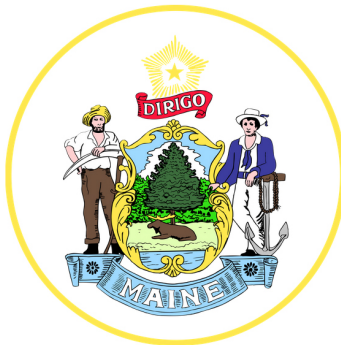


# **FY 2019 Comprehensive Federal Annual Monitoring Evaluation (FAME) Report**

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



**Evaluation Period: October 1, 2018 – September 30, 2019**

**Initial Approval Date: August 5, 2015**

**State Plan Certification Date: N/A**

**Final Approval Date: N/A**

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## Contents

I.	Executive Summary.....	1
II.	State Plan Background.....	2
	A. Background.....	2
	B. 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.....	7
	3. Review Procedures.....	16
	4. Standards and Federal Program Changes (FPCs) Adoption.....	17
	5. Variances .....	20
	6. State and Local Government Worker Program.....	20
	7. Whistleblower Program.....	20
	8. Complaint About State Program Administration (CASPA).....	22
	9. Voluntary Compliance Program.....	22
	10. State and Local Government 23(g) On-Site Consultation Program.....	23
	11. Status of MEOSH's Developmental Schedule.....	23

## 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 2018 Findings and Recommendations.....	C-1
Appendix D – FY 2019 State Activity Mandated Measures (SAMM) Report.....	D-1
Appendix E – FY 2019 State OSHA Annual Report (SOAR).....	E-1

## I. Executive Summary

The purpose of this report is to assess the Maine State Plan's (MEOSH) performance for Fiscal Year (FY) 2019 and its progress in resolving outstanding findings from previous Federal Annual Monitoring Evaluation (FAME) Reports. FY 2019 was MEOSH's fourth full year of operation after receiving initial approval as a State and Local Government Only State Plan in August 2015. To get up to speed, MEOSH has been studying its Field Operations Manual (FOM), receiving on-site training from the Occupational Safety and Health Administration (OSHA), and focusing on resolving issues cited in the previous FAME Report.

MEOSH's FY 2018 Follow-up FAME Report contained seven findings, but that number has decreased to only one in this report. Five of the seven findings in last year's FAME Report have been completed, including those related to violation documentation, violation classification, abatement, notification of next-of-kin, and penalties. OSHA has converted the other two findings to observations because MEOSH has shown significant progress. These pertain to complaints and severity assessments.

Additionally, six of the seven observations from the FY 2018 FAME Report have been closed. The remaining observation, which relates to union representation during inspections, has been elevated to a finding in this report because it has been on the books for the past three fiscal years and remains an issue. Some of the observations that have been closed pertain to use of OSHA Information System (OIS) reports for performance monitoring, violation documentation, and the workplace retaliation program.

With the exception of the observations that were previously findings, this report does not contain any new observations. However, one new issue surfaced that relates to MEOSH not being adequately staffed with compliance officers; the State Plan has had difficulty meeting its annual goal for inspections over the past two years, and in FY 2019, MEOSH did not have enough compliance officers readily available to respond to a work-related fatality in one work day. Aside from these issues, MEOSH had a stable and productive year: no major personnel changes occurred, MEOSH achieved a major milestone by establishing key components of its workplace retaliation program, and the State Plan completed the final steps of its developmental schedule.<sup>1</sup>

Appendix A describes the new and continued findings and recommendations and contains one new finding. Appendix B describes the observations and the related federal monitoring plans; this appendix lists six closed observations and two observations that had previously been findings. Appendix C describes the status of previous findings with associated completed corrective actions; this appendix lists the two findings that were converted to observations, as well as the five findings that were completed in FY 2019. Thus, OSHA has made one new finding and two new observations in this report.

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<sup>1</sup> A State and Local Government Only State Plan, such as MEOSH, may receive initial approval even though, upon submission, it does not fully meet the criteria set forth in 29 CFR 1956.10 and 1956.11 if it agrees to meet the criteria within a three-year period. See 29 Code of Federal Regulations (CFR) 1956.2(b). The State Plan's progress in completing the developmental steps is discussed in Section III.

## II. State Plan Background

### A. Background

In August 2015, MEOSH 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 (the Bureau) is the State Plan designee. The State Plan's headquarters is in Augusta.

#### *Coverage*

The State Plan covers approximately 2,400 state and local government employers and nearly 80,820 workers (22,054 workers in state government and 58,766 workers in local government). Volunteers under the direction of a state or local government employer are also covered. MEOSH 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 exercises authority over private sector employers in the state.

#### *Staffing*

The MEOSH Director and the program manager are the State Plan's first-line supervisors. MEOSH has two safety compliance officers and one health compliance officer, as well as two safety consultants and one health consultant. The Director of the Bureau of Labor Standards handles workplace retaliation complaints with assistance from one of the safety compliance officers and the program manager. Two administrative staff also support the State Plan.

#### *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. The State Plan has also adopted Maine's standards for state and local government dive team operations and driving training requirements for fire apparatuses.

#### *Enforcement and Whistleblower Protection Programs*

MEOSH conducts workplace inspections. If violations are identified, citations and proposed assessments of penalties are issued. State and local government employers may contest citations and proposed penalties before the Board of Occupational Safety and Health (the Board).<sup>2</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.

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<sup>2</sup> MEOSH also covers county government and quasi-municipal agencies.

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. MEOSH adopted 29 CFR 1977, Discrimination Against Employees Under the OSH Act of 1970, in FY 2019.

### *Funding*

MEOSH began FY 2019 with base-level funding of \$400,000; this total increased to \$407,900 due to a base-level funding adjustment. Additionally, MEOSH received one-time funding of \$53,574; therefore, MEOSH's total federal funding award in FY 2019 was \$461,474. In addition to matching the total federal funding award, the state contributed \$72,809, which brought the total funding amount up to \$995,757. In FY 2019, the state contributed 54 percent of the MEOSH's total funding in FY 2019, which was in keeping with its contribution in previous years.

### **B. 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 2019 was a comprehensive year, and as such, OSHA was required to conduct on-site evaluations and case file reviews. OSHA conducted two separate on-site reviews at MEOSH's headquarters in Augusta, Maine. One of these on-site evaluations focused on evaluating the State Plan's workplace retaliation program while the other focused primarily on the enforcement program. Case files were reviewed to assess the overall effectiveness of each program.

### **Enforcement On-site Evaluation**

From December 2 through 6, 2019, OSHA conducted an on-site evaluation of MEOSH's enforcement program. OSHA's on-site review team consisted of four personnel: a program analyst, one assistant area director, one safety and occupational health specialist, and a compliance safety and health officer (CSHO). The review team conducted an opening conference on December 2, 2019, with the Director of the Bureau, the Deputy Director of the Bureau, the MEOSH Director, the program manager, the chief safety and health inspector, the health inspector, and administrative staff.

During this evaluation, OSHA reviewed 37 safety and health inspection files, most of which were randomly selected from a universe of the 78 inspections that MEOSH opened and closed

during the evaluation period (October 1, 2018, through September 20, 2019). The selected population included:

- Twenty-eight (28) programmed inspection case files
- Three (3) complaint case files
- Three (3) referral case files
- Two (2) follow-up case files
- One (1) fatality case file

OSHA conducted interviews with the director, program manager, chief safety and health inspector, and administrative assistants. The purpose of these interviews was to discuss topics related to the operation of the State Plan, such as progress in resolving enforcement-related findings and observations from the FY 2018 Follow-up FAME Report, standard and federal program changes (FPC) adoptions, progress in completing the developmental plan, complaint processing, compliance assistance, and utilization of the OIS for monitoring and tracking.

All of the staff mentioned above attended the closing conference, which OSHA conducted on December 6, 2019. During this meeting, OSHA summarized issues and best practices 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.

### **Workplace Retaliation Program Case File Review**

On January 8, 2020, OSHA conducted an on-site evaluation of MEOSH at its headquarters. OSHA's on-site review team consisted of the Assistant Regional Administrator for Whistleblower Protection and a whistleblower investigator. At the beginning of the on-site review, the OSHA team held an opening conference with the Director of the Workplace Safety and Health Division, the program manager, and the chief safety and health inspector who is also the part-time workplace retaliation investigator.

During the evaluation, OSHA reviewed the one investigation file that MEOSH completed during FY 2019 and interviewed the above-mentioned staff from MEOSH. OSHA held the closing conference at the conclusion of the review and discussed issues identified, as well as the status of the open workplace retaliation observations from the previous Follow-up FAME Report.

### **Monitoring Sources**

The analyses and conclusions described in this report are based on information obtained from a variety of monitoring sources, including the:

- State Activity Mandated Measures (SAMM) Report (Appendix D)
- Mandated Activities Report for Consultation (MARC)
- State OSHA Annual Report (SOAR) (Appendix E)
- State Plan Annual Performance Plan
- State Plan Grant Application

- OIS reports (Abatement Tracking, Fatality/Catastrophe, Inspection Summary, Open Inspection, and Scan Summary)
- Quarterly monitoring meetings between OSHA and the State Plan
- Case file reviews (enforcement program and workplace retaliation protection program)

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. State Plan SAMM data that falls outside the FRL triggers a closer look at the underlying performance of the mandatory activity. Appendix D presents the State Plan's FY 2019 SAMM Report and includes the FRL for each measure.

## **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 is performing satisfactorily in terms of following OSHA Training and Education Directive 01-00-019 (Mandatory Training Program for OSHA Compliance Personnel, July 21, 2014), the directive which prescribes the requirements for training compliance officers. The State Plan's three CSHOs have completed all of the initial courses and are now taking the technical training offered by the OSHA Training Institute (OTI) as prescribed by the directive.<sup>3</sup> All consultants have completed OTI Course 1500, Introduction to On-site Consultation, and are taking technical courses to enhance their ability to perform their jobs. The CSHO responsible for conducting workplace retaliation investigations completed OTI Course 2720, Whistleblower Complaint Resolution, in FY 2018. The SOAR contains a list of the training completed by each field staff member and the program manager in FY 2019.

#### **b) OSHA Information System (OIS)**

OSHA did not identify any issues with MEOSH's use of OIS reports to monitor and track performance. Over the past two years, MEOSH has received training on running and analyzing OIS reports.

**Observation FY 2018-OB-01 (formerly 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.

**Status FY 2018-OB-01:** The CSHO who was promoted to the position of chief safety and health

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<sup>3</sup> The directive provides a two-phase approach to completing the mandatory training requirements for CSHOs throughout their career: Phase 1 - Initial Courses and Phase 2 - Technical Courses.

inspector has taken on the responsibility of running OIS reports—such as Abatement Tracking, Open Inspection, and Inspection Summary—on a regular basis. This observation is closed.

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 previous FAME Reports, the State Plan monitored performance in the following areas in FY 2019 and in FY 2018:

- 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)

Over the past two years, management has reviewed all open case files to make sure that case file documentation meets all of the requirements in the MEOSH FOM. MEOSH has improved with regard to case file management (i.e., violation documentation), as discussed later in this report. MEOSH has also improved with regard to SAMM 1a, average number of work days to initiate complaint inspections; for example, in FY 2017, MEOSH had an average of 17 days, but that average decreased to 4.20 work days in FY 2018 and to 1.75 work days in FY 2019. The State Plan continues to perform satisfactorily with regard to average lapsed days between the closing conference and written report; MEOSH's average of 14 days in FY 2019 was below the maximum average of 20 calendar days allowed in the Consultation Policies and Procedures Manual. Finally, MEOSH had a positive outcome for MARC 4D, percent of serious hazards corrected in original time or on-site. The State Plan's percent of 76.02 was above the standard/reference of 65 percent for this metric. Thus, MEOSH has benefitted from monitoring its performance in the areas listed in the SIEP.

d) Staffing

MEOSH began FY 2019 with a full complement of 23(g) consultants, but one safety consultant retired in November 2018. MEOSH usually fills vacancies within a month or so, but the State Plan encountered delays due to the changes in the governor's office. In April 2019, MEOSH filled the safety consultant vacancy. In July 2019, one of the 23(g) consultants began working as the State Plan's compliance assistance specialist. MEOSH made this change to facilitate the development of Alliances and Partnerships. Thus, MEOSH's 23(g) consultation program now consists of two safety consultants and one health consultant, rather than the three safety consultants that were on board at the beginning of FY 2019.

In terms of the enforcement program, staffing has been stable over the past two fiscal years. However, as discussed later in this report, there are indications that the State Plan is understaffed in terms of compliance personnel.



## 2. ENFORCEMENT

### a) Complaints

MEOSH's procedures for handling complaints are set forth in Chapter 9 of the MEOSH FOM, which mirrors the OSHA FOM in this regard. SAMMs 1 through 3 assess the program's efficiency in handling complaint inspections.

#### **SAMM 1a - Average number of work days to initiate complaint inspections (state formula)**

Discussion of State Plan data and FRL: The negotiated FRL for this SAMM is five days. As mentioned earlier, MEOSH's average in FY 2019 was 1.75 days.

Explanation: MEOSH's performance on this SAMM has improved over the past two years, and in FY 2019, the State Plan met the FRL of five days.

#### **SAMM 2a- Average number of work days to initiate complaint investigations (state formula)**

Discussion of State Plan data and FRL: The negotiated FRL is one day. MEOSH's average in FY 2019 was zero days.

Explanation: SAMM 2a (state formula) calculates the number of work days from the date MEOSH receives the complaint to the date the State Plan initiates the investigation by notifying the employer of the complaint. This SAMM pertains only to complaints that have no related inspection. In FY 2018, MEOSH was unfamiliar with the guidance in the MEOSH FOM for handling complaint investigations. In response, OSHA provided training on the complaint investigation procedures in Chapter 9 of the MEOSH FOM. In FY 2019, the State Plan did not conduct any complaint investigations; therefore, its average was zero days.

**Observation FY 2018-OB-05:** The State Plan's average of 17 work days did not meet the negotiated FRL of one work day for SAMM 2a, average number of work days to initiate complaint investigations (state formula).

**Status FY 2018-OB-05:** After receiving training from OSHA on the complaint investigation procedures in Chapter 9 of the MEOSH FOM, the State Plan understands the procedures for handling complaint investigations. Therefore, this observation is closed.

#### **SAMM 3 - Percent of complaints and referrals responded to within one work day (imminent danger)**

Discussion of State Plan data and FRL: The FRL of 100 percent is fixed for all State Plans. In FY 2019, MEOSH's result was 100 percent.

Explanation: MEOSH had one complaint of imminent danger in FY 2019 that was responded to within one work day.

In the FY 2017 Comprehensive FAME Report, OSHA made a finding related to case files not containing documentation that MEOSH had informed the complainant of the results of the inspection. As a corrective action, MEOSH reviewed the guidance in Chapter 9 of the MEOSH FOM, which directs the State Plan to “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.” OSHA continued this finding in the FY 2018 Follow-up FAME Report, pending the outcome of the FY 2019 case file review.

In FY 2019, there were only four inspections related to complaints that were both opened and closed during the fiscal year; of this total, three inspections were not in compliance. OSHA reviewed the three complaint inspections that had citations issued and determined that none contained documentation that the complainant had been notified of the results of the inspection.

Because OSHA reviewed only three case files for this issue, the results of the case file review are not conclusive. Additionally, MEOSH has shown improvement with regard to case file documentation in other areas, as discussed in this report. Therefore, it appears that with further monitoring, MEOSH will soon remedy this issue.

**Finding FY 2018-01 (formerly Finding FY 2017-02):** In FY 2017, 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.

**Status FY 2018-01:** This finding has been converted to an observation.

**Observation FY 2019-OB-01:** None of the three complaint inspections that were not in compliance contained documentation that the complainant had been notified of the results of the inspection.

**Federal Monitoring Plan FY 2019-OB-01:** On a quarterly basis, OSHA will discuss the need for MEOSH to follow the guidance in Chapter 9 of the MEOSH FOM to send a letter to the complainant. OSHA will also reinforce the need for MEOSH to 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 2019-OB-01:** This observation is new.

SAMM 4 pertains to gaining access to the worksite.

#### **SAMM 4 - Number of denials where entry not obtained**

Discussion of State Plan data and FRL: The FRL of zero is fixed for all State Plans. In FY 2019, MEOSH’s result was zero.

Explanation: MEOSH did not have any denials of entry in FY 2019.

## b) Fatalities

In FY 2018, there were no work-related fatalities in Maine's state and local government workforce, but in FY 2019, the State Plan inspected three work-related fatalities, one in the second quarter and two in the fourth quarter. At the time of the on-site case file review, MEOSH had closed only one of the three fatality inspections, which OSHA reviewed for this report. In the FY 2017 Comprehensive FAME Report, OSHA made a finding pertaining to the State Plan not following the requirements in Chapter 11 of the MEOSH FOM to contact and involve families. The State Plan's managers have been studying the MEOSH FOM and reviewing case files to make sure that all required documentation is included. The one fatality case reviewed for FY 2019 contained documentation of timely notification of the victim's family.

**Finding FY 2018-02 (formerly 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.

**Status FY 2018-02:** This finding has been completed.

### **SAMM 10 - Percent of work-related fatalities responded to in one work day**

Discussion of State Plan data and FRL: The FRL of 100 percent is fixed for all State Plans. In FY 2019, MEOSH's percent was 50. <sup>4</sup>

Explanation: Based on information from the OIS Fatality/Catastrophe Report, the State Plan opened three fatality inspections in FY 2019 and responded to two of the three fatalities within one work day. The fatality that MEOSH did not respond to in one work day involved a firefighter who lost his life while fighting a four-alarm fire.

On the day of the fatality, which was a Friday, the safety compliance officer who covers the portion of the state where the incident occurred was on leave and could not conduct the opening conference. The other safety compliance officer was working a few hundred miles away in the northern part of the state and would not have been able to arrive at the scene for several hours; the program manager was on leave, as well. The MEOSH Director determined that this event required the expertise of a safety inspector and, therefore, did not dispatch the State Plan's one and only health compliance officer to the scene.

The state fire marshal had secured the victim's fire gear, but due to intense activity at the scene by multiple fire departments, the State Plan and the fire marshal agreed to meet the following week to transfer custody of the gear. Additionally, MEOSH and the employer agreed to hold the opening conference at the beginning of the following week. The State Plan issued five serious citations to the local fire department, which provided MEOSH with proof of abatement of all

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<sup>4</sup> The End-of-Year SAMM Report for FY 2019 shows that MEOSH had two fatalities in FY 2019 and did not respond to one of the two fatalities within one work day. For one of the three fatality inspections, MEOSH did not properly code the victim as "OSHA-covered" in OIS. As a result, the SAMM Report did not capture one of MEOSH's three work-related fatalities in FY 2019.

hazards cited during the inspection. OSHA reviewed this case file during the on-site visit and identified no issues with the inspection.

Because of the activity at the scene and MEOSH's coordination with the state fire marshal to secure evidence pertinent to the investigation, OSHA is not overly concerned that MEOSH waited until after the weekend to open the inspection. However, MEOSH's inability to produce a CSHO who *could* have opened the inspection within one work day is cause for concern. The following section addresses this issue.

c) Targeting and Programmed Inspection

**SAMM 7 - Planned v. actual inspections – safety/health**

Discussion of State Plan data and FRL: The FRL is based on a number negotiated by OSHA and the State Plan through the grant application. In FY 2019, MEOSH planned to conduct 100 safety inspections and 25 health inspections. The FRL range was from 95 to 105 for safety and from 23.75 to 26.25 for health, and MEOSH conducted 57 safety inspections and 48 health inspections. The State Plan's total for safety inspections was outside (below) the FRL range, and its total for health inspections was outside (above) the FRL range. MEOSH had a positive result for health inspections but not for safety inspections.

Explanation: One of the State Plan's two safety compliance officers allocates a portion of her time to the State Plan's workplace retaliation program. Over the past few fiscal years, this particular CSHO has also been performing management duties, and in FY 2019, she was formally promoted to chief occupational safety and health inspector. Due to these additional duties, the time this CSHO has been able to spend on inspections has declined. For example, MEOSH projected 125 inspections in both FY 2019 and FY 2018; therefore, each CSHO should have conducted approximately 42 inspections in each of those years. However, OIS Inspection Summary Reports show that the chief inspector conducted only 20 inspections (18 percent) of the 112 inspections that were opened in FY 2018; and in FY 2019, the compliance officer conducted 14 inspections (13 percent) of 108 inspections opened in that year. As a solution, MEOSH is considering hiring another CSHO to increase inspection numbers.

MEOSH evaluates OSHA's 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 current five-year strategic plan, MEOSH has identified these industries using the Bureau of Labor Statistics 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 state government and local governments. 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.

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.

SAMM 9 calculates the State Plan's in-compliance rates (i.e., the percentage of inspections that have been closed with no violations). High in-compliance rates may indicate that the State Plan is not targeting worksites that are highly hazardous and prone to having serious violations.

### **SAMM 9 – Percent in compliance**

Discussion of State Plan data and FRL: The FRL is based on a three-year national average. In FY 2019, the FRL range was from 24.24 percent to 36.36 percent for safety and from 28.90 percent to 43.35 percent for health. MEOSH's in-compliance rate of 19.23 percent for safety inspections was outside (below) the FRL, and its in-compliance rate of 4.65 percent for health inspections was also outside (below) the FRL range. Both of these results were positive.

Explanation: MEOSH's results for SAMM 9 indicate that the State Plan is performing satisfactorily in terms of targeting the most hazardous worksites for inspections.

#### d) Citations and Penalties

SAMM 11 measures the State Plan's timeliness in issuing citations. MEOSH has performed satisfactorily in terms of timely citation issuance over the past two years.

### **SAMM 11- Average lapse time**

Discussion of State Plan data and FRL: The FRL is based on a three-year national average. In FY 2019, the FRL range was from 38.08 days to 57.13 days for safety and from 45.78 days to 68.68 days for health. MEOSH's average of 34.43 days for safety was outside (below) the FRL, and the State Plan's average of 20.30 days for health was outside (below) the FRL range; both outcomes were positive.

Explanation: Lapse time is calculated as the number of work days from opening conference date to the earliest issuance date. Over the past few years, MEOSH has consistently met the FRLs for both safety and health in SAMM 11.

The FY 2018 Follow-up FAME Report contained a continued finding related to MEOSH classifying some violations as serious when the violations should have been classified as other-

than-serious (OTS) and vice versa.<sup>5</sup> This finding also noted that for some violations, there was not enough documentation in the case file to determine whether the classification was correct. Since FY 2017, when 17 (50 percent) of 34 inspections reviewed for violation classification contained at least one violation that was not properly classified, the State Plan has been reviewing the guidance in Chapter 4 of the FOM for properly classifying violations and has also received training on this topic from OSHA. In FY 2019, six inspections (18 percent) of 34 inspections reviewed that were not in compliance contained at least one violation that was not properly classified. MEOSH's improvement over the past two years in the area of violation classification is evidence that the State Plan's corrective measures for this finding have been effective. Additionally, the FY 2019 case file review indicated that MEOSH has improved with regard to violation documentation. Therefore, Finding FY 2018-04 has been completed.

**Finding FY 2018-04 (formerly Findings FY 2017-06 and FY 2016-02):** In FY 2017, in 17 (50 percent) of 34 inspections that were reviewed for violation classification, there was at least one violation that was not properly classified as either serious or OTS, and/or there was not enough documentation to determine if the violation was correctly classified.

**Status FY 2018-04:** This finding has been completed.

In addition to the case file review, OSHA uses SAMM 5, average number of violations per inspection with violations by violation type, to determine whether the State Plan is performing satisfactorily in terms of classifying violations as serious/willful/repeat/unclassified (SWRU) or OTS.

#### **SAMM 5 - Average number of violations per inspection with violations by violation type**

**Discussion of State Plan data and FRL:** The FRL is based on a three-year national average. MEOSH's FY 2019 average of 1.31 was outside (below) the FRL range of 1.43 to 2.15 for SWRU violations. For OTS violations, the State Plan's average of 2.58 was outside (above) the FRL range of 0.78 to 1.16.

**Explanation:** Having a high average for OTS violations and a comparatively low average for SWRU violations in SAMM 5 could indicate that the State Plan has a tendency to classify some serious violations as OTS violations. In FY 2019, MEOSH had a high average for OTS violations; however, the State Plan's average for SWRU violations was not drastically below the FRL range. Additionally, the case file review shows that MEOSH has made progress with regard to violation classification. Therefore, OSHA is not concerned with MEOSH's performance on SAMM 5.

Next, the FY 2018 FAME Report contained a continued finding related to inadequate documentation of violations. In FY 2017, OSHA determined that 26 (76 percent) of the 34 cases that had violations were missing adequate evidence to support violations. Over the past couple of years, MEOSH has been reviewing the guidance in Chapters 4 and 5 of the MEOSH FOM to

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<sup>5</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)

document violations. During the FY 2019 case file review, OSHA identified only two cases that were missing adequate documentation of the violations cited. In some cases, such as the fatality inspection that OSHA reviewed during the on-site visit, the violations cited were well-documented.

**Finding FY 2018-05 (formerly Findings FY 2017-07 and FY 2016-01):** MEOSH did not follow the guidance in Chapters 4 and 5 of the MEOSH FOM to document violations. In FY 2017, adequate evidence to support violations was missing in 26 (76 percent) of the 34 cases that had violations.

**Status FY 2018-05:** This finding has been completed.

The FY 2018 Follow-up FAME Report also contained a continued observation that the CSHO did not take notes on worker interviews and include the notes in the case file. 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).” Over the past couple of years, MEOSH has improved in this area; in FY 2019, OSHA identified two cases that did not contain notes on worker interviews, which is not enough to warrant continuing this observation.

**Observation FY 2018-OB-02 (formerly Observations FY 2017-OB-04 and FY 2016-OB-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.

**Status FY 2018-OB-02:** This observation is closed.

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. The MEOSH Director has discretionary authority for civil penalties of up to \$1,000 per day for repeat and willful violations. Serious and OTS violations may be assessed a penalty of up to \$1,000 per violation, and failure-to-abate 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.

The FY 2018 Follow-up FAME Report contained a continued finding that in several cases, the CSHO did not properly assess the severity and probability of the alleged violation. To remedy this issue, MEOSH has been reviewing the guidance in Chapter 6 of the MEOSH FOM on assessing the severity and probability of the alleged violation, and the State Plan has received training on this topic from OSHA. In FY 2017, 19 (56 percent) of the 34 cases that had citations issued had problems with severity and probability assessments. In FY 2019, in 10 (29 percent) of 34 not in-compliance cases, the CSHO did not properly assess the severity and probability of the alleged violation. Although MEOSH has improved in this area, further monitoring of this issue is warranted.

**Finding FY 2018-03 (formerly Finding FY 2017-05):** In FY 2017, 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.

**Status FY 2018-03:** This finding has been converted to an observation.

**Observation FY 2019-OB-02 (formerly Findings FY 2018-03 and FY 2017-05):** In FY 2019, the CSHO did not properly assess the severity of the alleged violation in 10 (29 percent) of 34 cases that were not in compliance.

**Federal Monitoring Plan FY 2019-OB-02:** On a quarterly basis, OSHA will reinforce the need to ensure compliance with the guidance in Chapter 6 of the FOM to assess the severity and probability of the alleged violation.

**Status FY 2019-OB-02:** This observation is new.

In FY 2017, OSHA made a finding pertaining to MEOSH dismissing one or more proposed penalties before the citations were issued to the employer. This practice was 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. As a corrective measure, MEOSH discontinued this practice and has been following its penalty policy. In FY 2019, no cases were identified in which this issue resurfaced.

**Finding FY 2018-07 (formerly Finding FY 2017-09):** In FY 2017, 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.

**Status FY 2018-07:** This finding has been completed.

e) Abatement

MEOSH has had a longstanding finding on the books related to the CSHO not following 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. To remedy this issue, the State Plan has been reviewing the guidance in Chapter 5 of the MEOSH FOM to assign the shortest interval within which the employer can reasonably be expected to abate the hazard. During the FY 2019 case file review, OSHA did not identify any issues related to abatement. All abatement periods were appropriate, and there was adequate verification or evidence of abatement in the case files.

**Finding FY 2018-06 (formerly Findings FY 2017-08 and FY 2016-04):** In FY 2017, 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.

**Status FY 2018-06:** This finding has been completed.

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 FY 2019, MEOSH made sure that all initial inspections were conducted with worker walk around representation or worker interview.

**SAMM 13 – Percent of initial inspections with worker walk around representation or worker interview**

Discussion of State Plan data and FRL: The FRL of 100 percent is fixed for all State Plans. In FY 2019, MEOSH met the FRL of 100 percent for SAMM 13.

Explanation: MEOSH performed satisfactorily on SAMM 13.

Since FY 2017, MEOSH has had an observation related to the CSHO not documenting 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, it cannot be determined if the CSHO made sure that worker representatives were given the opportunity to participate in all phases of the inspection.

Over the past few years, MEOSH has been reviewing the MEOSH FOM, including Chapter 3, which discusses employee representation. In FY 2019, in eight (44 percent) of 18 inspection files reviewed where the union was at the workplace, the CSHO did not document whether union representatives were given the opportunity to participate in all phases of the inspection. Because this observation has been on the books for three years and has not been resolved, it has been elevated to a finding.

**Observation FY 2018-OB-03 (formerly Observations FY 2017-OB-05 and FY 2016-OB-04):** In FY 2017, in six (26 percent) of the 23 inspections where the union was at the workplace, the CSHO did not document whether union representatives were given the opportunity to participate in all phases of the inspection.

**Status FY 2018-OB-03:** This observation has been converted to a finding.

**Finding FY 2019-01 (formerly Observations FY 2018-OB-03, FY 2017-OB-05, and FY 2016-OB-04):** In FY 2019, in eight (44 percent) of the 18 inspections where the union was at the workplace, the CSHO did not document whether union representatives were given the opportunity to participate in all phases of the inspection.

**Recommendation FY 2019-01:** Follow the guidance in Chapter 3 of the MEOSH FOM to ensure that employee representatives are given the opportunity to participate in all phases of the inspection, and include documentation in the case file that this guidance was followed.

**Status FY 2019-01:** This finding is new.

### 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.

#### **SAMM 12 - Percent penalty retained**

Discussion of State Plan data and FRL: The FRL is based on a three-year national average. In FY 2019, MEOSH's percent penalty retained of 31.85 was far outside (below) the FRL range of 56.42 percent to 76.33 percent.

Explanation: OSHA is not concerned with MEOSH's performance on SAMM 12 because the State Plan's penalty policy calls for reducing original penalty amounts by 90 percent if the employer certifies abatement.

#### b) Formal Review of Citations

The Board is an independent authority that reviews contested cases. In FY 2019 and FY 2018, MEOSH did not have any 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 June 2019. Table 1 summarizes the status of MEOSH's standard adoptions and is followed by a brief discussion of each standard.

**Table 1  
Status of FY 2019 Federal Standards Adoption**

Standard	Response Due Date	State Plan Response Date	Intent to Adopt	Adopt Identical	Adoption Due Date	State Plan Adoption Date
Final Rule on the Standards Improvement Project - Phase IV 1904,1910,1915,1926 (5/14/2019)	7/13/2019	6/3/2019	Yes	Yes	11/14/2019	12/5/2019
Final Rule on the Implementation of the 2019 Annual Adjustment to Civil Penalties for Inflation 29 CFR 1902,1903 (1/23/2019)	3/23/2019	1/28/2019	No	No	7/23/2019	N/A
Final Rule on Crane Operator Certification Requirements 29 CFR Part 1926 (11/9/2018)	1/9/2019	1/4/2019	Yes	Yes	5/9/2019	3/5/2020

### **Standards Improvement Project - Phase IV Rule**

As part of OSHA's Standards Improvement Project, OSHA issued a final rule on May 14, 2019, that revises 14 provisions in the recordkeeping, general industry, maritime, and construction standards that may be confusing, outdated, or unnecessary. The revisions are expected to increase understanding and compliance with the provisions, improve worker safety and health, and save employers an estimated \$6.1 million per year. This is the fourth rule under OSHA's Standards Improvement Project (SIP-IV). MEOSH notified OSHA in a timely manner (i.e., within 60 days from publication of the standard in the *Federal Register*) of its intent to adopt this rule and exceeded the deadline for adoption by less than 30 days.

### **Implementation of the 2019 Annual Adjustment to Civil Penalties for Inflation Rule**

MEOSH responded timely to the Final Rule on the Implementation of the 2019 Annual Adjustment to Civil Penalties for Inflation. As a State and Local Government Only State Plan, MEOSH is not required to adopt OSHA's Interim Final Rule on Maximum Penalty Increases and did not do so.

### **Crane Operator Certification Requirements Rule**

On November 9, 2018, the Department of Labor published a *Federal Register* notice on the Final Rule on Crane Operator Certification Requirements, effective December 10, 2018. The amendments to OSHA's cranes standard in this final rule require employers to permanently implement evaluations of crane operators, whereas the previous evaluation duty had been temporary with a fixed end date. These evaluations must be documented and include more specificity than the previous temporary employer duty to assess and train operators. State Plans were required to adopt an "at least as effective" standard or amendment to their existing standards or show that they already have an existing "at least as effective" standard, within six months of the standard's publication date, i.e. by May 9, 2019.

MEOSH was overdue in adopting this rule because the director had questions concerning its requirements and did not bring these to the attention of OSHA until November 2019. Soon after discussing this rule with OSHA, the State Plan filed the rule with the Board, which adopted it in March 2020. The State Plan typically begins rulemaking in a timely manner; its late start in initiating adoption procedures appears to be a one-time departure from its normal policy and is not cause for concern.

b) Federal Program Change (FPC) Adoption

Table 2 summarizes the status of MEOSH's FPC adoptions.

**Table 2**  
**Status of FY 2019 Federal Program Change Adoption**

<b>FPC Directive/Subject</b>	<b>Response Due Date</b>	<b>State Plan Response Date</b>	<b>Intent to Adopt</b>	<b>Adopt Identical</b>	<b>Adoption Due Date</b>	<b>State Plan Adoption Date</b>
<b><i>Adoption Required</i></b>						
National Emphasis Program on Trenching and Excavation, CPL 02-00-161 (10/1/2018)	11/30/2018	12/1/2018	Yes	Yes	4/1/2019	11/27/2018
<b><i>Equivalency Required</i></b>						
Confined and Enclosed Spaces and Other Dangerous Atmospheres in Shipyard Employment, CPL 02-01-061 (5/22/2019)	7/21/2019	6/24/2019	No	N/A	11/22/2019	N/A
Shipyard Employment "Tool Bag" Directive, CPL 02-00-162 (5/22/2019)	7/21/2019	6/24/2019	No	N/A	11/22/2019	N/A
Enforcement Guidance for Personal Protective Equipment (PPE) in Shipyard Employment, CPL 02-01-060 (5/22/2019)	7/21/2019	6/24/2019	No	N/A	11/22/2019	N/A
Site-Specific Targeting 2016 (SST-16), CPL 02-18-01 (10/16/2018)	12/15/2018	12/7/2018	No	N/A	4/16/2019	N/A
<b><i>Adoption Encouraged</i></b>						
Alternative Dispute Resolution (ADR) Processes for Whistleblower Protection Programs, CPL 02-03-008 (2/4/2019)	4/5/2019	4/4/2019	No	No	N/A adoption not required	N/A

MEOSH responded timely to all FPCs but adopted only the FPC for trenching and excavation. Equivalencies were required for the three FPCs related to shipyard employment (CPL 02-00-161, CPL 02-00-162, and CPL 02-01-060), but, having no state or local government agencies in Maine that employ shipyard workers, MEOSH did not adopt these FPCs or equivalencies. State Plans must either adopt Site-Specific Targeting 2016 (SST-16) (CPL 02-18-01) or an equivalency. MEOSH did not adopt this FPC; rather, the State Plan has an equivalency which targets employers in state and local government with the highest DART rates. Adoption was not required, but encouraged, for ADR Processes for Whistleblower Protection Programs (CPL 02-03-008); MEOSH did not to adopt this FPC in FY 2019.

## **5. VARIANCES**

MEOSH did not have any variances in FY 2019.

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

MEOSH is a State and Local Government Only State Plan. Therefore, MEOSH conducted all inspections in state and local government workplaces in FY 2019 and in FY 2018.

## **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. Complaints are investigated by MEOSH, and a meritorious complaint would be litigated in state court by the Maine Attorney General. The State of Maine has investigated only two complaints under Title 26 M.R.S.A. §570, including one in the period covered by this FAME Report.

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. In the past, it was easier to find information on §833 protections than it was to find information on §570 protections. MEOSH has corrected this on its website and workers can now easily find information on §570 protections.

MEOSH did not investigate any workplace retaliation cases in FY 2018, but the State Plan investigated one workplace retaliation complaint in FY 2019. OSHA's review of the case file concluded that MEOSH conducted a thorough investigation and developed the necessary evidence to support the conclusion. The complainant was advised of his/her appeal rights, and MEOSH followed all relevant procedures. Additionally, the case file was well-organized.

In late FY 2019, MEOSH completed the establishment of key processes for handling workplace retaliation cases, such as complaints, appeals, and settlements. As discussed in the FY 2017 Comprehensive FAME Report, MEOSH planned to wait until its workplace retaliation program was up and running before proceeding with adoption of the Whistleblower Investigations Manual (CPL-02-03-007), which was issued in January 2016. Once these key components were established, MEOSH completed adoption of the manual on January 9, 2020.

MEOSH has outlined the areas where its program differs from the manual, such as appeals of MEOSH's decisions and litigation of merit cases, and OSHA has approved these differences. Additionally, in fulfillment of the developmental steps, MEOSH has adopted 29 CFR 1977, Discrimination Against Employees Under the OSH Act of 1970. Finally, OSHA reviewed MEOSH's website and found the information substantially more accessible and detailed than in past years. Complainants can easily find information on whistleblower rights and can file a complaint using MEOSH's website.

**Observation FY 2018-OB-04 (formerly Observations FY 2017-OB-07 and FY 2016-OB-06):**

MEOSH has not formally established key processes for handling retaliation cases, such as complaints, appeals, and settlements that are required by the Whistleblower Investigations Manual. Also, the State Plan's website contains little information on workers' rights under Maine's anti-retaliation statutes.

**Status FY 2018-OB-04:** This observation is closed.

Also, MEOSH obtained accounts for three staff members to use OITSS (formerly known as WebIMIS). However, there is no data in OITSS on the one case investigated in FY 2019, because the accounts were not obtained until after the case was closed. As discussed below, SAMMs 14, 15, and 16 contain no data for MEOSH, because these metrics pull data from OITSS.

**Observation FY 2018-OB-07:** MEOSH does not have access to OSHA's WebIMIS, the online database that stores information related to workplace retaliation investigations.

**Status FY 2018-OB-07:** This observation is closed.

**SAMM 14 - Percent of 11(c) investigations completed within 90 days**

Discussion of State Plan data and FRL: The FRL of 100 percent is fixed for all State Plans. In FY 2019, MEOSH's percent was zero.

Explanation: MEOSH's result for this SAMM was zero because the State Plan did not enter data on its workplace retaliation cases into OITSS in FY 2019.

**SAMM 15 - Percent of 11(c) complaints that are meritorious**

Discussion of State Plan data and FRL: The FRL range for SAMM 15 in FY 2019 was from 18.40 percent to 27.60 percent, and MEOSH's percent of 11(c) complaints that were meritorious was zero.

Explanation: MEOSH's result for this SAMM was zero because MEOSH did not enter data on its workplace retaliation cases into OITSS in FY 2019.

### **SAMM 16 – Average number of calendar days to complete an 11(c) investigation**

Discussion of State Plan data and FRL: The FRL of 90 calendar days is fixed for all State Plans. In FY 2019, MEOSH's average was zero days.

Explanation: MEOSH's result for this SAMM was zero because MEOSH did not enter data on its workplace retaliation cases into OITSS in FY 2019.

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

MEOSH did not have any CASPAs in FY 2019 or in FY 2018.

## **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>6</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, electrical hazards, and ergonomics, etc. In FY 2019, the STI trained nearly 1,800 workers, and of this total, 232 participants were from state and local government agencies. In FY 2018, MEOSH trained 2,315 workers, including 399 state and local government participants.

MEOSH also administers the Safety and Health Award for Public Employers (SHAPE) Program. Employers in SHAPE are exempt 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 programs. In FY 2019, MEOSH had 92 workplaces in SHAPE, and by the end of FY 2018, MEOSH had 89 SHAPE participants.<sup>7</sup> During the on-site review, OSHA confirmed that MEOSH's written policies and procedures for SHAPE are adequate.

MEOSH, in conjunction with the 21(d) On-site Consultation Project, periodically hosts occupational safety and health training meetings for SHARP and SHAPE companies. MEOSH has not had any Partnerships or Alliances since it became an OSHA-approved State Plan in 2015 but is considering developing an Alliance now that it has a consultant who performs compliance assistance duties.

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<sup>6</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.

<sup>7</sup> Data on workers trained and SHAPE participants was obtained from the State Plan's FY 2019 and FY 2018 SOARs.



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

Based on data from the OIS MARC Report, MEOSH's 23(g) Consultation Program opened 394 visits (275 visits in local government agencies and 119 visits in state government agencies) in FY 2019. In FY 2018, MEOSH opened 342 visits (235 visits in local government and 107 visits in state government). MEOSH's goal for 23(g) consultation visits has been 250 visits in each of the past few years; thus, MEOSH exceeded this goal in FY 2019 and in FY 2018.

MEOSH was outside (below) the reference/standard of 100 percent for MARC 4A, which calculates the percent of serious hazards corrected in a timely manner, in both FY 2019 and FY 2018. MEOSH's percent in FY 2019 was 87.54; and in FY 2018, it was 87.36. MEOSH's results for MARC 4A were not substantially outside (below) the reference/standard of 100 percent and, therefore, are not cause for concern.

Next, in FY 2019 and FY 2018, MEOSH performed well with respect to MARC 4D, which calculates the percent of serious hazards corrected in original time or on-site. In FY 2019, MEOSH's percentage was 76.02; and in FY 2018, its percentage was 75.53. Both results were outside (above) the reference/standard of 65 percent and were positive outcomes.

As noted earlier, MEOSH has been monitoring the average days lapsed between the closing conference and the written report as part of its SIEP. Based on Chapter 4 of the Consultation Policies and Procedures Manual, which MEOSH has adopted, "the Written Report must be sent to the employer no later than 20 calendar days after the closing conference is held." Although the State Plan's average has increased from 11 calendar days in FY 2017 to 14 calendar days in FY 2019, it remains acceptable based on data from the SOAR and OIS Consultation Customer Service Reports.

## **11. STATUS OF MEOSH'S DEVELOPMENTAL SCHEDULE**

As previously mentioned, 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 was established for MEOSH, with a due date for completion of August 5, 2018.

MEOSH needed to adopt three rules in order to complete its developmental steps. However, in FY 2018, MEOSH faced delays in rulemaking at the state level that lasted several months and were beyond the State Plan's control. Realizing that it would not be able to meet the original deadline of August 5, 2018, for completion of its developmental plan, MEOSH requested that OSHA extend the deadline to March 7, 2019. OSHA agreed to the extension, but the State Plan also missed that deadline due to ongoing delays that were beyond the State Plan's control. These delays finally ran their course, and in June 2019, MEOSH completed adoption of all three rules.

**Observation FY 2018-OB-06:** MEOSH did not meet deadlines for completion of the remainder of its developmental plan, which entails adoption of three rules: 29 CFR 1908, Consultation Agreements; 29 CFR 1905, Rules of Practice; and 29 CFR 1977, Discrimination Against Employees Under the OSH Act of 1970.

**Status FY 2018-OB-06:** This observation is closed.

The table below provides a list of MEOSH’s developmental steps along with the dates that the steps were completed.

**Table 3  
MEOSH’s Developmental Schedule**

<b>Developmental Step</b>	<b>Date of Completion</b>
Provide a comparison of Code of Maine Rules (CMR) 12-179, Chapter 6 (Recording Occupational Injuries and Illnesses in the Public Sector) to 29 CFR 1904 (Recording and Reporting Occupational Injuries and Illnesses).	June 2018
Adopt regulations equivalent to 29 CFR 1905 (Rules of Practice), or provide citations to currently existing equivalent regulations.	June 2019
Adopt regulations equivalent to 29 CFR 1977 (Discrimination Against Employees under the OSH Act of 1970), or provide citations to currently existing equivalent regulations.	June 2019
Enact revised legislation that revises 26 MRSA § 2 (Reports of Death and Injuries) and §44 (Right of Access).	June 2015
Provide a comparison of alternative standards that were adopted to federal standards.	July 2015
Provide an outline of procedures for the on-site public-sector consultation (29 CFR 1908, Consultation Agreements) program or a timeline for their development.	June 2019
Develop a five-year strategic plan and an annual performance plan.	October 2015
Update and revise, as necessary, the MEOSH FOM.	March 2019
Develop a plan for transitioning to the OIS.	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.	OSHA has determined that the Maine State Plan does 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 2019 MEOSH Comprehensive FAME Report

FY 2019-#	Finding	Recommendation	FY 2018-# or FY 2018-OB-#
FY 2019-01	In FY 2019, in eight (44 percent) of the 18 inspections where the union was at the workplace, the CSHO did not document whether union representatives were given the opportunity to participate in all phases of the inspection.	Follow the guidance in Chapter 3 of the MEOSH FOM to ensure that employee representatives are given the opportunity to participate in all phases of the inspection, and include documentation in the case file that this guidance was followed.	FY 2018-OB-03 FY 2017-OB-05 FY 2016-OB-04

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

### FY 2019 MEOSH Comprehensive FAME Report

Observation # FY 2019-OB-#	Observation# FY 2018-OB-# or FY 2018-#	Observation	Federal Monitoring Plan	Current Status
FY 2019-OB-01	FY 2018-01 FY 2017-02	None of the three complaint inspections that were not in compliance contained documentation that the complainant had been notified of the results of the inspection.	On a quarterly basis, OSHA will discuss the need for MEOSH to follow the guidance in Chapter 9 of the MEOSH FOM to send a letter to the complainant. OSHA will also reinforce the need to 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.	New
FY 2019-OB-02	FY 2018-03 FY 2017-05	In FY 2019, the CSHO did not properly assess the severity of the alleged violation in 10 (29 percent) of 34 cases that were not in compliance.	On a quarterly basis, OSHA will reinforce the need to ensure compliance with the guidance in Chapter 6 of the FOM to assess the severity and probability of the alleged violation.	New
	FY 2018-OB-01 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.		Closed
	FY 2018-OB-02 FY 2017-OB-04 FY 2016-OB-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.		Closed
	FY 2018-OB-03 FY 2017-OB-05 FY 2016-OB-04	In FY 2017, in six (26 percent) of the 23 inspections where the union was at the workplace, the CSHO did not document whether union representatives were given the opportunity to participate in all phases of the		Converted to Finding

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

### FY 2019 MEOSH Comprehensive FAME Report

		inspection.		
	FY 2018-OB-04 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 required by the Whistleblower Investigations Manual. Also, the State Plan’s website contains little information on workers’ rights under Maine’s anti-retaliation statutes.		Closed
	FY 2018-OB-05	The State Plan’s average of 17 work days did not meet the negotiated FRL of one work day for SAMM 2A, average number of work days to initiate complaint investigations (state formula).		Closed
	FY 2018-OB-06	MEOSH did not meet deadlines for completion of the remainder of its developmental plan, which entails adoption of three rules: 29 CFR 1908, Consultation Agreements; 29 CFR 1905, Rules of Practice; and 29 CFR 1977, Discrimination Against Employees Under the OSH Act of 1970.		Closed
	FY 2018-OB-07	MEOSH does not have access to OSHA’s WebIMIS, the online database that stores information related to workplace retaliation investigations.		Closed

## Appendix C - Status of FY 2018 Findings and Recommendations

### FY 2019 MEOSH Comprehensive FAME Report

FY 2018-#	Finding	Recommendation	State Plan Corrective Action	Completion Date (if Applicable)	Current Status (and Date if Item is Not Completed)
FY 2018-01	In FY 2017, 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.	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.	<p>MEOSH’s managers reviewed Chapter 9 with CSHOs to ensure that certified letters to the complainant are included in the case files. Furthermore, MEOSH managers have been using a case file checklist to ensure that case files include all the required documentation.</p> <p>Because OSHA reviewed only three case files for this issue, the results of the case file review are not conclusive. However, MEOSH has shown improvement with regard to case file documentation in other areas. Therefore, it appears that with further monitoring, MEOSH will soon remedy this issue.</p>	Not Applicable	Converted to Observation December 2019
FY 2018-02 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.	Follow the guidance in Chapter 11 of the MEOSH FOM to contact and involve victims’ families.	In March 2018, MEOSH’s managers reviewed with CSHOs the guidance in Chapter 11 of the MEOSH FOM for contacting and involving victims’ families. MEOSH’s managers have also been using a case file checklist to ensure that case files contain all required documentation. The one fatality case reviewed for FY 2019 contained documentation of timely notification of the victim’s family.	March 2018	Completed December 2019

## Appendix C - Status of FY 2018 Findings and Recommendations

### FY 2019 MEOSH Comprehensive FAME Report

<p>FY 2018-03 FY 2017-05</p>	<p>In FY 2017, 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.</p>	<p>Follow the guidance in Chapter 6 of the MEOSH FOM to assess the severity and probability of alleged violations.</p>	<p>In FY 2018, MEOSH’s managers reviewed with CSHOs the guidance in Chapter 6 of the FOM to assess the severity and probability of alleged violations. In August 2018, OSHA reviewed this assessment process with MEOSH’s staff.</p> <p>In FY 2019, in 10 (29 percent) of 34 not in-compliance cases, the CSHO did not properly assess the severity and probability of the alleged violation. Although MEOSH has improved in this area, further monitoring of this issue is warranted.</p>	<p style="text-align: center;">Not Applicable</p>	<p style="text-align: center;">Converted to Observation December 2019</p>
<p>FY 2018-04 FY 2017-06 FY 2016-02</p>	<p>In FY 2017, in 17 (50 percent) of 34 inspections that were reviewed for violation classification, there was at least one violation that was not properly classified as either serious or other-than-serious, and/or there was not enough documentation to determine if the</p>	<p>Follow the guidance in Chapter 4 of the MEOSH FOM to classify serious and other-than-serious violations.</p>	<p>In FY 2018, MEOSH’s managers reviewed with CSHOs the guidance in Chapter 4 of the FOM for properly classifying violations. In August 2018, OSHA reviewed this guidance with MEOSH staff.</p> <p>In FY 2019, six (18 percent) of 34 not in-compliance inspections contained at least one violation that was not properly classified, which is evidence that the State Plan’s corrective measures for this finding have been effective.</p>	<p style="text-align: center;">August 2018</p>	<p style="text-align: center;">Completed December 2019</p>

## Appendix C - Status of FY 2018 Findings and Recommendations

### FY 2019 MEOSH Comprehensive FAME Report

	violation was correctly classified.				
FY 2018-05 FY 2017-07 FY 2016-01	MEOSH did not follow the guidance in Chapters 4 and 5 of the MEOSH FOM to document violations. In FY 2017, 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.	In FY 2018, OSHA reviewed Chapters 4 and 5 of the FOM with MEOSH staff and reviewed violation documentation.  During the FY 2019 case file review, OSHA identified only two cases that were missing adequate documentation of the violations cited. In most cases, such as the fatality inspection that OSHA reviewed during the on-site visit, the violations cited were well-documented.	August 2018	Completed December 2019
FY 2018-06 FY 2017-08 FY 2016-04	In FY 2017, 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,	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.	In FY 2018, OSHA reviewed Chapter 5 of the FOM with MEOSH staff and reviewed assignment of appropriate abatement periods.  During the FY 2019 case file review, OSHA did not identify any issues related to abatement. All abatement periods were appropriate, and there was adequate verification or evidence of abatement in the case files.	August 2018	Completed December 2019



## Appendix C - Status of FY 2018 Findings and Recommendations

### FY 2019 MEOSH Comprehensive FAME Report

	<p>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.</p>				
<p>FY 2018-07 FY 2017-09</p>	<p>In FY 2017, 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.</p>	<p>MEOSH should follow its penalty policy that requires employers to either file a formal appeal or request a penalty conference in order to receive a penalty reduction.</p>	<p>MEOSH is following its penalty policy and has discontinued the practice of dismissing one or more penalties before the citations are issued. In FY 2019, OSHA did not identify any cases in which this issue has resurfaced.</p>	<p>September 2018</p>	<p>Completed December 2019</p>

## Appendix D - FY 2019 State Activity Mandated Measures (SAMM) Report

### FY 2019 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 2019	
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)	1.75	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)	1.25	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 work day (imminent danger)	100%	100%	The further review level is fixed for all State Plans.
<b>4</b>	Number of denials where entry not obtained	0	0	The further review level is fixed for all State Plans.
<b>5</b>	Average number of violations per inspection with violations by violation type	SWRU: 1.31	+/- 20% of SWRU: 1.79	The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from 1.43 to 2.15 for SWRU and from 0.78 to 1.16 for OTS.
		Other: 2.58	+/- 20% of Other: 0.97	

## Appendix D - FY 2019 State Activity Mandated Measures (SAMM) Report

### FY 2019 MEOSH Comprehensive FAME Report

<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: 57	+/- 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: 48	+/- 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 \$2,871.96	N/A – This is a State and Local Government State Plan.  The further review level is based on a three-year national average.
	<b>a.</b> Average current serious penalty in private sector (1-25 workers)	N/A	+/- 25% of \$1,915.86	N/A – This is a State and Local Government State Plan.  The further review level is based on a three-year national average.
	<b>b.</b> Average current serious penalty in private sector (26-100 workers)	N/A	+/- 25% of \$3,390.30	N/A – This is a State and Local Government State Plan.  The further review level is based on a three-year national average.
	<b>c.</b> Average current serious penalty in private sector (101-250 workers)	N/A	+/- 25% of \$4,803.09	N/A – This is a State and Local Government State Plan.

## Appendix D - FY 2019 State Activity Mandated Measures (SAMM) Report

### FY 2019 MEOSH Comprehensive FAME Report

				The further review level is based on a three-year national average.
	d. Average current serious penalty in private sector (greater than 250 workers)	N/A	+/- 25% of \$5,938.59	N/A – This is a State and Local Government State Plan.  The further review level is based on a three-year national average.
<b>9</b>	Percent in compliance	S: 19.23%	+/- 20% of S: 30.30%	The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from 24.24% to 36.36% for safety and from 28.90% to 43.35% for health.
		H: 4.65%	+/- 20% of H: 36.12%	
<b>10</b>	Percent of work-related fatalities responded to in one work day	50%	100%	The further review level is fixed for all State Plans.
<b>11</b>	Average lapse time	S: 34.43	+/- 20% of S: 47.61	The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from 38.08 to 57.13 for safety and from 45.78 to 68.68 for health.
		H: 20.30	+/- 20% of H: 57.23	
<b>12</b>	Percent penalty retained	31.85%	+/- 15% of 66.38%	The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from 56.42% to 76.33%.

## Appendix D - FY 2019 State Activity Mandated Measures (SAMM) Report

### FY 2019 MEOSH Comprehensive FAME Report

<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 23%	The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from 18.40% to 27.60%.
<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 1.23%	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 three-year national average.

# State of Maine

## State OSHA Annual Report (SOAR)

October 1, 2018 through September 30, 2019



Prepared By:

State of Maine  
Department of Labor  
Bureau of Labor Standards

Submitted: December 2019

## Appendix E - FY 2019 State OSHA Annual Report (SOAR)

### TABLE OF CONTENTS

	Page
EXECUTIVE SUMMARY	E-3
SUMMARY OF RESULTS RELATED TO THE ANNUAL PERFORMANCE PLAN	E-6
STATE INTERNAL EVALUATION PROGRAM (SIEP)	E-13

## **Appendix E - FY 2019 State OSHA Annual Report (SOAR)**

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

#### **FISCAL YEAR 2019 EXECUTIVE SUMMARY**

The Maine State Plan (MEOSH) submits this State OSHA Annual Report (SOAR) to the Occupational Safety and Health Administration (OSHA) for evaluation of the State Plan program.

The SOAR covers fiscal year (FY) 2019 (October 1, 2018 through September 30, 2019), 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. This report covers the Annual Performance Plan for October 1, 2018 through September 30, 2019.

As of October 1, 2018, MEOSH was fully staffed, with four consultants (three safety and one health) and three compliance safety and health officers (CSHO) (two safety and one health). A vacancy that occurred in a safety consultant's position in November 2018 was filled in April 2019.

The following is a summary of the Annual Performance Goals in MEOSH's FY 2019 Annual Performance Plan, as well as the strategies used to accomplish these goals. The FY 2019 results are discussed in detail later in this report.

In FY 2019, MEOSH planned to conduct a total of 125 inspections (100 safety and 25 health). By the end of the fiscal year, MEOSH had conducted 107 inspections (58 safety and 49 health), which is 86% of the total projected goal. During the course of the year, MEOSH devoted a lot amount of time to updating inspection files so that they meet the MEOSH Field Operations Manual's (FOM) requirements. The State Plan also conducted three fatality investigations which were time-consuming. Thus, MEOSH was unable to meet the goal for inspections.

In FY 2019 MEOSH conducted five complaint inspections, seven referral inspections and investigated three work-related fatalities. -

Of the total number of inspections, 107 (89%) were conducted in the targeted, high-hazard areas in both state and local government, including 16 inspections at police departments, 21



## Appendix E - FY 2019 State OSHA Annual Report (SOAR)

inspections at fire/rescue departments, 25 inspections at Department of Transportation (DOT)/public works departments, four inspections at correctional facilities, and 29 inspections at colleges/schools.

In FY 2018 MEOSH conducted 24 inspections in state government, but in FY 2019, this number decreased to nine. This decrease is mainly due to the fact that the CSHO who covers the area with the highest concentration of state government agencies had to allocate a significant portion of her time to the workplace retaliation program and assisting the program manager with three complex fatality investigations. Needless to say, these duties detracted from her time in the field. Looking ahead, it does not appear that this situation will change, since this CSHO was recently promoted to Chief Safety and Health Inspector, and most likely will continue to spend less time in the field and more time assisting the program manager. Thus, MEOSH is exploring the possibility of adding an additional CSHO position in the near future.

MEOSH is training compliance personnel in accordance with OSHA's Mandatory Training Program for OSHA Compliance Personnel (TED 01-00-019). The training completed by each field staff member and the program manager in FY 2019 is listed below. All three CSHOs have completed the initial CSHO three-year training requirements.

- CSHO 1: Completed 3015 Trenching & Excavation, 7115 Lockout/Tag Out and 7100 Machines and Machine Guarding.
- CSHO 2: Completed ICS 200, ICS 100; 3015 Trenching & Excavation, 1080 Health Hazard Awareness and 2000 Construction Standards.
- CSHO 3: Completed 1230 Accident Investigation, 7500 Intro to Safety & Health Mgt, 2225 Respiratory Protection, STI Welding/Cutting, NCSG 445 Lab Safety, DOT work-zone set up and flagging, 3015 Trenching & Excavation and 1280 Safety Hazard Awareness.

All CSHOs have completed the initial three-year training requirements. Although, ICS courses were completed during fourth year. We were unaware that this could be accomplished on-line.

- Consultant 1: Completed 3015 Excavation & Trenching and 521 Intro to Industrial Hygiene
- Consultant 2: Completed 7100 Intro to Machines and Machine Safeguarding, 7115 Lockout/Tag out, 7300 Permit Required Confined Spaces, 3015 Trenching & Excavation and 7505 Accident/Incident Investigation.
- Consultant 3: Completed 1500 Intro to onsite consultation, 3015 Trenching & Excavation, STI Welding/Cutting safety and MSC NFPA 70E Risk assessment, PPE and risk reduction, selection, use and care of FR/AR clothing.
- Consultant 4: Completed 7100 Machine and Machine Guarding, 521 Guide to Industrial Hygiene, STI Recordkeeping, STI Lifting/Rigging, STI Vehicle Ergonomics and STI Welding/Cutting.

All consultants have completed the required 1500 course. This is accomplished during the first year of employment. MEISH had one new consultant in FY 2019, and he has received this training.

Additionally, the program manager completed Maine Emergency Management Agency (MEMA)

## Appendix E - FY 2019 State OSHA Annual Report (SOAR)

Haz-Mat Propane IQ, NFPA 1403 Live Burn, STI Vehicle Ergonomics, STI Welding/Cutting and MEMA Emergency Preparedness.

All staff attended the 92<sup>nd</sup> Annual Maine Safety & Health Conference which included three keynote speakers and numerous breakout sessions.

SafetyWorks! (consultation) conducted a total of 401 state and local government visits (284 safety and 117 health), which is 160% of the goal of 250 state and local government visits. This high number was made possible by the large number of Safety & Health Award for Public Employers (SHAPE) sites in the program. MEOSH had a large number of renewals, and with the new sites the State Plan was able to visit locations that may have never requested our services.

The SafetyWorks! Training Institute trained 1,797 attendees in FY 2019. Of that total, 232 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
- Maine Municipal Association (MMA) Conference
- MMA Human Resource Conference
- Maine School Management Conference

MEOSH 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 entire city/town or just an individual department may be eligible for acceptance into SHAPE. As of September 30, 2019, there were 92 sites in SHAPE.

The State of Maine did not have any disasters that required the activation of the emergency response teams (ERT). However, MEOSH attended quarterly State Emergency Response Commission meetings as well as a few storm updates at the Emergency Response Center (ERC).

MEOSH did not establish any Partnerships or Alliances during FY 2019. However, the State Plan is working to establish training partnerships with Maine Department of Transportation (DOT) and Maine Fire Service Institute to prepare firefighters and construction personnel for hazards that may exist in their occupations.

MEOSH, through the Board of Occupational Safety & Health (BOSH,) established agency work rule Chapter 8, 9 and 10 in FY 2019. Chapter 8 covers discrimination; Chapter 9 covers variances and Chapter 10 includes consultation guidelines. All three were adopted by BOSH on

## Appendix E - FY 2019 State OSHA Annual Report (SOAR)

June 6, 2019.

**Summary of the Annual Performance Goals** in MEOSH’s FY 2019 Annual Performance Plan, as well as strategies used to accomplish these goals.

**NOTE: Select state and local government industry level estimates were not available for 2017 at a level of detail presented in prior years due to issues in the organization of data underlying these estimates. However, that is not the case with 2018 Bureau of Labor Statistics (BLS) data.**

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 BLS Days Away, Restricted or Transferred (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.			
Performance Indicator(s) (including activity, intermediate outcome, and primary outcome measures)	<p>Number of inspections: 15 (Goal was not met, MEOSH conducted 9 inspections)</p> <p>Number of consultation visits: 50 (MEOSH conducted 401 initial visits but was unable to distinguish between state and local government visits). Reduce the DART rates in state targeted industries by four percentage points from the 2013 baseline DART rates. Based on 2018 DART rates, <b>MEOSH did not meet its goal of a 4 percent reduction in all focus five areas from the 2013 baseline DART rates.</b> MEOSH will continue to focus on all five focused areas and increase inspections in all areas. Number of fatalities: one (law enforcement)</p>			
Data Source(s)	Internal BLS Research & Statistics Unit data, BLS DART rates			
Baseline	2013 BLS DART rates in targeted state government industries.			
	<b>Focused State Government Industries</b>			
	Industry	NAICS	2013 DART Rate	2018 DART Rate
	Police Protection	92212	6.4	5.1
	Highway, street, and bridge construction	2373	9.2	9.1

## Appendix E - FY 2019 State OSHA Annual Report (SOAR)

	Administration of human resource programs (except education, public health, and veterans' affairs programs)	92313	0.7	1.2
	Correctional facilities	92214	4.9	4.0
	Colleges, universities, and professional schools	6113	1.3	1.7
	<b>All state government</b>		<b>3.0</b>	<b>2.8</b>
Comment	MEOSH will increase inspections in all five strategic areas.			

Strategic Goal # 1. Improve workplace safety & health for all workers, as evidenced by reducing hazards, exposures, injuries, illnesses and fatalities in municipal/local 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 98) Number of consultation visits: 200 (conducted 401 initial visits, but unable to distinguish between state and local government visits). Reduce the DART rates in local government targeted industries by four percentage points from the 2013 baseline DART rates. Based on 2018 DART rates, <b>MEOSH did not meet its goal of a 4 percent reduction in all focus five areas from the 2013 baseline DART rates.</b> MEOSH will continue to focus on all five focused areas and increase inspections in all areas. Number of fatalities: three (one in public works and two in fire service)
Data Source(s)	Internal BLS Research & Statistics Unit data; BLS DART rates
Baseline	2013 BLS DART rates in targeted municipal government industries.

## Appendix E - FY 2019 State OSHA Annual Report (SOAR)

	<b>Focused Municipal/Local Government Industries</b>			
	Industry	NAICS	2013 DART Rate	2018 DART Rate
	Police Protection	92212	6.8	4.3
	Fire Protection	92216	4.8	4.8
	Highway, Street, and Bridge Construction	2373	10.0	6.2
	Elementary and Secondary Schools	6111	1.9	2.6
	Correctional Facilities	92214	2.8	2.5
	<b>All local government</b>		<b>3.0</b>	<b>3.3</b>
Comment	MEOSH will increase inspections in all five strategic areas.			
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 (114 courses and 12 from OSHA Education Center Region 1 were conducted, for a grand total of 126 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 1,797 of which 232 were state and local government workers). MEOSH exceeded class offerings but did not meet attendance goals. DART rates were not reduced.			
Data Source(s)	Course registration forms and sign-in sheets			
Baseline	FY 2019 Actuals: Courses provided 126, total participants trained 1,797, including 232 state and local government employees.			
Comment	STI trained 232 state and local government employees.			

## Appendix E - FY 2019 State OSHA Annual Report (SOAR)

	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 1,797 participants. This does not take into consideration Risk Management or Human Resources training. It also does not include on-site training. MEOSH exceeded class offerings but attendee numbers were down on state and local attendees compared to FY 2018.
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 SHAPE for state and local government worksites.
Performance Indicator(s) (including activity, intermediate outcome, and primary outcome measures)	Maintain the participation of 77 SHAPE sites (including those that are eligible for renewal in FY 2019); recruit eight new SHAPE participants.  The continued growth of SHAPE should help MEOSH obtain its goal to reduce the DART rates in state and local government targeted industries by four 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 89 SHAPE sites in FY 2018
Comment	The goal was to increase SHAPE participation to 97. As of 9/30/2019, the State Plan had a total of 92 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.

## Appendix E - FY 2019 State OSHA Annual Report (SOAR)

Performance Indicator(s) (including activity, intermediate outcome, and primary outcome measures)	<p>Number of conferences that the Maine State Plan will attend: five</p> <p>The goal was exceeded. The State Plan participated in seven conferences that were geared toward state and local government work sites.</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 four percentage points from the 2013 baseline DART rates.</p>
Data Source(s)	Conference registration forms
Baseline	Five conferences
Comment	The five conferences were attended, including an additional two geared toward state and local government. The conferences identified for attendance/informational booth were the Maine Fire Chiefs; Recycling/Solid Waste; Maine School Management; Maine Emergency Management (MEMA); and Maine Municipal Association Conference (MMA). In addition, MEOSH 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: four The goal was met; MEOSH 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 four percentage points from the 2013 baseline DART rates.</p>
Data Source(s)	Registrations received to attend breakfast meetings
Baseline	In FY 2018, four breakfast meetings were held. MEOSH did not have any Alliances in FY2018.
Comment	Four compliance courses were provided by MEOSH manager/staff. The meetings were held from 8:30 to

## Appendix E - FY 2019 State OSHA Annual Report (SOAR)

	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)	<p>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. All COSHs have completed the initial three years of training and all consultants have completed the 1500 course.</p> <p>Continued growth of staff and focused activities should help MEOSH reduce the DART rates in state and local government targeted industries.</p>
Data Source(s)	Training records
Baseline	Mandatory training courses prescribed by TED 01-00-019. New consultant has completed Course #1500.
Comment	Enforcement staff continues to follow OSHA's directive (TED 01-00-019-Mandatory Training Program for OSHA Compliance Personnel). All CSHOs have completed basic three-year CSHO training and are following phase two requirements. Staff also attended several courses offered through the OSHA Region 1 Education Center. Staff also attended the National Safety Council of Northern New England, 92 <sup>nd</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).



## Appendix E - FY 2019 State OSHA Annual Report (SOAR)

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” scenarios (i.e., 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.
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 was unable to participate in one tabletop exercise due to conflicting schedules. However, we did participate in the two other MEMA strategic planning meetings and multiple (all) inclement weather updates.

**Appendix E - FY 2019 State OSHA Annual Report (SOAR)**  
**STATE OF MAINE**  
**STATE INTERNAL EVALUATION PROGRAM (SIEP)**

Based on data from FY 2019 OSHA Information System (OIS) Reports and feedback received from OSHA during the onsite case file reviews for the 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 Files

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 2019 inspection files. Any discrepancies with case files were communicated with the inspector. Any discrepancy is addressed with inspector and at quarterly meetings. There is no formal recording or list of discrepancies.

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

The time to initiate complaint inspections has been a concern, because MEOSH did not meet the negotiated five-day further review level (FRL). In FY 2017, MEOSH's average was 17 days, in FY 2018, the average decreased sharply to 4.2 days. In FY 2019, MEOSH's average of 1.75 days met the five-day FRL, even though the State Plan had to deal with three complex fatality investigations during the year.

The State Plan will continue to monitor this average.

## Appendix E - FY 2019 State OSHA Annual Report (SOAR)

The table below shows a comparison of MEOSH’s results for SAMM #1 over the past three fiscal years.

SAMM 1A: Time to Initiate Complaint Inspections (Average work days)								
FY 2017			FY 2018			FY 2019		
MEOSH	Nat'l.	FRL	MEOSH	Nat'l.	FRL	MEOSH	Nat'l.	FRL
17.00	6.11	5.0	4.20	7.42	5.0	1.75	7.5	7.79

### Consultation

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

MEOSH has been concerned with the average number of lapsed days between consultation closing conference and written report to the employer. Therefore, MEOSH will continue to monitor this metric on a monthly basis. Through combined efforts of management and staff, this average decreased from FY 2017 to FY 2019. Although MEOSH’s FY 2019 average of 14.00 days met the goal of 20 days, one consultant’s average was 24 days. To reduce the potential for injuries, MEOSH is committed to ensuring that all workplace hazards are corrected as soon as possible. For this reason, MEOSH will continue to monitor this metric in FY 2020.

OIS Consultation Service Report				
	FY 2017	FY 2018	FY 2019	Goal
Averaged Lapsed Days	11.80	14.25	14.00	20.00

#### 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 2019 the consultation program’s percent was 76.26. However, the fourth quarter increased to 82.68. These numbers are not acceptable, therefore MEOSH will continue to monitor the timely closeout of identified hazards and refer non-compliant employers to enforcement. Management will continue to review the uncorrected hazards list on a weekly/bi-weekly and discuss with staff and refer non-compliant employers. 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.