

**FY 2013 Comprehensive  
Federal Annual Monitoring and Evaluation (FAME) Report**

**Maryland Occupational Safety and Health (MOSH)**



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## **I. Executive Summary**

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

The Federal Annual Monitoring and Evaluation (FAME) for Fiscal Year (FY) 2013 focuses on assessing the State Plan's performance during FY 2013 and evaluates its progress in addressing issues identified in prior years' evaluations. This report details the actions Maryland Occupational Safety and Health (MOSH) took as specified in their approved Corrective Action Plan (CAP) for the five findings and recommendations contained in the FY 2012 Maryland (MD) FAME Report. The FY 2013 FAME resulted in one new finding and one new observation.

During FY 2012, five findings were identified or continued from previous years. MOSH took action to address these findings since the FY 2012 FAME Report, including cancelling a policy which prevented the State Plan from assessing penalties for other-than-serious violations in certain instances, improving its timeliness of responses to federal program changes, and making significant improvements to its discrimination program documentation. One previously identified finding regarding closing letters was closed. MOSH's lack of a discrimination appeals process is introduced as a new finding. The new observation refers to MOSH not meeting its inspection goals to support the adopted Process Safety Management (PSM) Covered Chemical Facilities National Emphasis Program (CHEM NEP).

### **B. State Plan Introduction**

The Maryland Department of Labor, Licensing and Regulation (DLLR), Division of Labor and Industry (DLI) is the state agency designated by the governor to administer the MOSH State Plan. The MOSH State Plan was approved on July 5, 1973, pursuant to Section 18 of the Occupational Safety and Health (OSH) Act. The Plan achieved operational status on February 15, 1980 and was granted final State Plan approval on July 18, 1985. MOSH operates under the authority of the MOSH Act, Labor and Employment Article, Section 5-101 through 5-901.

DLLR is headquartered in Baltimore and consists of MOSH representatives stationed in different regional and field offices located in Hunt Valley, Easton, and Hagerstown. Each group has been delegated certain powers by the Commissioner to carry out the specific statutory mandates of the Department.

In FY 2013, MOSH was operated under the guidance of Leonard J. Howie III, Secretary of DLLR; J. Ronald DeJuliis, Commissioner of DLI (the OSHA State Plan Designee); and Eric Uttenreither, Assistant Commissioner of MOSH.

MOSH 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 workers, the United States Postal Service, private sector maritime activities (shipyard employment, marine terminals, and long shoring), and U.S. military bases, which come under OSHA's jurisdiction. Additionally, MOSH administers the

Outreach Unit which provides free consultation services (Consultation Program), training and education, and manages cooperative programs. MOSH also administers the Discrimination Unit which investigates complaints received by workers who feel that they have been discriminated by their employer for making a safety and health complaint. Lastly, the Research and Statistic Unit provides MOSH with statistical data on occupational fatal and nonfatal workplace injuries and illnesses.

In FY 2013, MOSH had a staff of 76.35 full-time equivalents (FTEs) who were assigned to the Compliance Services Unit, the Outreach Unit, and the Discrimination Unit. Additionally, one FTE is assigned to the Consultation Program for public sector. This FTE is not covered under the 21(d) grant but under the 23(g) grant.

The federal share of the FY 2013 23(g) grant was \$4,036,016.00. The state over matched the grant, 100% state funded money with \$406,553.00 additional monies. The total budget for FY 2013 was \$8,478,565.00 (48% federally funded and 52% state funded with the over match).

As a State Plan, MOSH has the authority to promulgate standards and regulations which may be more stringent than OSHA standards. MOSH has multiple standards and regulations which differ from the federal program such as but are not limited to High Voltage Lines (Title 6), Fall Protection in Steel Erection (Code of MD Regulations (COMAR) 09.12.25), Crane Safety (COMAR 09.12.26), Confined Spaces (COMAR 09.12.35), and Tree Care and Removal (COMAR 09.12.28). MOSH has also made amendments to OSHA standards that are more stringent than OSHA such as Permit-Required Confined Spaces (29 CFR 1910.146), Occupational Exposure to Formaldehyde (29 CFR 1910.1048), Lead in Construction Work (29 CFR 1926.62), Excavations (Requirements for Protective Systems 29 CFR 1926.652) and Steel Erection (29 CFR 1926, Subpart R).

### **C. Data and Methodology**

The monitoring and evaluation activities for this year's Comprehensive FAME concentrated on assessing the State Plan's enforcement performance during the year including assessment of the mandated measures, progress in addressing five outstanding findings, and the progress towards their performance goals and strategic plan and the overall effectiveness of MOSH.

On-site monitoring visits were conducted from February 10 through February 12, 2014 and February 18 through February 19, 2014. The purpose of the visits were to evaluate the State Plan through case file review, to conduct a special study on how a State Plan develops and evaluates the effectiveness of their targeting programs, and to discuss State Plan operations with management and staff. Follow-up communications were conducted with MOSH management after the on-site monitoring visits.

Throughout the evaluation process, MOSH was cooperative, shared information, and ensured staff was available to discuss cases, policies and procedures, and to answer questions. Data contained in the Integrated Management Information System (IMIS), OSHA's database system used by the State Plan to administer its program, was also utilized as a means to monitor and evaluate its 23(g) enforcement program activities.

A total of 131 case files were reviewed by the Area Director (AD), an Assistant Area Director (AAD), and two safety compliance officers. The cases reviewed included fatalities, complaints, referral investigations/inspections, and programmed/un-programmed inspections. The majority of the cases were safety-related. All the cases reviewed covered a period from October 1, 2012 through September 30, 2013. Another 14 case files were reviewed to evaluate the state's discrimination program. This review included all case files which were handled after MOSH received assistance from OSHA Region III Whistleblower staff.

In addition to reviewing the case files mentioned above, the OSHA monitoring team discussed MOSH procedures with MOSH administration and management staff. These procedures included their Operations Unit which handles the un-programmed inspections, abatement verification, penalty collection, complaint responses and scheduling informal conferences and formal hearings. The monitoring team also conferred with MOSH management on the progress of their five-year strategic goals. Various statistical information, complaint processing, and inspection targeting were also reviewed by the monitoring team.

Quarterly discussions are held between OSHA and MOSH. Topics of these discussion include: quarterly reports on MOSH's progress in achieving annual and strategic performance goals, laws/regulation changes, personnel issues, and any concerns that have come up since last the previous quarterly meeting was held.

#### **D. Findings and Recommendations**

There was one new finding identified during the FY 2013 FAME. The finding was in regard to MOSH not having an internal process in place for discrimination complainants to file appeals.

**Finding 13-01:** MOSH does not currently have an internal appeals process for discrimination.

**Recommendation:** MOSH should continue to work to implement an internal appeals process which is at least as effective as the current federal process.

A new observation was also identified during the FY 2013 FAME. This new observation was that MOSH did not meet the inspection requirements of a National Emphasis Program (NEP) that it adopted. This observation is also detailed in Appendix B of this report.

- MOSH did not conduct three inspections under the Process Safety Management (PSM) Covered Chemical Facilities National Emphasis Program (CHEM NEP) as adopted in

MOSH Instruction 13-4 - National Emphasis Program (NEP) - Process Safety Management (PSM) Covered Chemical Facilities, effective February 5, 2013.

**Federal Monitoring Plan:** During the quarterly discussions in FY 2014, OSHA and MOSH will monitor the State Plan's inspections to support this NEP.

### **Previous Findings/Recommendations Successfully Closed/Completed**

Since the last report, MOSH has taken significant action to address the five findings and recommendations that were addressed in the FY 2012 FAME Report. The actions are addressed below, but are included in their entirety in Appendix C of this report.

Finding 12-01 addressed a penalty policy which prevented the Commissioner from assessing penalties for other-than-serious violations in certain situations. On February 27, 2014, MOSH cancelled MOSH Instruction 98-3 by adopting MOSH Instruction 14-9 which removed this restriction.

Finding 12-02 addressed the challenges that MOSH was having in ensuring adoption of Federal Program Changes (FPCs) were made within an acceptable timeframe. All FPCs in FY 2013 were responded to and required items were adopted within an acceptable timeframe.

Finding 12-03 addressed issues with appropriate documentation of required elements in the MOSH's discrimination investigative reports. MOSH reorganized their discrimination program in FY 2013 and also worked with OSHA to improve their documentation of required elements. A review of case files was conducted for those investigations after this assistance was provided. The case file review found that MOSH is addressing all required elements and this finding was completed.

Finding 12-04 addressed an issue where closing letters of discrimination cases did not include required information. MOSH revised their closing letters to address applicable items.

Finding 12-05 addressed an issue with MOSH's benchmark positions. MOSH took action to revise their benchmarks during FY 2013 when preparing their FY 2014 grant to OSHA's satisfaction.

## **II. Major New Issues**

None

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

### **1. Enforcement**

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

Mandated activities include program assurances and State Plan activity measures. Fundamental program requirements that are an integral part of MOSH 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 contests
- 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 employee exposure to toxic or harmful agents
- Coverage of public sector employees
- Recordkeeping and reporting
- Voluntary compliance activities

A statistical review of MOSH was conducted using the official agency close-out data, the end-of-year State Activity Mandate Measures (SAMM) Report (which compares State Plan activity data to an established reference point found in Appendix D), the State Indicator Report (SIR), and MOSH's State OSHA Annual Report (SOAR) for FY 2013.

During the evaluation period of FY 2013 (October 1, 2012 through September 30, 2013), MOSH conducted 1,529 private and public sector inspections based on the SAMM Report. Of the 1,529 inspections conducted by MOSH in FY 2013, 1,338 (88%) were safety-related and 191 (12%) were related to health. The projected number of inspections for FY 2013 was 1,305 safety and 240 health. The number of safety inspections exceeded the grant projections by 1.02%. Seventy-nine percent (79%) of the projected health inspection were conducted.

**a) Complaints**

- MOSH conducted 142 complaint inspections in FY 2013. On average, these inspections were initiated within 2.87 days, which was within the agreed upon goal of five days.
- MOSH investigated 134 complaints during the year. On average, MOSH took .05 days to initiate investigations for these complaints, which is well below the negotiated timeframe of three days.
- MOSH received four complaints or referrals which involved complaints of imminent danger. MOSH responded to all of these complaints within one day, as required.

## **b) Fatalities**

- There were 24 occupational deaths in Maryland during FY 2013. The SAMM Report, Measure 21, states that 20 out of 21 inspections (95%) were initiated within one day of notification. The goal is 100% initiated within one day of notification. MOSH reviewed their records concerning the two inspections. The review revealed the fatalities were entered improperly and have since been corrected to accurately reflect 100% of fatality investigations were initiated in one day. The remaining six fatalities were not investigated as they were identified as being not work-related or were due to a pre-existing medical condition. This was found to be the correct determination for these six cases.
- OSHA found that MOSH was utilizing the next of kin (NOK) letters to reach out to the victim's family.
- It was determined that the leading sector/activity that led to these fatalities was tree trimming operation. MOSH continues to address this high-risk operation with its Local Emphasis Program (LEP) for Tree Care and Removal.
- OSHA found that all fatality inspections conducted in FY 2013 were conducted appropriately.

## **c) Targeting and Programmed Inspections**

- MOSH's programmed plan inspections for general industry are derived mainly from their Site-Specific Targeting (SST) program. The previous year's Data Initiative survey is the basis of MOSH's SST. MOSH also utilizes a number of targeting programs to identify and schedule programmed inspections. These include the use of OSHA's National Emphasis Programs (NEPs), their Site-Specific Targeting Program, and Maryland-specific LEPs which address special emphasis hazards and industries in Maryland. The following LEPs and NEPs were active in FY 2013:

MOSH Instruction (MI) 12-1- LEP -Fall Hazards in Construction

MI 12-2- LEP - Electrical Hazards in Construction

MI 12-3- LEP - Crushed-by/Struck-by Hazards in Construction

MI 12-4- LEP - Public Sector

MI 12-5- LEP - Tree Care and Removal

MI 12-6- LEP - Maryland High Hazard Industries

MI 8-5- NEP - Combustible Dust

MI 8-7- NEP - Crystalline Silica

MI 10-2- NEP - Facilities that Manufacture Food Flavorings Containing Diacetyl

MI 10-14- NEP - Hexavalent Chromium

MI 13-2- NEP - Nursing and Residential Care Facilities

MI 13-4- NEP - PSM Covered Chemical Facilities

MI 13-5- NEP - Primary Metal Industries



- Case files that were identified as being in-compliance were found to be documented properly with no issues identified.
- Case files that had violations identified show proper hazard identification with the correct standard for each violation noted.
- According to the SAMM Report, of the 1,280 inspections conducted with citations issued, the average number of violations per inspections with serious, willful and/or repeat (S/W/R) hazards was 2.04 and with other-than-serious (OTS) hazards was 2.28. MOSH met the reference/standard for average number of violations per inspection with S/W/R violations.
- MOSH conducted programmed inspections relating to both safety and health issues. OSHA found that 64.7% of the safety programmed inspections contained serious, willful, or repeat violations. OSHA also found that 71.2% of the health programmed inspections were serious, willful, or repeat violations.
- No significant enforcement actions were identified by MOSH.

**d) Citations and Penalties**

- MOSH conducted 1,280 inspections (based on the SAMM) throughout the year that had serious, willful and/or repeat violations identified, which accounted for 84% of the total inspections conducted.
- On average in FY 2013, MOSH issued citations within 39.40 days from the opening conference for safety inspections and 57.35 days for health inspections. In FY 2012, the average of state-issued citations was 43.65 for safety and 65.48 for health. MOSH's progress in reducing their lapse time between opening conference and issuance of citations is apparent.
- Assessment of civil penalties are covered under Sections 5-809 and 5-810 of the MOSH Act as well as Chapter VI of MOSH's Field Operations Manual (FOM). The average penalty per serious violation was \$1,066.74.
- Based on the review of compliance cases and discussions with MOSH management during the monitoring evaluation, the violations issued were classified (S/W/R/OTS) appropriately, penalties assessed were appropriate and grouping of violations was justified.

**e) Abatement**

- The on-site review included a review of 131 case files. Of the 131 files reviewed, 91 contained citations. A review of these case files found no issues with abatement periods. All abatement was collected in a timely manner, if not found corrected during inspection.

Verification of abatement and evidence of abatement was well documented and clearly identified in the case file.

**f) Worker and Union Involvement**

- The SAMM report showed that workers/union involvement was achieved in 100% of MOSH's inspections. Workers are interviewed and unions are given the opportunity to participate in opening and closing conferences, as well as the walk around part of the inspection.

**2. Review Procedures**

**a) Informal Conferences**

- OSHA reviewed a representative sample of cases that held an informal conference and found that all relevant procedures were followed, all changes to citations was deemed appropriated and proper documentation was collected, and all modifications were explained and documented. No issues were identified.
- There was no set pattern for the settlements, each case was reviewed on its own and an independent result was reached which was unique to the case file.
- A review of the SIR showed that only 1.5% of initial violations were vacated in the private sector, and only .9% of violations were reclassified at informal conferences.
- MOSH retained approximately 58% of penalties issued during informal conferences. This was an improvement from the previous FY where 52.2% were retained.

**b) Formal Review of Citations**

- OSHA's review of case files that were involved with the formal review process during FY 2013 found that the state had an adequate defense for each contested item. No items that were changed were due to problems with the original citation. All decisions were made available to the public and decisions were consistent with federal procedure.
- When cases were contested, 21.3% of violations were vacated and 10.4% of violations were reclassified. When cases were contested in the public sector, 22% of violations were vacated, and 7.1% of the violations were reclassified. The average lapse time length from receipt of contest to first level decision was 234.33 days.

**3. Standards and Federal Program Changes (FPC) Adoption**

When OSHA incorporates changes to standards or the federal program, State Plans are required to respond within 60 days of initial notification to declare whether they intend to adopt the change. According to 29 CFR 1953, when a federal change is identified as having the potential to impact the effectiveness of the State Plans, states are required to either adopt

the change identically, or submit an alternative approach with a State Plan supplement that is at least as effective as the federal change. During FY 2013, OSHA adopted seven program changes, including two standards and five directives. Of the State Plan changes issued, only four required the State Plan's intent during the evaluation period. MOSH responded to three of these prior to the deadline, and all four within one day after the deadline. Two changes were required to be adopted by the State Plans. MOSH adopted the required FPC within six months after federal issuance and already had a standard in place which was at least as effective as the federal standard change for Cranes and Derricks.

**Standards:**

- Direct Final Rule - Cranes and Derricks in Construction: Underground Construction and Demolition: 29 CFR Part 1926 (Issued: April 25, 2013/State Adoption- Required)

**State Plan Action:** MOSH responded to the notification in a timely manner. MOSH did not exclude underground construction or demolition in their previously issued crane standard; therefore, no additional action was required.

- Updating OSHA Standards Based on National Consensus Standards; Head Protection: 29 CFR-PART 1910,15,17,18&26/1910,15,17,18&26 (Issued: July 16, 2013/State Adoption Not Required)

**State Plan Action:** MOSH responded to the notification in a timely manner. This change was adopted identically to the federal standard.

**Directives:**

- Inspection and Citation Guidance for Roadway and Highway Construction Work Zones: [CPL-02-01-054 2013 545](#) (Issued: September 6, 2013/State Adoption- Not Required)

**State Plan Action:** MOSH responded to the notification one day after it was due. MOSH's intent was to adopt the change with some differences from the federal program, although the change was not required. The plan change has not yet been submitted.

- Site-Specific Targeting 2012 (SST-12): [CPL-02-13-01 2013 564](#) (Issued: January 4, 2013/State Adoption - Not Required)

**State Plan Action:** MOSH responded to the notification in a timely manner. This change was adopted identically to the federal directive.

- National Emphasis Program: Occupational Exposure to Isocyanates: [CPL-03-00-017 2013 585](#) (Issued – June 20, 2013/State Adoption - Required)

**State Plan Action:** MOSH responded to the notification in a timely manner and indicated that this directive would be adopted identical to the federal program. Adoption was not due until FY 2014.

- Federal Program Change Memo for OSHA Instruction CPL-02-00-155: [CPL-02-00-155 2013 604](#) (Issued September 6, 2013/State Adoption - Not Required)

**State Plan Action:** MOSH's response of intent is not due until FY 2014.

- Maritime Cargo Gear Standards and 29 CFR Part 1919 Certification: [CPL-02-01-055 2014 624](#) (Issued- September 30, 2013/State Adoption - Not Required)

**State Plan Action:** MOSH's response of intent is not due until FY 2014.

In previous year FAMES, OSHA identified repeat findings on the MOSH's untimely submission of State Plan changes. During FY 2013, MOSH has improved in their response to State Plan changes, and also took action to address some long awaited changes, such as submission of its Field Operations Manual (FOM). Given MOSH's improved action to address these findings, OSHA is closing this finding.

#### 4. Variances

- No variances were requested in FY 2013.

#### 5. Public Employee Program

- OSHA looked at a representative sample of public sector inspections and found that while no monetary penalty was issued, the violations had the necessary deterrent effect as abatement was completed for violations identified and the hazards were corrected.
- MOSH conducted 3.92% of their inspections in the public sector.
- A new targeting list for the public sector was developed and will be effective in FY 2014.
- Approximately 67.5% of the public sector inspections were in safety. Serious violations were cited 50.2% in safety and 32.5% in health.

#### 6. Discrimination Program

Section 5-604 of the Maryland Occupational Safety and Health Act provides discrimination protection for workers who raise safety and health concerns at their work place. The focus of this program is to investigate worker allegations against employers who take adverse action against them because they reported safety and health complaints at their workplace or to MOSH. MOSH made a number of modifications to their Discrimination Program in FY 2013 including changes to investigative staff and procedures. These changes are expected to increase the effectiveness of the program and already a significant backlog has been reduced from these efforts throughout the year.

During this evaluation period, MOSH investigated 21 discrimination complaints. Four of these complaints were investigated within 90 days as noted in the State Activity Mandated

Measure (SAMM) 13, which was below the measure to investigate 100% of investigations within this timeframe. Thirty-eight percent of discriminations cases were found to be meritorious which was above the national average of 24.8%. OSHA found that merit settlement and litigation rates are appropriate.

In May of 2013, OSHA and MOSH worked together to address challenges and issues within the discrimination program. OSHA selected case files after this time period to monitor the State Plan's progress in addressing the findings from the FY 2012 FAME. The results of the case file review showed significant progress. The monitors found that the determinations that were reached in the case files were based on substantive evidence in the case files and sound legal reasoning. The monitors also found that MOSH's investigative reports now include required elements that currently pertain to the state's discrimination procedures. All case identifiers, back pay calculations, mitigations of damages for settlements, and elements of the prima facie case are now being properly documented. Therefore, OSHA considers previous Finding #12-03 to be completed.

The second finding from last year's FAME (Finding #12-04) was that closing letters omitted required information. This has been substantially addressed and has been closed. The one item that was not addressed is notification of complainant's rights to an appeal. During the review, MOSH informed the monitors that MOSH is currently taking action to implement an internal appeals process which will be substantively similar to OSHA's internal process. OSHA will continue to monitor this situation through FY 2013 FAME Finding #13-01.

**Finding #13-01:** MOSH does not currently have an internal appeals process for discrimination.

**Recommendation #13-01:** MOSH should continue to work to implement an internal appeals process which is at least as effective as the current federal process.

## 7. Special Study - State Plan Targeting Program

MOSH has targeting program in place for both Construction and General Industry. This written policy has been used to create five LEPs:

- Fall Hazards in Construction
- Electrical Hazards in Construction
- Crushed-by/Struck-by Hazards in Construction
- Public Sector, Tree Care and Removal
- Maryland High Hazard Industries

Strategic goals are addressed by the targeting program which includes a number of inspection goals. Once implemented, MOSH utilizes randomization to ensure a neutral selection criteria. MOSH has a process in place to evaluate the effectiveness of its targeting program. Detailed findings of the targeting study can be found in the separate template provided by the National Office.

## **8. Complaints About State Program Administration (CASPs)**

No CASPs were received in FY 2013.

## **9. Voluntary Compliance Program**

### **Cooperative Compliance Partnerships (CCP)**

MOSH's CCP program seeks to establish joint cooperative relationship with private sector companies who are committed to reducing injuries and illnesses, as well as building a positive safety and health culture. This program is mostly focused towards the construction sector. The program conducted 349 visits to these sites throughout the year, identifying 238 hazards and removing 3,167 workers from risk. MOSH signed five CCP agreements in FY 2013 increasing the number of active sites to 10. These five new CCP sites are:

- The Whiting Turner Contracting Company, Holy Cross Hospital Project (signed in October of 2012)
- Turner Construction Company, MEDCO DHMD Public Health Lab Project (signed in October of 2012)
- KBR Building Group, The Heritage Project (signed in October of 2012)
- The Whiting Turner Contracting Company, UMBC Performing Arts & Humanities Building Phase 2 Project (signed in March of 2013)
- The Whiting Turner Contracting Company, Pike & Rose Phase I Project (signed in September of 2013)

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

MOSH administers a VPP that recognizes mid- to large size employers for developing a comprehensive safety and health management system to protect their workers from harm. These workplaces are recognized for their efforts in achieving an exceptional, progressive program that has management commitment and worker involvement, employs routine hazard identification, hazard control and safety and health training. MOSH's VPP mirrors the federal VPP with the exception that it only accepts employers who meet the STAR status; whereas the federal program also employs another designation (MERIT status) for employers who are close, but have not met the full criteria of the program. MOSH's VPP also does not extend the program to mobile worksites. Inspection deferrals are approved under this program and mirror the federal policy.

MOSH did not recognize any new VPP sites during the year. The total number of active VPP sites remained at 17.

## **Education Unit**

MOSH is very committed to educating both workers and employers in a wide variety of safety and health topics. These include an offering of 31 topics which are frequently taught by MOSH compliance officers. These seminars are provided throughout the state at no cost to the attendees.

No major programmatic changes were made to MOSH's voluntary and cooperative programs during FY 2013.

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

### **Consultation**

MOSH employs one consultant to provide free occupational safety and health consultation services to industries in municipal, state, and county workers. These services include providing initial safety and health visits, training and assistance, and follow-up visits at no cost to the state and municipal employers. In return, the employer must agree to correct all serious hazards that are identified in their workplace.

MOSH projected that the project would conduct 28 safety and health visits throughout the year. According to the Mandated Activities Report for Consultation (MARC), the State Plan fell one visit short of their projection, conducting 22 initial visits, and five follow-up visits. However, local records indicated that 29 visits were conducted. During these initial visits, MOSH identified 540 serious hazards, averaging over 24 serious hazards per consultation visit. MOSH is required to meet a number of mandated measures while implementing the public sector consultation program under this grant. MOSH met almost all of the applicable mandated measures. These included ensuring at least 90% of visits were conducted in high hazard industries and ensuring employee involvement during all visits. The one mandated measure that was not met during the year was ensuring 100% of serious hazards are verified as corrected within the latest correction date. According to the MARC report, 97% of these serious hazards were corrected in a timely manner. Additionally, 53.15% of serious hazards were verified as corrected within the original agreed upon timeframe, while the goal is 65%. There were no open uncorrected serious hazards which were more than 90 days past due.

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

FY 2013 was the first year of MOSH's new Five-Year Strategic Plan which encompassed 2013-2017. MOSH's annual performance plan supplements its Five-Year Strategic Plan.

Strategic Goal 1 is to improve workplace safety and health through compliance assistance and enforcement of occupational safety and health regulations.

Performance Goal 1.1 and 1.2 are to decrease fatality rate by one percent yearly (for a five year reduction of 5%) and maintain or reduce their serious injury Days Away, Restricted Duty or Transfer (DART) rate of 2.0. MOSH surpassed the projected number of construction inspections done in FY 2013 by 28%. The DART rate remains at 1.6 injuries and illnesses per 100 full-time workers as noted in calendar year (CY) 2012.

Strategic Goal 2 is to 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 is to increase recognition programs by five sites by FY 2017. Although recognition programs were not increased by one in FY 2013, MOSH may have five new recognition programs by FY 2017.

Performance Goal 2.2 was to sign three new CCPs during the year. MOSH exceeded this goal by signing five new CCPs in targeted high hazard industries.

Performance Goal 2.3 was to maintain attendance in MOSH outreach and training programs at 6,000 participants annually. MOSH had a total of 5,363 participants in MOSH's outreach and training programs in FY 2013, meeting 89% of the goal.

Strategic Goal 3 is securing public confidence through excellence in the development and delivery of MOSH programs and services.

Performance Goal 3.1 was to initiate at least 95% of fatality and catastrophe inspections within one working day of notification. MOSH initiated 100% their inspection/investigations within one working day of the notification of an occupational fatality and/or catastrophe. Two of the fatality inspections had incorrect data entered in the system which was not corrected prior to the SAMM Report.

Performance Goal 3.2 was to initiate inspections of serious complaints within an average of five working days of notification in at least 95% of the cases. This goal was exceeded. Complaint inspections were initiated in 2.87 days. Complaint investigations were initiated within 0.5 days.

Performance Goal 3.3 is to complete 90% of all discrimination complaints within 90 days. MOSH investigated 21 discrimination cases throughout the year and four of these were completed in 90 days. This was well below their goal. MOSH's Discrimination Program underwent reorganization throughout the year which accounted for this goal not being met. Now that the unit has been reorganized and their backlog has been addressed, MOSH expects this measure to improve significantly in FY 2014.

Performance Goal 3.4 is to achieve an overall satisfaction rating of at least 90% of polled responses from the MOSH website users by 2017. MOSH has improved and continues to improve their website to be more user-friendly; however, the online poll for users to fill out to indicate/rate their experience using MOSH's website is in the development stage.



## **V. Other Special Measures of Effectiveness and Areas of Note**

During the formal review of enforcement cases, OSHA noted that MOSH has developed and implemented two successful practices that positively affect its complaint inspection and documentation process and fatalities investigations.

During the case file review, significant emphasis was put on documenting physical evidence in regard to complaint items. Whether it be photographs, training procedures, or reports, each complaint item listed has a quantifiable piece of evidence that either showed the complaint was unfounded or valid, MOSH has strong evidence to substantiate the violation.

This consistent practice of going above and beyond to provide tangible evidence during a complaint inspection allows MOSH to be in a better position to provide closure to complaint inspections. If the complaint items were unfounded, MOSH can provide this concrete evidence to the complainant that there is no safety/health issue. If the complaint items were valid, this allows MOSH to hold employer's accountable to their safety and health standards and improve jobsite safety.

In the comprehensive review of MOSH's FY 2013 fatalities, OSHA noted that a pre-closing conference meeting takes place with senior MOSH management, representatives from the Attorney General's office, and the CSHO, prior to the issuance of citations or closing of the case. During these meetings all aspects of the case are discussed and the case is thoroughly vetted.

This practice provides an additional layer of review and discussion for these high visibility, high impact cases. By doing this MOSH is better equipped to come to a consensus on the facts associated with these cases with all parties involved with the execution of the case – the supervisors, attorneys, and senior leadership. Additionally, the inclusion of the CSHO in these meetings allows for first-hand explanations of the case's findings and allows the CSHO to be involved in every stage of the inspection process.

In addition, it should be noted that during FY 2013, the state of Maryland required that each MOSH CSHO take five furlough days which equated approximately 270 lost work days. MOSH was prepared for the shutdown and was able to continue to perform their work and maintain productivity.

## Appendix A - New and Continued Findings and Recommendations

### FY 2013 Maryland State Plan Comprehensive FAME Report

FY-Rec#	Finding	Recommendation	FY 12
13-01	MOSH does not currently have an internal appeals process for discrimination.	MOSH should continue to work to implement an internal appeals process which is at least as effective as the current federal process.	

## Appendix B - Observations Subject to Continued Monitoring

### FY 2013 Maryland State Plan Comprehensive FAME Report

FYXX-Observation # [FY13-OB-1]	Observation	Federal Monitoring Plan	FY 12
FY13-OB-1	MOSH did not conduct three inspections under the Process Safety Management (PSM) Covered Chemical Facilities National Emphasis Program (CHEM NEP) as adopted per MOSH Instruction 13-4.	OSHA and MOSH will monitor the State Plan's inspections to support this NEP during the quarterly discussions.	

**Appendix C - Status of FY 2012 Findings and Recommendations**  
**FY 2013 Maryland State Plan Comprehensive FAME Report**

FY 2013 Maryland State Plan Comprehensive FAME Report					
Status of FY 2012 Findings and Recommendations					
FY Rec-#s	Finding	Recommendation	State Plan Response/Corrective Action	Completion Date	Current Status
FY12-01 (11-02)	MOSH Instruction 98-3 prevents the Commissioner from assessing penalties for other-than-serious violations (OTS) (in manufacturing and construction when less than 10 total violations are cited).	MOSH Instruction 98-3 must be revised to allow the Commissioner the ability to assess penalties for instances when it is appropriate to achieve the necessary deterrent effect.	MOSH Instruction (MI) 98-3 was cancelled by MI 14-9. This instruction provides the program with the ability to assess penalties for OTS instances when it is appropriate to achieve the necessary deterrent effect.	02/27/2014	Completed
12-02 (11-04)	Federal Program Changes (FPCs) are not being adopted within a timely manner.	MOSH must take action to adopt FPCs within six months of notification.	MOSH has taken action to improve their responses to federal program changes, and has adopted all required changes in a timely manner in FY 2013.	10/01/2013	Completed
12-03 (11-07)	Investigative reports must 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, and address the elements of a prima facie case (protected activity, respondent knowledge, adverse action, and nexus).	Review the Whistleblower Investigations Manual and revise the investigative reports to include all required components. MOSH and OSHA will work jointly to evaluate and address this issue in FY 2013.	MOSH has reorganized their Discrimination Unit and received guidance from Region III's Whistleblower staff in FY 2013 to address these issues. The case file review of all cases showed that MOSH has addressed this issue and the reports include all required components.	10/01/2013	Completed
12-04 (11-08)	Closing letters must include all information required by the Whistleblower Manual.	In closing letters and conferences, inform complainants of their right to appeal a dismissal. Include	MOSH has reorganized their Discrimination Unit and received guidance from OSHA Region III Whistleblower staff in FY 2013 to address	10/01/2013	Closed

**Appendix C - Status of FY 2012 Findings and Recommendations**  
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		the case identifier on all correspondence. MOSH and OSHA will work jointly to evaluate and address this issue in FY 2013.	these issues. Closing letters now contain all required components, with the exception of notification of the complainants' right to appeal. MOSH's lack of an appeals program will be tracked through new finding 13-01.		
12-05 (11-06)	Staff that does not perform enforcement inspections is being counted towards enforcement benchmarks.	MOSH must ensure that only staff who perform general enforcement inspections are designated as fulfilling its benchmark requirements pursuant to 29 CFR §1952.213. MOSH should revise their FY 2013 grant to remove positions from the benchmarks that do not conduct these activities and reallocate additional positions to meet the benchmark requirements.	MOSH revised their benchmarks in the FY 2014 grant. All Staff counted on benchmarks are performing enforcement activities.	10/01/2013	Completed

## Appendix D – FY 2013 State Activity Mandated Measures (SAMM) Report FY 2013 Maryland State Plan Comprehensive FAME Report

OSHA is in the process of moving operations from a legacy data system (IMIS) to a modern data system (OIS). During FY 2013, OSHA case files were captured on OIS, while State Plan case files continue to be processed through IMIS. The SAMM, which is native to IMIS, is not able to access data in OIS, which impacts OSHA's ability to process SAMM standards pinned to national averages (the collective experience of State Plans and OSHA). As a result, OSHA has not been able to provide an accurate reference standard for SAMM 18, which has experienced fluctuation in recent years due to changes in OSHA's penalty calculation formula. Additionally, OSHA is including FY 2011 national averages (collective experiences of State Plan and OSHA from FY 2009-2011) as reference data for SAMM 20, 23 and 24. OSHA believes these metrics are relatively stable year-over-year, and while not exact calculations of FY 2013 national averages, they should provide an approximate reference standard acceptable for the FY 2013 evaluation. Finally, while SAMM 22 was an agreed upon metric for FY 2013, OSHA was unable to implement the metric in the IMIS system. OSHA expects to be able to implement SAMM 22 upon the State Plan's migration into OIS.

U.S. Department of Labor				
Occupational Safety and Health Administration State Activity Mandated Measures (SAMMs)				
State: Maryland			FY 2013	
SAMM Number	SAMM Name	State Plan Data	Reference/Standard	Notes
<b>1</b>	Average number of work days to initiate complaint inspections	2.87	(Negotiated fixed number for each state) 5	State data taken directly from SAMM report generated through IMIS.
<b>2</b>	Average number of work days to initiate complaint investigations	0.05	(Negotiated fixed number for each state) 3	State data taken directly from SAMM report generated through IMIS.
<b>4</b>	% of complaints and referrals responded to within 1 work day (imminent danger)	100%	100%	State data taken directly from SAMM report generated through IMIS.
<b>5</b>	Number of denials where entry not obtained	0	0	State data taken directly from SAMM report generated through IMIS.
<b>9a</b>	Average number of violations per inspection with violations by violation type	2.04	SWR: 2.04	State data taken directly from SAMM report generated through IMIS; national data was manually calculated from data pulled from both IMIS and OIS

**Appendix D – FY 2013 State Activity Mandated Measures (SAMM) Report  
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<b>9b</b>	Average number of violations per inspection with violations by violation type	2.28	Other: .88	for FY 2011 -2013.
<b>11</b>	% of total inspections in the public sector	3.92	(Negotiated fixed number for each state) 5%	State data taken directly from SAMM report generated through IMIS.
<b>13</b>	Percent of 11c Investigations completed within 90 calendar days	19.05	100%	State data taken directly from SAMM report generated through IMIS.
<b>14</b>	Percent of 11c complaints that are meritorious	38.1	24.8% meritorious	State data taken directly from SAMM report generated through IMIS; National data was pulled from web IMIS for FY 2011-2013.
<b>16</b>	Average number of calendar days to complete an 11c investigation	25.8	90 Days	State data taken directly from SAMM report generated through IMIS.
<b>17</b>	Planned vs. actual inspections - safety/health	1338/191	(Negotiated fixed number for each state) 1305/240	State data taken directly from SAMM report generated through IMIS; the reference standard number is taken from the FY 2013 grant application.
<b>18a</b>	Average current serious penalty - 1 -25 Employees	a. 643.32	State data taken directly from SAMM report generated through IMIS; national data is not available.	
<b>18b</b>	Average current serious penalty - 26-100 Employees	b. 982.21	State data taken directly from SAMM report generated through IMIS.	
<b>18c</b>	Average current serious penalty - 101-	c. 1215.83	State data taken directly from SAMM report generated through IMIS.	

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	250 Employees			
<b>18d</b>	Average current serious penalty - 251+ Employees	d. 1529.35		State data taken directly from SAMM report generated through IMIS.
<b>18e</b>	Average current serious penalty - Total 1 - 250+ Employees	e. 781.04		State data taken directly from SAMM report generated through IMIS.
<b>19</b>	Percent of enforcement presence	1.47%	National Average 1.5%	Data is pulled and manually calculated based on FY 2013 data currently available in IMIS and County Business Pattern data pulled from the US Census Bureau.
<b>20a</b>	Percent In Compliance – Safety	Safety - 14.06	Safety - 29.1	State data taken directly from SAMM report generated through IMIS; current national data is not available. Reference data is based on the FY 2011 national average, which draws from the collective experience of State Plans and federal OSHA for FY 2009-2011.
<b>20b</b>	Percent In Compliance – Health	Health 23.89	Health - 34.1	
<b>21</b>	Percent of fatalities responded to in 1 work day	95%	100%	State data is manually pulled directly from IMIS for FY 2013
<b>22</b>	Open, Non-Contested Cases with Abatement Incomplete > 60 Days			Data not available
<b>23a</b>	Average Lapse Time - Safety	39.4	43.4	State data taken directly from SAMM report generated through IMIS; current national data is not available. Reference data is based on the FY 2011 national average, which draws from the collective experience of State Plans and federal OSHA for FY 2009-2011.



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<b>23b</b>	Average Lapse Time – Health	57.35	57.05	State data taken directly from SAMM report generated through IMIS; current national data is not available. Reference data is based on the FY 2011 national average, which draws from the collective experience of State Plans and federal OSHA for FY 2009-2011.
<b>24</b>	Percent penalty retained	72.4	66	State data taken directly from SAMM report generated through IMIS; current national data is not available. Reference data is based on the FY 2011 national average, which draws from the collective experience of State Plans and federal OSHA for FY 2009-2011.
<b>25</b>	Percent of initial inspections with employee walk around representation or employee interview	100%	100%	State data taken directly from SAMM report generated through IMIS.