

**FEDERAL ANNUAL MONITORING AND EVALUATION  
REPORT**

**MARYLAND OCCUPATIONAL SAFETY AND HEALTH PROGRAM**

**October 1, 2010 to September 30, 2011**

**Date of Report: March 30, 2012**

## TABLE OF CONTENTS

	<u>Page</u>
I. Executive Summary	
A. Summary of the Report .....	4
B. State Plan Introduction .....	4
C. Data & Methodology .....	6
D. Findings and Recommendations .....	8
II. Major New Issues .....	8
III. State Response to Fiscal Year (FY) 2010 FAME Recommendations ....	9
IV. Assessment of State Performance .....	16
V. Assessment of State Progress in Achieving Annual Performance Goals..	29
Appendix A FY 2011 Findings and Recommendations .....	32
Appendix B Status of State Actions in Response to FY 2010 EFAME Follow-Up Recommendations .....	33
Appendix C MD State Plan FY2011 Enforcement Comparison .....	40
Appendix D FY 2011 State Activity Mandated Measures (SAMM) Report .....	41
Appendix E State Information Report (SIR) .....	43
Appendix F FY 2011 State OSHA Annual Report (SOAR) .....	47
Appendix G FY 2011 23 (g) Consultation Data .....	48

# **I. Executive Summary**

## **A. Summary of the Report**

The Federal Annual Monitoring and Evaluation (FAME) report focuses on the Maryland Occupational Safety and Health (MOSH) program's activities during Fiscal Year (FY) 2011, or October 1, 2010 to September 30, 2011. The FAME also details MOSH's progress in resolving outstanding recommendations from prior evaluations. The FY 2011 FAME Report details the MOSH Program's progress in achieving the actions as specified in their approved Corrective Action Plan (CAP).

The FY 2010 Maryland (MD) FAME report contained 22 findings and recommendations. A majority of the corrective actions addressing FY 2010 findings and recommendations have been implemented or are in the process of being implemented. This report also documents five policies and practices that continue to require action, including possible revocation of two policies which significantly affect the State's penalties.

This report also addresses MOSH's progress towards achieving their annual performance goals as established in their FY 2011 Annual Performance Plan as well as the effectiveness of their five-year strategic plan. The primary goal of MOSH's strategic plan is to reduce occupational injuries, illnesses and fatalities through direct intervention. Through effective resource utilization, partnership development, outreach activities, and an overall commitment to performance goal achievements, the majority of MOSH's enforcement goals in the FY 2011 Performance Plan have been met or exceeded.

## **B. State Plan Introduction**

Section 18 of the Occupational Safety and Health Act of 1970 encourages States to develop and operate their own job safety and health programs. The Federal Occupational Safety & Health Administration (OSHA) approves and monitors State plans and provides up to 50% of an approved plan's operating costs. Maryland is one of 27 States and American territories authorized to operate its own safety and health enforcement program. Among other things, States that develop these plans must adopt standards and conduct inspections to enforce those standards. The Maryland plan was certified on February 15, 1980, and was granted final State plan approval on July 18, 1985. The MOSH program operates under the authority of the MOSH Act, Labor and Employment Article, Section 5-101 through 5-901.

The MOSH program is administered by Maryland's Department of Labor, Licensing and Regulation (DLLR), Division of Labor and Industry (DLI). In Fiscal Year 2011, the MOSH program was operated under the guidance of Alex Sanchez, Secretary of DLLR; J. Ronald DeJuliis, Commissioner of DLI/OSHA State Plan Designee; and Eric Uttenreither, Assistant Commissioner of the MOSH Administration.

The MOSH program consists of a Compliance Services Unit that conducts occupational safety and health inspections for all public and private sector places of employment in the State of

Maryland, with the exception of federal employees, the United States Postal Service, private sector maritime activities (shipyard employment, marine terminals, and long shoring), and U.S. military bases, which come under Federal OSHA's jurisdiction. Additionally, MOSH has an Outreach Unit which provides free consultation services (Consultation Program), training and education, and manages cooperative programs. MOSH also administers a Whistleblower Program Unit. Lastly, the Research and Statistic Unit provides MOSH with statistical data on occupational fatal and nonfatal workplace injuries and illnesses.

In FY 2011, the MOSH program had a staff of 94.25 full-time employees (FTEs) which were assigned to the Compliance Services Unit, the Outreach Unit, and the Whistleblower Program Unit. Additionally, one FTE is assigned to the Consultation Program in the Outreach Unit. This FTE is not covered under the 21(d) grant but under the 23(g) grant.

MOSH's mission is to promote and assure workplace safety and health in the State while reducing workplace fatalities, injuries, and illnesses. As in prior fiscal years, MOSH's FY 2011 Annual Performance Plan fully supports Maryland's long-term strategic goals and at the same time addresses state-specific issues and concerns. MOSH is achieving their goals by promoting a safe and healthful workplace culture.

In addition to adopting Federal OSHA's National Emphasis Programs (NEPs), MOSH has implemented their own Local Emphasis Programs (LEPs) on high hazard industries (establishments that have a high number of days away, restricted or transferred from job due to an occupational injury or illness); and falls, electrocutions, and struck / crushed by hazards in construction. According to MOSH, these LEPs have resulted in an increased awareness for occupational safety and health.

As a State plan state, MOSH has the authority to promulgate standards and regulations which may be more stringent than those of Federal OSHA standards. There are multiple standards which differ from the Federal program. Significant standard differences include:

## **Labor and Employment Article, Annotated Code of Maryland**

### **Title 5. Occupational Safety and Health.**

- **Subtitle 1.** Definitions; General Provisions.
- **Subtitle 2.** Administration and Enforcement.
- **Subtitle 3.** Regulations.
- **Subtitle 4.** Access to Information About Hazardous and Toxic Substances.
- **Subtitle 5.** Training of Power Equipment Operators.
- **Subtitle 6.** Miscellaneous Provisions:
  - Asbestos protective clothing
  - Work in confined spaces
  - Work in manholes
  - Discrimination against employee

## **Title 6. High Voltage Lines.**

### **Code of Maryland Regulations (COMAR)**

**09.12.20** Occupational Safety and Health

**09.12.21** Employee Injury and Illness Records and Reports

**09.12.22** Personally Identifiable Employee Medical Information

**09.12.23** Prohibition on Smoking in an Enclosed Workplace

**09.12.24** MOSH Consultation Education and Training Program

**09.12.25** MOSH Fall Protection in Steel Erection

**09.12.26** Crane Safety

**09.12.31** Federal Standards—Incorporation by Reference (includes adoption of provisions in 29 CFR 1910, 1926 and 1928)

**09.12.33** MOSH Regulations for Access to Information About Hazardous and Toxic Substances

**09.12.35** MOSH Standard for Confined Spaces

**09.12.36** MOSH Standard for Field Sanitation

**09.12.38** General Industry Standard for Personnel Platforms Suspended from Cranes, Derricks and Hoists

Pending-

- The “Tree Care and Removal” (Code of Maryland Regulations (COMAR) 09.12.28) is in the Maryland. Federal Register, Volume 38, July 1, 2011, Issue 14. MOSH is planning to adopt in FY 2012.

### **MOSH Amendments to OSHA Standards**

**29 CFR 1910.146** Permit-Required Confined Spaces

**29 CFR 1910.1048** Occupational Exposure to Formaldehyde

**29 CFR 1926.62** Lead in Construction Work

**29 CFR 1926.550** Cranes and Derricks

**29 CFR 1926.652** Excavations (Requirements for Protective Systems)

**29 CFR 1926, Subpart R** Steel Erection

## **C. Data & Methodology**

The monitoring and evaluation activities for this year’s FAME report focused on the status of corrective actions implemented by MOSH with respect to the 22 findings identified during the FY 2010 monitoring and evaluation. An onsite monitoring visit was conducted from February 6, 2012 through February 10, 2012 to assess MOSH’s progress in addressing the FY 2010 Enhanced FAME (EFAME) recommendations. Follow-up conversations were held with MOSH management after the onsite monitoring visit.

A total of 149 case files were reviewed by an Assistant Area Director (AAD), two Safety Compliance Officers and one Industrial Hygienist. The cases reviewed included fatalities, complaints, referral investigations/inspections and programmed/un-programmed inspections, the

majority of which were safety-related. All the cases reviewed were closed, and span a period from October 1, 2010 through September 30, 2011.

In addition to reviewing the case files mentioned above, the audit team reviewed several of MOSH's programs such as, but not limited to, their Operations Unit which handles the un-programmed inspections, abatement verification, penalty collection, complaint responses and scheduling informal conferences and formal hearings. The Assistant Chief for the MOSH Compliance Administration, the Occupational Safety and Health Officer Supervisor and their Administrative Assistant, were interviewed on MOSH's procedures on abatement verification (how it is tracked and process used for the abatement not received), and complaint processing (from receipt to final letter of the findings). Standard Operation Procedures (SOPs) that are in the developing stages for the procedures to follow when performing all duties in the Operations Unit to ensure consistency were discussed, as well as different tracking methods. The audit team conferred with MOSH's Program Manager on the progress of revising MOSH's Field Operations Manual (FOM) and their five-year strategic goals. The Chief of MOSH's Compliance Services Unit was included in the discussion concerning the strategic goals, along with the Chief explaining MOSH's field operations.

Also, various statistical information, complaint processing, and inspection targeting were reviewed by the audit team. Data contained in the Integrated Management Information System (IMIS), OSHA's database system used by the State of Maryland to administer its program, was utilized as a means to monitor and evaluate the State's 23(g) enforcement program activities. Additional sources of data included the State Activity Mandated Measures (SAMM) report as well as the State Indicator Report (SIR).

Compliance with legislative requirements, contact with families of fatality victims, training and personnel retention was assessed.

The audit team also held informal discussions with various members of MOSH staff. Throughout the evaluation process, MOSH was cooperative, shared information and ensured staff was available to discuss cases, policies and procedures, and to answer questions.

An offsite review of MOSH's Cooperative Programs was also conducted. This included a review of the state Voluntary Protection Program (VPP), Alliances and MOSH's alternative approach to OSHA's Strategic Partnership Program and Construction VPP, the Cooperative Compliance Partnership (CCP) program.

Additional monitoring and discussions were held with the state throughout FY 2011, including quarterly reviews. Topics such as, but not limited to: quarterly reports on MOSH's progress in achieving their goals, laws and regulations; personnel; and any other applicable concerns raised by MOSH or Federal OSHA were discussed.

## **D. Findings and Recommendations**

The FY 2011 onsite review found significant progress in addressing the FY 2010 Maryland EFAME report, which contained 22 findings and recommendations. Thirteen of the 22 findings dealt with MOSH's Enforcement Program and the remaining findings addressed their Whistleblower Program. MOSH Enforcement took action in correcting eight out of thirteen findings in FY 2011. A summary of all of the programmatic findings are located in Section III, State Response to the FY 2010 FAME Recommendations. There are three items which are outstanding from FY 2010 to which MOSH still objects. These include two state penalty policies which are less stringent than the Federal Program, including not assessing penalties for first instance other-than-serious violations (in manufacturing, and in construction when less than 10 total violations), and state penalty reductions for immediate on-site abatement. The third outstanding finding includes the designation of benchmark positions.

Additional progress was made in addressing FY 2010 findings in the MOSH Discrimination Program. During FY 2011 MOSH corrected seven out of the nine follow-up findings. The two outstanding findings related to case file structure, and timely closure of discrimination complaints. The FY 2011 case file review found an additional two findings for MOSH to strengthen their discrimination program. These include ensuring closing letters to complainants include appeal information and case file numbers, as well as including back pay and mitigation damage calculations in the settlement documentation.

## **II. Major New Issues**

In FY 2011, MOSH continued to experience furloughs and temporary salary reductions. In OSHA's FY 2011, an average of eight days had to be taken by State employees for the new temporary salary reduction which included two to four floating furlough days based on salary. According to MOSH, the cumulative effect of the furlough days in achieving the goals set with the knowledge of an average of eight additional lost work days per Compliance Safety and Health Officer (CSHO) has and will continue to present a challenge. All fatalities and complaints were responded to as required by MOSH's policies and procedures.

In FY 2009, MOSH began the process of developing its own standard in response to the OSHA Instruction CPL 02-01-045 "Citation Guidance Related to Tree Trimming and Tree Removal Operations." The changes on the State specific tree trimming standard have been completed and the proposed standard, for the second time, is now in the process required before final adoption. The "Tree Care and Removal", Code of Maryland Regulations (COMAR) 09.12.28, is in the Maryland Federal Register, Volume 38, July 1, 2011, Issue 14. MOSH is planning to adopt this standard in FY 2012.

### **III. State Response to FY 2010 FAME Recommendations**

#### **COMPLAINTS:**

**Finding 10-1:** MOSH's FOM outlines that formal complaints involving potentially serious hazards shall be investigated within three working days of assignment. October 1, 2008 through September 30, 2009, Maryland received 110 serious complaints and 102 were inspected within five days with a response rate of 92%.

**Recommendation 10-1:** MOSH must respond to serious complaints within three days of assignment pursuant to its FOM or change its FOM.

**Action to date:** MOSH's FOM states that Regional Offices must respond to formal complaints within three days of assignment. The agreed upon time frame with OSHA for response is five days from original receipt of the complaint. MOSH continues to work to update the language in the State FOM to remove any ambiguity related to the assignment date of a serious complaint. They have agreed to change the language in the FOM to five days. MOSH exceeded the agreed upon negotiated fixed rate of five days in FY 2011.

**Status: Completed.**

#### **FATALITIES:**

**Finding 10-02:** Case file review revealed that no next-of-kin letters were sent on fatality inspections. MOSH began to send next-of-kin letters in December 2009. Another trend observed was that there was little or no communication with families at the conclusion of the inspections to inform the next-of-kin of inspection findings.

**Recommendation 10-2:** At the start of all fatality inspections/investigations send condolence letters to next-of-kin. Families of fatality victims also must be kept up-to-date about investigations and informed of the outcome of MOSH investigations.

**Action to date:** MOSH's pilot program for sending next-of-kin notification letters was completed and was considered successful. MOSH then rolled out this procedure state-wide in FY 2010. Seventeen fatalities in Maryland in FY 2011 were reported to MOSH. Fifteen of the fatality case files were reviewed as one fatality case file was at the AAG's Office and one fatality was not under MOSH's jurisdiction. Five of the cases had no next-of-kin letters and no communication with the family at the conclusion of the inspection; four of the cases had next-of-kin letters however no communication with the family at the conclusion of the inspection; six of the cases had next-of-kin letters and had communication with the family at the conclusion of the inspection. It was noted that two of the instances where next-of-kin notifications were absent included situations where victims were the owners. MOSH reported that the state does not send a final communications at the conclusion of the inspection when the next-of-kin requests the

entire case file. It was recommended that MOSH include copies of the transmittal letter in the case file when this occurs to document this in the case file.

**Status:** Continue to monitor. **Finding 11-01.**

**Finding 10-3:** A number of OSHA-170 forms contained inappropriate information in the narrative, e.g., name of compliance officer who conducted the inspection and/or the names of decedents and/or injured employees.

**Recommendation 10-03:** Retrain compliance officers and supervisors in the proper completion of OSHA-170 forms to ensure that names of compliance officers, decedents, and/or injured employees are not contained in narrative portion of the OSHA-170 form.

**Action to date:** MOSH provided additional guidance to their supervisors and staff on the appropriate information that should be included in the OSHA-170 forms. Supervisors are reviewing the narrative section of the OSHA-170 form to ensure the information is appropriate. The case file review demonstrated that this item has been resolved.

**Status:** Completed.

#### **PENALTIES:**

**Finding 10-04:** MOSH does not assess penalties for first instance other-than-serious violations (in manufacturing, and in construction when less than 10 total violations).

**Recommendation 10-04:** Revise MOSH Instruction 98-3 dated September 28, 1998 to eliminate Section C.3 that does not permit penalty assessment for first instance other than serious violations in construction with less than ten total violations and at all times in manufacturing.

**Action to date:** This finding was disputed by MOSH, and a decision was upheld by the National Office (NO). OSHA does not agree with the State's response that this policy is in place as the result of an Executive Order (EO) and the work of a Task Force. State Plans are required to have statutory authority and penalty policies in place to assess penalties for other than serious violations. The MOSH Instruction effectively negates the MOSH Act provision for first-instance sanctions. Although the State policy is premised on the Gubernatorial EO 01.01.1993.12, the EO includes an exception if the action is required by Federal or State law, as this is. Maryland procedures should provide for the proposal of first instance penalties for other than serious violations in accordance with State and Federal law, in circumstances comparable to Federal policy. MOSH continues to follow the MOSH Instruction and at this time has no intention in revoking the Instruction.

**Status:** Continue to monitor. **Finding 11-02.**

**Finding 10-5:** MOSH offers penalty reductions of approximately 54% and has a penalty retention rate of 53% percent compared to Federal rate of 63.2% at the end of FY 2009.

**Recommendation 10-5:** Rescind Memorandum 01-2 dated April 9, 2001 titled “Employer Incentive 50% Penalty Reduction.” In this memorandum if an employer immediately abates any hazards/violations prior to the compliance officer leaving the site on the day of observation, an automatic 50% penalty reduction in the proposed penalty for that specific hazard/condition is given. This incentive program does not apply to willful, repeat, failure to correct violations, or alleged violations/conditions relating to accidents/fatalities.

**Action to date:** MOSH continues to follow the 50% penalty reduction program, as it results in an increase in immediate onsite abatement and is more effective at reducing employee exposure to hazards. Monitored and evaluated during onsite visit.

**Status:** Continue to monitor. **Finding 11-03.**

### **ABATEMENT:**

**Finding 10-06:** Abatement data was not being entered into the database.

**Recommendations 10-06:** Promptly enter abatement verification data into the database.

**Action to date:** Verification of abatement information is now reviewed and processed on a weekly basis by the Operation’s Unit. MOSH is in the process of drafting new SOPs which will provide instructions to address this issue.

**Status:** Completed.

### **CASE DOCUMENTATION:**

**Finding 10-07:** Case file diary sheets were not found in inspection files.

**Recommendation 10-07:** Institute the use of a case file diary sheet. This form needs to be kept at the top of the case file so that a reviewer can tell at first glance the status of the case.

**Action to date:** MOSH still disagrees that a diary sheet is mandatory but feels it is a valid suggestion. MOSH set up a pilot program in the Region I Eastern Shore office to use the diary sheets in FY 2011 cases. The results of the program that concluded in December 2011 were positive. Although not a mandatory issue, MOSH has agreed it works well and will implement their version of diary sheets in all compliance cases.

**Status:** Completed.

**Finding 10-8:** MOSH was not calling employers or sending abatement letters on all cases where abatement had not been received.

**Recommendation 10-8:** Send abatement letters on all cases where abatement certification/documentation has not been received and when no response, call employers for outstanding abatement documentation. MOSH should continue to work on drafting their SOPs to address this issue and submit the SOPs to OSHA when they have been completed.

**Action to date:** MOSH has taken numerous steps to address this issue. First, to reduce incidence of overdue abatement and ensure employers are aware of abatement verification requirements, training and written procedures were provided to all applicable personnel who conduct informal conferences. MOSH has taken action to ensure letters requesting abatement certification documentation are mailed weekly. The state is in the process of drafting SOPs and reevaluating the FOM to ensure that the staff is taking appropriate steps to maintain contact with employers who did not provide abatement verification.

**Status: Completed.**

**Finding 10-9:** Abatement tracking reports are not routinely reviewed by management on a weekly basis.

**Recommendation 10-9:** Abatement tracking reports should be carefully reviewed weekly by all regional supervisors. If necessary, additional training should be provided to regional supervisors to ensure that this report is being properly utilized to track abatement.

**Action to date:** Cases in the “open case file” are manually purged weekly to verify if abatement has been received. During the audit, reports that can be generated off the NCR and used for abatement tracking were discussed. MOSH is establishing written procedures and written reports on abatement verification tracking.

**Status: Completed.**

#### CONTESTED CASES:

**Finding 10 -10:** Contested case information was not being entered into the database.

**Recommendation 10 -10** Retrain staff in the proper database entries for contested cases. Supervisors should review these data entry issues on a weekly basis to ensure that coding is being completed.

**Action to date:** Retraining on data entry was provided. Contested information is now being entered in the NCR by Operations, as verified by review of MOSH’s Micro to Host report.

**Status: Completed.**

## **FEDERAL PROGRAM CHANGES:**

**Finding 10-11:** Not all Federal Program Changes (FPCs) are adopted within the six month period.

**Recommendation 10-11:** It is recommended that MOSH adopt their FPCs within the six month period.

**Action to date:** MOSH is working hard to reduce the amount of time it takes to adopt FPCs. During FY 2011, there were eleven FPCs, five of which required adoption. Out of those required, one was able to be adopted within 6 months. MOSH reported that there are inherent obstacles for the States to adopt regulatory changes, including that the State Board meets only quarterly to discuss state response to FPCs. MOSH emphasizes that the amount of time for States to adopt FPCs would be decreased significantly if OSHA involves State Plan States on the front end of FPC promulgation. MOSH also continues their work on revising their FOM.

**Status:** Continue to monitor. **Finding 11-04.**

**Finding 10-12:** Abatement verification data was not being properly entered into the database for 23(g) public sector consultation.

**Recommendation 10-12:** Maryland should regularly monitor its hazard verifications and ensure that data is promptly entered into the database and any coding errors are corrected.

**Action to date:** The Consultation Project Manager now reviews open hazard reports with each consultant at the beginning of the week to ensure coding errors are caught timely. For those employers who are past-due on their abatement, the Project Manager requests that the consultant follow-up with the employer to either submit the documentation or to request an extension if there is a valid reason.

**Status:** Completed.

## **DISCRIMINATION:**

**Finding 10-13:** Files were not properly maintained in accordance with the Discrimination Manual, Chapter 2 through Chapter 5.

**Recommendation 10-13:** Files should be set up and maintained in accordance with the Discrimination Manual, Chapter 2 through Chapter 5.

**Action to date:** All completed case files were organized and maintained according to the “Whistleblower Investigations Manual.”

**Status:** Completed.

**Finding 10-14:** There were no opening (Docketing and Notification) letters to the complainants and respondents contained in the files.

**Recommendation 10-14:** Letters must be prepared, sent out and maintained in accordance with the Discrimination Manual, Chapter 2, III (E) and Chapter 5, III (B).

**Action to date:** Opening letters were noted in all of the reviewed case files.

**Status: Completed.**

**Finding 10-15:** Case file documentation was inserted into the case file with no order and the files were not tabbed.

**Recommendation 10-15:** Case files be prepared and tabbed in accordance with the Discrimination Manual, Chapter 5, III.

**Action to date:** All completed case files were organized and maintained according to the “Whistleblower Investigations Manual.”

**Status: Completed.**

**Finding 10-16:** A recently closed case had no dismissal letters in the file.

**Recommendation 10-16:** Cases must be closed in accordance with the Discrimination Manual, Chapter 4 and IV.

**Action to date:** All of the reviewed case files contained closing letters.

**Status: Completed.**

**Finding 10-17:** Management and non-management interviews were not always conducted.

**Recommendation 10-17:** Interviews must be conducted and documented in accordance with the Discrimination Manual.

**Action to date:** Interviews were conducted when appropriate and were documented in the case file.

**Status: Completed.**

**Finding 10-18:** There was incomplete case information in Web IMIS.

**Recommendation 10-18:** Input complete case information into the Web IMIS in accordance with the Web IMIS guide.

**Action to date:** Web IMIS information was properly entered and up-to-date.

**Status: Completed.**

**Finding 10-19:** There was no documentation of settlement of Whistleblower cases.

**Recommendation 10-19:** Settlements must conform to and be documented in accordance with the Discrimination Manual, Chapter 6, IV.

**Action to date:** Settlement Agreements were documented in the case files.

**Status: Completed.**

**Finding 10-20:** Investigations were not completed in accordance with MOSH FOM, Chapter X, A3 (b), which requires investigations to be completed within 90 days of filing. Section 5-604(d) (3) of the MOSH Act requires that “within 90 days after the Commissioner receives a complaint, the Commissioner shall notify the employee of the determination under this subsection.”

**Recommendation 10-20:** Investigations must be completed within 90 days in accordance with MOSH FOM and the MOSH Act.

**Action to date:** MOSH has hired one new investigator. Of the 19 cases opened in FY 2011, 16% were closed within 90 days.

**Status:** Continue to Monitor. **Finding 11-05**

**Finding 10-21:** Numerous case files were open for extended periods of time with no current activity documented in the case files.

**Recommendation 10-21:** The Whistleblower program manager should monitor the Web IMIS system to determine what cases are open and determine what appropriate action is required in accordance with the Discrimination Manual and MOSH FOM.

**Action to Date:** MOSH has hired one new investigator during FY 2011 to reduce the number of cases which become inactive. In FY 2011, out of three closed cases, only one was open for 10 months before being dismissed due to a lack of cooperation from the complainant. The new investigator will assist in investigations leaving the program manager additional time to monitor the Web IMIS system to determine what cases are open.

**Status: Completed.**

**STAFFING:**

**Finding 10-22:** Enforcement staffs, designated as benchmark positions, are not performing enforcement activities.

**Recommendation 10-22:** MOSH must ensure that personnel designated as fulfilling its benchmark requirements pursuant to 29 CFR §1952.213 are performing enforcement activities and conducting inspections for the majority of their work time. Compliance assistance positions and their activities must not be counted toward enforcement activities or benchmark calculations in State grant applications.

**Action to date:** MOSH is aware the requirements that staff must conduct enforcement duties in order to be counted towards benchmarks. One and a half of the four employees that were included in the original Micro-to-Host report are no longer included as a benchmark. Additionally, MOSH has taken some steps to increase enforcement activities in one of the two and a half remaining positions. MOSH has taken additional steps to meet the benchmarks in FY 2011, including the recent hiring of 6 safety compliance officers and one industrial hygiene compliance officer.

**Status:** Continue to monitor. **Finding 11-06**

## **IV. Assessment of State Performance**

### **A. Enforcement**

A statistical review of the Maryland OSHA Program was conducted using the official agency close-out data, the end-of-year (SAMMs found in Appendix D), the State Information Report (SIR found in Appendix E) and the FY 2010 State/Federal enforcement activity data comparisons (Appendix C). During the evaluation period of FY 2011 (October 1, 2010 through September 30, 2011) the MOSH program conducted 1,279 private and public sector inspections. The projected goal for FY 2011 was to conduct 994 inspections. Therefore, MOSH exceeded its goal. Of the 1,279 inspections conducted by Maryland during FY 2011, 1,082 were safety-related (85%) while 197 (15%) were health-related.

Total programmed inspections were 1,021 (80%) and 164 (13%) were un-programmed inspections (fatality and accident investigations, complaints). A total of 1,190 (93%) inspections were conducted at private establishments and 89 (7%) were conducted at public sector agencies. A total of 5,252 violations were issued in FY 2011, 49% were serious, willful, or repeat and the remaining 51% were other-than-serious. MOSH generated \$2,460,272.00 in total penalties.

Appendix C shows a statistical comparison of Maryland to other State Plan States and Federal OSHA during FY 2011.

The MOSH Enforcement Program targets their inspections from a High Hazard Industry list and the Federal OSHA Site Specific Targeting (SST) program. The MOSH Enforcement Program also uses the University of Tennessee Dodge Report for inspection sites, as well as local and national emphasis programs. MOSH also participates in the Federal OSHA exempted SIC/NAICS industry list as provided in the current Appropriations Act.

MOSH developed and implemented at least four LEPs in FY 2009 which were continued in FY 2011. These LEPs include, but are not limited to, fall hazards in construction, electrocution hazards in construction, and struck/crushed by hazards in construction.

Activities, mandated under the Occupational Safety and Health Act of 1970, are considered core elements of MOSH program. The accomplishment of these core elements is tied to achievement of the State's strategic goals. Many mandated activities are "strategic tools" used to achieve outcome and performance goals.

Mandated activities include program assurances and State activity measures. Fundamental program requirements that are an integral part of the MOSH program are assured through an annual commitment included as part of the 23(g) grant application. Program assurances include:

- Unannounced targeted inspections;
- A system to adjudicate contested cases;
- Ensuring abatement of potentially harmful or fatal conditions;
- Prompt and effective standards setting and allocation of sufficient resources;
- Counteraction of imminent dangers;
- Responses to complaints;
- Fatality/catastrophe investigations;
- Access to information on their exposure to toxic or harmful agents;
- Coverage of public employees;
- Recordkeeping and reporting;
- Voluntary compliance activities.

On a quarterly basis mandated activities are tracked using the State Activity Mandated Measures (SAMM) report which compares State activity data to an established reference point. Additional activities are tracked using the interim State Indicator Report (SIR).

Appendix D is the SAMM for Maryland covering the period October 1, 2010 through September 30, 2011 (FY 2011). The following is a summary of State performance on the major issues covered in the SAMM:

Measure		State Data	Reference Data	Comment
1. Average number of days to initiate complaint inspections		2.36	5	Reference point of 5 was exceeded.
2. Average number of days to initiate complaint investigations		.49	1	Reference point was exceeded.
3. Percent of complaints where complainants were notified on time		80.89	100%	Reference point was not met.
4. Percent of complaints and referrals responded to within one day		100%	100%	Reference point was met as in previous FY.
5. Number of denials where entry was not obtained		0	0	Not applicable
6. Percent of S/W/R** violations verified	Private	77.12	100%	Reference point was not met. Standard Operating Procedures for verifying abatement are being developed.
	Public	76.36		
7. Average number of calendar days from opening conference to citation issuance	Safety	43.39	51.9	Reference point was exceeded. Lapse time is lower than the National Average and went down five days from FY 2010.
	Health	62.08	64.8	Reference point was exceeded. Lapse time is lower than the National Average and went down six days from FY 2010.
8. Percent of programmed inspections with S/W/R violations	Safety	65.24%	58.5%	Reference point was exceeded. Safety unit is above the National Average for FY 2011.
	Health	78.75%	51.7 %	Reference point was exceeded. Health unit is above the National Average for FY 2011.
9. Average violations per inspection with violations	S/W/R	2.45	2.1	Reference point was exceeded.
	Other	2.37	1.2	Reference point was exceeded.
10. Average initial penalty per serious violation – private sector only		\$1196.29	\$1,679.6	Reference point was not met. MOSH did not adopt Federal OSHA's new penalty system, therefore average penalties are lower than federal (or national) average penalties.
11. Percent of total inspection in public sector		6.96%	6.0%	Reference point was exceeded.
12. Average lapse time from receipt of contest to first level of decision		177.02	199.7	Reference point was exceeded. Below National Data.
13. Percent of 11C investigations completed within 90 days		8.70%	100%	Reference point was not met. Improved from no cases (0%) completed in FY 2010.

Measure	State Data	Reference Data	Comment
14. Percent of 11C complaints that are meritorious	8.70%	23.0%	Reference point was not met. State data was below 3 year national average.
15. Percent of meritorious 11C complaints that are settled	50%	87.5%	Reference point was not met. Improved from no cases (0%) being settled in FY 2010. First quarter of FY 2012 shows 100% settled.

The following assured mandated activities are not related to MOSH's strategic goals or are not covered in the SAMM reports:

- Prohibition against advance notice;
- Employees have access to hazard and exposure information;
- Posting of employee protection and rights;
- Safeguards to protect an employer's trade secret;
- Employer Recordkeeping;
- Legal procedures for compulsory process and right of entry;
- Right of employee representative to participate in the walk around;
- Right of an employee to review a decision not to inspect (following a complaint); and
- Voluntary compliance programs.

Appendix E is the Interim State Indicator Report (SIR) on performance measures for Maryland covering the period October 1, 2010 through September 30, 2011 (FY 2011). The following is a summary of State performance on the following measures:

<b>Enforcement Private Sector</b>	<b>Performance Measures</b>		<b>State FY 2011 Data</b>	<b>Federal FY 2011 Data</b>	<b>Comments</b>
	1. Programmed Inspection (%)	Safety	88.0	62.5	Above Federal OSHA
		Health	31.1	34.6	Below Federal OSHA
	2. Programmed Inspection with Violations (%)	Safety	77.2	70.1	Above Federal OSHA's percentage this FY.
		Health	57.0	56.2	Above Federal OSHA's percentage this FY.
	3. Serious Violations (%)	Safety	49.6	76.7	Special Study conducted on 1/31/11, showed no trends of inappropriate classification of OTS hazards.
		Health	31.3	64.4	
	4. Abatement Period for Viols %	Safety % > 30 Days	25.1	17.9	Acceptable
		Health % > 60 Days	0	9.4	Acceptable
	5. Average Penalty	Safety OTS	373.1	1126.9	Different penalty structure than OSHA
Health OTS		417.3	980.9	Different penalty structure than OSHA.	
6. Inspections per 100 hours	Safety	2.6	5.5	Lower than Federal inspections	
	Health	1.7	2.2	Below Federal OSHA in FY11	

	Performance Measures		State FY 2011 Data	Federal FY 2011 Data	Comments
	7. Violations Vacated (%)		1.9	7.0	MOSH upholds more of their violations than Federal OSHA
	8. Violations Reclassified (%)		1.8	4.8	Type of violation is changed more frequently in Federal OSHA.
	9. Penalty Retention (%)		52.6	62.8	Lower than Federal OSHA
			<b>Public</b>	<b>Private</b>	<b>Comments</b>
<b>Enforcement Public Sector</b>	1. Programmed Inspections (%)	Safety	75.0	88.0	
		Health	60.0	31.1	
	2. Serious Violations (%)	Safety	57.8	49.6	
		Health	47.0	31.3	
		<b>State</b>	<b>Federal</b>	<b>Comments</b>	
<b>Review Procedures</b>	1. Violations Vacated (%)		9.8	23.5	The violations are upheld in MOSH more than Federal OSHA.
	2. Violations Reclassified (%)		11.8	13.3	Fewer violations are reclassified in the MOSH program.
	3. Penalty Retention (%)		49.8	62.3	

### 1. Complaints:

During the period October 1, 2010 through September 30, 2011, Maryland received 151 complaints. The average response rate was 2.36 days. MOSH's negotiated fixed number with OSHA is five days. All complaint files were readily available for the audit. Only eighty-one percent (81%) of the complainants were notified on time in FY 2011. This is a result of the state's policy to wait for the return receipt from the employer prior to sending out the complaint response. One hundred percent (100%) of the complainants need to be notified on time. MOSH has already improved their response time to complainants by 100% in the first quarter of FY 2012.

### 2. Fatalities:

Seventeen fatalities in Maryland in FY 2011 were reported to MOSH. Fifteen of the fatality case files were reviewed as one fatality case file was at the AAG's Office and one fatality was not under MOSH's jurisdiction.

All fatalities under MOSH's jurisdiction were inspected within a day of the event. Fatality case files that were reviewed during the audit revealed that next-of-kin letters were not sent to all victims' families and there was limited communication with families at the conclusion of the inspections to inform the next-of-kin of inspection findings.

MOSH began to send next-of-kin letters on fatality inspections as a pilot program in FY 2010. Although they feel that the program is not required to be adopted by State Plans, they began to roll out the program statewide during FY 2011. However, five of the cases reviewed had no next-of-kin letters and no communication with the family at the conclusion of the inspection; four of the cases had next-of-kin letters, however no communication with the family at the conclusion of the inspection; six of the cases had next-of-kin letters and had communication with the family at the conclusion of the inspection.

**Finding 11-01 (10-02):** Case file review revealed that next-of-kin letters were not sent on all fatality inspections (where required).

**Recommendation 11-1 (10-2):** At the start of all fatality inspections/investigation, send condolence letters to next-of-kin. Families of fatality victims should also be kept up-to-date about investigations and informed of the outcome of MOSH investigations.

### **3. Targeting and Programmed Inspections**

There were over 900 inspections conducted under MOSH's LEPs. LEPs that apply to only Maryland are related to accident reports, high hazardous industries (different than Federal OSHA) and fall, electrical, and struck/crushed by hazards in construction. Under the NEPs, 117 inspections were conducted.

### **4. Citations and Penalties**

MOSH offers penalty reductions of approximately 50% when employers abate the alleged violation immediately while the inspector is still on site. MOSH has a penalty retention rate of 49.8% compared to the Federal rate of 62.3%. MOSH does not assess penalties for first instance other-than-serious violations (in manufacturing, and in construction when less than 10 total violations). As in previous years, MOSH had a serious violation rate (47%) which was much lower than the federal average (73%). A case study performed in the FY 2010 EFAME follow-up, as well as the case file review did not find any trends of inappropriate classification. During FY 2011, there was an average of 2.45 serious/willful/repeat (S/W/R) and 2.37 other than serious violations issued per non-incompliance inspection. Of the S/W/R violations, 65.24% were in safety and 78.75% in health. The average initial serious penalty was \$1,196.00.

**Finding 11-02 (10-04):** MOSH does not assess penalties for first instance other-than-serious violations (in manufacturing, and in construction when less than 10 total violations).

**Recommendation 11-02 (10-04)-** Revise MOSH Instruction 98-3 dated September 28, 1998 to eliminate Section C.3 that does not permit penalty assessment for first instance other than serious violations.

**Finding 11-03 (10-05):** MOSH offers penalty reductions in excess of what is offered by Federal OSHA.

**Recommendation 11-03 (10-05):** Rescind Memorandum 01-2 dated April 9, 2001 titled “Employer Incentive 50% Penalty Reduction.” In this memorandum if an employer immediately abates any hazards/violations prior to the compliance officer leaving the site on the day of observation, an automatic 50% penalty reduction in the proposed penalty for that specific hazard/condition is given. This incentive program does not apply to willful, repeat, failure to correct violations, or alleged violations/conditions relating to accidents/fatalities.

## **5. Abatement**

MOSH monitors all open cases with citations manually and on a weekly basis to ensure abatement is received. During the onsite evaluation, reports concerning open abatement that can be generated from the NCR were discussed. When abatement verification was not sent in, a letter was sent to the employer. Letters requesting abatement were reviewed during the audit.

## **6. Employee and Union Involvement**

MOSH’s FOM adequately addresses employee and union participation which are followed by the compliance officers. Employees are interviewed during inspections/investigations. Copies of the citations are sent to the union representative when applicable.

## **B. Review Procedures**

The majority of MOSH’s cases that are contested by an employer are settled in an informal conference conducted by the Regional Supervisor. MOSH had 1.9% violations vacated compared to Federal OSHA’s 7.0% vacated. MOSH had 1.8 % violations reclassified and Federal OSHA had 4.8% reclassified.

## **C. Standards and Federal Program Changes Adoption**

Due to State policies, MOSH cannot adopt all Federal Program Changes within the six month period. Out of the five Federal standards or changes required to be adopted in FY 2011, MOSH adopted four with minor changes. MOSH is not adopting the Federal Field Operations Manual but making major changes to their present one. Of the six Federal standards or changes not required to be adopted in FY 2011, 4 are being adopted. The 2 not being adopted concern shipyards and MOSH does not have jurisdiction over shipyards. Response dates for the automatic tracking system are not always met.

**Finding 11-04 (10-11):** Not all Federal Program Changes (FPCs) are adopted within the six month period.

**Recommendation 11-04 (10-11):** It is recommended that MOSH develop strategies to adopt Federal Program Changes within the six month period.

#### **D. Variances**

None in FY 2011.

#### **E. Public Employee Program**

Seven percent (7%) of MOSH's total inspections were in public sector. Although there are no penalties imposed on these inspections, MOSH utilizes other methods to ensure hazards are abated. If abatement is not accomplished, the state conducts follow-up inspections or sends letters to the Secretary of the Department/Agency and /or the Governor of the State/Mayor of the city to ensure abatement is received.

#### **F. Discrimination**

##### **Investigative Case File Reviews:**

A review of the case files was performed, as well as a review of the Web IMIS system. It should be noted that the case files reviewed only included cases which were opened in FY 2011, therefore the numbers detailed below do not reconcile with the SAMM measures # 13, 14 and 15, which are based on closed cases. Nineteen cases were opened during this evaluation period, of which three were closed within the targeted ninety days. Of the nineteen cases, six were settled and five remained open five and half months after the close of the fiscal year. An additional twelve cases were documented in Web IMIS as administratively closed via the screening process. Ten cases that were closed during FY 2011 were randomly selected for review. This included, but was not limited to:

- Screening
- Investigation
- Report Writing
- Interviewing
- Case File Management
- Timeliness
- Other Issues as Needed

##### **Investigative Reports:**

A review was conducted of MOSH's investigative reports. It was noted during the review that investigative reports did not refer to tabbed exhibits to support the assertions in the report. See Chapter 5, Paragraph IV of the "Whistleblower Investigations Manual." It is recommended that

the report refer to which tab contains the supporting evidence for the report. This makes it easier for a reviewer to confirm the assertions in the report.

Not all investigative reports indicated whether or not the complainant agreed with the analysis of the reasons for dismissal. This is pertinent because if they did not agree, complainants should be informed of the appeal process.

MOSH settled six of the cases filed during FY 2011. Over \$15,000 was recovered for complainants in these cases. However, there was nothing in the investigative reports to demonstrate how the parties arrived at these settlement amounts. Back pay calculations, including mitigation of damages, are to be documented in the investigative report, as mandated in Chapter Five of both the previous and current “Whistleblower Investigations Manual.”

**Finding 11-07:** Investigative reports did not include the required elements under the “Whistleblower Investigations Manual”, including: rights to an appeal, case identifiers, back pay calculations and mitigation of damages for settlements, references to tabbed evidence. Three of the eight investigative reports reviewed that should have had an analysis did not address the elements of a *prima facie* case (protected activity, respondent knowledge, adverse action, and nexus).

**Recommendation 11-07:** Review the Whistleblower Investigations Manual and revise the investigative reports to include all required components.

It was noted that closing letters do not include notification to complainants of their right to appeal a dismissal, nor does it include instructions on how to do so. It was also noted that case identifiers were not usually included in closing letters. All of the examples of correspondence in the previous and current edition of the “Whistleblower Investigations Manual” include this identifying information (*Respondent/Complainant/Case number*).

**Finding 11-08:** Closing letters did not include all information required by the Whistleblower Manual.

**Recommendation 11-08:** In closing letters and closing conferences, inform complainants of their right to appeal a dismissal. Include the case identifier on all correspondence with complainants and respondents.

**Timeliness:**

MOSH improved from having no cases closed within ninety days in the last evaluation to having three closed within ninety days in FY 2011. Out of the cases opened in FY 2011, MOSH is hitting the target only 16% of the time. Some of the cases appeared to be inactive for a long time before they were closed. One case was open for ten months before being closed due to a lack of cooperation. One way to cut down on lapse time would be maintain closer contact with the parties in an investigation and hold them to time frames for producing evidence, to include a due date for response to MOSH. If there is no response by the due date, the case could be closed for lack of cooperation from the complainant or forwarded for litigation based upon the evidence on hand.

**Finding 11-05 (10-20):** Investigations were not completed in accordance with MOSH FOM, Chapter X, A 3 (b), which requires investigations to be completed within 90 days of filing. Section 5-604(d)(3) of the MOSH Act requires that “within 90 days after the Commissioner receives a complaint, the Commissioner shall notify the employee of the determination under this subsection”.

**Recommendation 11-05:** Investigations shall be completed within 90 days in accordance with MOSH FOM and the MOSH Act. MOSH should provide a plan to the Region to detail what steps are to be taken to increase the percentage of investigations completed within 90 days, including those dismissed due to lack of cooperation.

During FY 2011, no merit cases were forwarded for litigation, but of the cases reviewed, six of the 19 cases opened during the evaluation period were settled for a settlement rate of 32%. Although according to the SAMM report only 8.7% of MOSH’s cases were meritorious in FY 2011 (compared to 23% nationally), no trend of deficiencies of the investigations were noted during the case file review. It was noted that MOSH improved upon their 0% meritorious rate in FY 2010.

**Program Management:**

During FY 2011, nineteen whistleblower complaints were opened by MOSH and an additional twelve were screened out. The Whistleblower program manager can utilize the Web IMIS system to determine what cases are open more than ninety days and what appropriate action is required in accordance with the Discrimination Manual and MOSH FOM.

**Resources:**

MOSH has two full-time and two part-time investigators to handle this case load. A review of cases showed that proper referrals were made when necessary. Both of the investigators have been through OSHA training and multiple personnel from the MOSH discrimination investigation staff attended the national whistleblower investigations conference in September 2011.

**G. CASPAs**

During FY 2011 there was one Complaint About State Plan Administration. This complaint was determined to have a partially valid allegation. Recommendations were made to address the issue. No other problems were identified which required further follow-up.

**H. Voluntary Compliance Programs**

MOSH administers voluntary compliance programs to proactively assist and encourage employers to improve their safety and health management systems with the goal of reduction of workplace injuries and illnesses. The three major programs MOSH utilizes to reach this end are the Voluntary Protection Program (VPP), the Cooperative Compliance Program (CCP), and the Alliance Program.

### **Voluntary Protection Program (VPP)**

MOSH recognizes employers in Maryland who have met the high standards of their safety and health management systems through their VPP. The program differs from the Federal Program as employers are only recognized at the STAR level and only fixed general industry sites are eligible to participate. An offsite review of MOSH's VPP policy and procedures and two VPP evaluation reports was conducted. In addition, an informal interview with the VPP program manager was held. The review found that Maryland's VPP program included appropriate tracking procedures. Both of the two reports reviewed showed that the initial onsite and recertification were conducted in a timely manner, and all 90-day items were corrected prior to approval. It was noted that the team leader and evaluation teams were trained appropriately. MOSH recently committed to taking part in the federal program for certification of Special Governmental Employee's (SGE's) who assist with onsite VPP evaluations. No deficiencies were noted during the review.

### **Cooperative Compliance Partnership Program (CCP)**

MOSH's Cooperative Compliance Partnerships or CCP Program, which was developed prior to OSHA's Strategic Partnership Program (OSPP), is administered with the goal of recognizing and working with qualified employers to improve safety at worksites. This program is a hybrid between federal OSHA's VPP and the Strategic Partnership programs, and provides onsite non-enforcement assistance to participating employers. Minimum participation criteria for their program includes a complete successful site visit assessment showing the participant has implemented effective safety and health programs, designated safety and health officials for the program, and has no history with MOSH for willful violations or failure to abate hazards within the past five years. According to the MOSH application packet, walkthrough verification inspections can be conducted at varying frequencies of one to four times per year, however most sites have at least four visits annually. Companies are expected to report all incidents to MOSH immediately, attain quick deadlines for abatement and recommendations, and meet company safety and health goals during the project. During FY 2011, MOSH signed three new partnerships, bringing the total number of active partnerships to nine. MOSH has exceeded their goal of establishing 49 partnerships in their five year strategic plan. Three partnerships concluded in FY 2011. Project closeout forms showed that each of the projects were successful, including one partnership which had no OSHA recordable injuries in a project which lasted 14 months.

### **Alliances**

MOSH's Alliance Program is designed to partner with employer and employee organizations to work with MOSH provide outreach and education on various safety and health topics. Although States were not required to adopt an Alliance Program, MOSH has utilized their version of the program to increase the voice of safety in health in the work place. In FY 2011, MOSH had four active Alliances. One of the four agreements and supporting documentation was reviewed offsite as part of the review. The Alliance review showed that signed agreement and renewal documentation was available, and the core elements of the OSHA's federal program were followed, although not required. A review of minutes from alliance participant meetings showed that MOSH continues to track a number of initiatives in the reviewed program, although some goals were unable to be conducted due to resource constraints. MOSH's Alliance Program continues to provide great resources to industries within Maryland.

## **I. Public Sector On-Site Consultation Program**

MOSH has one 23(g) public sector consultant who during FY 2011 inspected 30 sites (27 initial visits and three follow-up visits). Program assistance was provided in 96.3% of the initial visits. There were 470 serious and 147 other than serious hazards noted during FY 2011. All of the serious hazards identified by the Public Sector consultant were verified as abated. Eighty-three percent (83%) of the hazards were abated within the original time frame or on-site.

**J. N/A**

## **K. Program Administration**

In FY 2011, MOSH's budget was \$8,905,756 of which 46% was federally-funded and 54% was state-funded. There were 94.25 employees. Of the 94.25 employees in the MOSH program during the FY, 84 were FTEs assigned to the enforcement program. The benchmarks for the MOSH program are 36 safety compliance officers and 18 industrial hygiene compliance officers. In March, 2011, MOSH hired six safety compliance officers and one industrial hygiene compliance officer bringing the total number of safety officers to 36.5 and the number of health officers to 13.9. The Region is encouraged by the hiring and supports MOSH's efforts to get up to capacity.

During this audit as in previous ones, enforcement staff, designated as benchmark positions, are not performing enforcement activities.

**Finding 11-06 (10-22):** Enforcement staff, designated as benchmark positions, are not performing enforcement activities.

**Recommendation 11-06 (10-22):** MOSH must ensure that personnel designated as fulfilling its benchmark requirements pursuant to 29 CFR §1952.213 are performing enforcement activities and conducting enforcement inspections for the majority of their work time. Clarification of staffing and the breakdown assigned to each unit/program including the separation of enforcement and compliance assistance activities must be provided.

Eighteen compliance officers attended the OSHA Training Institute (OTI) training courses throughout the nation. Training courses such as but not limited to Accident Investigation, Inspection Techniques and Legal Aspects, Basic Whistleblower Investigation, Evaluation of Safety and Health Management Systems were attended. By sending compliance officers to OTI, MOSH was able to bring several classes such as OSHA's Fall Arrest Systems 3110, OSHA's Electrical Safety Standards NFPA 70E, Assertive Leadership, General Industry Standards, and Team Building/Coaching/Mentoring classes to their Hunt Valley Headquarters. Informal staff training took place throughout the year. By the end of FY 2011, the seven newly hired CSHOs had completed five months of their 12 month training program.

An average of eight furlough days had to be taken by each CSHO. Two to four floating furlough days were based on salary in Federal FY 2011. MOSH employees will have more furlough days that they will need to take in FY 2012.

## **V. Assessment of State Progress in Achieving Annual Performance Goals**

The MOSH Administration through their State OSHA Annual Report (SOAR) has provided information that supports positive performance in the accomplishment of meeting their five-year Strategic Plan. Through effective resource utilization, partnership development, outreach activities, and an overall commitment to performance goal achievements, the majority of goals have been met or exceeded. Information provided by MOSH Administration has been reviewed and analyzed to assess its accuracy in meeting Performance Plan goals.

The following summarizes the activities and/or accomplishments for each of the FY 2011 performance goals:

**Strategic Goal 1:** Improve workplace safety and health through compliance assistance and enforcement of occupational safety and health regulations.

**Performance Goal 1.1:** Total reduction in the fatality rate by 1%.

**Result:** This goal was achieved.

**Discussion:** MOSH investigated 26 fatalities in FY 2010 and 17 fatalities were investigated in FY 2011. The baseline MOSH used for this goal is 1.84 fatalities per 100,000 workers (there were approximately 2.28M workers in Maryland in 2006). In 2011 the fatality rate was 1.12 fatalities per 100,000 workers (there were approximately 2.31M workers in Maryland in 2010). This is a reduction of nearly 40% in the state's occupational fatality rate. This exceeds our goal of 5% by the end of 2012.

MOSH also exceeded the 5% increase in inspections and intervention activity in construction, manufacturing, trade, transportation, utilities and public sector. Public sector visits by the one 23(g) consultant in MOSH was exceeded by 8.

**Performance Goal 1.2:** Total reduction in injury and illness DART rate from the Calendar Year 2003-2005 baseline of 2.4 to 2.34.

**Result:** MOSH exceeded this goal.

**Discussion:** The DART rate for Calendar Year 2010 was 1.9 per 100 equivalent full-time workers.

**Strategic Goal 2:** Promote a safety and health culture through Cooperative Programs,

Compliance Assistance, On-Site Consultation Programs, Outreach, Training and Education and Informative Services.

**Performance Goal 2.1:** Increase Voluntary Protection Program (VPP) and Safety and Health Achievement Recognition Program (SHARP) sites from 18 to 21.

**Result:** This goal was not achieved.

**Discussion:** There were two VPP applications received in FY 2011. The companies are scheduled for their evaluations in the upcoming year. During FY 2011, one new VPP site was approved. At the end of FY 2011, there were 20 VPP and SHARP sites. This performance goal is expected to be achieved in FY 2012.

**Performance Goal 2.2:** Increase partnerships and alliances from 54 to 57.

**Result:** MOSH has exceeded this goal.

**Discussion:** MOSH has been successful in increasing its partnerships adding three new partnerships in FY 2011. No new alliances were signed in FY 2011, however MOSH has exceeded its overall goal with four alliances and 57 partnerships.

**Performance Goal 2.3:** Increase the total number of people participating in MOSH outreach and training programs by 9%.

**Result:** This goal was not achieved.

**Discussion:** MOSH's original projection was to reach attendance totals in the amount of 6,756 for this evaluation period. However, the total number of projected participants was decreased to 5,465. A total of 11 classes were canceled due to low enrollment.

**Strategic Goal 3:** Secure public confidence through excellence in the development and delivery of MOSH programs and services.

**Performance Goal 3.1:** Percent of fatality and catastrophe inspections initiated within one working day of notification was maintained at 95%.

**Result:** MOSH exceeded this goal.

**Discussion:** In FY 2011, 100% of the fatalities investigated by MOSH were initiated within one working day of notification.

**Performance Goal 3.2:** At least 95% of serious complaint inspections initiated within an average of five working days of notification.

**Result:** This goal was achieved.

**Discussion:** The average time for MOSH to respond to complaint inspections was 2.36 days. During FY 2011, 99% of the complaints were investigated within five days of notification.

**Performance Goal 3.3:** Percent of discrimination complaint investigations completed within 90 days maintained at 90%.

**Result:** This goal was not achieved.

**Discussion:** There are 23 discrimination cases reflected on the SAMM report for FY 2011. Two of the discrimination cases were completed within 90 days (8.7%). MOSH restructured the discrimination unit to better serve its clients.

**Performance Goal 3.4:** Percent of polled responses from MOSH website users indicating a positive overall experience at 90% by 2012.

**Result:** MOSH has until 2012 to achieve this goal.

**Discussion:** MOSH's goal in FY 2009 was to implement a more user-friendly website and to track user feedback. In FY 2010, MOSH was able to achieve the FY 2009 goal. MOSH launched its new website in the spring of 2010. At the end of FY 2012, this goal will be evaluated.

## APPENDIX A

### Maryland FY2011 Findings and Recommendations

REC #	FINDING	RECOMMENDATION	
11-01	Case file review revealed that next-of-kin letters were not sent on all fatality inspections(where required).	At the start of all fatality inspections/ investigations, send condolence letters to next-of-kin. Families of fatality victims also must be kept up-to-date about investigations and informed of the outcome of MOSH investigations.	10-02
11-02	MOSH does not assess penalties for first instance other-than-serious violations (in manufacturing, and in construction when less than 10 total violations).	Revise MOSH Instruction 98-3 dated September 28, 1998 to eliminate Section C.3 that does not permit penalty assessment for first instance other than serious violations.	10-04
11-03	MOSH offers penalty reductions in excess of what is offered by Federal OSHA.	Rescind Memorandum 01-2 dated April 9, 2001 titled "Employer Incentive 50% Penalty Reduction."	10-05
11-04	Not all Federal Program Changes (FPCs) are adopted within the six month period.	Recommend MOSH develop strategies to adopt Federal Program Changes within the six month period.	10-11
11-05	Whistleblower investigations were not completed in accordance with MOSH FOM, Chapter X, A 3 (b), which requires investigations to be completed within 90 days of filing. Section 5-604(d) (3) of the MOSH Act requires that "within 90 days after the Commissioner receives a complaint, the Commissioner shall notify the employee of the determination under this subsection."	Whistleblower investigations must be completed within 90 days in accordance with MOSH FOM and the MOSH Act. MOSH should provide a plan to the Region to detail what steps are to be taken to increase the percentage of investigations completed within 90 days, including those dismissed due to lack of cooperation. .	10-20
11-06	Enforcement staff, designated as benchmark positions, are not performing enforcement activities	MOSH must ensure that personnel designated as fulfilling its benchmark requirements pursuant to 29 CFR §1952.213 are performing enforcement activities and conducting enforcement inspections for the majority of their work time. Clarification of staffing and the breakdown assigned to each unit/program including the separation of enforcement and compliance assistance activities must be provided.	10-22
11-07	Investigative reports did not include the required elements under the Whistleblower Investigations Manual", including: rights to an appeal, case identifiers, back pay calculations and mitigation of damages for settlements, or references to tabbed evidence. Three of the eight investigative reports reviewed that should have had an analysis did not address the elements of a <i>prima facie</i> case (protected activity, respondent knowledge, adverse action, and nexus).	Review the Whistleblower Investigations Manual and revise the investigative reports to include all required components.	
11-08	Closing letters did not include all information required by the Whistleblower Manual.	In closing letters and conferences, inform complainants of their right to appeal a dismissal. Include the case identifier on all correspondence.	

**APPENDIX B**  
**Maryland**  
**Status of State Actions in Response to FY2010 EFAME**

	<b>Findings</b>	<b>Recommendations</b>	<b>Corrective Action Plan</b>	<b>State Action Taken</b>	<b>Status</b>
<b>10-1</b>	In FY 2009, MOSH received 110 serious complaints and 102 were inspected within five days for a response rate of 92%. MOSH's FOM outlines that formal complaints involving potentially serious hazards shall be investigated within three working days of assignment.	MOSH must respond to serious complaints within three days of assignment pursuant to its FOM or change its FOM.	MOSH has agreed to ensure that the language in the FOM is changed to five days from receipt and will begin to submit FOM chapters until FOM fully revised.	The FOM is being worked on continuously and meetings are scheduled weekly for those involved in the revisions. However, MOSH responded to all complaints in FY 2011 in 2.36 days.	Completed
<b>10-2</b>	No next-of kin letters were sent on fatality inspections and there was little or no communication with families at the conclusion of the inspection to inform the next-of-kin inspection findings. MOSH began to send next -of-kin- letters in December 2009.	Send condolence letters to next-of-kin at start of investigation. Families of fatality victims must be kept-up-to date about the investigations and informed of the outcome of the investigation.	MOSH did not adopt this non-mandatory policy, however, they concur the correspondence with the families is a good practice and will continue the process.	Next-of-kin-letters are now sent as confirmed during on-site review. Still very little communication concerning the inspection findings.	Continue to monitor (Finding 11-01)
<b>10-3</b>	A number of OSHA-170 forms contained inappropriate information in the narrative, e.g., name of compliance officer who conducted the inspection and/or the names of decedents and/or injured employees.	Retrain compliance officers and supervisors in the proper completion of OSHA-170 forms to ensure that names of compliance officers, decedents and/or injured employees are not contained in narrative portion of the OSHA-170 form.	Guidance will be provided on the completion of the forms and MOSH will work through the supervisors to ensure adherence to the guidance.	MOSH addressed this issue by issuing additional guidance to staff and requiring supervisors to review the narrative portion of the OSHA – 170 forms. An additional instruction was sent to all Supervisors by Operations on 11/30/10.	Completed

	<b>Findings</b>	<b>Recommendations</b>	<b>Corrective Action Plan</b>	<b>State Action Taken</b>	<b>Status</b>
<b>10-4</b>	MOSH does not assess penalties for first instance other-than-serious violation (in manufacturing, and in construction when less than 10 total violations) .	Revise MOSH Instruction 98-3 dated September 28, 1998 to eliminate Section C.3 that does not permit penalty assessment for first instance other-than-serious violations.	MOSH will take this request under advisement and discuss it with the Governor’s staff. This procedure is in place due to a Gubernatorial Executive Order (EO) and only applies to manufacturing.	MOSH has had preliminary discussions with the Commissioner and found that there is no support for changing this policy which has been in place as the result of an Executive Order and the work of a Task Force.	Continue to monitor (Finding 11-02 )
<b>10-5</b>	MOSH offers penalty reductions of approximately 54% and has a penalty retention rate of 46% percent compared to Federal rate of 63.2%.	Rescind Memorandum 01-2 dated April 9, 2001 titled “Employer Incentive 50% Penalty Reduction,” which provides an automatic 50% penalty reduction in the proposed penalty to employers who immediately abate any hazards/violations prior to the compliance officer leaving the site on the day of observation. This incentive program does not apply to willful, repeat, failure to correct violations, or alleged violations/conditions relating to accidents.	No Action Plan. MOSH believes that this procedure is more effective than its federal counterpart and declines to rescind this memorandum. Immediate abatement on-site is more effective at reducing employee exposure to hazards and this penalty incentive is a tool to accomplish this shared goal. MOSH continues to believe that this procedure is more effective than its federal counterpart.	None	Continue to monitor (Finding 11-03)
<b>10-6</b>	Abatement data was not being entered into the database.	Promptly enter abatement verification data into database.	Operations will enter abatement information into the database instead of from the field.	Operations enters the verification information at a minimum weekly	Completed
<b>10-7</b>	Case file diary sheets were not found in inspection files.	Institute the use of a case file diary sheet. This form needs to be kept at the top of the case file so that a reviewer can tell at first glance the status of that case.	MOSH began to use these forms immediately on a pilot basis in their Eastern Shore Office (Region I).	The pilot was successful and all Regions will begin using the diary.	Completed

	<b>Findings</b>	<b>Recommendations</b>	<b>Corrective Action Plan</b>	<b>State Action Taken</b>	<b>Status</b>
<b>10-8</b>	MOSH was not calling employers or sending abatement letters on all cases where abatement had not been received by MOSH.	MOSH should, in accordance with its own procedures as outlined in its FOM send abatement letters on all cases where abatement verification has not been received and call employers for outstanding abatement verification if no response.	Provide training to all personnel that conduct informal conferences.	Training was provided August 30, 2010 through September 2, 2010 and written procedures were provided for what is needed at the informal for abatement documentation. Letters to employers to provide abatement documentation and the verification forms are being sent.	Completed
<b>10-9</b>	Abatement tracking reports are not routinely reviewed by management on a weekly basis.	Abatement tracking reports should be carefully reviewed weekly by all Regional Supervisors. If necessary, additional training should be provided to Regional Supervisors to ensure that this report is being properly utilized to track abatement.	During the audit there were no findings of unabated hazards. MOSH manually every week goes through their "open case files" to verify abatement. If no abatement verification was received than MOSH policy on abatement is followed.	Cases are manually purged to ensure abatement.	Completed
<b>10-10</b>	Contested case information was not entered into the database.	Retrain staff in the proper database entries for contested cases. Supervisors should review these data entry issues on a weekly basis to ensure that coding is being completed.	Steps were being implemented before audit as this issue was identified internally.	MOSH provided retraining on data entry. Contested information is now entered into the NCR in Operations.	Completed
<b>10-11</b>	Not all Federal Program Changes (FPC) are adopted within the six month period.	It is recommended that MOSH adopt Federal Program Changes within the six month period.	MOSH will work hard to adopt Federal Program changes within the six month period. However, there are certain changes that require comprehensive review and evaluation by key enforcement and management personnel where the six month time frame is not attainable. , MOSH notes that it is impossible for a State program to do the type of review that is required of the comprehensive documents being prepared by OSHA within a six month time frame. Involvement by State Plans in the beginning of a FPC would help reduce the short turn around on large workloads	MOSH is working hard to adopt Federal Program changes within the six month period.	Continue to monitor (Finding 11-04)

	<b>Findings</b>	<b>Recommendations</b>	<b>Corrective Action Plan</b>	<b>State Action Taken</b>	<b>Status</b>
<b>10-12</b>	Abatement verification data was not being properly entered into the database for 23(g) public sector consultation.	Maryland should regularly monitor its hazard verifications and ensure that data is promptly entered into the database and any coding errors are corrected.	During the audit there were no findings of unabated hazards MOSH is reviewing their coding procedures in Consultation. to ensure coding errors are caught timely.	MOSH has streamlined its coding procedures to ensure proper abatement tracking. The supervisor reviews the open hazard report with each consultant at the beginning of each week.	Completed
<b>10-13</b>	Files were not properly maintained in accordance with the Discrimination Manual, Chapter 2 through Chapter 5.	Files should be set up and maintained in accordance with the Discrimination Manual, Chapter 2 through Chapter 5	MOSH concurs that major program improvements are warranted in its Discrimination Program and is actively engaged in a comprehensive review and rewrite of its Discrimination procedures. <i>All 2010 and 2011 discrimination case files will be organized in accordance with the Whistleblower Manual. A Right and Left Index will be included in each case file.</i>	While some progress has been made in this area, one of the ten reviewed case files did not have any tabbed exhibits and five of the reviewed files had some documents in the file folders, but not secured.	Completed
<b>10-14</b>	There were no opening (Docketing and Notification) letters to the complainants and respondents contained in the files.	Letters must be prepared, sent out and maintained in accordance with the Discrimination Manual, Chapter 2, ? III (E) and Chapter 5, ? III (B).	MOSH concurs that major program improvements are warranted in its Discrimination Program and is actively engaged in a comprehensive review and rewrite of its Discrimination procedures. <i>Complaint and Respondent Docketing/Notification Letters were contained in the case files. However, docketing of the complaints was often untimely. Discrimination cases will now be docketed within 5 work days of initial contact with the complainant.</i>	Opening letters were noted in all of the reviewed case files.	Completed

	Findings	Recommendations	Corrective Action Plan	State Action Taken	Status
10-15	Case file documentation was inserted into the case file with no order and the files were not tabbed.	Case files be prepared and tabbed in accordance with the Discrimination Manual, Chapter 5, ? III	MOSH concurs that major program improvements are warranted in its Discrimination Program and is actively engaged in a comprehensive review and rewrite of its Discrimination procedures./ <i>All new discrimination cases files will be maintained in accordance with the Whistleblower Manual. See attached R/L Index. Tabs will be used to identify documents.</i>	All, but one of the reviewed case files were prepared and tabbed in accordance with the Discrimination Manual, except where some documents were not secured or tabbed in the case file, as noted in 10-13.	Completed
10-16	A recently closed case had no dismissal letters in the file.	Cases must be closed in accordance with the Discrimination Manual, Chapter 4, ? and IV.	MOSH concurs that major program improvements are warranted in its Discrimination Program and is actively engaged in a comprehensive review and rewrite of its Discrimination procedures./ <i>The Program Manager is preparing the Field Investigation Reports and dismissal letters for all closed cases.</i>	All of the reviewed case files contained closing letters.	Completed
10-17	Management and non-management interviews were not always conducted.	Interviews must be conducted and documented in accordance with the Discrimination Manual.	MOSH concurs that major program improvements are warranted in its Discrimination Program and is actively engaged in a comprehensive review and rewrite of its Discrimination procedures./ <i>Management and non-management interviews are being conducted and documented in accordance with the Manual for all new cases. Three staff members were trained in procedures to ensure proper case processing and documentation. Field investigations need to be conducted for 2010 and 2011 cases.</i>	Interviews were conducted when appropriate and were documented in the case file.	Completed

	<b>Findings</b>	<b>Recommendations</b>	<b>Corrective Action Plan</b>	<b>State Action Taken</b>	<b>Status</b>
<b>10-18</b>	There was incomplete case information in Web IMIS.	Input complete case information into the Web IMIS in accordance with the Web IMIS guide.	MOSH concurs that major program improvements are warranted in its Discrimination Program and is actively engaged in a comprehensive review and rewrite of its Discrimination procedures/: <i>Information will be entered into Web IMIS for all old cases not yet entered and new 2011 cases. Discrimination cases and screen-out cases will be entered in Web IMIS within 30 calendar days of assignment.</i>	Web IMIS information was properly entered.	Completed
<b>10-19</b>	There was no documentation of settlement of Whistleblower cases.	Settlements must conform to and be documented in accordance with the Discrimination Manual, Chapter 6, ? IV.	MOSH concurs that major program improvements are warranted in its Discrimination Program and is actively engaged in a comprehensive review and rewrite of its Discrimination procedures / <i>2010 and 2011 cases that are settled will contain a settlement document in accordance with the Whistleblower Manual.</i>	Settlement Agreements were documented in the case files.	Completed
<b>10-20</b>	Investigations were not completed in accordance with MOSH FOM, Chapter X, A3 (b), which requires investigations to be completed within 90 days of filing. Section 5-604(d) (3) of the MOSH Act requires that "within 90 days after the Commissioner receives a complaint, the Commissioner shall notify the employee of the determination under this subsection."	Investigations must be completed within 90 days in accordance with MOSH FOM and the MOSH Act.	MOSH concurs that major program improvements are warranted in its Discrimination Program and is actively engaged in a comprehensive review and rewrite of its Discrimination procedures /: <i>By assigning and training 3 new investigators, MOSH will meet the 90 day investigation time line on new cases. Procedures are being implemented to ensure the 90 day requirement will be met for 90% of 2011 discrimination cases. The discrimination manager is tracking the timely conduct of investigations.</i>	MOSH has hired one new investigator. However, of the 19 cases opened in FY 2011, 16% were closed within 90 days.	Continue to monitor (Finding 11-05)

	<b>Findings</b>	<b>Recommendations</b>	<b>Corrective Action Plan</b>	<b>State Action Taken</b>	<b>Status</b>
<b>10-21</b>	Numerous case files were open for extended periods of time with no current activity documented in the case files.	The Whistleblower program manager should monitor the Web IMIS system to determine what cases are open and determine what appropriate action is required in accordance with the Discrimination Manual and MOSH FOM.	MOSH concurs that major program improvements are warranted in its Discrimination Program and is actively engaged in a comprehensive review and rewrite of its Discrimination procedures./ <i>By assigning and training three new investigators and implementing new procedures for the conduct of discrimination complaints, 2011 cases will not become inactive.</i>	MOSH has hired one new investigator during FY 2011 to reduce number of cases which become inactive. In FY 2011, out of three closed cases, one was open for 10 months before being dismissed due to a lack of cooperation from the complainant. Only 16% of the cases opened in FY 2011 were closed within 90 days.	Completed
<b>10-22</b>	Enforcement staffs, designated as benchmark positions, are not performing enforcement activities.	MOSH must ensure that personnel designated as fulfilling its benchmark requirements pursuant to 29 CFR 1952.213 are performing enforcement activities and conducting inspections for the majority of their work time.	MOSH disagrees with this finding. Benchmark staff does perform certain administrative functions, but all are engaged in performing enforcement work. However, although MOSH believes this to be an accurate statement, they will seek additional positions to begin to assign administrative duties to non-benchmark positions. MOSH has asked for clarification on whether staff that is conducting VPP and CCP inspections are appropriately counted toward benchmarks as it is required to be administered through enforcement.	One staff member is no longer counted as a benchmark and another is spends only ½ of his work as a benchmark.	Continue to monitor (Finding 11-06)

## APPENDIX C

### Maryland State Plan FY 2011 Enforcement Comparison

	MD	State Plan Total	Federal OSHA
<b>Total Inspections</b>	<b>1,279</b>	<b>52,056</b>	<b>36,109</b>
Safety	1,082	40,681	29,671
% Safety	85%	78%	82%
Health	197	11,375	6,438
% Health	15%	22%	18%
Construction	837	20,674	20,111
% Construction	65%	40%	56%
Public Sector	89	7,682	N/A
% Public Sector	7%	15%	N/A
Programmed	1,021	29,985	20,908
% Programmed	80%	58%	58%
Complaint	146	8,876	7,523
% Complaint	11%	17%	21%
Accident	18	2,932	762
Insp w/ Viols Cited	1,029	31,181	25,796
% Insp w/ Viols Cited (NIC)	80%	60%	71%
% NIC w/ Serious Violations	74%	63.7%	85.9%
<b>Total Violations</b>	<b>5,252</b>	<b>113,579</b>	<b>82,098</b>
Serious	2,474	50,036	59,856
% Serious	47%	44%	73%
Willful	14	295	585
Repeat	76	2,014	3,061
Serious/Willful/Repeat	2,564	52,345	63,502
% S/W/R	50%	46%	77%
Failure to Abate	-	333	268
Other than Serious	2,688	60,896	18,326
% Other	51%	54%	22%
Avg # Violations/ Initial Inspection	4.9	3.4	2.9
<b>Total Penalties</b>	<b>\$ 2,460,272</b>	<b>\$ 75,271,600</b>	<b>\$ 181,829,999</b>
Avg Current Penalty / Serious Violation	\$ 745.70	\$ 963.40	\$ 2,132.60
% Penalty Reduced	48.3%	46.6%	43.6%
<b>% Insp w/ Contested Viols</b>	<b>11.0%</b>	<b>14.8%</b>	<b>10.7%</b>
Avg Case Hrs/Insp- Safety	19.0	17.1	19.8
Avg Case Hrs/Insp- Health	46.1	26.8	33.1
Lapse Days Insp to Citation Issued- Safety	31.5	35.6	43.2
Lapse Days Insp to Citation Issued- Health	45.6	43.6	54.8
Open, Non-Contested Cases w/ Incomplete Abatement >60 days	3	1,387	2,436

*Note: Federal OSHA does not include OIS data.*

*The total number of inspections for Federal OSHA is 40,684.*

Source: DOL-OSHA. State Plan & Federal INSP & ENFC Reports, 11.8.2011.

# APPENDIX D

## FY 2011 State Activity Mandated Measures (SAMM) Report

U. S. D E P A R T M E N T O F L A B O R  
O C C U P A T I O N A L S A F E T Y A N D H E A L T H A D M I N I S T R A T I O N  
S T A T E A C T I V I T Y M A N D A T E D M E A S U R E S ( S A M M s )

NOV 08, 2011  
PAGE 1 OF 2

State: MARYLAND

RID: 0352400

MEASURE	From: 10/01/2010 To: 09/30/2011	CURRENT FY-TO-DATE	REFERENCE/STANDARD	
1. Average number of days to initiate Complaint Inspections	357 2.36 151	6 3.00 2	Negotiated fixed number for each State	
2. Average number of days to initiate Complaint Investigations	56 .49 114	0 .00 17	Negotiated fixed number for each State	
3. Percent of Complaints where Complainants were notified on time	127 80.89 157	5 100.00 5	100%	
4. Percent of Complaints and Referrals responded to within 1 day -ImmDanger	16 100.00 16	0 0 0	100%	
5. Number of Denials where entry not obtained	0	0	0	
6. Percent of S/W/R Violations verified				
Private	1365 77.12 1770	24 5.97 402	100%	
Public	239 76.36 313	1 1.52 66	100%	
7. Average number of calendar days from Opening Conference to Citation Issue				
Safety	41267 43.39 951	3048 35.85 85	2631708 51.9 50662	National Data (1 year)
Health	9748 62.08 157	998 71.28 14	767959 64.8 11844	National Data (1 year)

State: MARYLAND

RID: 0352400

MEASURE	From: 10/01/2010 To: 09/30/2011	CURRENT FY-TO-DATE	REFERENCE/STANDARD
8. Percent of Programmed Inspections with S/W/R Violations			
	640	55	90405
Safety	65.24 981	67.07 82	58.5 154606
			National Data (3 years)
Health	63 78.75 80	5 83.33 6	10916 51.7 21098
			National Data (3 years)
9. Average Violations per Inspection with Violations			
S/W/R	2721 2.45 1107	246 2.48 99	419386 2.1 198933
			National Data (3 years)
Other	2629 2.37 1107	210 2.12 99	236745 1.2 198933
			National Data (3 years)
10. Average Initial Penalty per Serious Violation (Private Sector Only)	2708410 1196.29 2264	321306 1508.47 213	611105829 1679.6 363838
			National Data (3 years)
11. Percent of Total Inspections in Public Sector	89 6.96 1279	0 .00 33	220 6.0 3657
			Data for this State (3 years)
12. Average lapse time from receipt of Contest to first level decision	6904 177.02 39	0 0	3533348 199.7 17693
			National Data (3 years)
13. Percent of 11c Investigations Completed within 90 days	2 8.70 23	1 50.00 2	100%
14. Percent of 11c Complaints that are Meritorious	2 8.70 23	2 100.00 2	1517 23.0 6591
			National Data (3 years)
15. Percent of Meritorious 11c Complaints that are Settled	1 50.00 2	2 100.00 2	1327 87.5 1517
			National Data (3 years)

\*MD FY11

\*\*PRELIMINARY DATA SUBJECT TO ANALYSIS AND REVISION

# APPENDIX E

## State Information Report (SIR)

U. S. D E P A R T M E N T O F L A B O R

PAGE 1

OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION

CURRENT MONTH = SEPTEMBER 2011

INTERIM STATE INDICATOR REPORT (SIR)

STATE = MARYLAND

PERFORMANCE MEASURE	----- 3 MONTHS-----		----- 6 MONTHS-----		-----12 MONTHS-----		-----24 MONTHS-----	
	FED	STATE	FED	STATE	FED	STATE	FED	STATE
C. ENFORCEMENT (PRIVATE SECTOR)								
1. PROGRAMMED INSPECTIONS (%)								
A. SAFETY	3694	193	8169	481	18137	888	40070	1606
	61.3	88.1	61.4	89.4	62.5	88.0	63.7	84.1
	6026	219	13312	538	29042	1009	62876	1909
B. HEALTH	480	10	1020	19	2126	46	4357	110
	39.7	34.5	36.4	29.7	34.6	31.1	34.7	34.8
	1208	29	2806	64	6150	148	12569	316
2. PROGRAMMED INSPECTIONS WITH VIOLATIONS (%)								
A. SAFETY	3378	213	7266	442	14959	794	32614	1263
	73.7	81.9	72.4	79.4	70.1	77.2	69.1	72.2
	4583	260	10036	557	21330	1028	47196	1750
B. HEALTH	456	15	890	25	1723	51	3487	111
	57.0	48.4	57.2	51.0	56.2	57.3	55.3	61.0
	800	31	1555	49	3068	89	6309	182
3. SERIOUS VIOLATIONS (%)								
A. SAFETY	11703	472	23768	937	48704	1892	109064	3186
	79.6	50.9	77.4	46.9	76.7	49.6	78.4	49.8
	14698	927	30703	1998	63528	3811	139117	6392
B. HEALTH	2634	43	5290	107	10266	242	21598	646
	66.6	28.5	64.7	30.5	64.4	31.3	66.7	34.8
	3957	151	8180	351	15930	774	32380	1858
4. ABATEMENT PERIOD FOR VIOLS								

	2394	191	4978	376	10776	723	23693	1187
A. SAFETY PERCENT >30 DAYS	16.6	27.4	16.8	26.4	17.9	25.1	17.9	24.5
	14465	697	29573	1423	60243	2876	132414	4841
	259	0	711	0	1451	0	3159	4
B. HEALTH PERCENT >60 DAYS	6.5	.0	8.6	.0	9.4	.0	10.0	.4
	4006	68	8234	168	15507	386	31619	1070

1111011

U. S. D E P A R T M E N T O F L A B O R

PAGE 2

OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION

CURRENT MONTH = SEPTEMBER 2011

INTERIM STATE INDICATOR REPORT (SIR)

STATE = MARYLAND

PERFORMANCE MEASURE	----- 3 MONTHS-----		----- 6 MONTHS-----		-----12 MONTHS-----		-----24 MONTHS-----	
	FED	STATE	FED	STATE	FED	STATE	FED	STATE
C. ENFORCEMENT (PRIVATE SECTOR)								
5. AVERAGE PENALTY								
A. SAFETY								
	505479	22984	1258835	77281	2803637	163063	5086228	281306
OTHER-THAN-SERIOUS	1181.0	280.3	1195.5	324.7	1126.9	373.1	1055.2	413.1
	428	82	1053	238	2488	437	4820	681
B. HEALTH								
	219203	5875	441915	22400	853346	44650	1667151	117324
OTHER-THAN-SERIOUS	1184.9	534.1	1077.8	448.0	980.9	417.3	958.7	417.5
	185	11	410	50	870	107	1739	281
6. INSPECTIONS PER 100 HOURS								
A. SAFETY								
	6874	241	15417	596	33850	1146	73070	2129
	6.0	2.3	5.6	2.5	5.5	2.6	5.4	2.6
	1138	106	2730	240	6145	438	13476	809
B. HEALTH								
	1458	50	3330	109	7311	235	14958	469
	2.4	1.5	2.2	1.5	2.2	1.7	2.0	1.8
	615	34	1501	74	3390	139	7404	257
7. VIOLATIONS VACATED %								
	1270	28	3026	60	6577	98	12352	152
	5.6	2.5	6.6	2.3	7.0	1.9	6.2	1.6
	22608	1122	46128	2648	93448	5252	200310	9530
	737	6	1997	52	4456	94	9147	165

8. VIOLATIONS RECLASSIFIED %	3.3	.5	4.3	2.0	4.8	1.8	4.6	1.7
	22608	1122	46128	2648	93448	5252	200310	9530
9. PENALTY RETENTION %	19478404	309704	40012395	688490	77322520	1159856	134938244	2262773
	61.0	51.8	61.6	52.0	62.8	52.6	62.8	51.7
	31918969	598309	65001782	1323655	123124542	2204427	214845679	4378066

U. S. D E P A R T M E N T O F L A B O R

PAGE 3

OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION

CURRENT MONTH = SEPTEMBER 2011

INTERIM STATE INDICATOR REPORT

STATE = MARYLAND

PERFORMANCE MEASURE	----- 3 MONTHS-----		----- 6 MONTHS-----		----- 12 MONTHS-----		----- 24 MONTHS-----	
	PRIVATE	PUBLIC	PRIVATE	PUBLIC	PRIVATE	PUBLIC	PRIVATE	PUBLIC

D. ENFORCEMENT (PUBLIC SECTOR)

1. PROGRAMMED INSPECTIONS %

A. SAFETY	193	9	481	20	888	36	1606	46
	88.1	90.0	89.4	83.3	88.0	75.0	84.1	63.9
	219	10	538	24	1009	48	1909	72
B. HEALTH	10	3	19	13	46	24	110	38
	34.5	60.0	29.7	76.5	31.1	60.0	34.8	55.9
	29	5	64	17	148	40	316	68

2. SERIOUS VIOLATIONS (%)

A. SAFETY	472	62	937	171	1892	193	3186	237
	50.9	59.6	46.9	57.6	49.6	57.8	49.8	55.1
	927	104	1998	297	3811	334	6392	430
B. HEALTH	43	50	107	115	242	167	646	283
	28.5	48.1	30.5	48.3	31.3	47.0	34.8	50.0
	151	104	351	238	774	355	1858	566

1111011

U. S. D E P A R T M E N T O F L A B O R

PAGE 4

OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION

CURRENT MONTH = SEPTEMBER 2011

COMPUTERIZED STATE PLAN ACTIVITY MEASURES

STATE = MARYLAND

PERFORMANCE MEASURE	----- 3 MONTHS-----		----- 6 MONTHS-----		----- 12 MONTHS-----		----- 24 MONTHS-----	
	FED	STATE	FED	STATE	FED	STATE	FED	STATE
E. REVIEW PROCEDURES								
1. VIOLATIONS VACATED %	579	16	1131	26	2220	34	4270	58
	22.8	24.2	23.4	19.8	23.5	9.8	23.0	10.2
	2542	66	4834	131	9442	346	18586	570
2. VIOLATIONS RECLASSIFIED %	328	2	620	11	1259	41	2360	46
	12.9	3.0	12.8	8.4	13.3	11.8	12.7	8.1
	2542	66	4834	131	9442	346	18586	570
3. PENALTY RETENTION %	3616720	78298	9500018	95707	16062961	667994	28079915	881260
	56.1	55.1	62.4	54.5	62.3	49.8	60.6	53.9
	6443756	142050	15212620	175662	25766759	1341346	46371522	163600

## **APPENDIX F**

### **FY 2011 State OSHA Annual Report (SOAR)** (Available Separately)

## APPENDIX G

### Maryland State Plan FY 2011 23(g) Consultation Activity

	MD Public Sector	Total State Plan Public Sector
<b>Requests</b>	<b>39</b>	<b>1,328</b>
<i>Safety</i>	9	576
<i>Health</i>	3	560
<i>Both</i>	27	192
<b>Backlog</b>	<b>10</b>	<b>123</b>
<i>Safety</i>	4	51
<i>Health</i>	-	58
<i>Both</i>	6	14
<b>Visits</b>	<b>30</b>	<b>1,632</b>
<i>Initial</i>	27	1,336
<i>Training and Assistance</i>	-	175
<i>Follow-up</i>	3	121
<i>Percent of Program Assistance</i>	96%	67%
<i>Percent of Initial Visits with Employee Participation</i>	100%	96%
<b>Employees Trained</b>	<b>44</b>	<b>5,030</b>
<i>Initial</i>	44	2,144
<i>Training and Assistance</i>	-	2,886
<b>Hazards</b>	<b>617</b>	<b>6,063</b>
<i>Imminent Danger</i>	-	3
<i>Serious</i>	470	4,804
<i>Other than Serious</i>	147	1,171
<i>Regulatory</i>	-	85
<i>Referrals to Enforcement</i>	-	6
<b>Workers Removed from Risk</b>	<b>4,819</b>	<b>171,075</b>
<i>Imminent Danger</i>	-	55
<i>Serious</i>	3,705	136,884
<i>Other than Serious</i>	1,114	26,046
<i>Regulatory</i>	-	8,090

Source: DOL-OSHA. 23(g) Public & Private Consultation Reports, 11.29.2011