

FY 2014 Follow-up Federal Annual Monitoring and Evaluation (FAME) Report

Maryland Occupational Safety and Health (MOSH)



Evaluation Period: October 1, 2013 – September 30, 2014

Initial Approval Date: June 28, 1973
Program Certification Date: February 6, 1980
Final Approval Date: July 18, 1985

Prepared by:
U. S. Department of Labor
Occupational Safety and Health Administration
Region III
Philadelphia, Pennsylvania



Contents

I. Executive Summary	3
A. State Plan Activities, Themes, and Progress	3
B. State Plan Introduction	3
C. Data and Methodology	5
D. Findings and Observations	5
II. Assessment of State Plan Performance	6
A. Major New Issues	6
B. Assessment of State Plan Progress in Achieving Annual Performance Goals.....	6
C. Highlights from the State Activity Mandated Measures (SAMM)	7
III. Assessment of State Plan Corrective Actions	8

Appendices

Appendix A – New and Continued Findings and Recommendations.....	A-1
Appendix B – Observations Subject to New and Continued Monitoring.....	B-1
Appendix C – Status of FY 2013 Findings and Recommendations.....	C-1
Appendix D – FY 2014 State Activity Mandated Measures (SAMM) Report....	D-1

I. Executive Summary

A. State Plan Activities, Themes, and Progress

The purpose of this Federal Annual Monitoring Evaluation (FAME) report is to assess the Maryland Occupational Safety and Health (MOSH) State Plan's progress in resolving the issues identified in previous evaluations, and its progress in achieving their goals by focusing on MOSH State Plan activities during Fiscal Year (FY) 2014.

MOSH continues to be effective in protecting Maryland's private and state and local government workers' safety and health. The most recent evaluation, as well as previous FAMEs, show that the State Plan establishes and enforces safety and health standards; conducts targeted inspections of worksites where employers who demonstrate indifference to their legal obligation to protect the workers they employ and in industries with high injury and illness rates; ensures that all employers accurately report workers injuries, illnesses, and deaths; and give workers a voice in how workplaces protect their safety and health.

During FY 2014, even with the departure of nine compliance officers (COs) and forced furlough days for state employees, MOSH conducted 1,458 inspections. MOSH conducted an internal inspection count and found that 32 cases were not included in the tally located in the SAMM. Although inspections were below their projected goal, over 75% of their inspections were conducted in high hazard industries covered under the state or national emphasis programs. Fatalities were initiated within one day of notification. MOSH has also made great progress in working toward achieving their strategic goals.

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 initially approved on June 28, 1973, pursuant to Section 18 of the Occupational Safety and Health (OSH) Act. The Plan was certified on February 15, 1980, and granted State Plan final approval on July 18, 1985. MOSH operates under the authority of the MOSH Act, Labor and Employment Article, Section 5-101 through 5-901.

In FY 2014, MOSH operated under the guidance of Leonard J. Howie III, Secretary of DLLR; J. Ronald DeJulius, Commissioner of DLI, who also served as the OSHA State Plan Designee; and Eric Uttenreither, Assistant Commissioner of MOSH. 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.

The table below shows MOSH's funding levels for FY 2014.

FY 2014 Funding					
Fiscal Year	Federal Award (\$)	State Plan Match (\$)	100% State Funds (\$)	Total Funding (\$)	% of State Plan Contribution
2014	\$3,958,500	\$3,958,500	\$1,195,556	\$9,112,556	57%

MOSH's Compliance Services Unit conducts occupational safety and health inspections for all public and private sector places of employment in the state of Maryland. MOSH, however, does not inspect places of employment which fall under OSHA's jurisdiction. OSHA's jurisdiction includes federal workers, the United States Postal Service, private sector maritime activities (shipyard employment, marine terminals, and long shoring), and U.S. military bases. Additionally, MOSH's Outreach Unit provides free consultation services (Consultation Program), training and education, and manages its cooperative programs. MOSH's Discrimination Unit 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.

The table below shows the number of MOSH's full-time and part-time staff as of the end of FY 2014.

FY 2014 Staffing					
23(g) Grant Positions	Allocated FTE* Funded 50/50	Allocated FTE 100% State Plan Funded	Total	50/50 Funded FTE On Board as of 09/30/14	100% State Plan Funded FTE On Board as of 09/30/14
Managers/ Supervisors (Administrative)	2.55	0	2.55	2.55	0
First Line Supervisors (Program)	6.35	0	6.35	6.35	0
Safety Compliance Officers	38.50	0	38.50	35.50	0
Health Compliance Officers	15.50	0	15.50	12.50	0
Discrimination Investigator	1.00	0	1.00	0	0
Public Sector Safety Consultants	0.50	0	0.50	0.50	0
Public Sector Health Consultants	0.50	0	0.50	0.50	0.50
Private Sector Safety Consultants	0	0	0	0	0
Private Sector Health Consultants	0	0	0	0	0
Trainers	0	0	0	0	0
Compliance Assistance Specialist	1.20	0	1.20	1.20	0

Clerical/Admin/Data System	19.35	0	19.35	19.35	0
Other (all positions not counted elsewhere)	2.54	0	2.54	2.54	0
Total 23(g) FTEs	87.99	0	87.99	80.99	0

*FTE=Full-Time Equivalent

In addition to adopting OSHA’s National Emphasis Programs (NEPs), MOSH implemented its own Local Emphasis Programs (LEPs) in the following areas: high hazard industries (establishments that have a high number of days away, restricted, or transferred from job rates due to an occupational injury or illness); top four leading causes of worker fatalities in construction; public sector workers; and tree care and removal. According to MOSH, these LEPs have resulted in an increased awareness of occupational safety and health in the workplace.

As a State Plan, MOSH has the authority to promulgate standards and regulations which may be more stringent than federal OSHA’s standards. MOSH has multiple standards and regulations which differ from the federal program including, but not limited to: High Voltage Lines (Title 6), Fall Protection in Steel Erection (Code of MD Regulations (COMAR) 09.12.25), 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’s 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), Cranes and Derricks (29 CFR 1926.550), Excavations (Requirements for Protective Systems- 29 CFR 1926.652), and Steel Erection (29 CFR 1926, Subpart R).

C. Data and Methodology

OSHA established a two-year cycle for the FAME process. FY 2014 was a follow-up year and as such, OSHA did not perform an on-site evaluation or degree of case file review associated with a comprehensive FAME. This strategy allows the State Plan to focus on correcting deficiencies identified in the most recent comprehensive FAME.

Quarterly meetings were held between OSHA and MOSH. Meeting topics included: quarterly reports on MOSH’s progress in achieving annual and strategic performance goals, law and regulation changes, personnel issues, and any concerns that have come up since the previous quarterly meeting was held.

OSHA continually monitors MOSH’s activity and progress through a variety of methods, including: conducting quarterly meetings, and reviewing MOSH’s most recent Corrective Action Plan (CAP), State Activity Mandated Measures (SAMM) reports, and the State OSHA Annual Report (SOAR).

D. Findings and Recommendations

There were no new findings or observations in FY 2014. There was one finding identified during the FY 2013 FAME regarding MOSH not having an internal process in place for

discrimination complainants to file appeals. OSHA recommended that MOSH continue to work to implement an internal appeals process which is at least as effective as the current federal process.

There was also one observation identified during the FY 2013 FAME regarding MOSH not meeting the three inspection requirement of the Process Safety Management (PSM) Covered Chemical Facilities National Emphasis Program (CHEM NEP) that it adopted.

II. Assessment of State Plan Performance

A. Major New Issues

There were no major issues identified during FY 2014.

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

This section provides an assessment of MOSH's progress in achieving its annual performance goals. FY 2014 was the second year of MOSH's five-year strategic plan which encompasses FY 2013-2017. MOSH's FY 2014 annual performance plan supports its five-year strategic plan.

MOSH's first strategic goal is to improve workplace safety and health through compliance assistance and enforcement of occupational safety and health regulations. The supporting performance goals include decreasing the fatality rate by one percent yearly (for a five-year reduction of five percent), and maintaining or reducing the serious injury Days Away, Restricted Duty, or Transfer (DART) case rate of 2.0. MOSH surpassed the projected number of construction inspections conducted in FY 2014 by 28 percent. The DART rate decreased slightly to 1.5 injuries and illnesses per 100 full time FTEs in calendar year (CY) 2013.

The second strategic goal is to promote a safety and health culture through cooperative programs, compliance assistance, on-site consultation programs, outreach, training and education, and informative services. There are three performance goals under this strategic goal. Although the number of recognition programs was did not increase by one new company in FY 2014 (Performance Goal 2.1), MOSH will begin recertification for each active project already recognized in FY 2015, and begin accepting new applications by FY 2016. MOSH exceeded FY 2014 Performance Goal 2.2 (to sign three new cooperative partnerships) by signing six new partnerships in targeted high hazard industries. Performance Goal 2.3 (to maintain attendance in MOSH outreach and training programs annually at 6,000 participants) was also exceeded. There was a total of 6,061 participants in MOSH's outreach and training programs in FY 2014.

The third strategic goal is to secure public confidence through excellence in the development and delivery of MOSH programs and services. Performance Goal 3.1 supports the strategic goal by initiating at least 95 percent of fatality and catastrophe inspections within one working day of notification. MOSH initiated 100 percent their inspections within one working day of the notification of an occupational fatality and/or catastrophe.

Performance Goal 3.2 (percentage of serious complaint inspections initiated within an average of five days of notification) was exceeded. Complaint inspections were initiated in 3.01 days and complaint investigations in 0.03 days.

MOSH has greatly improved their timeliness related to Performance Goal 3.3, which is to maintain the percent of discrimination complaint investigations completed within 90 days to at least 90 percent. In FY 2014, MOSH investigated 66 percent of the discrimination cases within 90 days of receiving the complaint. This was an increase of 46 percent from FY 2013. Data that would indicate users' satisfaction and experience on MOSH's website is not available to measure Performance Goal 3.4. An online poll that rates user experience with using MOSH's website is in the developmental stage and will serve as an evaluation tool. MOSH has improved and continues to improve their website to be more user-friendly.

Performance Goal 3.5 relates to the overall satisfaction of services provided by MOSH's Consultation Program measured by DLLR's external customer service form. Progress towards this goal is reported in MOSH's Consultation Annual Performance Report.

MOSH's Performance Goal 3.6 relates to the timeliness of services provided by MOSH's Consultation Program. MOSH acted on requests within 108 days in the public sector and exceeded their goal to issue reports within 20 days after a consultation visit. Progress toward this goal for the State Plan's private sector consultation program is reported in MOSH's Consultation Annual Performance Report.

C. Highlights from the State Activity Mandated Measures (SAMMs)

MOSH continues to initiate complaint inspections and investigations below the five day and three day, respectively, negotiated timeframe with OSHA. Inspections were initiated in 3.01 days and investigations in 0.03 days.

The average number of serious, willful, and repeat violations per inspection increased from FY 2013 and exceeded the national average in FY 2014. In-compliance cases, both safety and health, decreased from the previous FY and were below the national standard/reference. MOSH's percent of penalties retained increased and is above national reference.

Any areas in which MOSH did not meet the reference/standard which include, but are not limited to: percentage of inspections in public sector, enforcement presence, and worker on walk-around/interviewed was missed by a minimal value.

It should be noted that during FY 2014, MOSH began its transition from the National Cash Register (NCR) to the OSHA Information System (OIS). By the end of FY 2014 the transition was completed. However, during FY 2014, two systems were used to generate reports on MOSH's progress which may have caused discrepancies as both systems use different algorithms to generate the reports. (Refer to Appendix D for complete SAMM results.)

III. Assessment of State Plan Corrective Actions

FY 2013 Finding

During the FY 2013 FAME, OSHA identified one finding requiring State Plan corrective action. This finding related to the omission of an internal appeals process which will be substantively similar to OSHA's internal process.

Finding FY 2014-01: MOSH does not currently have an internal appeals process for discrimination.

Recommendation FY 2014-01: MOSH should continue to work to implement an internal appeals process which is at least as effective as the current federal process.

Status of Finding FY 2014-01: MOSH is working toward a solution that will address this item, and is confident it will be completed by the next year's FAME. This finding is open.

FY 2013 Observation

During the FY 2013 FAME, OSHA identified one observation requiring a federal monitoring plan. This observation related to MOSH 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.

Observation FY 2013-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.

Federal Monitoring Plan: OSHA and MOSH will monitor the State Plan's inspections to support this NEP during the quarterly discussions.

Status of Observation FY 2013-OB-1: OSHA verified that MOSH conducted three inspections that supported the CHEM NEP during FY 2014. This observation is closed.

Appendix A – New and Continued Findings and Recommendations

FY 2014 Maryland State Plan Follow-up FAME Report

New and Continued Findings and Recommendations FY 2014 Maryland State Plan Follow-up FAME Report			
FY 2014-#	Finding	Recommendation	FY 2013-#
FY 2014-01	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.	FY 2013-01

Appendix B – Observations Subject to New and Continued Monitoring

FY 2014 Maryland State Plan Follow-up FAME Report

Observations Subject to New and Continued Monitoring FY 2014 Maryland State Plan Follow-up FAME Report				
Observation # FY 2014-OB-#	Observation # FY 20XX-OB-#	Observation	Federal Monitoring Plan	Current Status
	FY 2013-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.	Closed

Appendix C - Status of FY 2013 Findings and Recommendations
FY 2014 Maryland State Plan Follow-up FAME Report

Status of FY 2013 Findings and Recommendations					
FY 2014 Maryland State Plan Follow-up FAME Report					
FY 2013-#	Finding	Recommendation	State Plan Response/Corrective Action	Completion Date	Current Status and Date
FY 2013-01	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.	MOSH is developing an internal appeals process for discrimination and anticipates implementation during FY 2015.	Not Completed	Open (9/30/2014)

Appendix D - FY 2014 State Activity Mandated Measures (SAMM) Report

FY 2014 Maryland State Plan Follow-up FAME Report

OSHA is in the process of moving operations from a legacy data system (NCR) to a modern data system (OIS). During FY 2014, federal OSHA case files were captured on OIS, while most State Plan case files continued to be processed through NCR. Maryland opened 1,062 enforcement inspections in FY 2014. Of those, 1,043 inspections were captured in NCR, while 19 were captured in OIS. The SAMM Report, which is native to IMIS (a system that generates reports from the NCR), is not able to access data in OIS. Additionally, certain algorithms within the two systems are not identical. These challenges impact OSHA's ability to combine the data. For FY14 we will use a format very similar to the one used for FY13. Below is an explanation of which data OSHA was able to use when calculating each metric.

- a. Measures 1 & 2 will use State Plan data for FY14 as captured in NCR and compared to the State Plan's negotiated number. Any State Plan data from OIS will not be considered due to irregularities in the algorithm between OIS and NCR.
- b. Measures 20a-b, 23, and 24 will use State Plan data for FY14 as captured in NCR and compared to the historical FY2011 national average (FY09-11). Any State Plan data from OIS will not be considered due to irregularities in the algorithm between OIS and NCR.
- c. Measures 5, 9, 11, 17, 19, 21, and 25 will use State Plan data for FY14 as tabulated manually to include both OIS and NCR data and compared to the fixed/negotiated/national numbers associated with them.
- d. Measures 13, 14 and 16 will be extracted from NCR (OIS conversion should not impact). National data will be pulled from WebIMIS for FY12-14.
- e. Measures 18a-e will use State Plan data for FY14 as captured in NCR. Any data from OIS will not be considered due to irregularities in the algorithm between OIS and NCR. Much like FY13, no national data will be available for comparison.
- f. Measure 22 will be excluded from the report (other than as a placeholder to demonstrate that it is one of the agreed upon metrics, but not one we can currently generate).
- g. Measure 4 will use State Plan data for FY 14 as captured in NCR.

Appendix D - FY 2014 State Activity Mandated Measures (SAMM) Report
FY 2014 Maryland State Plan Follow-up FAME Report

U.S. Department of Labor				
State Plan: Maryland			FY 2014	
SAMM Number	SAMM Name	State Plan Data	Reference/Standard	Notes
1	Average number of work days to initiate complaint inspections	3.01	5 days	State data taken directly from SAMM report generated through IMIS. The reference/standard is a negotiated number for each State.
2	Average number of work days to initiate complaint investigations	0.03	3 days	State data taken directly from SAMM report generated through IMIS. The reference/standard is a negotiated number for each State.
4	Percent of complaints and referrals responded to within 1 work day (imminent danger)	100.0%	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 and Open Inspection OIS report.
9a	Average number of violations per inspection with violations by violation type	2.17	SWR: 1.99	State data taken from SAMM report generated through IMIS and the Inspection summary report generated in OIS; national data was manually calculated from data pulled from both IMIS and OIS for Fiscal Years (FY) 2012-2014.
9b	Average number of violations per inspection with violations by violation type	2.42	Other: 1.22	
11	Percent of total inspections in the public sector	3.50%	6.21%	State data taken from SAMM report generated through IMIS and the Inspection summary report generated in OIS. The reference/standard is derived from the FY 14 grant application.

Appendix D - FY 2014 State Activity Mandated Measures (SAMM) Report
FY 2014 Maryland State Plan Follow-up FAME Report

13	Percent of 11c Investigations completed within 90 calendar days	66%	100%	State data taken directly from SAMM report generated through IMIS; National data was pulled from web IMIS for FY 2012-2014.
14	Percent of 11c complaints that are meritorious	20	24.8% meritorious	State data taken directly from SAMM report generated through IMIS; National data was pulled from web IMIS for FY 2012-2014.
16	Average number of calendar days to complete an 11c investigation	96.2	90 Days	State data taken directly from SAMM report generated through IMIS; National data was pulled from web IMIS for FY 2012-2014.
17	Planned vs. actual inspections - safety/health	1213/213*	1401/242	State data taken from SAMM report generated through IMIS and the Inspection summary report generated in OIS; the reference standard number is taken from the FY 2014 grant application. The reference/standard is a negotiated number for each State.
18a	Average current serious penalty - 1 -25 Employees	627.71		State data taken directly from SAMM report generated through IMIS.
18b	Average current serious penalty - 26-100 Employees	929.05		
18c	Average current serious penalty - 101-250 Employees	1461.6		
18d	Average current serious penalty - 251+ Employees	1561.6		
18e	Average current serious penalty - Total 1 - 250+ Employees	802.62		

*MOSH conducted an internal inspection count resulting in 32 inspections being unaccounted for by the systems during the transition. A total of 1,458 inspections were conducted in FY 2014.

Appendix D - FY 2014 State Activity Mandated Measures (SAMM) Report
FY 2014 Maryland State Plan Follow-up FAME Report

19	Percent of enforcement presence	1.40%	National Average 1.51%	Data is pulled and manually calculated based on FY 2014 data currently available in IMIS and County Business Pattern data pulled from the US Census Bureau.
20a	20a) Percent In Compliance – Safety	14.22	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 2014 national average, which draws from the collective experience of State Plans and federal OSHA for FY 2009-2011.
20b	20b) Percent In Compliance – Health	23.35	Health - 34.1	
21	Percent of fatalities responded to in 1 work day	100%	100%	State data is manually pulled directly from IMIS for FY 2013.
22	Open, Non-Contested Cases with Abatement Incomplete > 60 Days	n/a		Data not available
23a	Average Lapse Time - Safety	36.18	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	63.56	57.05	
24	Percent penalty retained	74.39	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	99.8	100%	State data taken from SAMM report generated through IMIS and the Inspection where Workers Involved report generated in OIS.