.

FPC Adoptions FY 2016 – FY 2017 Source: State Plan Automated Tracking Application					
Directive	Date	Response Due Date	Date State E-mailed Response	Adopt Identical	Adoption Date
Shipbreaking					
CPL 02-03-007: Whistleblower Investigations Manual	1/28/2016	4/27/2016	3/15/2016	MEOSH did not adopt.	Not applicable
CSP-02-00-00: Consultation Policies and Procedures Manual Directive	11/19/2015	1/19/2016	2/19/2016	YES	2/1/2016
CPL-02-00-159: Field Operations Manual Directive	10/1/2015	12/1/2015	1/11/2016	NO	1/4/2016
TED-01-00-020: Mandatory Training Program for OSHA Whistleblower Investigators Directive	10/8/2015	12/8/2015	1/11/2016	YES	6/30/2017
CPL-02-03-006: Alternative Dispute Resolution Process for Whistleblower Protection Program Directive	8/18/2015	12/7/2015	10/15/2015	MEOSH did not adopt.	Not applicable

Of the eight FPCs that had adoption due dates in FY 2016 and FY 2017, MEOSH responded timely to all but three (Consultation Policies and Procedures Manual, Field Operations Manual (CPL 02-00-059), and Mandatory Training Program for Whistleblower Investigators).<sup>16</sup> For each of these directives, the State Plan was about a month overdue in responding. Of the five FPCs that MEOSH adopted, four were adopted timely. As discussed below, MEOSH was several months late in adopting the directive on Enforcement Procedures and Scheduling for Occupational Exposure to Workplace Violence.

MEOSH did not respond timely to the directive for the Mandatory Training Program for Whistleblower Investigators (TED 01-00-129), nor did the State Plan adopt it timely because it was awaiting further guidance from OSHA. As noted in the previous FAME Report, MEOSH was committed to having its workplace retaliation investigators complete the basic OTI course (#1420) for investigators, but MEOSH's response to and adoption of the training directive was delayed because the State Plan sought a determination from OSHA on whether its investigators needed to take the additional four courses that are prescribed by the directive. 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. Therefore, MEOSH decided to adopt the directive identically effective June 30, 2017.<sup>17</sup>

MEOSH has not yet adopted the Whistleblower Investigations Manual due to the fact that it is still working on developing its own procedures for handling complaints, settlements, appeals, and other essential elements of the whistleblower protection program. Although the State Plan had previously indicated that it would adopt this manual within the required six-month

<sup>16</sup>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 *Federal Register* publication date.

<sup>17</sup> 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.

timeframe, it subsequently determined that adoption is not feasible until its own workplace retaliation program is up and running.

For State Plans, adoption of the directive for Alternative Dispute Resolution Process for the Whistleblower Protection Program (CPL-02-03-006) was encouraged but not required; MEOSH chose not to adopt this directive. The State Plan also did not adopt the directive related to the National Emphasis Program on Shipbreaking (CPL 03-00-020) because there are no employers who perform shipbreaking under the State Plan's jurisdiction.

MEOSH adopted OSHA's FOMs (CPL 02-00-159 and CPL 02-00-160) within the required timeframes; however, the State Plan did not adopt OSHA's FOMs identically because MEOSH follows policies and procedures for informal conferences that are different from the federal program. As discussed earlier with in this report, MEOSH has not yet revised Chapter 7 of the MEOSH FOM to reflect the procedures that the State Plan is actually following with regard to informal conferences. Updating and revising the MEOSH FOM is a developmental step that the State Plan must complete by August 5, 2018 (see Observation FY 2017-OB-06).

MEOSH was one month late in responding to the Consultation Policies and Procedures Manual (CSP-02-00-00), but its adoption of this directive was timely. The State Plan also responded timely to Enforcement Procedures and Scheduling for Occupational Exposure to Workplace Violence (CPL 02-01-058) but was several months overdue in adopting this directive. According to the director, MEOSH had intended to adopt this FPC within the six-month timeframe, but other issues emerged that were more pressing. He also acknowledged that because adoption of this FPC was encouraged but not required, he did not make timely adoption of this FPC a priority. Going forward, MEOSH should ensure that all FPCs are adopted timely, regardless of whether adoption is required.

## **5. VARIANCES**

MEOSH had no activity with respect to variances in FY 2016 or FY 2017.

## **6. STATE AND LOCAL GOVERNMENT WORKER PROGRAM**

MEOSH is a State and Local Government Only State Plan. Therefore, all of its 107 inspections were conducted in state and local government workplaces.

## **7. WHISTLEBLOWER PROGRAM**

In Maine, workers in state and local government establishments who believe they have been retaliated against for engaging in worker health- and safety-related activities have two possible options under state law. The first option may be exercised under Title 26 M.R.S.A. §570, which is Maine's equivalent to §11(c) of the Occupational Safety and Health (OSH) Act. The State of Maine has never investigated a complaint under Title 26 M.R.S.A. §570. These complaints

would be investigated by MEOSH, and a meritorious complaint would be litigated in state court by the Maine Attorney General.

A second option for state and local government workers is to file a complaint with the Maine Human Rights Commission under Title 26 M.R.S.A. §833, known as the Whistleblower's Protection Act. These complaints would be investigated by the Maine Human Rights Commission. The commission may pursue meritorious cases in state court, but complainants have a private right of action and may request a "right to sue letter" six months after filing their complaint if the commission has not filed a lawsuit.

While there are some major advantages of §833, such as the 300-day filing deadline and the private right of action, there is one major disadvantage, which is that a worker must first raise the retaliation concern with the employer before filing such a complaint with the Maine Human Rights Commission. If the worker fails to first raise the concern with the employer before the commission investigates the complaint, the worker will not be protected under §833.

While §570 appears to be identical to §11(c) of the OSH Act and would not have this loop-hole, it is much easier to find information on §833 protections than it is to find information on §570 protections. It is likely that one reason that MEOSH has had no complaints under §570 is that state and local government workers can find §833-related information more easily; consequently, they file their complaints under that statute.

Therefore, it is important that MEOSH increase the visibility of information on workers' rights under Maine's retaliation statute (§570). OSHA recommends adding a workplace retaliation fact sheet to MEOSH's website that outlines and differentiates both avenues (§570 and §833); adding an online complaint form to the MEOSH website for §570 complaints; and exploring a relationship with the Maine Human Rights Commission in order to refer complaints back and forth between the agencies.

Over the past year, there are areas in which MEOSH has made progress with regard to its whistleblower protection program. For example, MEOSH plans to adopt 29 CFR 1977 (Discrimination Against Employees under the Occupational Safety and Health (OSH) Act of 1970) or an equivalent, and the State Plan is also working on adopting the Whistleblower Investigations Manual. However, the State Plan still needs to complete these adoptions, as discussed elsewhere in this report.

MEOSH has also moved forward with developing key procedures (complaints, appeals, and settlements) that that have been lacking, as discussed in the FY 2016 FAME Report. For example:

- MEOSH has determined that appeals of retaliation complaints under §570 that MEOSH dismisses will be heard by the Board of Occupational Safety and Health, which is the same body that reviews contested citations. This appeals process is acceptable, but more work is needed to formally establish this arrangement.
- MEOSH has coordinated with the state attorney general regarding litigation of merit cases. However, the attorney general represents the State of Maine as an employer in

employment litigation, which may present a conflict of interest. Therefore, this is one problem that must be ironed out.

- Settlements would ultimately be approved by the MEOSH director with the attorney general providing advice as needed.

Another sign of progress is that the CSHO who will be allocating a portion of her time to the investigation of retaliation complaints completed the basic whistleblower investigations course in FY 2017 and is scheduled for further training in accordance with the whistleblower training directive. However, until all of the key elements of MEOSH's whistleblower protection program have been ironed out and properly established, and improvements have been made with regard to the visibility of workers' rights under Maine's retaliation statute, OSHA is continuing Observation FY 2016-OB-06.

**Observation FY 2017-OB-07 (FY 2016-OB-06):** MEOSH has not formally established key processes for handling retaliation cases, such as complaints, appeals, and settlements 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 FY 2017-OB-07:** 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.

**Status FY 2017-OB-07:** This observation is continued.

SAMM #14 calculates the percent of 11(c) investigations completed within 90 days. SAMM #15 measures the percent of 11(c) complaints that are meritorious, and SAMM #16 calculates the average number of calendar days to complete an 11(c) investigation. As stated earlier, MEOSH did not handle any workplace retaliation cases in either FY 2016 or FY 2017, so there is no data for these SAMMs. The State Plan received one workplace retaliation complaint in FY 2017, but it was handled as an enforcement case instead of a workplace retaliation investigation. Under Maine's workplace retaliation statute (Title 26, Chapter 6, §570), MEOSH can issue a citation and did so in this case.

## **8. COMPLAINT ABOUT STATE PROGRAM ADMINISTRATION (CASPA)**

MEOSH had no CASPAs in FY 2016 or in FY 2017.

## **9. VOLUNTARY COMPLIANCE PROGRAM**

Through classes at the Maine Department of Labor's SafetyWorks! Training Institute (STI), the CSHOs, consultants, and managers all devote a portion of their time to training workers.<sup>18</sup> 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,

---

<sup>18</sup>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.

electrical hazards, and 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. In FY 2017, MEOSH trained 2,080 workers, including 468 state and local government participants.

MEOSH also administers the Safety and Health Award for Public Employers (SHAPE) Program. 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 Safety and Health Achievement Recognition Program (SHARP), which is administered by state 21(d) On-site Consultation Projects. In FY 2016, MEOSH had 68 workplaces in SHAPE, and by the end of FY 2017, MEOSH had 77 SHAPE participants. During the onsite review, OSHA confirmed that MEOSH's written policies and procedures for SHAPE are adequate.<sup>19</sup>

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 is considering forming Alliances with some high schools that specialize in vocational training.

## **10. STATE AND LOCAL GOVERNMENT 23(g) ON-SITE CONSULTATION PROGRAM**

MEOSH's 23(g) On-site Consultation Project is staffed by three safety consultants and one health consultant. 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 staff the program's promotional booths at various state and municipal conferences that are held in Maine throughout the year.

Based on the MARC that was run for the FY 2016 Comprehensive FAME Report, 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, which calculates the percent of initial visits in high-hazard establishments, 304 (98.06 percent) of 310 initial visits were opened in high-hazard establishments, which met the reference/standard of not less than 90 percent.

In FY 2017, MEOSH had similar results according to the MARC that was run for this FAME Report. For example, the State Plan opened 378 visits (286 visits in local government and 92 visits in state government). Of 332 initial visits, 283 (85.24 percent) were conducted in high-hazard establishments. This percentage, however, did not meet the reference/standard of not less than 90 percent.

MEOSH also did not meet the reference/standard for MARC 4A, which calculates the percent of serious hazards corrected in a timely manner, in either FY 2016 or FY 2017. The

---

<sup>19</sup> Data on workers trained at the STI and SHAPE participants was obtained from the FY 2016 and FY 2017 SOARs.

reference/standard is 100 percent. In FY 2016, the State Plan corrected 95% of serious hazards in a timely manner; in FY 2017, the percentage was 92. MEOSH’s performance on MARC 4A is not so far off the mark that it warrants formal monitoring by OSHA. Additionally, MEOSH is monitoring its performance on this MARC to help ensure that the reference/standard of 100 percent is met, as discussed in the SIEP.

Next, in both FY 2016 and FY 2017, MEOSH performed well with respect to MARC 4D, which calculates the percent of serious hazards corrected in original time or onsite. The reference/standard is 65 percent. In FY 2016, MEOSH had a percentage of 74 while the FY 2017 percentage was 85.

The OIS End-of-Year Consultation Metrics Report shows that in FY 2017, MEOSH removed 70,250 workers from risk, compared to 58,324 in FY 2016.<sup>20</sup> The average number of serious hazards identified per initial visit was 7.79, which compares favorably to the national average of 4.56. Similarly, the FY 2016 average was 7.53. Of the grand total of 2,586 serious hazards identified in MEOSH’s state and local government workplaces in FY 2017, 1,275 (49 percent) were in state and local government establishments with 25 workers or less, and the remaining 1,311 hazards (51 percent) were in state and local government establishments with 26-100 workers. OSHA has not identified any areas of concern with regard to MEOSH’s 23(g) on-site consultation program.

## 11. STATUS OF MEOSH’S DEVELOPMENTAL SCHEDULE

As noted earlier, MEOSH was approved as a developmental State 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, or developmental steps, within three years. As such, a developmental schedule has been established for MEOSH, and the developmental steps must be completed by August 5, 2018.

The table below summarizes MEOSH’s developmental schedule and the status of each developmental step. As discussed earlier, MEOSH planned to submit the rules that are currently incomplete to the Board for consideration in FY 2017 but was stymied by a section in the state’s Administrative Procedure Act that prevented it from doing so. Thus, MEOSH plans to complete adoption of these rules in FY 2018, prior to the August 5, 2018, deadline.

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)	Incomplete	MEOSH has decided to adopt OSHA’s recordkeeping regulation (29 CFR 1904) or an equivalent rather than Maine’s rule (CMR 12-

<sup>20</sup> There is a discrepancy between the data in MARC 4 and the End-of-Year Consultation Report for the total number of serious hazards. Whereas MARC 4 only captures the hazards that were identified in visits that have been finalized, the End-of-Year Consultation Report includes the hazards that were identified in visits that are in draft, as well as those that have been finalized. (Source: OIS Purpose and Description of Reports)

MEOSH's Developmental Schedule		
Developmental Step	Status	Comment
to 29 CFR 1904 (Recording and Reporting Occupational Injuries and Illnesses).		179). MEOSH plans to submit 29 CFR 1904 or an equivalent to the Board by March 2018 and anticipates adoption by June 2018.
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 June 2018 and anticipates adoption by August 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 2018 and anticipates adoption by August 2018.
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	The State Plan's standards on video display terminals and respiratory protection were reviewed and approved by OSHA.
Provide an outline of procedures for the on-site state and local government consultation (29 CFR 1908, Consultation Agreements) program or a timeline for their development.	Incomplete	The Maine State Plan intends to adopt 29 CFR 1908 (or an equivalent). MEOSH plans to submit 29 CFR 1908 (or an equivalent) to the Board by March 2018 and anticipates adoption by June 2018.
Develop a Five-Year Strategic Plan and an Annual Performance Plan.	Completed	
Update and revise, as necessary, the MEOSH Field Operations Manual.	Completed	
Develop a plan for transitioning to 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 the Maine State Plan 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 2017 MEOSH Comprehensive FAME Report

FY 2017-#	Finding	Recommendation	FY 2016-# or FY 2016-OB-#
FY 2017-01	MEOSH's average of 17 days did not meet the negotiated FRL of 5 days in SAMM #1A (state formula).	Implement procedures to meet the negotiated FRL of five days, such as following the guidance in Chapter 9 of the MEOSH FOM to conduct inquiries, when appropriate.	
FY 2017-02	In seven (70 percent) of 10 cases reviewed that were related to complaint inspections, MEOSH did not follow the procedures in Chapter 9 of the MEOSH FOM to notify complainants of the results of the inspection.	Follow the guidance in Chapter 9 of the MEOSH FOM to send a letter to the complainant. Ensure that a copy of the letter or documentation that the letter was sent (such a notation on the case file diary sheet) is in the case file.	
FY 2017-03	In each of the two fatality inspections MEOSH conducted in FY 2017, MEOSH did not follow the requirements in Chapter 11 of the MEOSH FOM to contact and involve families of victims.	Follow the guidance in Chapter 11 of the MEOSH FOM to contact and involve victims' families.	
FY 2017-04	MEOSH's ratio of state government inspections to local government inspections is too low, and the State Plan is focusing its targeting efforts mainly on local government employers rather than on state government workplaces. In FY 2017, only six (six percent) of 109 total inspections were conducted at state workplaces, and only one (1.5 percent) of 68 programmed inspections was conducted in state government.	Increase the number of inspections in state government so that the number of inspections at state workplaces is not disproportionately lower than the number of inspections in local government. Likewise, increase the number of programmed inspections in state government.	
FY 2017-05	In 19 (56 percent) of the 34 cases that had citations issued, the CSHO did not properly assess the severity and probability of the alleged violation.	Follow the guidance in Chapter 6 of the MEOSH FOM to assess the severity and probability of the alleged violation.	
FY 2017-06	In 17 of 34 inspections (50 percent) that were reviewed for violation classification, there was at least one violation in which the CSHO did not properly classify the violation as either serious or other-than-serious, and/or there was not enough documentation to determine whether or not the violation was correctly classified.	Follow the guidance in Chapter 4 of the MEOSH FOM to classify serious and other-than-serious violations.	FY 2016-02
FY 2017-07	MEOSH did not follow the guidance in Chapters 4 and 5 of the MEOSH FOM to document violations. Adequate evidence to support violations was missing in 26 (76 percent) of the 34 cases that had violations.	Follow the guidance in Chapters 4 and 5 of the MEOSH FOM to document violations.	FY 2016-01

## Appendix A – New and Continued Findings and Recommendations

### FY 2017 MEOSH Comprehensive FAME Report

FY 2017-#	Finding	Recommendation	FY 2016-# or FY 2016-OB-#
FY 2017-08	In 10 (29 percent) of 34 cases that OSHA reviewed for abatement, the CSHO did not follow the requirement in Chapter 5 of the MEOSH FOM to assign the shortest interval within which the employer can reasonably be expected to abate the hazard. In addition, six (18 percent) of the 34 case files did not include the justification for allowing the employer to go beyond 30 days to abate the violation, as required by Chapter 5 of the MEOSH FOM.	Follow the guidance in Chapter 5 of the MEOSH FOM to assign 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 2016-04
FY 2017-09	In seven (21 percent) of 34 cases that had citations for serious violations, MEOSH dismissed one or more proposed penalties before the citations were issued to the employer. This practice is not in keeping with MEOSH's policy for granting penalty reductions.	MEOSH should follow its policy which requires employers to either file a formal appeal or request a penalty conference in order to receive a penalty reduction.	

## Appendix B – Observations Subject to New and Continued Monitoring

### FY 2017 MEOSH Comprehensive FAME Report

Observation # FY 2017-OB-#	Observation# FY 2016-OB-# or FY 2016-#	Observation	Federal Monitoring Plan	Current Status
FY 2017-OB-01	FY 2016-OB-01	The first-line supervisors have not taken any of the mandatory courses for compliance officers or whistleblower investigators.	On a quarterly basis, 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.	Continued
FY 2017-OB-02		Other than the SAMM Report, MEOSH did not run OIS reports to ensure proper monitoring of case files and program activities in the area of enforcement.	On a quarterly basis, OSHA will review OIS reports and discuss them with the State Plan to ensure proper monitoring of enforcement activities.	New
FY 2017-OB-03	FY 2016-OB-02	The health CSHO did not perform health sampling in FY 2017.	A health CSHO from an OSHA Area Office will confer with the new CSHO to help ensure that sampling is performed when appropriate.	Continued
	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.		Closed
FY 2017-OB-04	FY 2016-05	In 34 cases where the CSHO indicated that worker interviews were held, OSHA determined that 10 (29 percent) did not contain notes or documentation of the interview.	On a quarterly basis, OSHA will discuss the need to document worker interviews with MEOSH's managers.	New
FY 2017-OB-05	FY 2016-OB-04	In six (26 percent) of the 23 inspections where the union was at the workplace, the CSHO did not document whether the union representative was given the opportunity to participate in all phases of the inspection.	On a quarterly basis, OSHA will review the need for the CSHO to document whether union representatives were given the opportunity to participate in all phases of the inspection.	Continued
FY 2017-OB-06	FY 2016-OB-05	Chapter 7 of the MEOSH FOM 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.	Continued
FY 2017-OB-07	FY 2016-OB-06	MEOSH has not formally established key processes for handling retaliation cases, such as complaints, appeals, and settlements 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.	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.	Continued

## Appendix C - Status of FY 2016 Findings and Recommendations

### FY 2017 MEOSH Comprehensive FAME Report

FY 2016-#	Finding	Recommendation	State Plan Corrective Action	Completion Date (if Applicable)	Current Status (and Date if Item is Not Completed)
FY 2016-01	MEOSH did not follow the guidance in Chapter 5 of the MEOSH FOM to document violations.	MEOSH should follow the guidance in Chapter 5 of the MEOSH FOM for documenting violations and for using the case file activity diary sheet.	MEOSH's managers and CSHOs have reviewed the guidance for documenting violations and using the case file activity diary sheet in Chapter 5 of the MEOSH FOM. The managers held training sessions on the MEOSH FOM's guidance for all CSHOs in June 2017.		Open December 2017
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 seven cases (19 percent) in which the CSHO misclassified at least one serious violation as other-than-serious.	MEOSH should follow the guidance in Chapter 4 of the MEOSH FOM for classifying serious and other-than-serious violations.	MEOSH's managers and CSHOs have reviewed the guidance for classifying serious and other-than-serious violations in Chapter 4 of the MEOSH FOM. The managers held training sessions on the MEOSH FOM's guidance for all CSHOs in March 2017.		Open December 2017
FY 2016-03	Of the 36 cases that were NIC, 16 (44 percent) had citations that were not grouped properly.	Follow the guidance in Chapter 4 of the MEOSH FOM to group violations.	MEOSH's managers and CSHOs have reviewed the guidance for grouping violations in Chapter 4 of the MEOSH FOM. The managers held training sessions on the MEOSH FOM's guidance for all CSHOs in March 2017.	9/30/2017	Completed

## Appendix C - Status of FY 2016 Findings and Recommendations

### FY 2017 MEOSH Comprehensive FAME Report

FY 2016-#	Finding	Recommendation	State Plan Corrective Action	Completion Date (if Applicable)	Current Status (and Date if Item is Not Completed)
FY 2016-04	In 33 of 36 cases that were not in compliance (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.	MEOSH should 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.	MEOSH's managers and CSHOs have reviewed the guidance for assigning abatement periods in Chapter 5 of the MEOSH FOM. The managers held training sessions on the MEOSH FOM's guidance for all CSHOs in June 2017.		Open December 2017
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.	MEOSH should follow the procedures for documenting interviews in Chapter 5 of the MEOSH FOM.	MEOSH's managers and CSHOs have reviewed the guidance for documenting interviews in Chapter 5 of the MEOSH FOM. The managers held training sessions on the MEOSH FOM's guidance for all CSHOs in June 2017.		Converted to observation December 2017

## Appendix D - FY 2017 State Activity Mandated Measures (SAMM) Report

FY 2017 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 2017	
SAMM Number	SAMM Name	State Plan Data	Further Review Level	Notes
<b>1a</b>	Average number of work days to initiate complaint inspections (state formula)	17.00	5	The further review level is negotiated by OSHA and the State Plan.
<b>1b</b>	Average number of work days to initiate complaint inspections (federal formula)	12.75	N/A	This measure is for informational purposes only and is not a mandated measure.
<b>2a</b>	Average number of work days to initiate complaint investigations (state formula)	0.00	1	The further review level is negotiated by OSHA and the State Plan.
<b>2b</b>	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.
<b>3</b>	Percent of complaints and referrals responded to within one workday (imminent danger)	N/A	100%	The further review level is fixed for all State Plans.  N/A – The State Plan did not receive any imminent danger complaints or referrals in FY 2017.
<b>4</b>	Number of denials where entry not obtained	0	0	The further review level is fixed for all State Plans.

## Appendix D - FY 2017 State Activity Mandated Measures (SAMM) Report

### FY 2017 MEOSH Comprehensive FAME Report

SAMM Number	SAMM Name	State Plan Data	Further Review Level	Notes
<b>5</b>	Average number of violations per inspection with violations by violation type	SWRU: 8.25	+/- 20% of SWRU: 1.83	The further review level is based on a two-year national average. The range of acceptable data not requiring further review is from 1.46 to 2.20 for SWRU and from 0.79 to 1.19 for OTS.
		Other: 0.52	+/- 20% of Other: 0.99	
<b>6</b>	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.
<b>7</b>	Planned v. actual inspections – safety/health	S: 98	+/- 5% of S: 100	The further review level is based on a number negotiated by OSHA and the State Plan through the grant application. The range of acceptable data not requiring further review is from 95 to 105 for safety and from 23.75 to 26.25 for health.
		H: 9	+/- 5% of H: 25	
<b>8</b>	Average current serious penalty in private sector - total (1 to greater than 250 workers)	N/A	+/- 25% of \$2,516.80	N/A – This is a State and Local Government State Plan.  The further review level is based on a two-year national average.
	<b>a.</b> Average current serious penalty in private sector (1-25 workers)	N/A	+/- 25% of \$1,706.10	N/A – This is a State and Local Government State Plan.  The further review level is based on a two-year national average.
	<b>b.</b> Average current serious penalty in private sector (26-100 workers)	N/A	+/- 25% of \$2,867.94	N/A – This is a State and Local Government State Plan.  The further review level is based on a two-year national average.

## Appendix D - FY 2017 State Activity Mandated Measures (SAMM) Report

### FY 2017 MEOSH Comprehensive FAME Report

SAMM Number	SAMM Name	State Plan Data	Further Review Level	Notes
	c. Average current serious penalty in private sector (101-250 workers)	N/A	+/- 25% of \$3,952.26	N/A – This is a State and Local Government State Plan.  The further review level is based on a two-year national average.
	d. Average current serious penalty in private sector (greater than 250 workers)	N/A	+/- 25% of \$5,063.48	N/A – This is a State and Local Government State Plan.  The further review level is based on a two-year national average.
<b>9</b>	Percent in compliance	S: 12.37%	+/- 20% of S: 29.53%	The further review level is based on a two-year national average. The range of acceptable data not requiring further review is from 23.62% to 35.44% for safety and from 28.62% to 42.94% for health.
		H: 11.11%	+/- 20% of H: 35.78%	
<b>10</b>	Percent of work-related fatalities responded to in one workday	100%	100%	The further review level is fixed for all State Plans.
<b>11</b>	Average lapse time	S: 37.13	+/- 20% of S: 45.29	The further review level is based on a two-year national average. The range of acceptable data not requiring further review is from 36.23 to 54.35 for safety and from 44.82 to 67.24 for health.
		H: 17.63	+/- 20% of H: 56.03	
<b>12</b>	Percent penalty retained	28.94%	+/- 15% of 67.44%	The further review level is based on a two-year national average. The range of acceptable data not requiring further review is from 57.32% to 77.56%.



## Appendix D - FY 2017 State Activity Mandated Measures (SAMM) Report

### FY 2017 MEOSH Comprehensive FAME Report

SAMM Number	SAMM Name	State Plan Data	Further Review Level	Notes
<b>13</b>	Percent of initial inspections with worker walk around representation or worker interview	100%	100%	The further review level is fixed for all State Plans.
<b>14</b>	Percent of 11(c) investigations completed within 90 days	0%	100%	The further review level is fixed for all State Plans.
<b>15</b>	Percent of 11(c) complaints that are meritorious	0%	+/- 20% of 25%	The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from 20% to 30%.
<b>16</b>	Average number of calendar days to complete an 11(c) investigation	0	90	The further review level is fixed for all State Plans.
<b>17</b>	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.  The further review level is based on a two-year national average.

# State of Maine

## State OSHA Annual Report (SOAR)

October 1, 2016 through September 30, 2017



Prepared By:

State of Maine  
Department of Labor  
Bureau of Labor Standards

Submitted: January 8, 2018

## Appendix E - FY 2017 State OSHA Annual Report (SOAR)

### TABLE OF CONTENTS

	Page
EXECUTIVE SUMMARY	3
SUMMARY OF RESULTS RELATED TO THE ANNUAL PERFORMANCE PLAN	5
STATE INTERNAL EVALUATION PROGRAM (SIEP)	12

## Appendix E - FY 2017 State OSHA Annual Report (SOAR)

### DEPARTMENT OF LABOR WORKPLACE SAFETY AND HEALTH DIVISION STATE OSHA ANNUAL REPORT (SOAR)

#### FISCAL YEAR 2017 EXECUTIVE SUMMARY

The State of Maine, Department of Labor, Bureau of Labor Standards, Workplace Safety & Health Division (MEOSH) State and Local Government Only Public Sector Only State Plan submits this State OSHA Annual Report (SOAR) to the Federal Occupational Safety and Health Administration (OSHA) for evaluation of the State Plan program.

The SOAR covers fiscal year (FY) 2017 (October 1, 2016 through September 30, 2017), and is submitted to OSHA in accordance with the State Plan Policies and Procedures Manual. This SOAR contains the following sections:

- Executive Summary
- Annual Performance Plan Charts/Accomplishments
- State Internal Evaluation Program (SIEP)

In FY 2016, MEOSH developed its first five-year Strategic Plan, which extends from FY 2016 through FY 2020. As of October 1, 2016, MEOSH was fully staffed, with four consultants (three safety one health) and three compliance safety and health officers (CSHO) (two safety and one health). However, in late January 2017, a CSHO resigned; MEOSH filled this vacancy in April 2017 with a 21(d) program health consultant.

The following is a summary of the Annual Performance Goals in MEOSH's FY 2017 Annual Performance Plan, as well as the strategies used to accomplish these goals. The FY 2017 results are discussed in detail later in this report.

MEOSH planned to conduct 125 inspections in FY 2017; however, 109 inspections (100 safety and 9 health) were accomplished which equates to 87% of the projected goal. The projected number was not met due to new hire training and some lengthy accident investigations which involved two fatalities, one of which involved coordination with multiple state agencies. MEOSH received a total of 18 complaints in FY 2017 and conducted multiple accident investigations, most of which did not meet the criteria for a FAT/CAT. In FY 2016, MEOSH had 8 complaints and no fatality investigations. In FY 2017, most of the programmed and unprogrammed inspections were conducted within local government, and included 6 police departments, 21 fire/rescue departments, 12 public works departments and 18 schools. In addition, MEOSH also inspected 18 water/sewer/utilities districts which share many of the same hazards associated with highway/public works departments.

State government was inspected 8 times by MEOSH, which included one Maine Turnpike Authority (MTA) site, 2 state colleges and 5 administrative locations. State government and

## Appendix E - FY 2017 State OSHA Annual Report (SOAR)

state universities account for approximately 25% of the public-sector employees which is why there is a greater emphasis with municipal governments which encompass the other 75%. In addition, state agency inspections usually encompass a larger department and are more time consuming. With that being said, MEOSH will put a greater emphasis on state agency inspections in FY 2018.

MEOSH is training compliance personnel in accordance with OSHA's Mandatory Training Program for OSHA Compliance Personnel (TED 01-00-019). In FY 2017, each of the two safety compliance officers completed Investigative Interviewing Techniques (#1310) and Accident Investigation (#1230) at OSHA Training Institute (OTI). In addition, one safety compliance officer also attended Inspection Techniques and Legal Aspects (#1410) and Whistleblower Investigation Fundamentals (#1420) at OTI. The new Health Compliance Officer has attended Initial Compliance (#1000) at OTI. The Program Manager attended Initial Compliance (#1000) at OTI but was only able to complete one week of the course. He was also scheduled to attend the Whistleblower training (#1420) but was unable to attend due to budget constraints. He will be attending the course in FY 2018. All enforcement and support staff attended training on MEOSH's Field Operations Manual (FOM) that occurred over four days. The FOM training was conducted by the program manager and focused mainly on case documentation, grouping violations and other issues that were cited as findings in the FY 2016 Comprehensive FAME.

Safety Consultant I attended Introduction to Consultation course (#1500) at OTI. In addition, Safety Consultant I and II attended Region 1 Education Center courses in Electrical (#3095), OSHA Construction Standards (#510) and Construction Train the Trainer (#500). Safety Consultant III attended Region 1 Education Center courses in Construction Update (#502), Confined Spaces (#2264), Evacuation and Emergency Planning (#7105), Introduction to Combustible Dust (#7120), Safety and Health Management (#7500), Accident Investigation (#7505) and Electrical (#NCSH 74). Health Consultant I attended Electrical (#3095). All consultants attended the annual Maine Safety & Health Conference which included three keynote speakers and 30 breakout sessions.

SafetyWorks! (consultation) conducted 376 public sector total visits. Of those, 332 were initial visits. The goal for public sector consultation total visits was 110 which equates to 342%. This high number was made possible by the large number of Safety & Health Award for Public Employers (SHAPE) towns in the program. We have a large number of renewals, and with the new sites we are able to visit locations that may not have ever requested our services.

The SafetyWorks! Training Institute trained over 2,000 attendees this year. Of that total, 468 participants were from state and local government. The program also distributed 4,000 SafetyWorks! Training Institute calendars.

SafetyWorks! had a promotional booth at the following conferences:

- Maine Fire Chief/Fire Commission Conference
- Maine Emergency Management Agency Conference
- Maine Recycling and Solid Waste Conference & Trade Show
- Construction Rodeo

## Appendix E - FY 2017 State OSHA Annual Report (SOAR)

Maine Municipal Association (MMA) Conference

MMA Human Resource Conference

Maine School Management Conference

We participated in approximately 16 conferences in total, but some were more geared towards the private sector and thus were not included in the above list.

SHAPE is a voluntary protection program similar to the Safety and Health Achievement Recognition Program (SHARP) program. The whole city/town can qualify for SHAPE or just an individual department. As of September 30, 2017, there were 80 sites in SHAPE.

Maine Employers for Safety & Health Excellence (MESHE) continues to meet on a quarterly basis. The business/training meetings are for SHARP/SHAPE companies and those interested in pursuing a voluntary protection program.

The state did not have any disasters that required the activation of the emergency response teams (ERT). However, quarterly State Emergency Response Commission meetings were attended as well as two mock ice storm disaster drills.

MEOSH did not establish any Partnerships or Alliances during FY 2017. However, the State Plan is currently working with Department of Education and a few technical high schools on best practices for safety and health and to prepare schools for acceptance into the SHAPE program.

MEOSH, through the Board of Occupational Safety & Health (BOSH,) updated agency work rule Chapter 2 and 3 in FY 2017. Chapter 2 covers OSHA General Industry Standards which addressed new Walking Working Surfaces and Beryllium changes. Chapter 3 covers OSHA Construction Standards which addressed Silica and Beryllium changes. Both were adopted by BOSH on September 7, 2017. For FY 2018, BOSH plans to update Chapter 6-Recordkeeping rule which will also address electronic filing. MEOSH also plans to adopt three new agency work rules that cover 1908 consultation procedures, whistleblower and variances.

**Summary of the Annual Performance Goals** in MEOSH's FY 2017 Annual Performance Plan, as well as strategies used to accomplish these goals and FY 2017 results.

Strategic Goal # 1. Improve workplace safety & health for all workers, as evidenced by reducing hazards, exposures, injuries, illnesses and fatalities in state government.	
Annual Performance Goal 1.1	Reduce DART rates in the following targeted industries: Police protection, highway, street, and bridge construction, administration of human resource programs (except education, public health, and veterans' affairs programs), correctional facilities, and colleges, universities, and professional schools. Prevent fatalities in these industries.
Strategy	Conduct inspections and consultations in the targeted high hazard industries.

## Appendix E - FY 2017 State OSHA Annual Report (SOAR)

Performance Indicator(s) (including activity, intermediate outcome, and primary outcome measures)	Number of inspections: 15 (Goal not met, conducted 8) Number of consultation visits: 15 (conducted 332 initial visits, but unable to distinguish between state and local government visits). Reduce the DART rates in state targeted industries by two percentage points from the 2013 baseline DART rates. None of the five focus areas saw a reduction in rates this year despite efforts by consultation, training sessions and enforcement activities. MEOSH will continue to focus on all five focused areas but increase inspections in all areas. Number of fatalities: 1 (work zone)																																
Data Source(s)	Internal BLS Research & Statistics Unit data, BLS DART rates																																
Baseline	<p>2013 BLS DART rates in targeted state government industries.</p> <table border="1" data-bbox="792 743 1560 1551"> <thead> <tr> <th colspan="4" style="text-align: center;"><b>Focused State Government Industries</b></th> </tr> <tr> <th style="text-align: center;">Industry</th> <th style="text-align: center;">NAICS</th> <th style="text-align: center;">2013 DART Rate</th> <th style="text-align: center;">2016 DART Rate</th> </tr> </thead> <tbody> <tr> <td>Police Protection</td> <td style="text-align: center;">92212</td> <td style="text-align: center;">6.4</td> <td style="text-align: center;">6.5</td> </tr> <tr> <td>Highway, street, and bridge construction</td> <td style="text-align: center;">2373</td> <td style="text-align: center;">9.2</td> <td style="text-align: center;">10.7</td> </tr> <tr> <td>Administration of human resource programs (except education, public health, and veterans' affairs programs)</td> <td style="text-align: center;">92313</td> <td style="text-align: center;">0.7</td> <td style="text-align: center;">1.3</td> </tr> <tr> <td>Correctional facilities</td> <td style="text-align: center;">92214</td> <td style="text-align: center;">4.9</td> <td style="text-align: center;">9.9</td> </tr> <tr> <td>Colleges, universities, and professional schools</td> <td style="text-align: center;">6113</td> <td style="text-align: center;">1.3</td> <td style="text-align: center;">1.6</td> </tr> <tr> <td><b>All state government</b></td> <td></td> <td style="text-align: center;"><b>3.0</b></td> <td style="text-align: center;"><b>3.3</b></td> </tr> </tbody> </table>	<b>Focused State Government Industries</b>				Industry	NAICS	2013 DART Rate	2016 DART Rate	Police Protection	92212	6.4	6.5	Highway, street, and bridge construction	2373	9.2	10.7	Administration of human resource programs (except education, public health, and veterans' affairs programs)	92313	0.7	1.3	Correctional facilities	92214	4.9	9.9	Colleges, universities, and professional schools	6113	1.3	1.6	<b>All state government</b>		<b>3.0</b>	<b>3.3</b>
<b>Focused State Government Industries</b>																																	
Industry	NAICS	2013 DART Rate	2016 DART Rate																														
Police Protection	92212	6.4	6.5																														
Highway, street, and bridge construction	2373	9.2	10.7																														
Administration of human resource programs (except education, public health, and veterans' affairs programs)	92313	0.7	1.3																														
Correctional facilities	92214	4.9	9.9																														
Colleges, universities, and professional schools	6113	1.3	1.6																														
<b>All state government</b>		<b>3.0</b>	<b>3.3</b>																														
Comment	MEOSH will increase inspections in all five strategic areas.																																

## Appendix E - FY 2017 State OSHA Annual Report (SOAR)

Strategic Goal # 1. Improve workplace safety & health for all workers, as evidenced by reducing hazards, exposures, injuries, illnesses and fatalities in municipal government.																																	
Annual Performance Goal # 1.2	Reduce DART rates in the following targeted municipal government industries: police protection; fire protection; highway, street, and bridge construction; elementary and secondary schools and correctional facilities. Prevent fatalities in these industries.																																
Strategy	Conduct inspections and consultations in the high hazard targeted industries.																																
Performance Indicator(s) (including activity, intermediate outcome, and primary outcome measures)	Number of inspections: 110 (Goal not met, actual 100) Number of consultation visits: 110 (conducted 332 initial visits, but unable to distinguish between state and local government visits). Reduce the DART rates in local government targeted industries by two percentage points from the 2013 baseline DART rates. The police departments were the only substantial reductions. The other four focus areas either stayed approximately the same or increased. Police departments have decreased 3.1 percentage points over the past three years. Number of fatalities: 1 (law enforcement)																																
Data Source(s)	Internal BLS Research & Statistics Unit data; BLS DART rates																																
Baseline	2013 BLS DART rates in targeted municipal government industries.  <table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th colspan="4" style="text-align: center;"><b>Focused Municipal Government Industries</b></th> </tr> <tr> <th style="text-align: center;">Industry</th> <th style="text-align: center;">NAICS</th> <th style="text-align: center;">2013 DART Rate</th> <th style="text-align: center;">2016 DART Rate</th> </tr> </thead> <tbody> <tr> <td>Police Protection</td> <td style="text-align: center;">92212</td> <td style="text-align: center;">6.8</td> <td style="text-align: center;">3.7</td> </tr> <tr> <td>Fire Protection</td> <td style="text-align: center;">92216</td> <td style="text-align: center;">4.8</td> <td style="text-align: center;">5.9</td> </tr> <tr> <td>Highway, Street, and Bridge Construction</td> <td style="text-align: center;">2373</td> <td style="text-align: center;">10.0</td> <td style="text-align: center;">12.2</td> </tr> <tr> <td>Elementary and Secondary Schools</td> <td style="text-align: center;">6111</td> <td style="text-align: center;">1.9</td> <td style="text-align: center;">1.8</td> </tr> <tr> <td>Correctional Facilities</td> <td style="text-align: center;">92214</td> <td style="text-align: center;">2.8</td> <td style="text-align: center;">2.9</td> </tr> <tr> <td><b>All local government</b></td> <td></td> <td style="text-align: center;"><b>3.0</b></td> <td style="text-align: center;"><b>3.1</b></td> </tr> </tbody> </table>	<b>Focused Municipal Government Industries</b>				Industry	NAICS	2013 DART Rate	2016 DART Rate	Police Protection	92212	6.8	3.7	Fire Protection	92216	4.8	5.9	Highway, Street, and Bridge Construction	2373	10.0	12.2	Elementary and Secondary Schools	6111	1.9	1.8	Correctional Facilities	92214	2.8	2.9	<b>All local government</b>		<b>3.0</b>	<b>3.1</b>
<b>Focused Municipal Government Industries</b>																																	
Industry	NAICS	2013 DART Rate	2016 DART Rate																														
Police Protection	92212	6.8	3.7																														
Fire Protection	92216	4.8	5.9																														
Highway, Street, and Bridge Construction	2373	10.0	12.2																														
Elementary and Secondary Schools	6111	1.9	1.8																														
Correctional Facilities	92214	2.8	2.9																														
<b>All local government</b>		<b>3.0</b>	<b>3.1</b>																														
Comment	MEOSH will increase inspections in all five strategic areas including police due to fatality.																																



## Appendix E - FY 2017 State OSHA Annual Report (SOAR)

Strategic Goal # 2. Promote a safety and health culture through compliance assistance, cooperative programs and outreach activities.	
Annual Performance Goal # 2.1	Increase safety and health awareness among workers in state and municipal work sites.
Strategy	Conduct training courses at the SafetyWorks! Training Institute (STI) on school laboratory safety, public sector work zone, trenching/excavation, fall protection, OSHA recordkeeping and other applicable courses.–
Performance Indicator(s) (including activity, intermediate outcome, and primary outcome measures)	Number of courses to be conducted: 100 (110 courses and eight from OSHA Education Center Region 1 were conducted, for a grand total of 118 courses). Number of participants to be trained: 2,000 state and local government and private employees. Of this total, 300 participants are estimated to be workers from state and local government. (The actual number of workers trained was 2,080 of which 468 were state and local government workers). We accomplished total class attendance and public sector participant goals. All three goals were exceeded. Despite this increase in training, DART rates were not reduced.
Data Source(s)	Course registration forms and sign-in sheets
Baseline	FY 2016 Actuals: Courses provided 103, total participants trained 1554 and public sector trained 337. All of them were exceeded in FY 2017.
Comment	STI trained 468 state and local government employees. This total does not include attendees who registered from a private employer but who are also volunteer firefighters, or school or town volunteers, etc. The total class attendance was 2,080 participants. This does not take into consideration Wage & Hour, Risk Management or Human Resources training. It also does not include on-site training.
Strategic Goal # 2. Promote a safety and health culture through compliance assistance, cooperative programs and outreach activities.	
Annual Performance Goal # 2.2	Promote effective worksite-based safety and health programs in the public sector.
Strategy	Administer the SHAPE Voluntary Protection Program for public sector worksites

## Appendix E - FY 2017 State OSHA Annual Report (SOAR)

Performance Indicator(s) (including activity, intermediate outcome, and primary outcome measures)	Maintain the participation of 68 SHAPE sites (including those that are eligible for renewal in FY 2017); recruit 8 new SHAPE participants.  The continued growth of this program should help MEOSH obtain its goal to reduce the DART rates in state and local government targeted industries by two percentage points from the 2013 baseline DART rates.
Data Source(s)	SHAPE applications, DART rates, and results of onsite audits of SHAPE sites
Baseline	MEOSH had 68 SHAPE sites in FY 2016
Comment	The goal was to increase SHAPE participation to 76. As of 9/30/2017 the State Plan had a total of 80 SHAPE sites.
Strategic Goal #2. Promote a safety and health culture through compliance assistance, cooperative programs and outreach activities.	
Annual Performance Goal # 2.3	Promote safety and health consultation services at various trade shows and conferences.
Strategy	Staff vendor booths at conferences attended by participants from the public sector; provide safety and health training at these conferences when possible.
Performance Indicator(s) (including activity, intermediate outcome, and primary outcome measures)	Number of conferences that the Maine State Plan will attend: 5  The goal was exceeded. The Plan participated in 7 conferences that were geared toward state and local government work sites.  Continued outreach of this program should help MEOSH obtain its goal to reduce the DART rates in state and local government targeted industries by two percentage points from the 2013 baseline DART rates.
Data Source(s)	Conference registration forms
Baseline	In FY 2016 MEOSH participated in five conferences
Comment	The five conferences were attended, including an additional two geared towards the public sector. The conferences identified for attendance/informational booth were the Maine Fire Chiefs; Recycling/Solid

## Appendix E - FY 2017 State OSHA Annual Report (SOAR)

	Waste; Maine School Management; Maine Emergency Management (MEMA); and Maine Municipal Association Conference (MMA). In addition, attended the Construction Rodeo (DOT/Public Works) and MMA Human Resource Conference.
Strategic Goal #2. Promote a safety and health culture through compliance assistance, cooperative programs and outreach activities.	
Annual Performance Goal # 2.4	Conduct outreach to public sector work sites on a variety of occupational safety and health topics
Strategy	Conduct compliance meetings statewide
Performance Indicator(s) (including activity, intermediate outcome, and primary outcome measures)	<p>Number of compliance meetings to be attended: 6 The goal was not met; we provided four public sector compliance meetings.</p> <p>Continued outreach of this program should help MEOSH obtain its goal to reduce the DART rates in state and local government targeted industries by two percentage points from the 2013 baseline DART rates.</p>
Data Source(s)	Registrations received to attend breakfast meetings
Baseline	In FY 2016, four breakfast meetings were held. MEOSH did not have any alliances in FY-2016.
Comment	Four compliance courses were provided by MEOSH manager/staff. The meetings were held from 8:30 to 10:30 at MDOL Augusta and three satellite MDOL locations (northern and southern Maine). These meetings are non-formal training sessions where attendees can freely ask questions about the department without concerns of enforcement. It's an open dialog meeting.
Strategic Goal #3. Maximize MEOSH effectiveness and efficiency by strengthening staff capabilities and focusing on high hazard/injury rate establishments.	
Annual Performance Goal # 3.1	Strengthen the technical and professional skills and education of MEOSH field staff.
Strategy	Management will meet with staff to discuss their training needs. Management will also encourage/support staff in their pursuit of higher education and professional certifications.
Performance Indicator(s) (including activity, intermediate outcome, and primary outcome measures)	Annually each field staff will complete at least one safety and/or health class. Staff will also attend one professional development course/seminar annually. The goal was met.

## Appendix E - FY 2017 State OSHA Annual Report (SOAR)

	Continued growth of staff and focused activities should help MEOSH obtain its goal to reduce the DART rates in state and local government targeted industries by two percentage points from the 2013 baseline DART rates.
Data Source(s)	Training records
Baseline	Mandatory training courses prescribed by TED 01-00-019. Each consultant will have completed Course #1500. Each CSHO conducting discrimination investigations will complete Course #1420.
Comment	Enforcement staff continues to follow OSHA's directive (TED 01-00-019-Mandatory Training Program for OSHA Compliance Personnel). Staff also attended numerous courses offered through the OSHA Region 1 Education Center. Staff also attended the National Safety Council of Northern New England, 90 <sup>th</sup> annual Safety & Health Conference with keynote speakers and multiple break-out sessions.
Strategic Goal #3. Maximize MEOSH effectiveness and efficiency by strengthening staff capabilities and focusing on high hazard/injury rate establishments.	
Annual Performance Goal # 3.2	Maintain a Local Emergency Management partnership with the Maine Emergency Management Agency (MEMA).
Strategy	Management will assist MEMA by staffing Emergency Operation Center (EOC) during state emergencies and exercises.
Performance Indicator(s) (including activity, intermediate outcome, and primary outcome measures)	MEOSH will participate in an annual conference and provide "real world safety" (participate in drills, but also have additional staff available to provide actual hands-on safety and health monitoring of the exercise) at statewide exercises such as Vigilant Guard. Staff from the Maine State Plan attended one conference, two drills on ice storms.
Data Source(s)	100% participation at large exercises and state disasters
Baseline	MEOSH will participate in 100 percent of all emergencies, exercises, and SERC meetings.
Comment	MEOSH participated in MEMA's disaster drills that involved ice storms. Desk top exercise, we did not have any staff in the field providing safety and health monitoring.

## **Appendix E - FY 2017 State OSHA Annual Report (SOAR)**

### **STATE OF MAINE**

#### **STATE INTERNAL EVALUATION PROGRAM (SIEP)**

Based on data from FY 2017 OIS reports and feedback received from OSHA during the onsite case file review for the FY 2016 and FY 2017 Comprehensive Federal Annual Monitoring and Evaluation (FAME) Reports, MEOSH has identified the following areas that it will monitor in the SIEP.

1. Case file management
2. Average number of work days to initiate complaint inspections (based on State Activity Mandated Measures (SAMM) 1A)
3. Average lapsed days between closing conference and written report (based on OSHA Information System (OIS) Written Report Lapsed Days)
4. Percent of Serious Hazards Corrected in a Timely Manner (based on Mandated Activities Report for Consultation (MARC) 4A - 4D)

### **Enforcement**

#### **Case File Documentation**

Documenting case files as directed by the MEOSH FOM is a concern of management and staff. Management will periodically (not to exceed quarterly) review case files (10 percent) to ensure that all documentation required by the MEOSH FOM is included, such as diary sheets, field notes, employee interviews, penalty assessments, and background information to support the citations. Detailed case files are necessary in case of an employer appeal. In addition, management and field staff will discuss/review the MEOSH FOM requirements on a quarterly basis. The program manager and system administrator reviewed 100% of FY 2017 files. Any discrepancies with case files were communicated to the inspector.

#### **Average Number of Work Days to Initiate Complaint Inspections: State Activity Mandated Measures Report (SAMM) 1A**

The time to initiate complaint inspections is a concern, because MEOSH did not meet the negotiated five-day further review level. This went up substantially from last year, primarily due to a number of complaints and accident investigations occurring about the same time. field staff had difficulty initiating incoming complaint inspections because they were occupied with several complex inspections that were already in progress. MEOSH had 18 complaint and numerous

## Appendix E - FY 2017 State OSHA Annual Report (SOAR)

accident investigations in FY 2017 compared to 8 complaints in FY 2016. In addition, MEOSH had two fatality investigations in FY 2017 compared to none in FY 2016.

In FY 2018 MEOSH will explore the use of phone/fax complaint notification which should reduce the number of physical on-site complaint inspections. The Plan will closely monitor this average so that the negotiated five-day further review level will be met in FY 2018.

The SAMM report for FY2017 showed the following data for SAMM 1A. -

Total FY2017	All State Plans	National
17.0	7.38	6.11

### Consultation

#### Average Lapsed Days Between Closing Conference and Written Report

The average number of lapsed days between consultation closing conference and written report to the employer have been a concern of SafetyWorks! management and staff. We will continue to monitor this metric on a monthly basis as we progress as an approved state plan for state and local government. Although Maine's averages were not too far out of compliance in FY 2016 at 24 days, they exceeded the goal of 20 days or less. Through combined efforts this number has been greatly reduced for FY 2017 and is currently not a concern at 10 days. However, to reduce the potential for injuries we want to see all workplace hazards corrected as soon as possible. For this reason, we will continue to monitor this metric for FY 2018.

Discipline	Total Days FY2017	Total Days FY2017 Goal
Safety & Health	10	20

#### Percent of Serious Hazards Corrected in a Timely Manner

The percent of serious hazards corrected in a timely manner is a concern of SafetyWorks management and staff. The Mandated Activities Report for Consultation (MARC) requires that a minimum of 65% of serious hazards be corrected onsite or within the original time frame. In FY 2016 the consultation program was at 74.05% and in FY 2017 we have improved to 84.9%. We will continue to monitor the timely closeout of identified hazards and refer non-compliant employers to enforcement. Management and staff will continue to review the uncorrected hazards list on a weekly/bi-weekly basis and discuss any potential non-compliant employers.

## **Appendix E - FY 2017 State OSHA Annual Report (SOAR)**

The goal is for employers to correct all hazards (100%) by the correction due date, but shall not exceed 14-days past due MARC 4A-4D.