

FY 2016 Follow-up Federal Annual Monitoring and Evaluation (FAME) Report

Maryland Occupational Safety and Health (MOSH)



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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) 2016. MOSH is the agency responsible for protecting workers in Maryland from safety and health hazards in the workplace.

The Occupational Safety and Health Administration (OSHA) has observed a decline in some areas of MOSH's program. Most notably, MOSH has not been accurately entering receipt dates of complaints and other unprogrammed activity (UPA) into the OSHA Information System (OIS). This has delayed employer notification of hazardous conditions, leaving workers at-risk for a longer time period. In some cases, MOSH even failed to address serious workplace hazards that were brought to their attention. Additionally, OSHA cannot accurately track and evaluate MOSH performance due to inaccuracies in the data.

There are a total of 10 findings and four observations in this report. During the FY 2016 performance period, MOSH completed one finding from FY 2015, but made minimal progress to address the remaining three findings identified in last year's comprehensive FAME report. With respect to the completed finding, MOSH was able to implement a whistleblower appeals process by issuing MOSH Instruction 17-1 with an effective date of March 1, 2017.

With respect to the three continued findings, MOSH continues to be delinquent with responding to and adoption of Federal Program Changes (FPCs) which, in FY 2016, included both federal directives and standards. MOSH has failed to determine any results of its on-going practice of holding informal conferences well beyond 15 days from the date the employer receives the citation, and has made minimal progress to rectify the issue of failing to document that they sent next-of-kin (NOK) letters.

In FY 2016, OSHA investigated two Complaints About State Plan Administration (CASPA). OSHA also received a CASPA the first week of FY 2017 and initiated an investigation in response. One of the CASPAs received in FY 2016 and the FY 2017 CASPA alleged that MOSH was mishandling responses to complaints. These two CASPA investigations prompted OSHA to conduct a detailed review of the MOSH UPAs, which include fatalities, accidents, referrals, and complaints that may be addressed either through an on-site inspection or a non-formal investigation. OSHA determined that MOSH has not been following the complaint policies and procedures as stated in its Field Operations Manual (FOM), nor has it been ensuring the accuracy of complaint data entered into OIS.

This report includes six new findings (one converted from a FY 2015 observation) and four new observations associated with UPA processing. There is also one additional new finding related to abatement verification in programmed and unprogrammed activity.

MOSH has not been adequately verifying and documenting that abatement has been completed. Abatement reports identified 265 open cases which have been awaiting abatement verification for more than 60 days. The reports indicate that 154 of the identified cases have been awaiting abatement verification for over one year – with 42 of those cases awaiting abatement verification over two years.

The number of inspections that MOSH conducted has declined over the past two years. During FY 2015, MOSH conducted 74% of its 1,847 planned inspections. In FY 2016, even though MOSH reduced the total inspection goal by 352, MOSH only conducted 68% of planned inspections. During August 2014, MOSH was staffed with approximately 35.50 safety compliance officers and 12.50 health compliance officers. Between August 15, 2014 and July 1, 2015, MOSH lost approximately 17 members of its enforcement staff, which included nine safety compliance officers and five health compliance officers, as well as three administrative positions. In spring of 2016, MOSH hired a class of 19 new compliance officers who continue to receive both classroom and field training.

The State Activity Mandated Measures (SAMM) report shows an overall decline in MOSH's performance in FY 2016. Although the SAMM data indicates that MOSH met the requirements associated with complaint inspections and investigations, a more in-depth review of complaints provided conflicting results which will be discussed in this report. MOSH issued fewer violations per inspection and conducted fewer inspections than in FY 2015 – including a smaller percentage in state and local government workplaces. MOSH's lapse time (average number of workdays from opening an inspection to issuance of citations) for both safety and health cases increased in FY 2016. However, its safety lapse time was on par with the national average. In addition, all whistleblower-associated SAMMs declined in performance. In particular, the SAMM data indicated that MOSH completed 22% of whistleblower cases in 90 days and none of the whistleblower cases resulted in a meritorious outcome.

In terms of program improvement in FY 2016, MOSH had fewer in-compliance safety cases and retained a greater amount of penalty. MOSH continued to respond to 100% of fatalities in one day and included workers during walkarounds or interviews.

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 program. The Maryland State Plan was initially approved on July 5, 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 2016, MOSH operated under the guidance of Kelly M. Schulz, Secretary of DLLR; Thomas Meighen, Commissioner of DLI, and William Dallas, 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, Hagerstown, and Upper Marlboro.

MOSH's Compliance Services Unit conducts occupational safety and health inspections for all state and local government, and private sector places of employment in the state of Maryland. However, MOSH 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 longshoring), 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 whistleblower complaints made by workers who feel that they have been discriminated against 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. Industries covered by MOSH include a combination of agricultural, manufacturing, construction, transportation, and trade and service industries. Similar to OSHA, MOSH has selected certain high hazard industries on which to focus its safety and health activities through the implementation of emphasis programs.

The table below presents MOSH's funding levels for FY 2016:

MOSH Program FY 2016 Funding Levels					
Fiscal Year	Federal Award (\$)	State Plan Match (\$)	100% State Plan Funds (\$)	Total Funding (\$)	% of State Plan Contribution
2016	\$3,999,100	\$3,999,100	\$1,471,948	\$9,470,148	58%

As a State Plan, MOSH has the authority to promulgate standards and regulations which may be more stringent than 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), and Tree Care and Removal (COMAR 09.12.28). MOSH also made amendments to OSHA standards that are more stringent than OSHA's such as: Occupational Exposure to Formaldehyde (29 CFR 1910.1048), Lead in Construction Work (29 CFR 1926.62), Excavations (Requirements for Protective Systems (29 CFR 1926.652), and Steel Erection (29 CFR 1926, Subpart R).

C. Data and Methodology

OSHA established a two-year cycle for the FAME process. FY 2016 was a follow-up year and as such, OSHA did not perform an on-site evaluation with the 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. However, due to the results of a CASPA investigation conducted in FY 2016, as well as an observation in the FY 2015 FAME, OSHA conducted a limited on-site review that focused on UPA processing.

A two-person OSHA team from Region III conducted the on-site review on January 25, 2017 and examined 70 UPA cases. The files were randomly selected from closed UPA cases that were received during the evaluation period (October 1, 2015 through September 30, 2016). . These cases included complaints and referrals as well as accident and fatality notifications. Following the review of the 70 UPA cases, OSHA determined that MOSH did not validate and

process at least two serious complaints. Due to the significance of failing to validate and process two serious complaints, OSHA also conducted a review of MOSH's action taken on approximately 1,800 electronic complaints received in the Baltimore Washington Area Office and forwarded to MOSH for processing in FY 2016.

In addition to reviewing the 70 case files, the OSHA evaluation team discussed MOSH procedures with MOSH administration and staff. Quarterly meetings were held between OSHA and MOSH during FY 2016 and 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 developed since the previous quarterly meeting. OSHA continually monitors MOSH's activity and progress through a variety of methods, including: reviewing MOSH's most recent Corrective Action Plan (CAP), its State Activity Mandated Measures (SAMM) reports, and its State OSHA Annual Report (SOAR).

D. Findings and Observations

This follow-up FAME report includes a total of 10 findings; seven are new and three are carried over from FY 2015. MOSH completed one finding from FY 2015 by establishing an internal appeals process for whistleblower complaints. There are also four new observations and the one observation from FY 2015 that was converted to a finding in this report.

A detailed discussion of the seven new findings can be found in *Section II, Major New Issues*. A complete summary of the FY 2015 findings and recommendations, and MOSH's progress in addressing the findings, is in *Section III, Assessment of State Plan Corrective Actions*. A list of the new and continued findings for FY 2016 is found in *Appendix A, New and Continued Findings and Recommendations*. A list of observations is found in *Appendix B, Observations Subject to New and Continued Monitoring*; and a list of the FY 2015 findings and recommendations is found in *Appendix C, Status of FY 2015 Findings and Recommendations*.

II. Assessment of State Plan Performance

A. Major New Issues

With the passage of the Bipartisan Budget Bill on November 2, 2015, OSHA raised its maximum penalties effective August 2016, and again increased penalties according to the Consumer Price index (CPI) in January of 2017. As required by law, OSHA will continue to raise maximum penalties each year according to the CPI. State Plans are required to adopt both the catch-up increase and annual increase.

OSHA investigated two CASPAs regarding MOSH – one in FY 2016 and another in early FY 2017. Both CASPAs alleged that MOSH mishandled responses to complaints. In addition, there was an observation in the FY 2015 FAME report regarding two cases where MOSH responded to complaints beyond the negotiated three-day timeframe. As part of this follow-up report, OSHA elected to perform a limited on-site review of 70 UPA cases, which includes fatalities,

accidents, referrals, and complaints that MOSH should be addressing either through an on-site inspection or a non-formal investigation if valid. This FAME revealed multiple areas of the complaint process where MOSH did not follow the complaint policies and procedures outlined in its FOM. OSHA found that MOSH not responding timely to complaints was not a pattern of isolated incidents, but a larger issue where MOSH did not respond to complaints in a timely manner.

The following six findings are all related to complaint processing: FY 2016-04, FY 2016-05, FY 2016-06, FY 2016-07, FY 2016-08, and FY 2016-09. One of the major issues with MOSH's complaint processing is that MOSH personnel are entering receipt dates in OIS that are later than the actual receipt dates for both valid and invalid complaint cases. Of the 70 UPA cases reviewed, 37 were complaints coded as "not valid." Of these 37 "not valid" complaints, 13 (35%) had receipt dates entered in OIS that ranged from four to 156 days (average of 22 days) after the actual receipt date. Due to the time between the actual receipt date and the date entered in OIS, at least one of the complaints was actually received in a previous fiscal year. Of the 70 UPA cases reviewed, 18 were complaints coded as valid. Of those 18 valid complaints, 11 (61%) had receipt dates entered in OIS that ranged from one to 62 days after the actual receipt date.

Finding FY 2016-06: *Complaint Response Time by Receipt Date*

In 24 of 55 (44%) of reviewed complaint files, MOSH incorrectly documented that the complaints were received after the actual receipt date, initiating complaint investigations and inspections after the negotiated three- and five-day timeframes.

Recommendation FY 2016-06: MOSH should reevaluate complaint processing procedures and develop a strategy to ensure that a complaint investigation or inspection is initiated within the negotiated timeframe after a receipt of a complaint.

OSHA also determined that MOSH validated complaints multiple days after sufficient information was available to process the complaint. When MOSH is waiting for more information, clarification, or signature from a complainant, the complainant is notified with a deadline by which that information must be provided. If MOSH does not receive a response from the complainant by that date, MOSH's FOM procedures dictate that they should either code the complaint as "not valid" or "valid" and process the complaint non-formally. For complaints that are processed as non-formal under these conditions, the complaint needs to be recorded as valid the day after the deadline, to ensure that the complaints are promptly addressed.

Of the complaints which were coded as valid, six of the files reviewed indicated that the complainant was contacted with a request for more information. In five of these six files, MOSH did not receive a response from the complainant by the deadline to justify processing as a formal complaint, but failed to mark the complaint "valid" and process non-formally until an average of seven days later. MOSH did not begin processing the complaints through the non-formal complaint process until the late "valid" date entered in OIS, which resulted in delayed employer notification of hazardous conditions.

Finding FY 2016-07: *Complaint Response Procedures*

In five of six (83%) complaint files where the complainant was contacted to provide information, MOSH did not validate the complaint appropriately, responding to the complaints after the negotiated three-day timeframe.

Recommendation FY 2016-07: MOSH should reevaluate its complaint processing procedures, and develop a strategy to ensure that all complaints are validated and processed, to ensure that a complaint investigation or inspection is initiated appropriately within the negotiated three-day timeframe.

In FY 2015, OIS showed that MOSH inspections were initiated on a date prior to the receipt date of the associated UPA in 105 of 271 UPA inspections (39%). Likewise, in FY 2016, OIS showed that inspections were initiated on a date prior to the receipt date of the associated UPA in 111 of UPA 244 inspections (45%). These date discrepancies are most likely due to the fact that MOSH is frequently recording an inaccurate, late receipt date.

Finding FY 2016-05: *Unprogrammed Activity (UPA) Documentation Accuracy*

MOSH documented that inspections were initiated prior to the receipt of the associated UPA in 216 of 515 (42%) inspections with a linked UPA, skewing data reports and distorting complaint documentation accuracy.

Recommendation FY 2016-05: MOSH should reevaluate the complaint processing procedures, and develop a strategy to ensure data integrity and accuracy of SAMM reports by confirming and correctly entering the accuracy of receipt dates for all complaints linked to an inspection in the OSHA Information System (OIS).

Since MOSH failed to accurately document receipt and “valid” dates for complaints, they did not respond to complaints within the agreed-upon timeframes. Furthermore, SAMM 1A and 2A are not accurate reflections of MOSH’s complaint response times. Due to the discrepancies, MOSH and OSHA are unable to accurately track MOSH complaint response times. Most importantly, MOSH delayed employer notification of hazardous conditions and left workers at-risk for a longer time period.

Electronic complaints are workplace health and safety complaints that come in through OSHA’s online complaint form and are forwarded to the State Plan for review/appropriate action. A review of MOSH’s electronic complaints also revealed problems. OSHA’s review of approximately 1,800 electronic complaints found that MOSH received 50 electronic complaints alleging serious hazards with sufficient information for validation yet failed to document these cases in OIS. Because the complaints could not be located in OIS, OSHA could not verify that they were processed correctly in accordance with the MOSH FOM. Through interviews, OSHA also determined that MOSH does not follow its own FOM procedures to document potentially valid complaints received by telephone.

Documentation of complaints in OIS allows staff to run reports and accurately determine if complaint cases are overdue for specific actions without having to review and evaluate each complaint file individually. When MOSH does not document complaints in OIS, it cannot

adequately conduct internal evaluation of complaint response actions, and OSHA cannot accurately monitor the MOSH program because the data reports do not accurately reflect all complaint activity.

Finding FY 2016-08: *Serious Hazard Complaint Documentation*

MOSH did not document at least 50 electronic complaints alleging serious hazards, and did not document all serious complaint allegations received telephonically in the OSHA Information System (OIS).

Recommendation FY 2016-08: MOSH should adhere to the complaint processing procedures in its Field Operations Manual (FOM) and document receipt of complaints.

In addition, based on the 1,800 electronic complaints forwarded to MOSH, OSHA determined that MOSH did not validate or process at least 17 electronic complaints alleging serious hazards.

Finding FY 2016-04: *Serious Hazard Complaint Validation and Processing Procedures*

MOSH did not validate and process at least 17 electronic complaints from former employees and others alleging serious hazards.

Recommendation FY 2016-04: MOSH should adhere to the non-formal complaint processing procedures and requirements set forth in its FOM, and develop a strategy to ensure that all complaints alleging serious hazards are addressed.

In addition, none of the electronic complaints that MOSH staff entered into OIS included a description of the hazardous conditions. When MOSH receives an electronic complaint, they do not document a description of the alleged hazardous conditions in OIS. While each hard-copy complaint file reviewed contained a printout of the electronic complaint, or some other means of identifying the alleged hazards descriptions, the conditions were not documented in OIS, the primary data collection system. Documentation in OIS allows those without access to the hard copy complaint file to promptly and adequately address the alleged hazardous conditions, as well as monitor progress in the data tracking system.

Finding FY 2016-09: *OSHA Information System (OIS)*

None of the electronic complaints entered into OIS had documentation of the hazardous condition described by the complainant.

Recommendation FY 2016-09: MOSH should adhere to the procedures outlined in its FOM and ensure that the hazardous conditions are documented in OIS.

This FAME also revealed that MOSH has not been adequately verifying and documenting when abatement has been completed. Abatement reports identified 265 open cases which have been awaiting abatement verification for more than 60 days. The reports also indicated that 154 of the open cases have been awaiting abatement verification for over one year, and 42 of those cases have been awaiting abatement verification for over two years. MOSH has not verified that hazardous conditions have been corrected in each of these cases, potentially permitting worker exposure to identified hazardous conditions.

Finding FY 2016-10: Abatement Verification and Documentation

MOSH has not verified and documented abatement for 265 inspection cases which have been open for more than 60 days.

Recommendation FY 2016-10: MOSH should adhere to the procedures outlined in its FOM and verify and document that abatement has been completed for all cases where abatement is past due.

The 2017 CASPA alleged that MOSH did not respond to two reports of imminent danger on the Eastern Shore during September and October of 2016. OSHA's investigation in revealed that MOSH did not initially respond to the reports, and that their records indicated that the severity of the incidents was not described as "serious." MOSH was notified of both by local emergency response services on the day of each incident.

MOSH did not initially document either referral in OIS or follow-up once more information on the incidents became available. MOSH initiated an inspection for one incident and subsequently entered a referral in OIS, but did not initiate an inspection for the second incident. MOSH's lack of a timely response to the incidents contradicts the MOSH FOM which states that even in the absence of death or multiple injuries, particular emphasis should be placed on investigating serious accidents. The FOM also outlines the purpose and importance of accident investigations.

It was also observed in the hard-copy case file that complainants would often provide phone numbers; however, in most circumstances, documentation available in the case file indicated that MOSH only made contact by email. By not attempting contact with complainants by all available methods, MOSH may be missing valid serious hazardous conditions that should be investigated. MOSH needs to make it a priority to address alleged serious safety and health hazards in the workplace (even if the complainant does not work for the company) in order to prevent potential injuries and illnesses

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 2016 was the fourth year of MOSH's five-year strategic plan which encompasses FY 2013-2017.

Strategic Goal 1: Improve workplace safety and health through compliance assistance and enforcement of occupational safety and health regulations. There are two performance goals under this strategic goal:

- **Performance Goal 1.1** (*total reduction in the fatality rate by 1% (5% by end of federal Fiscal Year [FFY] 2017)*) – MOSH conducted 24 fatality investigations in FY 2015 and 18 fatality investigations in FY 2016, six less than the prior year. MOSH exceeded this goal.

- **Performance Goal 1.2** (*Maintain an overall DART rate of 2.0 per 100 full-time workers*) –Even though MOSH did not meet inspection projection goals, the DART rate remained at 1.7 injuries and illnesses per 100 full-time workers. MOSH met this goal.

Strategic Goal 2: Promote a safety and health culture through cooperative programs, compliance assistance on-site consultation programs, outreach, training and education, and information services. There are three performance goals under this strategic goal:

- **Performance Goal 2.1** (*add five new recognition programs by end of FFY 2017*) – MOSH began FY 2013, which was the first year of the five year strategic plan, with 17 VPP sites. Since 2013 four sites have withdrawn from the program. MOSH’s Voluntary Protection Program (VPP) unit reenergized the program and awarded Star designation to six new sites in FY 2016, which brought the total to 19 active sites. Even though four sites withdrew from the program since FY 2013, MOSH has added more than one new site each year. MOSH met this goal.
- **Performance Goal 2.2** (*add 15 new cooperative partnerships by the end of FY 2017*) – MOSH began FY 2013, which was the first year of the five year strategic plan, with 63 partnerships. From FY 2013 to FY 2016, MOSH was successful in adding 17 new partnerships, five of which were added in FY 2016, bringing the total partnerships to 80. MOSH exceeded this goal.
- **Performance Goal 2.3** (*maintain attendance in MOSH outreach and training programs annually at 6,000 participants*) – MOSH increased attendance in outreach and training programs by 743 participants, for a total of 6,743. MOSH exceeded this goal.

Strategic Goal 3: Secure public confidence through excellence in the development and delivery of MOSH programs and services. There are six performance goals under this strategic goal:

- **Performance Goal 3.1** (*percent of fatality and catastrophe inspections initiated within one-working day of notification maintained at least 95%*) – MOSH initiated all (100%) of its inspections within one working day of the notification of an occupational fatality. MOSH exceeded this goal.
- **Performance Goal 3.2** (*initiate serious complaint inspections within an average of five days of notification*) – MOSH initiated complaint inspections in 2.90 days and complaint investigations in 2.49 days, meeting this goal. However, due to the handling and processing of complaints described in *Section II: Major New Issues* of this report, SAMM 1A and 2A may not be an accurate representation of complaint management.
- **Performance Goal 3.3** (*percent of discrimination complaint investigations completed within 90 days is at least 90%*) MOSH’s performance regarding timeliness declined. In FY 2016, MOSH completed investigation of 43% of the whistleblower protection cases within 90 days of receiving the complaint – a decrease from FY 2015 in which 50% of the complaints were closed in 90 days. MOSH did not meet this goal.

- **Performance Goal 3.4** (*percent of polled responses from MOSH website users indicating a positive overall experience established at 90% by 2017*) – MOSH continues to work on making their website more user-friendly. An online poll that rates user experience with MOSH’s website is still in the developmental stage. In CY 2016, DLLR launched a new website design for all the agencies. MOSH added pages for easy access to worker and employer resources, guidance documents, and complaint information. MOSH has also continued to utilize social media by managing a *Facebook* page, and the State of Maryland *YouTube* page.
- **Performance Goal 3.5** (*90% of responding employers are satisfied in the consultation visit received*) – This goal reflects overall satisfaction with services provided by MOSH’s consultation program measured by DLLR’s external customer service form. All (100%) employer surveys received for MOSH state and local government consultants were rated as excellent. MOSH exceeded this goal. Progress toward this goal for the State Plan’s private sector consultation program is reported in MOSH’s Consultation Annual Performance Report.
- **Performance Goal 3.6** (*provide prompt consultation service*) – MOSH acted on consultation requests from state and local government employers within 26 days and within seven days after a consultation visit. MOSH met this goal. 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 (SAMM)

MOSH’s average current penalty per serious violation in private sector (SAMM 8: 1-250 workers) was \$656.58 in FY 2016. The Further Review Level (FRL) is -25% of the National Average (\$2,279.03) which equals \$1,709.27. Penalties are one component of effective enforcement, and State Plans are required to adopt penalty policies and procedures that are “at least as effective” (ALAE) as those contained in OSHA’s FOM. OSHA will continue to explore ALAE analysis of State Plan penalty structures to include evaluation of average current penalty per serious violation data.

The MOSH safety in-compliance rate decreased from the FY 2015 rates to 13.42% (safety) and 38.46% (health) in FY 2016 and fell below the further review levels of 34.62% (safety) and 42.82% (health), indicating that MOSH compliance officers are proficient at recognizing and removing workers from hazardous conditions. The average lapse time for safety cases also fell under the further review level, indicating that MOSH is promptly notifying employers that hazardous safety conditions need to be abated. Although MOSH is promptly notifying employers that hazardous conditions need to be abated, MOSH is not adequately documenting that abatement has been verified after citations have been issued. The industrial hygiene team was heavily impacted by the loss of MOSH staff which has been a contributing factor to an increased lapse time for health cases. MOSH maintained 80.36% of penalties in FY 2016 – significantly exceeding the further review level.

The FY 2016 SAMM data indicates that MOSH continues to initiate complaint inspections and investigations prior to the five-day and three-day, respectively, negotiated timeframe with OSHA. Inspections were initiated in 2.90 days and investigations in 2.49 days. However, this FAME determined that because there are multiple discrepancies in MOSH complaint data entry procedures, the accuracy of the data is uncertain. MOSH's actual performance may not match the reported data. Based on the complaint findings and observations it is likely that these values are higher than reported.

The number of MOSH inspections continued to decline. During FY 2015, MOSH conducted 74% of planned inspections. In FY 2016, even though MOSH reduced its total inspection goal by 352, down to a total of 1,495, it only conducted 1,011 or 68% of projected inspections (6% less than in FY 2015). MOSH also set a goal of 9.36% of inspections in state and local government workplaces, but was only able to achieve 5.14% of the goal in FY 2016.

The FY 2016 metrics indicated that the MOSH whistleblower program is performing below the negotiated targets and further review levels. The SAMM report indicated that MOSH only completed 22% of whistleblower investigations within 90 days, while the further review level is 100%. MOSH did not report any meritorious whistleblower cases in FY 2016 (further review level is 20%) and took an average of 151 days to complete investigations (further review level is 90 days).

III. Assessment of State Plan Corrective Actions

There were four findings identified during last year's FY 2015 FAME. The first finding was regarding MOSH's response to/adoption of FPCs, and the second finding was regarding the timeframe that MOSH holds its informal conferences. The third finding was associated with the lack of documentation concerning the final NOK letter in fatality cases. The final finding, first noted in the FY 2013 FAME, identified that MOSH needed to implement an internal appeals process for whistleblower protection cases, was completed as MOSH Instruction 17-1 became effective on March 1, 2017.

FY 2015 Findings:

Finding FY 2015-01: In FY 2014 and FY 2015 MOSH did not take action on 71% of the FPCs.

Recommendation: MOSH should develop a strategy that ensures action is taken on FPCs within the required timeframes.

Status: MOSH has taken action on five of the 10 (50%) OSHA directive FPCs identified during last year's FY 2015 FAME. MOSH still needs to take action on one of the previously identified FPC directives. OSHA determined that it would not be necessary for MOSH to take action on the other four FPC directives as adoption or equivalency was not required for three, and one of the directives was cancelled and replaced in FY 2016. There were also five directives with response/adoption due dates in FY 2016 and MOSH has not taken action on any of these.

Furthermore, MOSH has not taken action on four FPC standards through FY 2016. OSHA continued this finding.

The status of MOSH's response to FPCs is presented in the tables below:

Status of MOSH's Response to Federal Program Changes (FPCs)		
Directives		
FPC	OSHA Adoption Date	MOSH Status
Field Operations Manual (FOM) (CSP-02-00-160)	August 8, 2016	No Response/ Not Adopted
National Emphasis Program on Shipbreaking (CPL-03-00-020)	March 7, 2016	No Response/ Not Adopted
Whistleblower Investigation Manual (CPL-02-03-007)	January 28, 2016	No Response/ Not Adopted
Consultation Policies and Procedures Manual (CSP-02-00-003)	November 19, 2015	Response Received/ Not Adopted
Mandatory Training Program for OSHA Whistleblower Investigators (TED-01-00-020)	October 8, 2015	No Response/ Not Adopted
OSHA Strategic Partnership Program for Worker Safety and Health (CPL-03-02-003).	November 6, 2013	No Response/ Not Adopted
Standards		
Interim Final Rule on Maximum Penalty Increases (1902, 1903)	July 2, 2016	No Response/ Not Adopted
Final Rule for Occupational Exposure to Crystalline Silica (1910, 1915, 1926)	March 25, 2016	No Response/ Not Adopted
Final Rule for Confined Space in Construction (1926.1200)	May 4, 2015	Will Adopt Identical/ Expected Adoption October 20, 2017
Electric Power Generation, Transmission, and Distribution (1910.269, 1926)	April 11, 2014	Will Adopt Identical/ Expected Adoption October 20, 2017

On January 1, 2015, OSHA implemented a new recordkeeping rule requiring employers to report inpatient hospitalizations, amputations, and losses of an eye within 24 hours. MOSH did not adopt and implement an equivalent standard until January 2, 2017 – 18 months after the required six-month deadline. OSHA recommended that MOSH implement a strategy similar to the OSHA Rapid Response Investigation (RRI) when notified of hospitalizations, amputations, and losses of an eye to investigate the circumstances of the incidents and prevent future reoccurrence.

Finding FY 2015-02: In 81% of the case files reviewed, MOSH held informal conferences beyond a 15 working day period.

Recommendation: MOSH should reevaluate this practice and update its FOM policy to ensure that informal conferences are held within 15 working days.

Status: MOSH continues to evaluate how holding an informal conference beyond the 15 working day period is impacting MOSH program effectiveness. MOSH will provide the results

to OSHA once completed. OSHA will re-evaluate the status during the FY 2017 comprehensive FAME. OSHA continued this finding.

Finding FY 2015-03: In nine of 12 (75%) fatality case files, there was no documentation showing that the final next-of-kin (NOK) letter with the inspection results was sent or that contact was made with family members.

Recommendation: MOSH should develop a strategy to ensure that final NOK letters with inspection results are provided to NOK in all fatality cases.

Status: MOSH developed and adopted a MOSH Instruction (16-10) in FY 2016 entitled “Communicating with Victim’s Family” which addresses the process for notifying NOK. OSHA will verify the corrective action during the FY 2017 comprehensive FAME. OSHA continued this finding.

Finding FY 2015-04: MOSH does not currently have an internal appeals process for whistleblower cases.

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

Status: MOSH Instruction 17-1 addresses the whistleblower appeals process which became effective March 1, 2017. This item is completed.

FY 2015 Observation:

Observation FY 2015 –OB-01: MOSH failed to respond to two separate complaints well beyond the negotiated three-day timeframe.

Federal Monitoring Plan: OSHA will continue to monitor and track MOSH’s timeliness when responding to complaint investigations. In FY 2017, a limited number of case files will be randomly selected and reviewed to determine if these are isolated instances or if this represents a trend that requires further action.

Status: OSHA conducted review of a limited number of UPA cases and determined that MOSH was not properly processing UPAs. OSHA converted this observation to a finding.

Appendix A – New and Continued Findings and Recommendations

FY 2016 Maryland State Plan Follow-up FAME Report

New and Continued Findings and Recommendations FY 2016 Maryland State Plan Follow-up FAME Report			
FY 2016-#	Finding	Recommendation	FY 2015-#
FY 2016-01	<i>Federal Program Changes</i> MOSH did not take action on Federal Program Changes (FPCs) within the required timeframes.	MOSH should develop a strategy that ensures action is taken on FPCs within the required timeframes.	FY 2015-01
FY 2016-02	<i>Informal Conferences</i> In 81% of the case files reviewed in FY 2015, MOSH held informal conferences beyond the 15 working day period.	MOSH should reevaluate and update its Field Operations Manual (FOM) policy to ensure that informal conferences are held within 15 working days.	FY 2015-02
FY 2016-03	<i>Next-of Kin (NOK) Notification Documentation</i> In nine of 12 (75%) fatality case files from FY 2015, there was no documentation showing that the final NOK letter with the inspection results was sent or that contact was made with family members.	MOSH should develop a strategy to ensure that final NOK letters with inspection results are provided to NOK in all fatality cases.	FY 2015-03
FY 2016-04	<i>Serious Hazard Complaint Validation and Processing Procedures</i> MOSH did not validate and process at least 17 electronic complaints from former employees and others alleging serious hazards.	MOSH should adhere to the non-formal complaint processing procedures and requirements set forth in their Field Operations Manual (FOM), and develop a strategy to ensure that all complaints alleging serious hazards are addressed.	
FY 2016-05	<i>Unprogrammed Activity (UPA) Documentation Accuracy</i> MOSH documented that inspections were initiated prior to the receipt of the associated UPA in 216 of 515 (42%) inspections with a linked UPA, skewing data reports and distorting complaint documentation accuracy.	MOSH should reevaluate the complaint processing procedures, and develop a strategy to ensure data integrity and accuracy of SAMM reports by confirming and correctly entering the accuracy of receipt dates for all complaints linked to an inspection in the OSHA Information System (OIS).	

Appendix A – New and Continued Findings and Recommendations

FY 2016 Maryland State Plan Follow-up FAME Report

New and Continued Findings and Recommendations FY 2016 Maryland State Plan Follow-up FAME Report			
FY 2016-#	Finding	Recommendation	FY 2015-#
FY 2016-06	<i>Complaint Response Time by Receipt Date</i> In 24 of 55 (44%) of reviewed complaint files, MOSH incorrectly documented that the complaints were received after the actual receipt date, initiating complaint investigations and inspections after the negotiated three- and five-day timeframes.	MOSH should reevaluate complaint processing procedures, and develop a strategy to ensure that a complaint investigation or inspection is initiated within the negotiated timeframe after a receipt of a complaint.	FY 2015-OB-01
FY 2016-07	<i>Complaint Response Procedures</i> In five of six (83%) complaint files where the complainant was contacted to provide information, MOSH did not validate the complaint appropriately, responding to the complaints after the negotiated three-day timeframe.	MOSH should reevaluate its complaint processing procedures, and develop a strategy to ensure that all complaints are validated and processed, to ensure that a complaint investigation or inspection is initiated appropriately within the negotiated three-day timeframe.	
FY 2016-08	<i>Serious Hazard Complaint Documentation</i> MOSH did not document at least 50 electronic complaints alleging serious hazards, and did not document all serious complaint allegations received telephonically in the OSHA Information System (OIS).	MOSH should adhere to the complaint processing procedures in its Field Operations Manual (FOM) and document receipt of complaints.	
FY 2016-09	<i>OSHA Information System (OIS)</i> None of the electronic complaints entered into OIS had documentation of the hazardous condition described by the complainant.	MOSH should adhere to its procedures outlined in their Field Operations Manual (FOM) and ensure that the hazardous conditions are documented on a MOSH form.	
FY 2016-10	<i>Abatement Verification and Documentation</i> MOSH has not verified and documented abatement for 265 inspection cases which have been open for more than 60 days.	MOSH should adhere to its procedures outlined in the Field Operations Manual (FOM) and verify and document that abatement has been completed for all cases where abatement is past due.	

Appendix B – Observations Subject to New and Continued Monitoring
FY 2016 Maryland State Plan Follow-up FAME Report

Observations Subject to New and Continued Monitoring FY 2016 Maryland State Plan Follow-up FAME Report				
Observation # FY 2016-OB-#	Observation # FY 20XX-OB-#	Observation	Federal Monitoring Plan	Current Status
	FY 2015-OB-1	<i>Complaint Response Time</i> MOSH failed to respond to two separate complainant requests well beyond the negotiated three-day timeframe.	In FY 2016, OSHA randomly selected a limited number of case files to determine if these are isolated instances or if this represents a trend that requires further action. OSHA determined that MOSH was not properly processing UPAs and converted this observation to a finding.	Converted to Finding (FY 2016-07)
FY 2016-OB-01		<i>Severe Incident Response Procedures</i> MOSH was notified but failed to respond timely to two separate severe injury incidents.	OSHA will continue to monitor and track MOSH's response to incidents. In FY 2017, OSHA will monitor incidents as feasible and evaluate MOSH's response to determine if these are isolated instances or if this represents a trend that requires further action.	New
FY 2016-OB-2		<i>OSHA Information System (OIS)</i> MOSH was notified of two separate severe injury incidents but did not document the referrals in OIS.	OSHA will continue to monitor and evaluate entry of referral notifications into OIS during FY 2017 as feasible.	New

Appendix B – Observations Subject to New and Continued Monitoring
FY 2016 Maryland State Plan Follow-up FAME Report

Observations Subject to New and Continued Monitoring				
FY 2016 Maryland State Plan Follow-up FAME Report				
Observation # FY 2016-OB-#	Observation # FY 20XX-OB-#	Observation	Federal Monitoring Plan	Current Status
FY 2016-OB-3		<i>Procedures/Documenting Contact with Complainant</i> MOSH does not appropriately document if it attempted to communicate with complainants by email and telephone (when this information is available) regarding potentially serious hazards.	OSHA will review case files in FY 2107 to identify how MOSH communicated with complainants to determine if potentially serious hazards were not investigated due to lack of contact with the complainant.	New
FY 2016-OB-4		<i>Workplace Retaliation Metrics</i> The FY 2016 metrics indicated that the MOSH Discrimination Unit is performing below negotiated targets and national averages.	OSHA will conduct an in-depth review of whistleblower protection case files in FY 2017.	New

Appendix C - Status of FY 2015 Findings and Recommendations
FY 2016 Maryland State Plan Follow-up FAME Report

Status of FY 2015 Findings and Recommendations FY 2016 Maryland State Plan Follow-up FAME Report					
FY 2015-#	Finding	Recommendation	State Plan Response/Corrective Action	Completion Date	Current Status and Date
FY 2015-01	<i>Federal Program Changes (FPCs)</i> In FY 2014 and FY 2015, MOSH did not take action on 71% of the FPCs.	MOSH should develop a strategy that ensures action is taken on FPCs within the required timeframes.	MOSH has taken action on all but one FPC requiring adoption or equivalency. MOSH anticipates to take action on this one outstanding FPC by June 1, 2017.	Not Completed	Open (9/30/2017)
FY 2015-02	<i>Informal Conferences</i> In 81% of the case files reviewed, MOSH held informal conferences beyond the 15 working day period.	MOSH should reevaluate and update their Field Operations Manual (FOM) policy to ensure that informal conferences are held within 15 working days.	MOSH is evaluating how holding the informal conference beyond the 15 working day period is effecting the MOSH program. MOSH will provide the evaluation to OSHA once completed. OSHA will re-evaluate the status during the FY 2017 comprehensive FAME.	Not Completed	Open (9/30/2017)

Appendix C - Status of FY 2015 Findings and Recommendations
FY 2016 Maryland State Plan Follow-up FAME Report

Status of FY 2015 Findings and Recommendations FY 2016 Maryland State Plan Follow-up FAME Report					
FY 2015-#	Finding	Recommendation	State Plan Response/Corrective Action	Completion Date	Current Status and Date
FY 2015-03	<i>Next-of-Kin (NOK) Notification Documentation</i> In nine of 12 (75%) fatality case files, there was no documentation showing that the final NOK letter with the inspection results was sent or that contact was made with family members.	MOSH should develop a strategy to ensure that final NOK letters with inspection results are provided to NOK in all fatality cases.	MOSH developed and adopted a MOSH Instruction (16-10) in FY 2016 entitled “Communicating with Victim’s Family.” This instruction addresses the process for notifying NOK in fatality cases. OSHA will verify corrective action during the FY 2017 comprehensive FAME.	Not Completed	Open (9/30/2017)
FY 2015-04	<i>Whistleblower Appeals Process</i> MOSH does not currently have an internal appeals process for whistleblower appeals.	MOSH should continue to work to implement an internal appeals process which is at least as effective as the current federal process.	MOSH developed an internal appeals process for whistleblowers and has developed a MOSH Instruction; implementation will occur by April 1, 2017.	3/1/2017	Completed

Appendix D - FY 2016 State Activity Mandated Measures (SAMM) Report

FY 2016 Maryland State Plan Follow-up FAME Report

Fiscal Year 2016 is the first year since the transition from the NCR (OSHA's legacy data system) began that all State Plan enforcement data has been captured in OSHA's Information System (OIS). All State Plan and federal whistleblower data continues to be captured in OSHA's WebIMIS System. Unless otherwise noted, the data contained in this Appendix D is pulled from the State Activity Mandated Measures (SAMM) report and State Plan WebIMIS report run on November 14, 2016, as part of OSHA's official end-of-year data runs. The further review levels for SAMMs 5, 8, 9, 11, 12, 15, and 17 have been negotiated to rely on a three-year national average. However, due to the recent transition to OIS, the further review levels for these SAMMs will rely on a one-year national average for one more year.

U.S. Department of Labor				
Occupational Safety and Health Administration State Plan Activity Mandated Measures (SAMM)				
State Plan: Maryland - MOSH			FY 2016	
SAMM Number	SAMM Name	State Plan Data	Further Review Level	Notes
1a	Average number of work days to initiate complaint inspections (state formula)	2.90	5	Further review level is negotiated by OSHA and the State Plan.
1b	Average number of work days to initiate complaint inspections (federal formula)	2.47	N/A	This measure is for informational purposes only and is not a mandated measure.
2a	Average number of work days to initiate complaint investigations (state formula)	2.49	3	Further review level is negotiated by OSHA and the State Plan.
2b	Average number of work days to initiate complaint investigations (federal formula)	0.59	N/A	This measure is for informational purposes only and is not a mandated measure.
3	Percent of complaints and referrals responded to within one workday (imminent danger)	100%	100%	Further review level is fixed for all State Plans.

Appendix D - FY 2016 State Activity Mandated Measures (SAMM) Report

FY 2016 Maryland State Plan Follow-up FAME Report

SAMM Number	SAMM Name	State Plan Data	Further Review Level	Notes
4	Number of denials where entry not obtained	0	0	Further review level is fixed for all State Plans.
5	Average number of violations per inspection with violations by violation type	SWRU: 1.87	+/- 20% of SWRU: 1.87	Further review level is based on a one-year national rate.
		Other: 1.87	+/- 20% of Other: .99	
6	Percent of total inspections in state and local government workplaces	5.14%	+/- 5% of 9.36%	Further review level is based on a number negotiated by OSHA and the State Plan through the grant application.
7	Planned v. actual inspections – safety/health	S: 933	+/- 5% of S: 1,317	Further review level is based on a number negotiated by OSHA and the State Plan through the grant application.
		H: 78	+/- 5% of H: 178	
8	Average current serious penalty in private sector - total (1 to greater than 250 workers)	\$656.58	+/- 25% of \$2,279.03	Further review level is based on a one-year national rate.
	a. Average current serious penalty in private sector (1-25 workers)	\$551.55	+/- 25% of \$1,558.96	Further review level is based on a one-year national rate.
	b. Average current serious penalty in private sector (26-100 workers)	\$935.28	+/- 25% of \$2,549.14	Further review level is based on a one-year national rate.
	c. Average current serious penalty in private sector (101-250 workers)	\$1,133.78	+/- 25% of \$3,494.20	Further review level is based on a one-year national rate.
	d. Average current serious penalty in private sector (greater than 250 workers)	\$1,658.05	+/- 25% of \$4,436.04	Further review level is based on a one-year national rate.

Appendix D - FY 2016 State Activity Mandated Measures (SAMM) Report

FY 2016 Maryland State Plan Follow-up FAME Report

SAMM Number	SAMM Name	State Plan Data	Further Review Level	Notes
9	Percent in compliance	S: 13.42%	+/- 20% of S: 28.85%	Further review level is based on a one-year national rate.
		H: 38.46%	+/- 20% of H: 35.68%	
10	Percent of work-related fatalities responded to in one workday	100%	100%	Further review level is fixed for all State Plans.
11	Average lapse time	S: 43.82	+/- 20% of S: 45.16	Further review level is based on a one-year national rate.
		H: 81.02	+/- 20% of H: 57.28	
12	Percent penalty retained	80.36%	+/- 15% of 69.86%	Further review level is based on a one-year national rate.
13	Percent of initial inspections with worker walk around representation or worker interview	99.80%	100%	Further review level is fixed for all State Plans.
14	Percent of 11(c) investigations completed within 90 days	22%	100%	Further review level is fixed for all State Plans.
15	Percent of 11(c) complaints that are meritorious	0%	+/- 20% of 24%	Further review level is based on a three-year national average.
16	Average number of calendar days to complete an 11(c) investigation	151	90	Further review level is fixed for all State Plans.
17	Percent of enforcement presence	0.98%	+/- 25% of 1.26%	Further review level is based on a one-year national rate.