

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

State of Michigan

Michigan Occupational Safety and Health Administration



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I. Executive Summary

A. Summary of the Report

The purpose of this comprehensive federal Annual Monitoring Evaluation (FAME) report is to assess the State Plan's progress towards achieving performance goals established in their federal Fiscal Year (FY) 2013 Annual Performance Plan, to review the effectiveness of programmatic areas related to enforcement activities including a summary of an onsite evaluation, and to describe corrections made by the State Plan in response to the FY 2012 FAME report findings and recommendations. This report fully assesses the current performance of Michigan Department of Licensing and Regulatory Affairs (LARA) – Occupational Safety and Health Division (MIOSHA) 23(g) compliance program and compares the State Plan's program to OSHA.

A four person OSHA team was assembled to accomplish the evaluation onsite at MIOSHA in Lansing, Michigan, beginning on January 27, 2014. The OSHA team's evaluation consisted of case file reviews, interviews of MIOSHA staff, and a special study of the State Plan's targeting programs.

A detailed explanation of the findings and recommendations of the MIOSHA performance evaluation is found in Section III, Assessment of State Plan Performance. A summary of all the findings and recommendations noted, as the result of OSHA's review, is found below and in Appendix A, *New and Continued Findings and Recommendations*.

The State Plan extends its protection to private, public, and municipal workers within the state. The program also covers non-Indian employers within Indian reservations and Indian employers outside the territorial boundaries of Indian reservations. MIOSHA does not have jurisdiction over federal agencies, United States Postal Service, maritime workers, household domestic workers, mineworkers, and employers who own or operate businesses located within the boundaries of Indian reservations who are enrolled members of Indian tribes.

The mission of MIOSHA is to help protect the safety and health of Michigan workers. The vision of MIOSHA is to enhance the quality of life and contribute to the economic vitality in Michigan.

The Michigan Occupational Safety and Health Strategic Management Plan for FY 2009 to FY 2013 established three goals: 1) Improve workplace safety and health for all workers, as evidenced by fewer hazards, reduced exposures, and fewer injuries, illnesses, and fatalities; 2) Promote employer and worker awareness of, commitment to, and involvement with safety and health to effect positive change in the workplace culture; and 3) Strengthen public confidence through continued excellence in the development and delivery of MIOSHA's programs and services.

Quarterly monitoring team meetings were held during FY 2013, at which time the State Activity Mandated Measures (SAMM) and State Information Report (SIR) were reviewed and discussed with MIOSHA compliance staff. The FY 2013 SAMM is Appendix D of this report.

OSHA received and investigated one CASPA during FY 2013. The CASPA was related to a fatality investigation, and was not completed at the time of this evaluation.

B. State Plan Introduction

MIOSHA functions under an Operational Status Agreement with OSHA. Effective January 31, 2013, Steven Arwood is the Director of LARA. Martha B. Yoder is the Director of MIOSHA and the Deputy Director for MIOSHA is Barton G. Pickelman.

MIOSHA includes Administration, Technical Services Division, General Industry Safety and Health Division, Construction Safety and Health Division, Consultation Education and Training Division, and MIOSHA Appeals Division. In FY 2013 MIOSHA was augmented by the Radiation Safety program. The Technical Services Division is responsible for standards adoption, information technology and laboratory operations. The General Industry Safety and Health Division (GISHD) is responsible for Compliance Program administration through conducting enforcement inspections in general industry workplaces. The Worker Discrimination Section is also included in the General Industry Safety and Health Division. The Construction Safety and Health Division (CSHD) is responsible for Compliance Program administration through conducting enforcement inspections related to construction. The Consultation Education and Training Division provide direct staff assistance and outreach to employers. The MIOSHA Appeals Division represents the Agency in contested cases and the Radiation Safety Section is responsible for safety compliance and outreach concerning radioactive sources used in the workplace. The MIOSHA Radiation Safety Section and Wage and Hour Programs are funded separately and receives 100% state funding.

In FY 2013, the State Plan's 23(g) enforcement grant included state and federal funds totaling \$23,766,210. MIOSHA overmatched the federal grant by \$3,183,010. The State Plan's current enforcement staff consists of 45 safety compliance officers, which is 80% of benchmark levels, and 28 industrial hygienists, which is 62% of benchmark levels.

C. Data and Methodology

A review of MIOSHA workplace safety and health program was conducted onsite from January 27, 2014 to February 4, 2014. Case files, 101, were selected for review, which included eight fatality cases, sixty-four safety, and nineteen health cases. Additionally, a total of thirteen non formal case files were evaluated. Discrimination cases were selected from those with a final determination and closed disposition between October 1, 2012 and September 30, 2013.

During the audit, the team also reviewed MIOSHA internal documents to gather information on policies and procedures related to the conduct of inspections and investigations. Such reviews included, but were not necessarily limited to complaint processing, inspection targeting, and emphasis program evaluation.

D. Findings and Recommendations

A detailed explanation of the findings and recommendations of the MIOSHA performance evaluation is found in Section III, Assessment of State Plan Performance. The FY 2012 FAME identified two findings and recommendations, both recommendations are being addressed with completion anticipated during FY 2014. A complete list of the FY 2012 findings and recommendations and MIOSHA's progress in addressing the findings is found in Appendix C, *Status of FY 2012 Findings and Recommendations*.

The summary of the findings and recommendations noted, as the result of OSHA's evaluation for FY 2013, is found below and in Appendix A, *New and Continued Findings and Recommendations*.

1. Finding 13-01: In 6.6% of case files reviewed, the date of receipt for complaints entered into the IMIS was determined to be the date the administrative staff received the complaint, not the actual day the complaint was received by MIOSHA. By not entering the actual date the complaint was received by MIOSHA, SAMM #1 and SAMM #2 do not reflect the actual number of days to conduct an inspection or investigation. This finding was identified in the FY 2011 FAME and was verified completed in the FY 2012 FAME.

Recommendation 13-01: Process all complainant information upon receipt of complaint.

2. Finding 13-02 (12-01): The verified abatement date was not being entered into IMIS in item 22 of the OSHA-1B. As a result, State Activity Mandated Measure #6, "Percent of Serious/Willful/Repeat Violations Verified," did not reflect any hazards as being abated.

Recommendation 13-02 (12-01): Ensure the date abatement was verified is entered into the IMIS. *MIOSHA Agreed to start entering the abatement date when they transition their enforcement program the OIS data system.*

3. Finding 13-03: Documentation that worker representatives were given an opportunity to participate in all phases of workplace inspections was not included in all case files reviewed in accordance with Section 29(4) of the Michigan Occupational Safety and Health Act.

Recommendation 13-03: Document that "worker representatives," as defined in the MIOSHA FOM Chapter V, Section 23, paragraph (a), are given an opportunity to participate in all phases of workplace inspections.

II. Major New Issues

Michigan House Bill 5917, proposing the elimination of the Construction Standards Commission, was introduced on September 19, 2012. This Bill was adopted and became Public Act 448, effective December 27, 2012.

Michigan House Bill 5922, proposing the elimination of the General Industry Safety Standards Commission, was introduced on September 19, 2012. This bill was adopted and became Public Act 416, effective December 27, 2012.

Michigan Senate Bill 1335, proposed amending the Michigan Occupational Safety and Health Act to require the Director of the Department of Licensing and Regulatory Affairs (LARA) to provide a statement of specific facts establishing a clear and convincing need when processing an administrative rule that goes beyond federal rule requirements. This bill was adopted and became Public Act 415, effective December 27, 2012

Michigan Senate Bill 1336, proposed repealing a section of the Act creating the Occupational Health Standards Commission. This Bill was adopted and became Public Act 447, effective December 27, 2012.

These bills became law on December 27, 2012 and have not affected MIOSHA's ability to promulgate and enforce standards

III. Assessment of State Plan Performance

A. Enforcement

During FY 2013, MIOSHA conducted 5282 inspections; 4248 safety and 1034 health. Of those 4204 were programmed, 685 were complaints, and 34 were fatalities. The total number of inspections was a 2.4% decrease from FY 2012. This information was taken from the SAMMs report dated November 12, 2013.

1. Complaints

During FY 2013, MIOSHA received a total of 1250 complaints, of which 565 (45%) were formal and 685 (55%) were non formal. The average number of days to initiate a complaint inspection in FY 2013 was 6.67, below the negotiated standard of ten days. The average number of days to initiate a complaint investigation was 5.45, below the negotiated standard of eight days. OSHA randomly selected 35 complaint investigations for review during this evaluation of the MIOSHA program.

All complaints will be evaluated according to established procedures, including the criteria listed below to determine if the complaint includes issues covered by MIOSHA. When information is not provided by the complainant, the complaint is too vague to evaluate, or the office has other specific information that the complaint is not valid, an attempt shall be made to clarify or supplement available information. If a decision is made that the complaint is not valid, a letter or email will be sent to the complainant or the complainant will be contacted by telephone advising him/her/them of the decision and its reasons. The contact will be documented and attached to the complaint.

The MIOSHA process for complaint processing is as follows. When a complaint was received, the administrative staff printed a copy of the complaint and attached a “buck slip,” which was used as a tracking mechanism. The complaint was then given to a manager for review and assessment. Once this was completed, the complaint was given back to the administrative staff to enter into IMIS. This process takes up to several days to complete.

Case file review documented that in some cases the date of receipt of complaints being entered in to IMIS was the date the administrative staff received the complaint, not the actual date the complaint was received by MIOSHA. This issue, originally noted on the FY 2011 FAME and was followed up on the FY 2012 FAME, was corrected at that time. It appears there was a misunderstanding as to response times for complaint investigations versus complaint inspections.

Finding 13-01: In 6.6% of case files reviewed, the date of receipt for complaints entered into the IMIS was determined to be the date the administrative staff received the complaint, not the actual day the complaint was received by MIOSHA.

Recommendation 13-01: Process all complainant information upon receipt of complaint.

2. Fatalities

A total of 34 fatalities were reported to MIOSHA in CY 2013, up from 28 the previous year. DLI’s Injury Notification Template is provided to OSHA for information and tracking of all fatalities.

A total of eight fatality case files were reviewed. During the case file review, it was identified that the Next of Kin (NOK) letters were not in two of the CSHD case file. After further investigation, it was determined that NOK letters were sent but, the letters were kept in a separate folder instead of being placed into the case file. This clerical error was rectified by MIOSHA during the audit. MIOSHA had followed their fatality investigation policy in all other areas during fatality investigations. Overall, documentation, penalties, classification of violations, and case disposition was as effective as federal requirements. The case files were in appropriate order which led to easy retrieval of information. The cases, where settlements occurred, were settled appropriately. MIOSHA tracked and obtained abatement; in some cases before the issuance of citations.

Observation 13-OB-1: Next of Kin letters were not consistently included in the case files in accordance with MIOSHA FOM, Chapter VI, paragraph I.B.2.e.

3. Targeting and Programmed Inspections

A special study of the development and evaluation of the effectiveness of the State Plan’s targeting programs has been conducted, and the results are found below in Subsection G, Special Study – State Plan Targeting Programs.

MIOSHA conducted 5282 inspections, with 79.6% as programmed inspections. MIOSHA focused its programmed inspections to reduce injuries, illnesses, and fatalities in certain targeted industries. MIOSHA has a guidance document that outlines its policies for inspection targeting and General Industry Inspection Priority System for Programmed Scheduled Inspections.

The priority system adopted by MIOSHA for conducting scheduled and programmed inspections in private sector workplaces involves two major steps. In the first step, MIOSHA designates target industries. In the second step, MIOSHA generates a priority list of establishments to be inspected based on the targeted industries.

MIOSHA selects targeted industries for its recurring five-year Strategic Plans. The current Strategic Plan in use is the MIOSHA Strategic Plan for Fiscal Years 2009-2013 in which the objectives of the Plan outline and guide program activity during the five-year period. The goals in the MIOSHA Strategic Plan are consistent with those of OSHA. The Strategic Plan defines goals that are outcome-based, rather than activity-based, thus providing clear benchmarks for evaluating performance. In the current Strategic Plan, two goals designate targeted industries. The industries are classified according to the North America Industry Classification System (NAICS) code. To generate the priority list, MIOSHA uses stratified, random sampling from the employer registers. The stratification is based on NAICS code.

The priority list contains a list of establishments in Michigan that have been selected for programmed inspections. The list is a random sample of Michigan employers. The establishments are pulled from publicly available and government-supplied directories of employers in Michigan. MIOSHA uses directories that have large numbers of employers and a wide array of NAICS codes. To ensure that the priority list is not a function of the data collection method of a particular directory, the directory used to generate the priority list is rotated. Additionally, MIOSHA combines lists of employers from multiple directories.

MIOSHA participates in several National Emphasis Programs (NEPs). These include combustible dust, process safety management, falls, and isocyanates.

MIOSHA has several Emphasis Programs which include field sanitation, residential construction, bridge painting, ergonomics, wood products manufacturing. MIOSHA doesn't consider these programs Local Emphasis Programs. Some emphasis programs in use by MIOSHA focus outreach efforts as the main tool to reduce hazards with minimal enforcement.

4. Citations and Penalties

There were 12,961 violations cited, of which 49.1% were serious, 0.1% were willful and 5.1% were repeat violations. There was 9.4 % decrease of total violations cited from FY 2012. Serious violations cited increased 7.3 %, willful violations decreased slightly by 0.2% and repeat violations increased 1.5% from 2012. The in compliance for safety was

28.1% and 43.4% for health, while the average number of violations per inspection was 3.6% down slightly from 2012 by .3%.

There are no citation and penalty-related observations or findings of concern requiring attention from the MIOSHA FY 2013 activities evaluated.

Most citations are issued from the main office in Lansing by the administrative staff person once the case file has been reviewed by the supervisor. Unlike OSHA, MIOSHA does not have a six-month statute of limitations for citation issuance. However, Section 33 of the MIOSHA Act states, "In no case shall any citation be issued beyond 90 calendar days from the completion of the investigation." Based on case file lapse time data noted below, citations are issued within the required 90-day limit from opening conference.

Safety	32.09
Health	57.44

A specific worksheet for assessing good faith was developed and implemented.

A total of 91 case files were reviewed. Documentation for the hazards identified was appropriate in all but two cases. All penalties were calculated correctly. Penalties were appropriate based on MIOSHA's FOM which allows reductions up to 95 percent depending upon the employer's "good faith," "size of business," and "history of previous violations." A maximum of 80 percent reduction is permitted for size, 30 percent for good faith, and 10 percent for history. If when using all of the allowable reductions, the gravity based penalty is reduced by more than 95% a minimum penalty of \$100 is assessed.

5. Abatement

MIOSHA noted that abatement documentation was closely tracked, using an internal Excel spreadsheet.

Abatement periods were noted as "abated," "immediately upon receipt," or on a given specific date, which was generally less than 30 calendar days in accordance with MIOSHA's FOM. All citations reviewed had abatement dates that were appropriate and set in accordance with this policy, which was similar to OSHA's policy.

MIOSHA does not enter the date abatement was verified in item 22 of the OSHA-1B. Participation in IMIS, including use of all of its components, is a State Plan requirement. As a result, SAMM indicator #6 did not reflect any hazards as being abated. It is anticipated this issue will be resolved when MIOSHA implements the IMIS replacement. MIOSHA created an Excel spreadsheet that is accessible to all Division personnel responsible for abatement verification. The Duty Officer for both the General Industry Safety and Health Division and the Construction Safety and Health Division is responsible for tracking and obtaining abatement verification. Interviews with MIOSHA

determined that the Excel spreadsheet used to track abatement is monitored closely to ensure abatement documentation is received. While this system is different from OSHA's, it appears to be an effective tracking tool.

MIOSHA conducted follow-up inspections according to their policy and procedures. Division supervisors assign follow-up inspections to compliance officers on a case by case basis. In addition, the supervisors assign other candidates for follow-up inspections based on the classification of those violations that included issuance of willful violations, repeat and high gravity serious, and/or citations related to imminent danger situations.

Finding 13-02 (12-01): The verified abatement date was not being entered into IMIS in item 22 of the OSHA-1B. As a result, State Activity Mandated Measure #6, "Percent of Serious/Willful/Repeat Violations Verified," did not reflect any hazards as being abated.

Recommendation 13-02(12-01): Ensure the date abatement was verified is entered into the IMIS. MIOSHA Agreed to start entering the abatement date when State Plans transition to the OIS data system.

6. Worker and Union Involvement

Section 29(4) of the Michigan Occupational Safety Act requires an worker representative be given an opportunity to participate in the inspection. The MIOSHA Field Operations Manual (FOM) Chapter V, paragraph I.B.23.a. defines the term "worker representative" as:

- (1) a representative of the certified or recognized bargaining agent, or if none, (2) an employee member of a safety and health committee who has been chosen by the employees (employee committee members or employees at large) as their MIOSHA representative, or (3) an individual employee who has been selected as the walk around representative by the employees of the establishment.

The MIOSHA Field Operations Manual (FOM) Chapter V, paragraph I.B.23.b., states "SO/IHs shall determine as soon as possible after arrival whether the workers at the worksite to be inspected are represented and, if so, shall ensure that worker representatives are afforded the opportunity to participate in all phases of the workplace inspection."

The MIOSHA Field Operations Manual (FOM) Chapter V, paragraph I.C.8.c., provides a guideline for the minimum number of interviews based on the number of workers affected by the inspection, not the total number of workers at the worksite. This guideline provides a minimum of two interviews.

During the case file review, it was found that documentation was lacking in some case files that worker representatives were given an opportunity to participate in the informal review process. During discussions with MIOSHA, they had stated that in some inspection case files where worker representatives were present at the worksite, they chose not to participate in the inspection.

Finding 13-03: Documentation that worker representatives were given an opportunity to participate in all phases of workplace inspections was not included in all case files reviewed in accordance with Section 29(4) of the Michigan Occupational Safety and Health Act.

Recommendation 13-03: Document that “worker representatives,” as defined in the MIOSHA FOM Chapter V, Section 23, paragraph (a), are given an opportunity to participate in all phases of workplace inspections.

B. Review Procedures

1. Informal Conferences

If MIOSHA meets with the employer regarding the employer’s petition, an informal conference will be held and the attendance of the worker or worker representative will be allowed. Informal conferences may be held by any means practical, but meeting in person is preferred. The informal conference or any request for such a conference shall not operate as a stay of the 15 working day appeal period. The Department shall notify the employer of its decision within 15 working days after receipt of the petition. The employer shall promptly post the notice of the Department’s decision together with the appropriate citation.

The decision of the Department shall become final 15 working days after the employer’s receipt of the decision, unless further appealed.

An employer, any affected worker, or the worker representative may request an informal conference. The subject of the meeting may be related to any issue raised by an inspection or investigation, citation, notice of proposed penalty, or appeal petition.

Whenever the employer, an affected worker, or the worker representative requests an informal conference, both parties shall be afforded the opportunity to participate fully. If either party chooses not to participate in the informal conference, a reasonable attempt shall be made to contact that party to solicit their input. Informal conferences may be held by any means practical.

Of the 91 case files reviewed, employers in 61 of the case files requested and had Informal Conferences. All but one informal conference was held within the required 15 day time period. Generally, the changes made were to the penalties. MIOSHA documented the rationale for all penalty changes using a standard form. In only one or two cases were the citations reclassified for grouping purposes. MIOSHA followed their established policies and procedures.

2. Formal Review of Citations

The MIOSHA statute provides for a two-step citation appeal process for employers and/or workers to appeal any citations issued by the enforcement divisions to resolve

disputes related to the alleged violations. If the citations cannot be resolved through the informal conference process utilized by the enforcement divisions, the case is transmitted to the Appeals Division where prehearings are conducted in an attempt to reach settlement. The Appeals Division also represents the agency's enforcement divisions at the formal appeal stage when an employer or worker contests the department's decision on a variance, a petition for modification for abatement, or a discrimination complaint.

Amendments to or withdrawal of a citation shall be made when information is presented to the supervisor which indicates a need for such action.

Withdrawal of or modifications to the citation and notification of penalty shall be accomplished by means of an appeal decision response letter. Depending on the number and complexity of the changes, an amended citation and Notification of Penalty Form may be issued as well.

When circumstances warrant it, the issuing division or Appeals Division, in consultation with the issuing division, may withdraw a citation in its entirety. Justifying documentation shall be placed in the case file.

In the cases reviewed during the FY 2013 audit, a majority of the changes were penalty reductions for settlement purposes.

C. Standards and Federal Program Changes (FPC) Adoption

1. Standards Adoption

MIOSHA submits all standard adoption notices to OSHA in a timely manner,

Subject	Intent to Adopt	Adopt Identical	Date Promulgated	Effective Date
Updating OSHA Standards Based on National Consensus Standards; Head Protection	YES	YES	06/17/2013	06/17/2013
Cranes and Derricks in Construction; Underground Construction and Demolition	YES	YES	11/12/2013	11/12/2013

2. OSHA/State Plan Initiated Changes

All Federal Program Changes were submitted timely along with Plan change information and any state initiated changes with no outliers of concern or recommendations requiring attention for the MIOSHA FY 2013 activities.

Directive Number	Title	Adoption Required, Equivalency Required or Adoption Encouraged/Not Required	Intent to Adopt	Adopt Identical	State Adoption Date
CPL-02-01-055 2014 624	Maritime Cargo Gear Standards and 29 CFR Part 1919 Certification	NO	NO	NO	NO
CPL-02-01-054 2013 545	Inspection and Citation Guidance for Roadway and Highway Construction Work Zones	Equivalency Required	NO	NO	06/17/2012
CPL-02-13-01 2013 564	Site-Specific Targeting 2012 (SST-12)	Equivalency Required	NO	NO	02/15/2013
CPL-03-00-017 2013 585	National Emphasis Program – Occupational Exposure to Isocyanates	Adoption Required	YES	YES	12/12/2013
CPL-02-00-155 2013 604	Inspection Scheduling for Construction	Equivalency Required	NO	NO	09/17/2013

D. Variances

In FY 2013, MIOSHA granted one permanent variance in general industry that had previously been an interim order. Fifty-eight of 59 variance requests were granted in construction.

E. Public Employee Program

MIOSHA's Public Worker Program operates identically as the private sector. As with the private sector, public sector employers can be cited with monetary penalties. The penalty structure for both sectors is the same. MIOSHA conducted 154 public sector inspections in FY 2013, or 2.92% of all inspections. These inspections included complaints and programmed activity.

F. Discrimination Program

Investigative File Review

The MIOSHA Division Memorandum GISHD-MEMO-ADM-11-2 indicates that the MIOSHA Worker Discrimination Section (MIOSHA) has adopted the Whistleblower Investigations Manual (WIM), CPL 02-03-003 for guidance during their investigations and there are no other MIOSHA policies or procedures manual applicable to the MIOSHA Whistleblower Program. Although not expressly stated in GISHD-MEMO-ADM-11-2, it appears that MIOSHA utilizes 29 CFR 1977 in conjunction with CPL 02-03-003 for guidance during their investigations. Three members of the discrimination staff were interviewed.

Complaint Intake and Screening

MIOSHA has created a “MIOSHA Discrimination Complaint” form that appears to be the official document used when docketing a complaint. This form equals or exceeds the comparable OSHA form. It appears that any available member of MIOSHA’s Worker Discrimination Section can/will complete the intake and screening of a complaint. MIOSHA informs the complainants of their right to file with OSHA.

Administrative Closure

During this reporting period, MIOSHA received 173 complaints, docketed 146 and administratively closed twenty-seven (27). Of the twenty-seven (27) administratively closed, two (2) were closed as not timely, two (2) as no protected activity, two (2) as no adverse action, nineteen (19) as no jurisdiction and two (2) as improper work refusal. Eight (8) of the twenty-seven (27) administratively closed were selected for review, using the different determinations and identified Investigator. Complainant’s have a right to decline or not concur with the administrative closure determination, thus requiring docketing for investigation. There is no indication in the case files reviewed that either Complainant objected or did not concur with the determination.

Observation 13-02: The review of the Whistleblower file found one instance where a “no jurisdiction” determination was incorrectly applied. The Complainant was the co-worker, rather than the worker, injured and reporting the on-the-job injury. There were two instances of improperly applied “work refusal” and one instance of improper recording of multiple Complainants, Respondents and one verse two complaints. Discriminaiton cases were not always screened following MIOSHA’s policies and procedures in accordance with CPL 02-03-003 and 29 CFR 1977.12(b)(2).

Complainant Statement and Witness Interviews

MIOSHA utilizes its own version of an interview statement, which was typically hand written. Complainant interview statements were typically signed and dated. Witness statements were a mix of signed and unsigned documents. In many instances, the witness statements were memos to file memorializing information obtained during the interview. In the files reviewed, the investigation and investigative interviews were applicable to the elements of a prima facie complaint, testing Complainant’s allegation and Respondent’s defense.

Respondent Notification

In the files reviewed, based on the available information, Respondent notification was not an issue, predominately occurring via certified mail.

Report Writing

MIOSHA has adopted the Whistleblower Investigations Manual (WIM), CPL 02-03-003, including procedures, letters, and forms. MIOSHA does not utilize a Secretary's Finding but utilizes a written determination that adequately sets forth the determination and provides the respective party their right to appeal the MIOSHA finding.

Settlements

During this reporting period, MIOSHA had a 21% merit rate, 10% less than the National average for OSHA complaints. Since this percentage is based upon the number of cases closed in any reporting period, the volume/number of National verse MIOSHA cases does not suggest this percentage difference is a deficiency. During this reporting period, MIOSHA records reveal: twenty-seven (27) merit findings; twenty-four (24) resolved as "settled" or "settled other;" five (5) Complainants reinstated; and a recovery of \$196,785.36 in damages for Complainants who filed complaints with MIOSHA during this reporting period. Nine (9) of the files reviewed contained a determination of "settled" or "settled other."

Observation 13-03: Six of the nine "settled or settled other" determination Whistleblower files reveal deviation from the provisions of CPL 02-03-003, Chapter 6.

Determinations

The MIOSHA overall merit rates for FY13 is 21%, 10% lower than the National average. As previously noted, this percentage represents the number of cases closed in any reporting period, thus the volume/number of National verse MIOSHA cases does not suggest this percentage difference is a deficiency. Reinstatement and wages collected rates however were consistent with the National Average. The determinations appear correct except as noted with the one identified withdrawal and the three (3) identified Administratively Closed complaints. This does not suggest nor imply these four (4) complaints would ultimately result in either a merit finding or settlement. There is no record indicating that either Complainant objected or did not concur with the MIOSHA determination or closure of the case file.

Case File Management

The MIOSHA Worker Discrimination Section has adopted the Whistleblower Investigations Manual (WIM), CPL 02-03-003, including procedures, letters, and forms. Final dispositions letters follow the guidelines of a Secretary's Finding, appropriately modified for a State Plan Program.

Timeliness

MIOSHA percentage of cases completed within 90 days with a 62 %, 31% higher than the National rate.

Withdrawn Complaints

The MIOSHA overall withdrawal rate for FY13 is 31%, 10% higher than the National average for 11 (c) complaints. Five (5) of the files reviewed contained a determination of “Withdrawn.”

Observation 13-04: One Whistleblower case file contained a memo of a telephone conversation with the Complainant that strongly suggested Complainant should consider withdrawing the complaint.

Overall Organization

The content of the files reviewed, with one exception, did conform to the guidelines set forth Whistleblower Investigations Manual (WIM), CPL 02-03-003.

Program Management

MIOSHA has adopted the Whistleblower Investigations Manual (WIM), CPL 02-03-003, including procedures, letters, and forms and appears to be utilizing 29 CFR 1977. MIOSHA does not utilize a Secretary’s Finding but utilizes a written determination that adequately sets forth the determination and provides the respective party their right to appeal the MIOSHA finding. MIOSHA’s determination letter is appropriate in that the State Program management is not the Secretary of Labor. As noted above, in a few instances, the determination date and the type of determination in the case files reviewed did not match the determination information in the Whistleblower IMIS. As noted above, MIOSHA’s timely completion rate for this reporting period was 31% higher than the National average.

Internal Quality Control

This review compared information in each case with the applicable entries in the Whistleblower Web Based (IMIS) System. It appears MIOSHA administrative staff or the person conducting the intake and screening of the complaint makes the initial entries in the IMIS. The Investigator of Record makes the follow-up entries for the assigned cases. Better use of the Case Comment and Additional Tracking sections would enhance management of the MIOSHA program.

Resources

MIOSHA received 146 cases and completed 130 cases during the reviewing period. MIOSHA’s staffing for this reporting period is a Program Manager, two (2) FTE Investigators, and one (1) part-time CSHO who does whistleblower investigations and one (1) FTE Administrative Support. The Program Manager carries a small caseload, manages the program and attempts to conduct most of the intake/screening of new complaints. The average number of complaints received each year by the MIOSHA Program suggests an additional FTE Investigator would be appropriate. Adding an additional FTE Investigator

would allow the Program Manager to concentrate on managing the program and perhaps conducting all of the intake/screening of new complaints.

Overall Evaluation

MIOSHA has an effective Whistleblower Program. The deficiencies/discrepancies noted above are minor adjustments and recommendations to ensure continuation of an effective program. The findings and recommendations do not suggest nor imply that any Complainant, in the cases reviewed, was or has been denied a right afforded by them by the Act.

G. Special Study – State Plan Targeting Programs

Development of Targeting Programs

MIOSHA has a targeting program in place for all industry, ADM 08-9R1 Targeting Industries Under Emphasis 1.1 and 1.2. MIOSHA had targeted thirteen industries with rates historically above the national average which would include both safety and health inspections. MIOSHA's ADM 08-9R1, Appendix A, outlines specific industries to be targeted. This targeting does not meet requirements set forth in OSHA directive CPL 04-00-001.

Evaluation of the Targeting Program

MIOSHA evaluates the effectiveness of its targeting program using the data received from BLS, OSHA, and Michigan Worker's Compensation . this data is also used to determine if there are downward trends in the illness and injury rates in the targeted industries.

MIOSHA does not have a procedure for approval and evaluation of LEPs. ADM 08-9R1 Targeting Industries Under Emphasis 1.1 and 1.2. describes triggers to be used in generating activity to develop a LEP for a particular industry. It is recommended MIOSHA use OSHA directive CPL 04-00-001, as guide, to develop an LEP. The program was not set up to measure the indicators noted in CPL 04-00-001. MIOSHA incorporates some OSHA LEPs, such as the fall initiative, into their targeting efforts.

Observation 13-05: MIOSHA had not developed a procedure to approve Local Emphasis Programs which includes but, is not necessarily limited to a rationale, selection process, industries covered, and an evaluation for effectiveness of the program. When developing targeting programs, MIOSHA should include a formal policy to develop, approve, implement, and evaluate the targeted areas.

H. CASPAs

OSHA received and investigated one CASPA during FY 2013. The CASPA was related to a fatality investigation, and was not completed at the time of this evaluation.

I. Voluntary Compliance Program

MIOSHA actively supports three Cooperative Programs which are Alliances, Partnerships and the Michigan Voluntary Protection Program (MVPP).

Alliances

MIOSHA is not required to have an Alliance Program similar to OSHA Alliance Program, CSP 04-01-001 (06/10/04). However, MIOSHA does have Alliances with Associations in place. The MIOSHA Instruction for the Alliance Program was reviewed and found to be consistent with the federal program. A review of Alliance documents found that copies of the signed agreement and annual reports were maintained.

Partnerships

The MIOSHA Instruction for their Partnership Program was reviewed and found to be consistent with the federal Program. As with OSHA, the majority of the Partnerships are with construction sites. MIOSHA added seven new partnerships in FY 2013.

A review of the Partnership documentation found that copies of the signed agreements and annual evaluations were maintained.

It also should be noted that MIOSHA continued to participate in the partnership with International Union, United Automobile, Aerospace and Agricultural Implement Workers of America UAW/ACH-LLC/Ford, and OSHA during FY 2013.

Voluntary Protection Program (MVPP)

MIOSHA's VPP afforded the same exemptions as the federal Program. MVPP companies were exempt from programmed inspections while in the Program. MIOSHA maintains a robust VPP program. MIOSHA renewed four and added three new companies to their VPP program in FY 2013. They conducted eight recertification visits. A review of their VPP files found that the application along with the current reports was maintained.

J. Public Sector On-site Consultation Program

In FY 2013, the Public Sector Consultation Program conducted a total of 12 visits. Of these 12 visits, 10 were classified as initial and two were follow-up. Workers were interviewed during each of these visits. A total of 11 serious hazards were identified and abated within established timeframes. Over 214 public sector workers were removed from workplace hazards.

The Training and Consultation Program not only provides assistance to public workers, they also effectively manage the Michigan Voluntary Protection program (MVPP), Alliance and Partnership Programs.

K. State Plan Administration

Training

MIOSHA has developed and implemented their own Training Program and Training Instruction, MIOSHA-TRG-04-1R5, which addressed the overall training needs of the MIOSHA staff. The instruction states:

“Each worker shall have the opportunity to attend at least one technical and one non-technical course per fiscal year, as funding permits.”

The Instruction does not include a specific listing of required courses for new hire CSHOs. A list of the specific training classes required for new CSHOs is established by each enforcement Division and is included in Division Training Instructions “MIOSHA-TRG-04-1R5” MIOSHA Staff Training, effective September 13, 2010.

MIOSHA developed and uses a “New Hire Checklist” to monitor the training for all new CSHOs. This Checklist included monitoring of the four-month training program developed specifically for each new CSHO. This training includes the following:

- Mentoring with an experienced and trained senior compliance officer
- Classroom training on the MIOSHA Act
- Classroom training on MIOSHA standards, administrative rules and Agency manuals
- Testing for competency of all issues at the end of four months (70% or higher)
- PPE assigned and training on use
- Defensive driving course
- Evaluations or mentoring activities

MIOSHA maintained all training records in a database. MIOSHA currently is updating and verifying this data.

Annually, a training plan is developed and submitted for approval. All MIOSHA workers received training annually for at least one course. This training varies from formal training at the MIOSHA Training Institute (MTI) or the OSHA Training Institute (OTI) to in-house training. Additionally, the training plan for each MIOSHA worker must include at least a day of formal cross training. This cross training might include an administrative staff member going out on site with a compliance officer or a manager training with an administrative staff member.

Funding

During FY 2013, the MIOSHA Program operated within the State Plan budget restrictions placed on the Agency, especially as it related to out-of-state travel. As noted above, an annual training plan was developed and submitted for approval at the beginning of the year. All in and out-of-state training was approved.

Total state and federal funds allocated to the MIOSHA 23(g) Program for FY 2013 was \$23,766,210. MIOSHA overmatched the federal grant by \$3,183,010. MIOSHA did not de-obligate any funds during the Fiscal Year. MIOSHA did not apply for any one-time funding monies as they had in the past.

Staffing

No furloughs were required in FY 2013.

The benchmark for safety compliance officers is 56. MIOSHA has 45 (80%) of these positions filled. The benchmark for health compliance officers is 45 with 28 (62%) filled. This is no change from FY 2012. MIOSHA has been unable to meet staffing benchmarks, specifically for health compliance officers, but is not required to do so, as the State Plan has not sought final approval of 18(e) status.

		FY 06	FY 07	FY 08	FY 09	FY 10	FY 11	FY 12	FY 13
Safety	Benchmark	56	56	56	56	56	56	56	56
	Positions Allocated	56	49	51	47	47	45	45	45
	Positions Filled	56	49	50	44	40	42	45	45
	Vacancies	1	0	1	3	7	3	0	0
	% of Benchmarks Filled	100%	88%	89%	84%	71%	75%	80%	80%
Health	Benchmark	45	45	45	45	45	45	45	45
	Positions Allocated	24	23	31	25	25	30	30	30
	Positions Filled	24	23	30	24	25	26	28	28
	Vacancies	0	0	1	1	2	4	2	2
	% of Benchmarks Filled	53%	51%	67%	53%	56%	58%	62%	62%

Information Management

Currently, MIOSHA enters inspection data into IMIS. They have developed an alternative manual tracking system, rather than using the IMIS management reports. This tracking system, an Access database, tracks all complaint and inspection activity from receipt to inspection, as appropriate, to final abatement and file closeout. While the database appeared to be effective, this was a duplication of work, since IMIS reports were available. One worker routinely monitors the system for outstanding abatement deficiencies to ensure all abatement is submitted and the file closed out.

Data entry is completed in one central location. All case files are sent via disk for submission into OSHA’s IMIS, which created some delay in IMIS data entry. The administrative staff enters the files and makes a copy for the supervisors to review. After the file is finalized, the citations are assembled, printed, signed by the supervisor, and mailed.

MIOSHA's tracking system is updated manually as files move through the system. Some form of an internal tracking system has been in place since MIOSHA joined IMIS.

MIOSHA GISHD completed work on an Access Database called the "Universal Log." The Universal Log combines the tracking spreadsheets that were being used into one central database. The Universal Log aids in the workflow as several staff members have the ability to access the log and work in it at the same time. GISHD has the ability to customize reports based on specific needs and has developed standardized reports, such as the "CSHO Performance Detail" and "CSHO Performance Summary." These reports provide information, such as inspections assigned per safety officer, violations cited, where the case is in the process, and detailed lapse time data. Another standardized report, "Injury-Illness Assignments," tracks inspections generated by the review of Workers Compensation Data. A weekly report called "IMIS Professional Weekly Report" is sent out to management every Monday. This report identifies all inspections over 45 days from the closing conference. The director of GISHD requires all inspections over 45 days to submit a status report, as MIOSHA case files must be closed at 90 days.

Debt collection is handled by each respective Division. In GISHD, the checks that come in the mail for penalty payment go from the mail room directly to Receipt Accounting. The MIOSHA staff uses the department system, as well as IMIS, by entering the form 163 once a penalty payment has been received. They also maintain documentation in the Universal Log.

If penalty payment has not been received within 30 days, a debt collection letter is sent to the employer. After the next 30 days, a pink slip is placed on the file. The file is then given to the Supervisor for follow-up with the employer. If a penalty payment is not received, the file is transferred to the Michigan Treasury Department. Once the Treasury Department has collected the penalties, the record of the transaction is sent to MIOSHA and it is entered into both federal and state databases.

MIOSHA closes cases in the IMIS once satisfactory abatement has been documented, including cases with unpaid penalties. Unpaid penalty cases are sent to the Michigan Department of Treasury for collection. The cases are tracked by MIOSHA. Treasury notifies MIOSHA when a collection is made and the company is removed from the list.

State Internal Evaluation Plan (SIEP)

MIOSHA conducted an evaluation of onsite health consultation files for fiscal year 2013. The purpose of the evaluation was to determine the average report lapse time for onsite health consultation, identify factors contributing to excessive report lapse time, and develop and implement a plan to improve report lapse time. MIOSHA found several issues that contributed to excessive lapse time and implemented a corrective action plan with continuous monitoring.

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

In the FY 2013 SOAR, MIOSHA provided information that outlined their accomplishment of meeting their five-year Strategic Management Plan. Information provided by MIOSHA has been reviewed and analyzed to assess their progress in meeting performance plan goals. The following summarizes the activities and/or accomplishments for each of the FY 2013 performance goals.

Strategic Goal #1: Improve workplace safety and health for all workers, as evidenced by fewer hazards, reduced exposures, fewer injuries, illnesses, and fatalities.

Performance Goal 1.1: Reduce the rate of worker injuries in high-hazard industries.

Results: See Table below.

Discussion: MIOSHA focused on reducing the total recordable cases (TRC) rate by 20% from baseline for thirteen high-hazard industries during its 2009-2013 Strategic Plan. Once the goal of a 20% reduction has been met, the industry may be dropped from the Annual Performance Plan (APP). The results are shown in the table below. At the end of the fifth year, MIOSHA has succeeded in reducing the TRC by 20% for three of the eleven industries where data was available. Six of the eight industries targeted in the strategic goal 1.1 that did not meet the 20% reduction goal of the FY 2009-2013 Strategic Plan were included in the 2014-2018 Strategic Plan Goal 1.1. The two remaining industries will have a local emphasis program in Michigan during FY 2014.

Goal #	Industry	Baseline	Results	Comments
1.1A-1	Beverage and Tobacco Product Manufacturing	9.2	13.2	Increase of 43.5%. 5 year goal not met.
1.1A-2	Wood Products Manufacturing	8.0	7.4	Decrease of 7.5%. 5 year goal not met.
1.1A-3	Plastics and Rubber Products Manufacturing	8.3	6.3	Decrease of 24.1%. 5 year goal met.
1.1A-4	Nonmetallic Mineral Product Manufacturing	10.0	5.2	Decrease of 48%. 5 year goal met.
1.1A-5	Primary Metal Manufacturing	8.4	10.1	Increase of 20.2%. 5 year goal not met.
1.1A-6	Fabricated Metal Product Manufacturing	8.9	6.4	Decrease of 28.1%. 5 year goal met.
1.1A-7	Machinery Manufacturing	6.3	5.4	Decrease of 14.3%. 5 year goal not met.
1.1A-8	Transportation Equipment Manufacturing	8.2	7.0	Decrease of 14.6%. 5 year goal not met.
1.1A-9	Recyclable Material Merchant Wholesaler	N/A	N/A	*

1.1A-10	Merchant Wholesalers, Nondurable Goods	5.6	6.1	Increase of 8.9%. 5 year goal not met.
1.1A-11	Landscaping Services	N/A	N/A	**
1.1A-12	Hospitals	9.0	7.5	Decrease of 16.7%. 5 year goal not met.
1.1A-13	Nursing and Residential Care Facilities	9.0	9.6	Increase of 6.7%. 5 year goal not met.

* Goal 1.1A-9 – Although Michigan specific BLS injury/illness data is not available for Recyclable Material Merchant Wholesalers, MIOSHA conducted 14 inspections and issued 29 serious citations.

** Goal 1.1A-11 – Although Michigan specific BLS injury/illness data is not available for Landscaping Services, MIOSHA has conducted 36 inspections in this industry and issued 52 serious citations. MIOSHA will continue to work with BLS to obtain state injury/illness data for this industry.

Performance Goal 1.2: Reduce by 20% (4% percent per year) the rate of worker injuries, illnesses, and fatalities in general industry workplaces experiencing high rates or with targeted hazards or exposures not covered by Emphasis 1.1.

Results: This was a two-part goal.

- Part 1: This goal was not met.
- Part 2: This goal was met

Discussion: This was a two-part goal.

- Part 1 was to reduce the incidence rate, total recordable cases (TRC) per 100 full-time workers by 20%. An 18.3% reduction to 5.8 was obtained.
- Part 2 was to reduce the number of fatalities by 20%. General industry fatalities for CY 2007 were eight compared to five in CY 2012. This is a reduction of 37.5%.

Performance Goal 1.3A: Decrease fatalities in the construction industry by 20%.

Results: This goal was met.

Discussion: A five year average (CYs 2003-2007) of 10.86 fatalities/100,000 workers for Michigan, was used as the baseline. CY 2012 had a fatality rate of 7.07, which is a 34.9% decrease from the baseline and exceeds the goal of a 20% decrease for the fifth year of the Strategic Plan.

Performance Goal 1.3B: Reduce injuries and illnesses in the construction industry by 20%.

Results: This goal was not met.

Discussion: The days away, restricted, transferred (DART) rate for CY 2012 was 2.7, which is a 10.0% decrease from the baseline of 3.0. This did not exceed the goal of a of 20% reduction. There was a significant and steady decline in the DART rate during each of the first four years of the Strategic Plan.

Strategic Goal #2: Promote employer and work awareness of, commitment to, and involvement with safety and health to effect positive change in the workplace culture.

Performance Goal 2.1: Safety and Health Management Systems (SHMSs) will be promoted during all MIOSHA contacts. General industry and construction establishments that are subject to a MIOSHA visit (programmed/comprehensive inspection or consultation hazard survey) will have a SHMS evaluation.

Results: This goal was met.

Discussion: MIOSHA promoted the safety and health management system on 100% of the MIOSHA visits conducted. In FY 2013, CET consultants re-evaluated 18 companies; 17 of the 18 companies showed improvement

Performance Goal 2.2: Increase by 50 the number of MIOSHA Training Institute (MTI) certificate holders by marketing the MIOSHA Training Institute to targeted groups.

Results: This goal was met.

Discussion: MIOSHA exceeded their goal of 50 MTI certificate holders by awarding 193 level 1 and advanced certificates. Over the five year Plan, MIOSHA exceeding their goal of 250 by adding 690 certificate holders.

In FY 2008, a total of 1,801 students attended a course at the MIOSHA Training Institute (MTI). In FY 2013, 2,715 students attended, which was a 51% increase over the baseline.

Performance Goal 2.3: Over five years, cooperative programs will increase participation by 15 new MVPP awards; 10 new MSHARP awards; 50 new CET (Bronze, Silver, Gold, & Platinum) Awards; 30 new Michigan Challenge Programs; 10 new Alliances; and seven new Partnerships.

Results: See table below.

Discussion: MIOSHA continued to promote their Cooperative Programs through press releases, media advisories, MIOSHA News and seminars. The results of their activities are noted below.

	2013 Goal	2013 Results	Comments
MVPP	3	3	Met goal
MSHARP	2	3	Exceeded goal
New CET	10	5	Did not meet goal
Michigan Challenge	6	1	Did not meet goal
Alliances	2	5	Exceeded goal
Partnerships	1 or 2	3	Exceeded goal

	2009-2013 Goal	2009-2013 Results	Comments
MVPP	15	22	Exceeded goal
MSHARP	10	14	Exceeded goal
New CET	50	56	Exceeded goal
Michigan Challenge	30	23	Did not meet goal
Alliances	10	9	Did not meet goal
Partnerships	7	12	Exceeded goal

Performance Goal 2.4: Provide safety and health awareness during every intervention.

Results: This goal was met.

Discussion: The baseline injury and illness rates for all Michigan industries (including state and local government) had a DART of 2.4 and TRC of 4.9 (BLS, 2007). In FY 2013, the Michigan DART of 2.0 and TRC of 4.1 (BLS, 2012) equals a 16.7% decrease and a 16.3% decrease, respectively, for year five.

Strategic Goal #3: Strengthen public confidence through continued excellence in the development and delivery of MIOSHA’s programs and services.

Performance Goal 3.1A: Internal – Implement strategies that nurture collaboration among all MIOSHA team members to enhance effective communication and staff development.

Results: This goal was met.

Discussion: MIOSHA last conducted an Organizational Culture Inventory (OCI) in 2009, a year ahead of the scheduled strategy. The next OCI is scheduled for 2014 or 2015. In February, the Cross Cultural Team (CCT) conducted the Internal Assessment of Management Strategies (IAMS) for Objective 3.1A of the Strategic Plan. The purpose of the survey is to evaluate the current feelings about the key result areas of management strategies within MIOSHA. The survey consisted of 12 multiple choice questions. A total of 134 out of 227 (59.03%) workers completed the survey. Each question also contained a space to provide additional information and comments.

Performance Goal 3.1B: External – 95% of employers and workers who provide customer service feedback rate their overall MIOSHA intervention(s) as useful in identifying and correcting workplace safety and health hazards.

Results: This goal was met.

Discussion: MIOSHA received 794 Comment/Suggestion Cards during Fiscal Year 2013. Results included the following.

1. 98.5% “Useful” on “How would you rate your overall experience with MIOSHA?”
2. 99.0% “Yes” on “Did you find the staff to be knowledgeable about worker safety and health issues?”
3. 99.3% “Yes” on “Did the staff explain how to correct the safety and health hazards they identified?”

Performance Goal 3.2A: Respond to 97% of complaints within 10 working days for the Enforcement Division.

Results: This goal was met.

Discussion: MIOSHA conducted 525 out of 528 complaints within 10 days (99.4%).

Performance Goal 3.2B: Continue to maintain initiation of investigations of program-related fatalities and catastrophes within one working day of notification for 100% of occurrences to prevent further injuries or deaths.

Results: This goal was met.

Discussion: MIOSHA initiated 100% of fatality and catastrophe investigations within one day and met this goal.

Performance Goal 3.2C: Decrease average number of calendar days from opening conference date to citation issuance date by 10 percent to protect workers in a timelier manner.

Results: See table below.

Discussion: MIOSHA targeted a 10% reduction for all four compliance programs units. Three of the four units exceed a 10% reduction. The results for each unit are noted in the table below.

	FY 2008 Baseline	FY 2012 Results	Comments
General Industry Safety	65.28	43.71	33% decrease
General Industry Health	67.70	73.60	8.7% increase
Construction Safety	51.9	35.30	47.0% decrease
Construction Health	64.8	55.10	17.6% decrease

Performance Goal 3.2D: Establish a priority and deadline for all standards assigned for promulgation. Promulgate 100% of standards required by OSHA within six months and 80% of the other standards within deadlines established by an annual standards promulgation plan.

Results: This goal was not met.

Discussion:

- Promulgate 100% of standards required by OSHA within six months. Accomplished 0% of original goal. Nine standard changes were initiated by OSHA during FY 2013 and none had been promulgated. The delay in promulgation was a result of a continued backlog of work within the Department of Licensing and Regulatory Affairs, and the Office of Regulatory Reinvention, which is outside the control of MIOSHA. It is anticipated the backlog will be eliminated in FY 2014.
- Promulgate 80% of other standards within deadlines established by an annual Standards Promulgation Plan. Accomplished 71% of original goal. Three of the standards which were proposed for promulgation have been submitted to the department for promulgation, but have not completed the process due to factors outside of our control. Two of the standards which were proposed for promulgation have been put on hold by our agency.

Performance Goal 3.3: Assess the information systems necessary to collect performance data, acquire related IT equipment, and provide appropriate hardware and software training for all Agency Programs.

Results: This goal was met.

Discussion: All staff is outfitted with a computer with a valid warranty. The analyst position is filled and fully utilized. All field staff are outfitted with Secure ID. Support for existing data systems is ongoing. On-line Training information is provided for staff in Microsoft Office 2010 products.

V. Other Special Measures of Effectiveness and Areas of Note

Effective during this review period MIOSHA has developed a Re-Inspection program that captures establishments with a history of numerous serious violations. Establishment have to meet specific criteria to be selected, however this program would not be dependent on the same criteria as programs such as, Severe Violators Enforcement Program (SVEP). MIOSHA by instituting this program can capture more establishments that may not meet SVEP but, still need to significantly improve safety and health in the workplace.

Appendix A – New and Continued and Recommendations
 FY 2013 Michigan State Plan Comprehensive FAME Report

Rec #	Findings	Recommendations	FY 2012
13-01	In 6.6% of case files reviewed, the date of receipt for complaints entered into the IMIS was determined to be the date the administrative staff received the complaint, not the actual day the complaint was received by MIOSHA. By not entering the actual date the complaint was received by MIOSHA, SMM #1 and SMM #2 do not reflect the actual number of days to conduct an inspection or investigation. This finding was identified in the FY 2011 FAME and was verified completed in the FY 2012 FAME.	Process all complainant information based upon the actual receipt of the complaint.	
13-02	The verified abatement date was not being entered into IMIS in item 22 of the OSHA-1B. As a result, State Activity Mandated Measure #6, “Percent of Serious/Willful/Repeat Violations Verified,” did not reflect any hazards as being abated.	Ensure the date abatement was verified is entered into the IMIS. MIOSHA Agreed to start entering the abatement date when State Plans transition to the OIS data system.	12-01
13-03	Documentation that worker representatives were given an opportunity to participate in all phases of workplace inspections was not included in all case files reviewed in accordance with Section 29(4) of the Michigan Occupational Safety and Health Act.	Document that “worker representatives,” as defined in the MIOSHA FOM Chapter V, Section 23, paragraph (a), are given an opportunity to participate in all phases of workplace inspections.	

Appendix B – Observations Subject to Continued Monitoring
FY 2013 Michigan State Plan Comprehensive FAME Report

Rec # [OB-1]	Observations	Federal Monitoring Plan	FY 2012
13-OB-1	Next of Kin letters were not consistently included in the case file in accordance with MIOSHA FOM, Chapter VI, paragraph I.B.2.e.	OSHA will review fatality case files to ensure they adhere to their FOM.	
13-OB-2	The review of the Whistleblower file found one instance where a “no jurisdiction” determination was incorrectly applied. The Complainant was the co-worker, rather than the worker, injured and reporting the on-the-job injury. There were two instances of improperly applied “work refusal” and one instance of improper recording of multiple Complainants, Respondents and one verse two complaints. Discriminaiton cases were not always screened following MIOSHA’s policies and procedures.	OSHA will review files to ensure they follow the Intake and Screening and Work Refusal provisions identified in of CPL 02-03-003 and 29 CFR 1977.12(b)(2).	
13-OB-3	Six of the nine “settled or settled other” determination Whistleblower files reveal deviation from the provisions of CPL 02-03-003, Chapter 6.	OSHA will review files to ensure they follow the settlement provisions identified in of CPL 02-03-003 and 29 CFR 1977.12(b)(2).	
13-OB-4	One Whistleblower case file contained a memo of a telephone conversation with the Complainant that strongly suggested Complainant should consider withdrawing the complaint.	OSHA will review files to ensure they follow the intake provisions identified in of CPL 02-03-003 and 29 CFR 1977.12(b)(2).	
13-OB-5	MIOSHA had not developed a procedure to approve Local Emphasis Programs which includes but, is not necessarily limited to a rationale, selection process, industries covered, and an evaluation for effectiveness of the program. When developing targeting progams, MIOSHA should include a formal policy to develop, approve, implement, and evaluate the targeted areas.	OSHA will review MIOSHA LEPs to determine if MIOSHA has included all the necessary elements to develop, implement and evaluate an effective targeting system.	

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

FY 2013 Michigan State Plan Comprehensive FAME Report					
FY 12- Rec #	Finding	Recommendation	State Plan Response/Corrective Action	Completion Date	Current Status
12-01	The verified abatement date was not being entered into IMIS in item 22 of the OSHA-1B. As a result, State Activity Mandated Measure #6, "Percent of Serious/Willful/Repeat Violations Verified," did not reflect any hazards as being abated.	Ensure the date abatement was verified is entered into the IMIS.	MIOSHA will begin entering the date abatement was verified when OIS is operational for compliance programs.	FY 2014	Open
12-02	The Standards Improvement Process has not been completed.	Ensure completion of the Standards Improvement Process as soon as feasible.	MIOSHA is in the process of revising all of the changes recommended in the SIP. MIOSHA anticipates having all revisions submitted to the Office of Regulatory Reinvention by 10/1/2013. Formal adoption was completed by 12/31/2013.	Planned 12/31/2013	Complete

Appendix D – FY 2013 State Activity Mandated Measures (SAMM) Report

FY 2013 Michigan 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: Michigan			FY 2013	
SAMM Number	SAMM Name	State Plan Data	Reference/Standard	Notes
1	Average number of work days to initiate complaint inspections	6.67	(Negotiated fixed number for each state) - 10	State data taken directly from SAMM report generated through IMIS.
2	Average number of work days to initiate complaint investigations	5.45	(Negotiated fixed number for each state) - 8	State data taken directly from SAMM report generated through IMIS.
4	Percent of complaints and referrals responded to within 1 work day (imminent danger)	0%	100%	State data taken directly from SAMM report generated through IMIS.
5	Number of denials where entry not obtained	0	0	State data taken directly from SAMM report generated through IMIS.
9a	Average number of violations per inspection with violations by violation type	2.05	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 for Fiscal Years (FY) 2011-2013.
9b	Average number of violations per inspection with violations by violation type	1.64	Other: .88	
11	Percent of total inspections in the public sector	2.92	(Negotiated fixed number for each state) - 3%	State data taken directly from SAMM report generated through IMIS.

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

13	Percent of 11c Investigations completed within 90 calendar days	62.31	100%	State data taken directly from SAMM report generated through IMIS.
14	Percent of 11c complaints that are meritorious	20.77	24.8% meritorious	State data taken directly from SAMM report generated through IMIS; National data was pulled from webIMIS for FY 2011-2013.
16	Average number of calendar days to complete an 11c investigation	57.13	90 Days	State data taken directly from SAMM report generated through IMIS.
17	Planned vs. actual inspections - safety/health	4248/1034	(Negotiated fixed number for each state) - 3936/655	State data taken directly from SAMM report generated through IMIS; the reference standard number is taken from the FY 2013 grant application.
18a	Average current serious penalty - 1 - 25 Employees	a. 245.33		State data taken directly from SAMM report generated through IMIS; national data is not available.
18b	Average current serious penalty - 26-100 Employees	b. 622.11		
18c	Average current serious penalty - 101-250 Employees	c. 1060.57		
18d	Average current serious penalty - 251+ Employees	d. 1313.45		
18e	Average current serious penalty - Total 1 - 250+ Employees	e. 531.68		
19	Percent of enforcement presence	3.08%	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.
20a	20a) Percent In Compliance – Safety	Safety - 28	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
20b	20b) Percent In Compliance – Health	Health - 42.59	Health - 34.1	

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

				collective experience of State Plans and federal OSHA for FY 2009-2011.
21	Percent of fatalities responded to in 1 work day	82%	100%	State data is manually pulled directly from IMIS for FY 2013
22	Open, Non-Contested Cases with Abatement Incomplete > 60 Days			Data not available
23a	Average Lapse Time - Safety	32.09	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.
23b	Average Lapse Time - Health	57.44	57.05	
24	Percent penalty retained	56.1	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.
25	Percent of initial inspections with employee walk around representation or employee interview	99.94%	100%	State data taken directly from SAMM report generated through IMIS.