

Federal Annual Monitoring and Evaluation (FAME)

Maryland Occupational Safety and Health Program

October 1, 2008 to September 30, 2009

Date of Report: April 30, 2010



**Occupational Safety
and Health Administration**

U. S. Department of Labor
Region III
Philadelphia, Pennsylvania

Table of Contents

I.	Executive Summary.....	3
II.	Overview.....	9
III.	Introduction.....	11
IV.	Summary of Recommendations and States Action from FY 2008 FAME.....	15
V.	Major New Issues.....	15
VI.	Assessment of State Performance.....	16
A.	Assessment of State Progress in Achieving Annual Performance Goals....	16
B.	Assessment of State Performance of Mandated Activities.....	19
i.	Enforcement.....	22
ii.	Standards Adoption and Plan Changes.....	39
iii.	Variances.....	41
iv.	Public Sector Consultation.....	41
v.	Discrimination Program	42
vi.	CASPA.....	44
vii.	Voluntary compliance programs.....	44
viii.	Program Administration.....	46
ix.	State Internal Evaluation.....	47
Appendix A	Findings and Recommendations	
Appendix B	Enforcement Comparison	
Appendix C	FY 2009 SOAR	
Appendix D	SAMM –FY 2009	
Appendix E	SIR – FY 2009	
Appendix F	MARC –FY 2009 (Public Sector)	

I. Executive Summary

Summary of the Report

This report assessed the Maryland Occupational Safety and Health (MOSH) program's progress towards achieving the performance goals established in their Federal Fiscal Year (FY) 2009 Annual Performance Plan and reviewed the effectiveness of programmatic areas related to enforcement activities during the period of October 1, 2008 to September 30, 2009.

The report documents a number of policies and practices that require immediate action including possible revocation of two policies which significantly affect the State's penalties. Maryland, like many other states, experienced furloughs and temporary salary reductions during FY 2009. Salary reductions occurred over a 90 day period in addition to 3 to 5 floating furlough days. The State, which has received final approval, has sufficient allocated positions to meet its safety compliance staffing benchmark of 36 but is one short (17) of meeting its health benchmark of 18. On-board staffing is at 34 safety/14 health.

MOSH implemented a new crane standard due to an increase of crane failures and fatalities around the country. The purpose of this new standard is to prevent injuries, fatalities and property damage related to the operation of cranes in the construction and demolition industries. This regulation became a final rule in April 2009. MOSH also is developing its own Tree Trimming and Tree Removal standard as well as revoking its residential fall protection policy.

The State conducted 1,228 inspections in FY 2009. Problems identified in the report include:

- Maryland has two penalty policies which require revocation:
 - Under a 1993 Executive Order, first-time violators in SICs 20-39 are exempt from first instance sanctions, where practicable. It appears that this policy has been implemented through a MOSH directive which waives all penalties for other-than-serious violations for inspections in establishments in these SICs unless there are more than ten violations.
 - Under the Employer Incentive Program, penalties are reduced by 50% for immediate abatement (excluding willful/repeat/failure to abate violations).
- Some serious violations are improperly grouped; some serious violations are misclassified as other-than-serious; most frequently violated standards are less likely to be cited as serious.
- Victims families were not contacted at all until a new policy was initiated in December 2009 and do not receive copies of citations or information about the outcome of inspections.
- Abatement is not always documented or verified, and is not tracked in IMIS.
- Discrimination cases are not properly investigated and/or documented, including settlements, and data is not entered in IMIS.
- State policy mandates destruction of CSHO field notes. Such documentation is critical in determining the correct classification of violations and defending them during contest. .
- Some compliance staff designated as enforcement health and/or safety benchmark positions are spending significant time performing administrative functions with little or no enforcement activity.

Background and Methodology

The Maryland Occupational Safety and Health (MOSH) program is an approved state plan meeting federal requirements under the Williams-Steiger Occupational Safety and Health Act of 1970 (OSHA). MOSH operates under the authority of the Maryland Occupational Safety and Health Act, Labor and Employment Article, Section 5-101 through 5-901. MOSH acts in place of Federal OSHA in Maryland, providing programs for Maryland employers and employees. MOSH is charged with preserving human resources and ensuring that each employer meets the responsibility of providing each working man and woman in the State with working conditions that are safe and healthful. The MOSH program also administers the Access to Information about Hazards and Toxic Substances Law, Labor and Employment Article, Sections 5-401 through 5-409. In Fiscal Year 2009, the MOSH program was operated under the guidance of Thomas E. Perez, Secretary of the Department of Labor, Licensing and Regulation; Ron DeJuliis, Commissioner of the Division of Labor and Industry; and Roger Campbell, Assistant Commissioner of the Maryland Occupational Safety and Health Administration. Since October 2009, Alexander Sanchez has been the Secretary of Labor, Licensing and Regulation. Since July 2010, Eric Uttenreither has been the Assistant Commissioner of the Maryland Occupational Safety and Health Administration.

This study concentrated on identifying areas needing improvement within the State of Maryland's Occupational Safety and Health program (MOSH). An onsite review was conducted from March 1, 2010 to March 5, 2010. Approximately 135 safety and health inspection files, which included programmed inspections, complaints and all closed fatality investigations, were reviewed in detail and evaluated. In addition, approximately 24 whistleblower investigation files and screen-out cases were reviewed in detail and evaluated. All cases occurred during the period October 1, 2008 through September 30, 2009.

In addition to reviewing the case files mentioned above, the audit team reviewed various statistical information, complaint processing, and inspection targeting. Data contained in the Integrated Management Information System (IMIS), OSHA's database system used by the State of Maryland to administer its program, was also examined. Compliance with legislative requirements, contact with families of fatality victims, training and personnel retention was assessed. The audit team also conducted MOSH management interviews and stakeholder interviews.

Throughout the entire process, Maryland shared information and made staff available to team members to discuss cases, policies, and procedures and to answer questions of the audit team.

Special Study Findings and Recommendations

Following are details on the findings and recommendations of the study:

Findings

Enforcement:

- Formal complaint letters to employers and letters to complainants with inspection findings were maintained in separate files at the central office in Baltimore rather than in each Regional Office servicing the complaint.
- Response letters to complainants were found in files that are maintained in the Baltimore office as mentioned above. However, the response letters are not maintained in the inspection files after they are closed.
- Original complaints are not kept in the inspection case file. This practice is problematic in that complaint inspection files are incomplete without the supporting documentation of a signed complaint letter or OSHA-7. Additionally, specific information about a hazard or facility is sometimes omitted from a re-typed or re-worded complaint.
- During the period October 1, 2008 through September 30, 2009, Maryland received 110 serious complaints and 102 were inspected within five days for a response rate of 92%. MOSH's FOM outlines that formal complaints involving potentially serious hazards shall be investigated within three working days of assignment.
- Case file reviews revealed that no next-of-kin letters were sent on fatality inspections. MOSH began to send next-of-kin letters in December 2009. Another trend observed was that there was little or no communication with families at the conclusion of the inspections to inform the next-of-kin of inspection findings.
- A number of OSHA-170 forms contained inappropriate information in the narrative, e.g., name of compliance officer who conducted the inspection and/or the names of decedents and/or injured employees.
- Violations cited on programmed inspections include a high percentage of other-than-serious citations for hazards that could be classified as serious.
- A number of files reviewed which had violations that were cited as other-than-serious and could have been classified as serious. Health compliance officers have a serious violation percentage of 28%, less than half the Federal rate of 70%.
- Abatement data was entered into the database inconsistently.
- MOSH was not calling employers or sending abatement letters on all cases where abatement had not been received by MOSH.
- Abatement tracking reports are not routinely reviewed by management on a weekly basis.
- Case file diary sheets were not found in inspection files.
- Contested case information was not being entered into the database.
- Not all Federal Program Changes are adopted within the six month period.
- Abatement verification data was not being properly entered into the database for 23(g) public sector consultation.
- Compliance officers' field notes were not contained in case files.
- MOSH offers penalty reductions of approximately 54% and has a penalty retention rate of 46% compared to the Federal rate of 63.2%.

- MOSH does not assess penalties for first instance other-than-serious violations.
- Enforcement Staff, designated as benchmark positions, are not performing enforcement activities.

Discrimination:

- Files were not properly maintained in accordance with the Discrimination Manual, Chapter 2 through Chapter 5.
- There were no opening (Docketing and Notification) letters to the complainants and respondents contained in the files.
- Case file documentation was inserted into the case file with no order and the files were not tabbed.
- A recently closed Whistleblower case had no dismissal letters in the file.
- Management and non-management interviews were not always conducted in Whistleblower cases.
- There was incomplete case information in Web IMIS.
- There was no documentation of settlement of Whistleblower cases.
- Investigations were not completed in accordance with MOSH FOM, Chapter X, § A3(b), which requires investigations to be completed with 90 days of filing. Section 5-604(d)(3) of the MOSH Act requires that "within 90 days after the Commissioner receives a complaint, the Commissioner shall notify the employee of the determination under this subsection."
- Numerous case files were open for extended periods of time with no current activity documented in the case files.

Recommendations

As a result of the review, several recommendations are being made for program improvement. These recommendations are listed below.

A list of all findings and recommendations is also included in Appendix A of this report. After review, the State will need to develop a response and/or plan of action where appropriate for each recommendation and submit a written response to Region 3 OSHA no later than 30 calendars following receipt of this report.

Complaints:

Recommendation 1: Letters received from complainants must be maintained in the inspection file (p. 24).

Recommendation 2: Response letters to complainants must be maintained in the inspection file (p. 24).

Recommendation 3: MOSH must respond to serious complaints within 3 days of assignment pursuant to its FOM or change its FOM (p. 24).

Fatalities:

Recommendation 4: Continue to send condolence letters to next-of-kin at start of investigation. Families of fatality victims must be kept up-to-date about investigations and informed of the outcome of MOSH investigations (p. 25).

Recommendation 5: Retrain compliance officers and supervisors in the proper completion of OSHA-170 forms to ensure that names of compliance officers, decedents and/or injured employees are not contained in narrative portion of the OSHA-170 forms (p. 25).

Training:

Recommendation 6: Conduct training on hazard classification for compliance officers and supervisors to ensure consistency with violation classification (p. 28).

Abatement:

Recommendation 9: Promptly enter abatement verification data into database (p. 32).

Recommendation 11: MOSH should, in accordance with its own procedures as outlined in its FOM, call employers for outstanding abatement documentation and/or send abatement letters on all cases where abatement documentation has not been received by MOSH (p. 32).

Recommendation 12: Abatement tracker reports should be carefully reviewed weekly by all Regional Supervisors. If necessary, additional training should be provided to Regional Supervisors to ensure that this report is being properly utilized to track abatement (p. 32).

Case File Organization:

Recommendation 10: Institute the use of a case file diary sheet. This form needs to be kept at the top of the case file so that a reviewer can tell at first glance the status of that case (p. 32).

IMIS/Training:

Recommendation 13: Retrain staff in the proper database entries for contested cases. Supervisors should review these data entry issues on a weekly basis to ensure that coding is being completed (p. 33).

Federal Program Changes:

Recommendation 14: It is recommended that MOSH adopt Federal Program Changes within the six month period (p. 40).

Public Sector Consultation:

Recommendation 15: Maryland should regularly monitor its hazard verifications and ensure that data is promptly entered into the database and any coding errors are corrected (p. 42).

Whistleblower:

Recommendation 16: Files should be set up and maintained in accordance with the Discrimination Manual, Chapter 2 through Chapter 5 (p. 43).

Recommendation 17: Letters must be prepared, sent out and maintained in accordance with the Discrimination Manual, Chapter 2, § III(E) and Chapter 5, § III(B) (p. 43).

Recommendation 18: Case files be prepared and tabbed in accordance with the Discrimination Manual, Chapter 5, § III (p. 43).

Recommendation 19: Cases must be closed in accordance with the Discrimination Manual, Chapter 4, § IV (p. 43).

Recommendation 20: Interviews must be conducted and documented in accordance with the Discrimination Manual, Chapter 3, § IV (p. 43).

Recommendation 21: Input complete case information into the Web IMIS in accordance with the Web IMIS guide (p. 43).

Recommendation 22: Settlements must conform to and be documented in accordance with the Discrimination Manual, Chapter 6, § IV (p. 43).

Recommendation 23: Investigations must be completed within 90 days in accordance with MOSH FOM and the MOSH Act (43).

Recommendation 24: The Whistleblower program manager should monitor the Web IMIS system to determine what cases are open and determine what appropriate action is required in accordance with the Discrimination Manual and MOSH FOM (p. 44).

Case File Documentation:

Recommendation 26: Compliance officers' field notes must be maintained in case files. OSHA FOM Chapter XII, Inspection Records, should be adopted (p. 47).

Program Administration:

Recommendation 8: Rescind Memorandum 01-2 dated April 9, 2001 titled "Employer Incentive 50% Penalty Reduction" (p. 31).

Recommendation 7: Revise MOSH Instruction 98-3 dated September 28, 1998 to eliminate Section C.3 that does not permit penalty assessment for first instance other-than-serious violations (p. 30).

Recommendation 25: MOSH must ensure that personnel designated as fulfilling its benchmark requirements pursuant to 29 CFR §1952.213 are performing enforcement activities and conducting inspections for the majority of their work time (p. 46).

MOSH's Progress in Achieving Annual Performance Goals

Through its annual performance report, Maryland has provided information that supports positive performance in the accomplishment of meeting their five-year strategic plan. Through effective resource utilization, partnership development, outreach activities, and an overall commitment to performance goal achievements, many goals have been met or exceeded. The primary goal of MOSH's strategic plan is to reduce occupational injuries, illnesses and fatalities through direct intervention. Review of BLS data indicated that MOSH achieved a 35.7% decrease in fatalities in FY 2009. MOSH was also able to reduce the injury and illness DART rate from 1.9 in Calendar Year 2008 to 1.7 in Calendar Year 2009. MOSH has also been successful in promoting a safety and health culture through an increase in participation in its VPP program by adding 4 new sites and an increase in its partnerships programs by adding 3 new partnerships. MOSH was also successful in investigating 20 of 21 fatalities within one working day of notification.

II. Overview

Section 18 of the Occupational Safety and Health Act of 1970 encourages states to develop and operate their own job safety and health programs. Federal OSHA approves and monitors state plans and provides up to 50 percent of an approved plan's operating costs. Maryland is one of 27 states and American territories approved to operate its own safety and health enforcement program. Among other things, states that develop these plans must adopt standards and conduct inspections to enforce those standards.¹

The FY 2009 Annual Performance plan for the Maryland Occupational Safety and Health Administration (MOSH) fully supports Maryland's long-term strategic goals while at the same time addressing state-specific issues and concerns. MOSH's mission is to promote and assure workplace safety and health while reducing workplace fatalities, injuries and illnesses. MOSH's program focuses on serious hazards and dangerous workplaces and emphasizes the exercise of strong, fair and effective enforcement, expansion of partnerships and voluntary programs, and expansion of outreach education and compliance assistance. The five-year Strategic Plan was restructured by MOSH in FY 2009 with revised annual goals. Its FY 2009 Annual Performance Plan recognized the interconnection and importance of its various program tools and the Annual Performance Plan was designed to make full use of these tools. One unique way of ensuring support of its long-term and short-term goals was to integrate the agency's annual goals into each employee's individual goals. MOSH believes that this enables the agency to work more efficiently at protecting employees in the state of Maryland.

The MOSH program remains committed to protecting workers. MOSH has been building a balanced approach through its compliance assistance programs. Consultation, education and cooperative

¹ Federal OSHA approves and monitors state plans and provides up to 50 percent of an approved plan's operating costs. To obtain federal approval, states must meet a number of criteria:

- Set job safety and health standards that are "at least as effective as" comparable federal standards.
- Conduct inspections to enforce its standards.
- Cover public (state and local government) employees.
- Operate occupational safety and health training and education

programs/compliance assistance provide the support needed to help employers and workers achieve a safe and healthful work environment, while strong, fair and effective enforcement of safety and health regulations help ensure that employers address safety and health issues. These programs are modified as necessary when MOSH submits its Annual Performance Plan to Federal OSHA.

MOSH's approach for achieving its long-term strategic goals is to identify significant problems, determine the most effective ways to address them, use the best mix of available tools, and then measure the results. MOSH's goals are to reduce occupational injuries, illnesses and fatalities through direct intervention in Maryland's workplaces, as evidenced by fewer hazards, reduced exposures, and fewer injuries, illnesses, and fatalities and to promote a safe and healthy workplace culture. In addition to these goals, MOSH has implemented local emphasis programs on high hazard industries, fall hazards in construction, electrocution hazards in construction, and struck/crushed by hazards in construction and general industry establishments that have a higher number of Days Away, Restricted or Transferred/Total Recordable Cases, which resulted in increased awareness of safety and health in these industries.

In addition to investigating all job-related fatalities and catastrophes, MOSH may investigate accidents which have resulted in one or more of the following conditions: serious injury, significant publicity and/or extensive property damage. In Maryland, there are over 2.4 million workers in approximately 158,915 companies (private and public sectors) covered by the Maryland Occupational Safety and Health Act. In FY 2009, MOSH directed all of its budgeted activities to support the Strategic Plan's goals and the Annual Performance Plan. One clear measure of the effectiveness of the MOSH program can be found in Goal 1 of Maryland's Strategic Plan—the reduction of occupational injuries, illnesses and fatalities. Review of the BLS data shows a 10.8% reduction for 2008 in total recordable injury and illness rates of 3.3 compared to 3.7 in 2007. Workplace fatalities investigated by MOSH have declined in FY 2009 by 37% (32 fatalities investigated in FY 2008 and 20 fatalities investigated in FY 2009) and workplace accidents have declined in FY 2009 (128 accidents investigated in FY 2008 and 112 accidents investigated in FY 2008).

During this evaluation period, the MOSH program conducted 1,228 inspections in the private and public sectors. These inspections resulted in 5,227 violations being issued, of which 2,363 were serious, for a serious rate of 45%.

During this evaluation period MOSH implemented a new crane standard due to an increase of crane failures and fatalities around the country. The purpose of this new standard is to prevent injuries, fatalities and property damage related to the operation of cranes in the construction and demolition industries. This regulation became a final rule in April 2009.

Maryland continues to have some vacancies in both safety and health compliance staff positions. Maryland has filled 95% of the safety benchmark and 78% of the health benchmark. Maryland is currently recruiting to fill some of its vacant benchmark positions. However, funding throughout the State of Maryland may continue to be a problem and the cause for vacancies that may be maintained in FY 2010.

Maryland continues to strive for improvements in its program and it has made progress in FY 2009. While the State did not meet all its goals for Fiscal Year 2009, it made significant progress and met

or exceeded six of its nine goals. Maryland continues to make changes where identified that support continued improvement in maintaining a good program, and it has made significant progress in achieving program success during FY 2009.

Key recommendations that have been identified involve abatement verification coding and proper data entry, case file documentation, communication with families of fatality victims, Whistleblower procedures and benchmark issues. A comprehensive listing of specific conclusions and recommendations can be found in Section IX below.

III. Introduction

The Maryland Occupational Safety and Health (MOSH) program is an approved state plan meeting federal requirements under the Williams-Steiger Occupational Safety and Health Act of 1970 (OSHA). MOSH operates under the authority of the Maryland Occupational Safety and Health Act, Labor and Employment Article, Section 5-101 through 5-901. MOSH acts in place of Federal OSHA in Maryland, eliminating duplication of requirements and programs for Maryland employers and employees. MOSH is charged with preserving human resources and ensuring that each employer meets the responsibility of providing each working man and woman in the State with working conditions that are safe and healthful. The MOSH program also administers the Access to Information about Hazards and Toxic Substances Law, Labor and Employment Article, Sections 5-401 through 5-409. In Fiscal Year 2009, the MOSH program was operated under the guidance of Thomas E. Perez, Secretary of the Department of Labor, Licensing and Regulation; Ron DeJuliis, Commissioner of the Division of Labor and Industry; and Roger Campbell, Assistant Commissioner of the Maryland Occupational Safety and Health Administration. Since October 2009, Alexander Sanchez has been the Secretary of Labor, Licensing and Regulation. Since July 2010, Eric Uttenreither has been the Assistant Commissioner of the Maryland Occupational Safety and Health Administration.

PROFILE OF THE MARYLAND STATE PLAN (FY 2009)		
Designee	Ron DeJuliis, Commissioner Department of Labor, Licensing and Regulation Division of Labor and Industry 1100 North Eutaw Street Room 613 Baltimore, MD 21201	
Plan Approved	July 5, 1973	
Operational Status Agreement	July 18, 1985	
Plan Certified	February 15, 1980	
FY 2009 Funding	Federal	\$3,316,600
	State	\$4,611,106
	TOTAL	\$7,927,706
Source of State Funding	Workers' Compensation Fund	
Compliance Officers	36 safety/17 health (allocated)	
	36 safety/14 health (on-board as of 9/30/2009)	

PROFILE OF THE MARYLAND STATE PLAN (FY 2009)				
23 (g) Public Sector Consultants	0 safety/1 health (allocated)			
	0 safety/1 health (on board as of 9/30/2009)			
Compliance Assistance	1.5 CAS (allocated)			
	1.5 (on board as of 9/30/2009)			
FY 2009 Inspections		Goal	Actual	Percent Complete
	Safety	920	1,021	111%
	Health	166	207	125%
	TOTAL	1,086	1,228	113%
FY 2009 Public Sector Consultation Visits		Goal	Actual	Percent Complete
	Safety	8	10	125%
	Health	15	9	60%
	TOTAL	23	19	83%
Covered workers	2.4 million			
Covered Establishments	158,9158			
Coverage	Public and private sector places of employment in the state, with the exception of federal employees, the United States Postal Service, private sector maritime (shipyard employment, marine terminals and longshoring) and military facilities, which are subject to federal jurisdiction.			

Maryland's occupational safety and health regulations and standards are established by the Maryland Occupational Safety and Health Advisory Board. The Board consists of eleven members appointed for six-year terms by the Commissioner of Labor and Industry with the approval of the Secretary of Labor, Licensing, and Regulation. The Commissioner of the Department of Labor and Industry is charged by statute with enforcing the regulations and standards of the Board. All MOSH functions are under the direct management of the Commissioner. In FY 2009, the MOSH program included 94 full-time and part-time positions and Maryland contributed \$4,611,106 in funding its program. For FY 2010, Maryland is contributing \$4,560,756 in funding to its program. Currently, the MOSH enforcement program has thirty-four (34) safety specialists and fourteen (14) industrial hygienists.

MOSH has an Operations Unit in Baltimore, Maryland where it is currently headquartered. Additionally, MOSH has five regional offices that cover the state of Maryland. The MOSH regional offices are similar to Federal OSHA area offices.

As mentioned above, MOSH promotes occupational safety and health in workplaces across Maryland. In addition to adopting many of the federal standards for General Industry (29 CFR 1910), Construction (29 CFR 1926), and Agriculture (29 CFR 1928), MOSH has supplemented the OSHA standards with several requirements unique to Maryland. The Maryland-specific provisions are the Labor and Employment Article, Annotated Code of Maryland Title 5, Occupational Safety

and Health. In these instances, Federal OSHA either does not have a comparable standard addressing the specific hazard or condition or, if it does, the federal standard differs substantially.

Specific Code of Maryland Regulations (COMAR) include:

09.12.20 Occupational Safety and Health

09.12.21 Employee Injury and Illness Records and Reports

09.12.22 Personally Identifiable Employee Medical Information

09.12.23 Prohibition on Smoking in an Enclosed Workplace

09.12.24 MOSH Consultation Education and Training Program

09.12.25 MOSH Fall Protection in Steel Erection

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

09.12.33 MOSH Regulations for Access to Information about Hazardous and Toxic Substances

09.12.35 MOSH Standard for Confined Spaces

09.12.36 MOSH Standard for Field Sanitation

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

MOSH Amendments to OSHA Standards include:

29 CFR 1910.146 Permit-Required Confined Spaces

29 CFR 1910.1048 Occupational Exposure to Formaldehyde

29 CFR 1926.62 Lead in Construction Work

29 CFR 1926.550 Cranes and Derricks

29 CFR 1926.652 Excavations and Requirements for Protective Systems

29 CFR 1926, Subpart R Steel Erection

The MOSH program consists of four major units: compliance, consultation, training and education, and statistics. The compliance unit is the enforcement arm of the program. It inspects places of work and issues citations and penalties for violations of established occupational standards. The

compliance unit responds to fatalities, accidents, employee complaints about safety and health, referrals from Federal OSHA, other State and local government agencies, and other safety and health professionals. The consultation unit provides assistance to Maryland employers to voluntarily comply with applicable requirements without the threat of citations and penalties. To assist employers, the MOSH consultation program provides on-site surveys and technical assistance. The MOSH program also provides statewide, free educational and training programs for employers and employees, as well as more than 100,000 printed publications each year to assist them in achieving voluntary compliance. The statistical unit works with the U.S. Department of Labor Bureau of Labor Statistics to compile the Maryland portion of national injury and illness statistics and other special statistical surveys.

The State of Maryland contains a mixture of agricultural, manufacturing, construction, transportation, and trade and service industries. The MOSH program has selected certain high hazard industries in construction and manufacturing on which to focus its safety and health activities. Consistent with federal OSHA's emphasis programs, MOSH also has special emphasis programs. MOSH has jurisdiction over all public and private sector places of employment in Maryland, with the exception of federal employees, the United States Postal Service, private sector maritime activities (shipyard employment, marine terminals, and longshoring) and construction employees performing work on federal property.

As detailed in the Code of Maryland Regulations (COMAR), an employer who has received a citation or proposed penalty may contest the citation by notifying MOSH in writing of the contest. The employer must mail or deliver by hand the notice of contest within 15 working days from the receipt of the citation or proposed penalty. Informal conferences are conducted at the local regional office level with the Regional Supervisor and/or their designee and are conducted upon approval of the Assistant Commissioner. A request for an informal conference does not delay the 15 workday period for filing a notice of contest.

After a notice of contest has been filed and a hearing date set, a party to the contest may request a pre-hearing conference with the Assistant Attorney General to exchange information, attempt to resolve or narrow the issues, or discuss settlement of the case. All parties may participate in a pre-hearing conference.

When a citation is contested, the Commissioner of Labor and Industry may appoint a Hearing Examiner to hold a hearing and prepare a record and report. A Hearing Examiner's written report becomes a final order of the Commissioner unless within 15 work days after the report is submitted, the Commissioner orders a review of the proceedings, or the employer or employee or representative files a request for the Commissioner to review the report. Upon receipt of a request for review, the Commissioner may review the report with or without a hearing. The Commissioner may affirm, modify, or vacate a citation or proposed penalty or direct other appropriate relief. A final order of the Commissioner may be appealed to the appropriate Circuit Court.

IV. Summary of Issues and State actions from the FY 2008 FAME

As a result of the review of MOSH's programs during FY 2008, several issues were identified and discussed with MOSH that required attention. These issues were:

During FY 2008, a MOSH goal was to initiate 95% of its serious complaint inspections within five working days. However, only 78% of all serious complaints were inspected within five working days. It was recommended to MOSH that it should continue to monitor this issue, determine the root cause and decrease its response time to serious complaints.

In FY 2008, a MOSH goal was to complete 90% of its discrimination investigations within 90 days. However, only 70% of its discrimination investigations were completed within 90 days. It was recommended to MOSH that it should continue to work with its discrimination investigator to determine the cause for its backlog and to complete the majority of its investigations within 90 days.

There has been a continuous issue with abatement verification, and these discrepancies were identified as predominantly coding issues in the database. In FY 2008, 72% of private sector inspections had citations that were timely abated and 21% of public sector inspections had citations that were timely abated. Federal OSHA has identified this issue in the past and has made several recommendations to MOSH for correction of this issue. Performance has improved but more work needs to be done to improve abatement verification coding.

V. Major New Issues

An issue arose in Region 3, in both state plans within Region 3, which involved fatalities and/or injuries and/or accidents that involved employees of Washington Metropolitan Area Transit Authority. MOSH is currently investigating an accident that occurred on January 26, 2010 in Rockville, Maryland where two maintenance workers were struck and killed by a rail maintenance vehicle while establishing a work zone.

Accidents involving the Washington Metropolitan Area Transit Authority have been occurring throughout Region 3, both in state plan states and states where Federal OSHA has jurisdiction. Federal OSHA has had detailed conversations with the Washington Metropolitan Area Transit Authority to determine the causes of these accidents and to bring them into compliance with OSHA regulations and to change the workplace safety culture of this employer.

In response to increased crane failures and fatalities around the country, MOSH took aggressive steps to implement more stringent crane operation regulations. The crane industry, including crane manufacturers, general contractors, trade contractors, rental companies, labor organizations and certifying agencies were brought together by Commissioner DeJuliis, a former crane operator, to develop this standard. This regulation became a final rule on April 6, 2009.

MOSH also offered six educational seminars throughout the state to assist employers and employees with becoming familiar with the new crane standard. Over 200 people attended these seminars along

with hundreds of others who have attended additional speaking engagements in the industry on the new regulation.

In order to bring its agency closer together in terms of information flow and daily communication, MOSH Consultation was brought under the Outreach Department to provide employers and employees one place to receive compliance assistance. In addition, during FY 2009 MOSH began the approval process to consolidate several of its offices, including the Baltimore headquarters, Consultation offices, and its Laurel offices into one location. Federal OSHA will be advised once a site is selected.

Furloughs and temporary salary reductions occurred during FY 2009. The salary reductions occurred over a 90 day period in addition to 3 to 5 days of floating furloughs. In FY 2010 it is anticipated that 5 service reduction days will be used for a temporary salary reduction as well as 2 to 4 floating furlough days based on the salary of each employee. The Maryland Occupational Safety and Health Program will continue to provide safety and health coverage for the state, responding to all workplace fatalities and complaints as required by MOSH's policies and procedures; however, inspection numbers may decline.

VI. Assessment of State Performance

Through its annual performance report, Maryland has provided information that supports positive performance in the accomplishment of meeting their five-year strategic plan. Through effective resource utilization, partnership development, outreach activities, and an overall commitment to performance goal achievements, many goals have been met or exceeded.

Information provided by Maryland has been reviewed and analyzed, as well as the State Activities Mandated Measures (SAMM) Report, the State Interim Report (SIR), Inspection and Enforcement Reports, to assess its accuracy in meeting performance plan goals and the overall accomplishment of the third year of their five year strategic plan.

A. Assessment of Progress in Achieving Annual Performance Goals

The following summarizes the activities and/or accomplishments for each of the FY 2009 performance goals.

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

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

Result: This goal was exceeded.

Discussion: MOSH investigated 31 fatalities in FY 2008 and 20 fatalities were investigated in FY 2009. This is a 35.7% decrease in fatalities in FY 2009.

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

Result: MOSH exceeded this goal.

Discussion: The DART rate for Calendar Year 2008 has dropped from 1.9 to 1.7 injury and illnesses per 100 equivalent full-time workers. This is a 10.5% reduction in the DART rate for covered facilities in Maryland.

Strategic Goal 2: Promote a safety and health culture through Cooperative Programs, Compliance Assistance, On-Site Consultation Programs, Outreach, Training and Education and Informative Services.

Performance Goal 2.1: Increase VPP and SHARP Recognition Programs from 14 to 19.

Result: MOSH exceeded this goal.

Discussion: There were 4 new VPP sites added to the program in Maryland. In addition, there were 3 new Safety and Health Achievement Recognition Program (SHARP) sites and 2 SHARP renewals during this evaluation period. Therefore, MOSH has increased its VPP and SHARP programs to 21. Evaluation of private sector Consultation goals, including the SHARP program, will be contained in the Regional Annual Consultation Evaluation Report (RACER) for FY 2009.

Performance Goal 2.2: Increase partnerships and alliances from 50 to 53.

Result: MOSH met this goal.

Discussion: MOSH has been successful in increasing its partnerships from 50 to 53 having signed 3 new partnerships in FY 2009. No new alliances were signed in FY 2009.

Performance Goal 2.3: Increase the total number of people participating in MOSH outreach and training programs by 6%.

Result: The total number of employees/employers participating in MOSH outreach and training programs during FY 2009 was 6,800. The total number of participants in the 2-day, full-day and ½ day educational seminars was 2,531. There were 4,269 participants in speaking engagements done by MOSH personnel.

Discussion: MOSH's goal was to reach attendance totals in the amount of 6,911 for this evaluation period. However, the total number of employees/employers participating in outreach and training was 6,800. Twelve classes were canceled due to low enrollment. Therefore, this goal was not reached but MOSH was successful in

providing outreach services to a significant number of employers and employees during this evaluation period.

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

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

Result: Ninety-five (95%) of fatality inspections were conducted within one working day of notification. MOSH met this goal.

Discussion: There were 21 fatalities that occurred in Maryland during FY 2009. Twenty (20) inspections were investigated within one day of notification.

Performance Goal 3.2: Percent of serious complaint inspections initiated within five working days of notification increased from 90% to 95%.

Result: MOSH received 110 complaints of a serious nature during FY 2009 and 102 were investigated within 5 days of notification which represents a 92% timely response rate. MOSH did not meet this goal.

Discussion: The average time for MOSH to respond to complaint inspections was 3.22 days and MOSH initiated complaint investigations within an average of 1.59 days of notification. During FY 2008, 89% of all serious complaints were responded to within five days and MOSH initiated complaint inspections within an average of 3.77 days and initiated complaint investigations within an average of 2.31 days. MOSH did not reach its goal of 95%, but it has improved its response time during FY 2009.

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

Result: MOSH did not meet this goal.

Discussion: There was one case reflected on the SAMM report for FY 2009. This data is not correct. There were 16 complaints that were screened out as not suitable for investigation and another 8 cases that were investigated but not within the 90 day timeframe.

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

Result: MOSH has until 2012 to achieve this goal.

Discussion: MOSH has posted a publication order form on its website and employers and employees can request free education seminars through the MOSH website. MOSH's current goal is to implement a more user-friendly website and to track user feedback.

B. Assessment of State Performance of Mandated Activities

Appendix D is the State Activity Mandated measures Report (SAMM) for Maryland covering the period October 1, 2008 through September 30, 2009. The following is a summary of State performance on the major issues covered in the SAMM.

Measure		State Data FY 2009	Reference Data	Comment
1. Average number of days to initiate complaint inspections		3.22	5	Goal is met.
2. Average number of days to initiate complaint investigations.		1.59	1	Goal is not met.
3. Percent of complaints where complainants were notified on time.		97.92	100%	Goal is not met.
4. Percent of complaints and referrals responded to within 1 day- Imminent Danger		92.32	100%	Goal is not met.
5. Number of denials where entry was not obtained.		0	0	Not applicable.
6. Percent of S/W/R violations verified.	Private	66.66%	100%	Goal is not met. Private sector violations verified decreased by 7% over FY 2008 and public sector verification improved by 41%. Both are below the reference of 100%.
	Public	52.05%		
7. Average number of calendar days from opening conference to citation issuance.	Safety	30.39	43.8	Goal is met. There has been a 17% reduction in lapse time from FY 2008.
	Health	62.15	57.4	Standard is below the National average. However, there has been a 20% reduction in lapse time from FY 2008.

8. Percent of programmed inspections with S/W/R violations – safety.	Safety	72.13%	58.6%	Goal is met.
	Health	82.61%	51.2%	Goal is met.
9. Average violations per inspection with violations.	S/W/R	2.44	2.1	Goal is met.
	Other	2.62	1.2	Goal is met.
10. Average initial penalty per serious violation – private sector only.		\$1262.14	\$1335.2	Goal is met.
11. Percent of total inspections in public sector.		6.3 %	5.9%	Goal is met. The inspections for FY 2009 totaled 1,228. Therefore, the correct percent of public sector inspections is 6.3 % and not 6.47%.
12. Average lapse time from receipt of contest to first level of decision.		0	0	No contests were recorded and this has been determined to be a coding error.
13. Percent of 11C investigations completed within 90 days.		100%	100%	Goal is not met. Data contained in SAMM report is not correct due to data entry errors.
14. Percent of 11C complaints that are meritorious.		100%	20.8%	Goal is not met. Data contained in SAMM report is not correct due to data entry errors.
15. Percent of meritorious 11C complaints that are settled.		100%	86.1%	Goal is not met. Data contained in SAMM report is not correct due to data entry errors.

Appendix E is the Interim State Indicator Report (SIR) for Maryland covering the period October 1, 2008 through September 30, 2009. The following is a summary of State performance on these measures:

Measure	State Data FY 2009	Federal Data FY 2009	Comment
Private Sector Programmed	79.30%	66.%	Standard set by Federal

Inspections Safety			OSHA is met.
Private Sector Programmed Inspections Health	43.5%	51.7%	Standard set by Federal OSHA is met.
Private Sector Programmed Inspections with Safety Violations	82%	65.8%	Standard set by Federal OSHA is met.
Private Sector Programmed Inspections with Health Violations	64.9%	51.7%	Standard set by Federal OSHA is met.
Private Sector Serious Safety Violations	51%	80%	Standard set by Federal OSHA is not met.
Private Sector Serious Health Violations	27.6%	69.7%	Standard set by Federal OSHA is not met.
Private Sector Abatement Greater Than 30 Days for Safety Violations	19.9%	17.6%	MOSH's rate is within 5 percentage points of Federal OSHA so standard is met.
Private Sector Abatement Greater Than 60 Days for Health Violations	0%	10%	Standard set by Federal OSHA is met.
Private Sector Average Penalty for Serious Safety Violations	\$519.00	\$1,030.00	Standard set by Federal OSHA is not met.
Private Sector Average Penalty for Serious Health Violations	\$447.50	\$855.00	Standard set by Federal OSHA is not met.
Private Sector Safety Inspections Per 100 Hours	2.8	5.5	Standard set by Federal OSHA is not met.
Private Sector Health Inspections Per 100 Hours	1.5	1.6	Standard set by Federal OSHA is met.
Private Sector Violations Vacated	1.9	5.1	Standard set by Federal OSHA is met.
Private Sector Violations Reclassified	2.2%	4.8%	Standard set by Federal OSHA is met.
Private Sector Penalty Retention	46%	63.2%	Standard set by Federal OSHA is not met.
Public Sector Programmed Safety Inspections	70.5%	Not Applicable	Standard set by Federal OSHA is met.
Public Sector Programmed Health Inspections	0%	Not Applicable	Standard set by Federal OSHA is met.
Public Sector Serious Safety Violations	55.3	Not Applicable	Standard set by Federal OSHA is met.
Public Sector Serious Health Violations	50%	Not Applicable	Standard set by Federal OSHA is met.
Percent of Violations Vacated After Contest	33.3	23.4	Standard set by Federal OSHA is not met.
Percent of Violations	0%	15.1%	Standard set by Federal

Reclassified After Contest			OSHA is met.
Percent of Penalty Retention After Contest	100%	58.5%	Standard set by Federal OSHA is met.

i. Enforcement

A statistical review of Maryland OSHA Program was conducted using the IMIS Micro-to-Host Inspection and Enforcement Reports and a comparison was made against several monitoring measures from the State Activities Mandated Measures (SAMM) Report and the State Interim Report (SIR). During the evaluation period of this study (October 1, 2008 through September 30, 2009), the Maryland OSHA Program conducted 1,228 inspections of its projected inspection goal of 1,086, representing 113% of its goal.

Of the 1,228 inspections conducted by Maryland during FY 2009, 1,021 were safety-related (83%) while 207 (17%) were health-related. Total programmed inspections were 885 (72%) and 343 (28%) were unprogrammed inspections, which represented fatality and accident investigations, complaints, referrals, follow-up inspections, monitoring inspections and other unprogrammed related activities. A total of 1,151 inspections were conducted at private establishments while 77 were conducted at public sector agencies. The following is a statistical comparison of Maryland to other state plans and Federal OSHA during FY 2009:

	Maryland	State Plans	Federal OSHA
Total Inspections	1,228	61,016	39,044
Safety	1,021	48,002	33,221
% Safety	83%	79%	85%
Health	207	13,014	5,783
% Health	17%	21%	15%
Programmed	885	39,538	24,316
% Programmed	72%	65%	62%
Accident	107	3,098	836
Complaint	145	8,573	6,661
% Complaint	12%	14%	17%
Construction	708	26,103	23,935

% Construction	58%	43%	61%
Total Violations	5,277	129,363	87,663
Serious	2,363	55,309	67,688
% Serious	45%	43%	77%
Willful	12	171	401
Repeat	39	2,040	2,761
% S/W/R	46%	44%	81%
Other-than-serious	2,848	71,336	16,615
% Other-than-serious	54%	55%	19%
Failure to Abate	15	494	207
Average Violations Per Initial Inspection	4.9	3.3	3.1
Total FY 2009 Penalties	\$2,198,574	\$60,556,670	\$96,254,766
Average Current Penalty Per Serious Violation	\$701.80	\$800.40	\$970.20
% Penalty Reduced	54.4%	51.9%	43.7%
Percent of Inspections with Violation Cited	82%	62%	69%
Average Case Hours/Safety	24.4	15.7	17.7
Average Case Hours/Health	41.6	26.6	33.1
Lapse Days to Citation Issued – Safety	21.8	31.6	34.3
Lapse Days to Citation Issued – Health	46.1	40.3	46.7
Open, Non-Contested Cases with Incomplete Abatement >60 days	4	2,010	2,234

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

The MOSH Safety Program has developed and implemented four (4) local emphasis programs (LEP) in FY 2009. These LEP programs include various industries and activities – Maryland High Hazard Industries, Fall Hazards in Construction, Electrocution Hazards in Construction, and Struck/Crushed by Hazards in Construction. There were 628 LEP inspections conducted during this evaluation

period. The MOSH Program also participates in National Emphasis Programs (NEPs) established by Federal OSHA. There were 243 NEP inspections conducted during this evaluation period, such as trenching in construction and amputations in general industry. MOSH had not implemented a method to evaluate the efficacy of each LEP to determine the need to cancel or continue each LEP on an annual basis. It was suggested to MOSH to establish a formal evaluation method for its LEPs in order to make a determination if it is feasible to continue each LEP from one year to the next.

The following is a discussion of Maryland's program performance during FY 2009:

Complaints and Referrals

Most complaints and referrals were processed in a timely manner by Maryland. Formal complaint letters to employers and letters to complainants with inspection findings were maintained in separate files at the central office in Baltimore rather than in each Regional Office servicing the complaint. Maintaining two files for formal complaints has been a long established practice in Maryland, and it was explained to the auditors that the reason for this practice is to avoid inadvertently releasing documents that contain the identity of the complainant. This practice is problematic in that complaint files maintained in Regional Offices are incomplete without supporting documentation of signed complaint letters.

Recommendation 1: Letters received from complainants must be maintained in the inspection file. Compliance officers must also have access to this information for investigative purposes.

Response letters to complainants were found in files that are maintained in the Baltimore office as mentioned above. However, the response letters are not maintained in the inspection files.

Recommendation 2: Response letters to complainants must be maintained in the inspection file.

Complainants were timely notified of the results of inspection activity in 98% of the inspections. This response time is in accordance with the procedures outlined in the Field Operations Manual (FOM).

During the period October 1, 2008 through September 30, 2009, Maryland received 110 serious complaints and 102 were inspected within five days for a response rate of 92%. Twenty complaint files which resulted in on-site inspections were randomly selected for review during this evaluation period. The evaluation process included interviews with the MOSH program directors and analyses of the case files.

It should be noted that MOSH's FOM outlines that formal complaints involving potentially serious hazards shall be investigated within 3 working days of assignment.

Recommendation 3: MOSH must respond to serious complaints within 3 days of assignment pursuant to its FOM or change its FOM.

Fatalities

During this evaluation period, Maryland experienced 20 fatalities which were investigated by Maryland OSHA. All of the fatality files were extensively reviewed during this evaluation.

Response time to fatality investigations was found to be within one day. Case file review revealed that no next-of-kin letters were sent on these inspections; however, MOSH began to send next-of-kin letters in December 2009. Another trend observed was that there was little or no communication with families at the conclusion of the inspections to inform the next-of-kin of inspection findings.

Recommendation 4: Families of fatality victims must be kept up-to-date about investigations and informed of the outcome of MOSH investigations.

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

Recommendation 5: Retrain compliance officers and supervisors in the proper completion of OSHA-170 forms to ensure that names of compliance officers, decedents and/or injured employees are not contained in narrative portion of the OSHA-170 forms.

All job-related fatalities are investigated as thoroughly and promptly as possible by MOSH, including during times that are normally non-working hours for Department staff, such as evenings, weekends, and holidays. Employers in Maryland are required to report to the MOSH Central Office within eight hours, any occurrence of an employment accident which is fatal to one or more employees or which results in the hospitalization of three or more employees.

Information about an accident, which may be subject to MOSH investigation, may be received by any MOSH employee at any time. The information could be received via telephone, newspaper, radio or television. Information about an accident received directly by a MOSH employee is to be reported immediately to their MOSH Supervisor who will then report it to MOSH Operations. In the event the MOSH Supervisor is unavailable, MOSH Operations is to be contacted.

The Operations Office is to immediately receive all pertinent information that can be obtained from newspapers or other sources. It is not necessary to have available all the pertinent facts to make the initial telephone call. As more facts become available, they are relayed to the Operations Office in subsequent calls. The following information is reported to the Operations Office as soon as possible:

- (1) Name of company, location of accident, and type of business.
- (2) Time of accident.
- (3) Type of accident (fire, explosion, building collapse, etc.).
- (4) Number of injured/fatalities.

- (5) Number of persons hospitalized.
- (6) Number of persons unaccounted for.
- (7) When MOSH personnel are expected to arrive at the scene.
- (8) Identify who is in charge at scene (if immediately known).

The Operations Office immediately notifies the Assistant Commissioner or an Authorized Representative and other necessary persons of each fatality and/or catastrophe. The Operations Office will also contact the Medical Examiner's Office in all fatal cases and obtain a copy of the death certificate and postmortem examination. Immediately upon receipt of information involving a catastrophe and/or fatality, the Operations Office assigns the investigation to the Regional Office having jurisdiction.

The compliance officer is responsible for ensuring that all required IMIS forms and accident narrative are completed. The supervisor exercises his own discretion in dispatching the most appropriately trained compliance officer to respond as soon as possible to a fatality or catastrophe. The compliance officer assigned to the fatality or catastrophe is responsible for completing the OSHA-1, Inspection Report and the OSHA-170, Investigation Summary.

The compliance officer assigned to the investigation looks at all aspects of the incident, gathers the appropriate facts, and be able to identify the causal factors of the accident in a clear and concise manner. Every factor relating to an incident must be discovered, evaluated, and analyzed in order to determine the actual sequence of events and causal factors of the incident. The investigation must be able to accomplish two goals: (1) determine the cause of the accident and (2) prevent it from happening again.

The compliance officer assigned to the investigation is able to understand the operation involved in the incident and be able to effectively explain that operation and what should occur during normal operations. The compliance officer will have an operating knowledge of the equipment, operation and process involved by the end of any investigation. The compliance officer must also be able to determine what direct, indirect and/or basic causal factors were present at the time of the incident.

The compliance officer assigned to the investigation is responsible for:

- (a) A description of the incident.
- (b) A description of the normal operating procedures.
- (c) A diagram and/or map of the area.
- (d) Providing appropriate measurements of distance, weight, voltage, etc.
- (e) Interviewing witnesses and taking statements.
- (f) A description of the events that preceded the incident.
- (g) Photographic evidence.
- (h) Respond to the scene as quickly as possible.
- (i) Personal data of the victim.

Response time to fatality investigations, for the most part, was found to be at one day or less. Case file reviews revealed that there were no next-of-kin letters sent and there was little or no communication between families of victims and MOSH at the conclusion of inspections to inform next-of-kin of inspection findings. It should be noted that a policy was instituted in December 2009 which directs that condolence letters should be sent to next-of-kin.

All of the fatality files reviewed were thoroughly investigated and documented and proper internal procedures were followed by MOSH. Four (4) of the twenty (20) fatality files reviewed were in compliance and properly closed by MOSH. These inspections were properly documented and rationale provided for not issuing citations. These cases are reviewed by the Chiefs of Compliance, Compliance Supervisors and the Chief of Operations prior to citation issuance. Once a case is in citation form, it is then reviewed by the Operations Supervisor prior to signature of the Assistant Commissioner. Some cases are also reviewed by the Assistant Attorney General's Office when issues are complex, unusual, high profile and/or controversial.

Prior to holding a closing conference involving a fatality investigation, a pre-closing conference is held. Present during the pre-closing conferences are the investigating compliance officer, the compliance officer's supervisor, the Chief of Compliance, the Assistant Chief of Compliance and the Chief of Operations. The Assistant Commissioner also participates in the pre-closing conference when the issues are complex, unusual, high profile and/or controversial. The sixteen (16) files in which citations were issued were well organized and the documents were properly maintained and secured in the case files. The majority of the cases contained good documentation and appropriate violations were issued related to the fatality. Documentation was generally complete and supported the violations and contained witness statements.

The files did include IMMLANG (the code designed to allow OSHA to track fatalities among Hispanic and immigrant workers) documentation.

See also Recommendation 4: Continue to send condolence letters to next-of-kin at start of investigation. Continued contact with families of fatality victims is recommended in addition to advising families of fatality victims of the outcome of the MOSH investigation.

Targeting/Inspection

Maryland targets various industries each year and develops local emphasis programs (LEPs) to achieve most of its programmed inspection activities but also participates in National Emphasis Programs (NEPs) developed by Federal OSHA. Most of Maryland's local emphasis programs are directly related to strategic areas of emphasis that Federal OSHA has developed. Maryland conducted 885 programmed inspections during FY 2009 with an average of 4.9 violations per inspection compared to Federal OSHA's 3.1 violations per inspection. Targeted inspections were conducted in general industry and manufacturing using Federal OSHA Data Initiative (ODI) data and in the construction industry using the University of Tennessee (Dodge) reports. MOSH also conducted inspections using LEPs in the four major hazards in the construction industry: fall hazards, struck and crushed by and electrical hazards. Maryland also participates in the National Emphasis Programs such as trenching in construction, amputations in general industry, silica and combustible

dust. MOSH does not have a formal method to evaluate the efficacy of each LEP to determine the need to cancel or continue each LEP on an annual basis.

It is suggested to MOSH that it should implement a formal evaluation process for all of its local emphasis programs administered in Maryland. This will assist MOSH in determining if it is viable to continue a local emphasis program from year to year.

Maryland's serious/willful/repeat rate was 46% compared to Federal OSHA's rate of 81%. While there appears to be a significant difference between Maryland's rate and Federal OSHA, the total state plan rate is 44%. There were some inspections where questionable classifications were reviewed. One involved the storage of oxygen within 20 feet of acetylene, which was classified as an other-than-serious violation. This should have been classified as a serious violation.

Recommendation 6: Conduct training on hazard classification for compliance officers and supervisors to ensure consistency with violation classification.

MOSH Instruction 08-09, Local Emphasis Program for Maryland High Hazard Industries, provides guidance to the Regional Offices for the implementation of this local emphasis program. By analyzing the results of injury and illness data, employment data and fatalities over a three year period to determine ascending or descending trends results in a list of High Hazard Industries that indicates where MOSH needs to utilize its resources. This data is based on the Bureau of Labor Statistics databases as well as Maryland's fatality reports. During this evaluation period, 100 inspections were conducted; 97% of the inspections had citations issued, with a serious, willful, and repeat rate of 90% for the violations observed. This LEP continues to be a viable enforcement tool for general inspection scheduling.

MOSH Instruction 07-06, Enforcement Exemptions and Limitations Placed on MOSH Activities by the Federal Labor/Health and Human Services Appropriations Act, provides guidance for compliance with OSHA Enforcement Exemptions and Limitations under the Federal Appropriations Act, OSHA Instruction CPL 2-0.51J, (when inspecting employers with ten or fewer employees). Regional Supervisors ensure that enforcement activities are scheduled and conducted as set forth in the OSHA Instruction. The federal Appropriations Act contains limits for OSHA activities where 23(g) grant funds are used on a year-by-year basis. Since these 23(g) grant funds are passed through from OSHA to the State Program, MOSH is held to the same restrictions and limits imposed on federal OSHA for the use of federal funds.

Overall, there was adequate evidence to support violations contained in the inspection file. Violations cited on programmed inspections include a high percentage of other-than-serious citations for hazards that could be classified as serious.

See Recommendation 6: Conduct training on hazard classification for compliance officers and supervisors to ensure consistency with violation classification.

MOSH has an in-compliance rate of 18% compared to Federal OSHA's rate of 32% and an overall state plan rate of 38%. Thus, it would appear that Maryland is making full use of its targeting system and is able to maximize its resources through proper targeting.

Employee and Union Involvement

Union contacts were found to be made where appropriate and participation by union in opening and closing conferences was documented. Employee interviews in fatality investigation files were also documented in case files to support alleged exposures in citations.

Employees in Maryland are afforded the right of review of alleged violations, abatement periods, and proposed penalties through the Code of Maryland Regulations. The regulations also provide employees or their representatives an opportunity to participate in review proceedings and to contest abatement dates. The employer has the option of having the informal conference conducted jointly or separately with employee representatives. Separate discussions will also be conducted if the employee representative so requests.

Stakeholder Meetings and Discussions

Region 3's labor liaison attended the Maryland State and District of Columbia AFL-CIO Executive Board Meeting. The Executive Committee is made up of approximately 80 AFL-CIO sanctioned union representatives. These board members represent approximately 350,000 union members performing work in Maryland and include the Building Trades, Health Care Providers, State Employees, United Food & Commercial Workers, United Steel Workers as well as several other organized labor organizations. The labor liaison addressed the group and provided information regarding Federal OSHA's role in state plan monitoring and how a complaint could be filed with Federal OSHA about any state plan activities. No specific issues were raised about the Maryland State Plan.

Region 3's labor liaison also met with representatives of the Virginia Building Construction Trades Council in Richmond, Virginia and several building trades' representatives from Maryland also attended this meeting. No specific issues were raised about the Maryland State Plan.

Citations and Penalties

The Acting Chief of Compliance Services is directly involved in the enforcement program. He reviews the technicality of all inspection case files, which are sent to his office prior to the issuance of any citations. This review also includes all fatalities, general duty clause violations, all media referrals and contested cases. The Acting Chief of Compliance Services also sits on a Review Committee for case file review, which consists of the Acting Chiefs of Safety and Health Compliance and the Chief of Operations. This review process was recently implemented. The new review process has had an impact on lag time from opening conference to the time of citation issuance. All data entry regarding updates to a case file is also now completed in the Baltimore Central Office.

Executive Order 01.01.1993.12 signed by then Governor William Donald Schaefer on March 19, 1993 provides for exemption of penalty assessment for first-time violators where practicable. Included within this exemption are Standard Industrial Classification (SIC) codes 20-39. MOSH continues to waive assessment of civil penalties for first instance other-than-serious violations resulting from an inspection of an establishment within these SIC codes, unless such establishment is

cited for 10 or more total violations (see MOSH Instruction 98-3). Serious, willful, and repeat violations and failure to correct notices are counted to determine the total number of violations.

Recommendation 7: Revise MOSH Instruction 98-3 to eliminate Section C.3 that does not permit penalty assessment for first instance other-than-serious violations.

Employer knowledge and employee exposure information was generally adequate in most of the case files that were reviewed during this evaluation. For willful violations, the evidence in the file supported an intentional violation of Maryland law or plain indifference to its requirements. Repeat violations were also properly cited and there was evidence that the employer had been cited previously for a substantially similar condition within the previous three years.

In order to ensure uniformity, consistency and the legal adequacy of a limited category of citations, including willful and repeat violations, MOSH compliance managers, program directors, and the Assistant Attorney General's office engage in pre-citation consultation in order to determine if additional work is required prior to the issuance of citations.

Maryland has an incentive program to encourage employers to more quickly abate hazardous conditions and violations (MOSH Compliance Directive 95-2 established in April 2001). This program, which is not applicable to willful, repeat or failure to abate violations or alleged violations relating to accidents, significantly reduces penalties by 50% for immediate abatement when the compliance officer has observed abatement.

The Interim State Indicator Report (SIR) for 2009 indicates that Maryland has a serious safety violation rate of approximately 51% compared to Federal OSHA's rate of 80% over a 12 month period. The SIR also indicates that over a 12 month period, Maryland vacated 1.9% of its cited violations compared to the Federal rate of 5.1, reclassified 2.2% of its violations compared to the Federal rate of 4.8% and had a penalty retention rate of 46% compared to the Federal rate of 63.2%.

While no specific trends could be determined from the case files that were reviewed, it is suspected that more serious violations are grouped by MOSH safety compliance officers resulting in the smaller percentage. There were a few files reviewed which had violations that were cited as other-than-serious and should have been classified as serious. Health compliance officers have a serious violation percentage of 28%, less than half the Federal rate of 70%.

Federal OSHA plans to conduct a special study of violations that have been cited as other-than-serious to determine if violations were appropriately classified and/or grouped.

Informal conferences are conducted at the local Regional Office level, with the Regional Supervisors and/or their designees, and are conducted upon the approval of the Assistant Commissioner. The Regional Supervisors have the authority to reduce penalties by an additional ten percent (10%) if the employer has the penalty check available at the time of the informal conference. An additional fifty percent (50%) penalty is applied if items are abated immediately at the time of the inspection. These reductions are in addition to other penalty adjustment factors for size, good faith and history. The MOSH program can also assess additional penalties, up to \$2,000.00, if there are ten (10) or more

violations observed, and/or if a person is fatally injured or suffers a permanent injury. There is no such provision in Federal OSHA for these additional assessed penalties or penalty reduction factors. The average current penalty per serious violation is \$701.80 compared to \$970.20 for Federal OSHA.

Recommendation 8: Rescind Memorandum 01-2 dated April 9, 2001 titled “Employer Incentive 50% Penalty Reduction.”

The Interim State Indicator Report (SIR) for 2009 indicates that Maryland continues to have a serious violation rate of approximately 45% compared to Federal OSHA’s rate of 77% over a 12 month period. The SIR also indicates that over a 12 month period, Maryland vacated 1.9% of its cited violations compared to the Federal rate of 5.1%, reclassified 2.2% of its violations compared to the Federal rate of 4.8% and had a penalty retention rate of 46% compared to the Federal rate of 63.2%.

Abatement

There was an apparent problem with obtaining timely abatement certification and documentation on a sufficient number of cases that were reviewed. Abatement issues with these files fell into several types:

- (1) Cases which had been closed without proper documentation of abatement.
- (2) Cases with late abatement.
- (3) Those still open awaiting abatement.

In a number of the cases that were closed, abatement information, either certification or documentation, had been brought to the informal conference by the employer but had not been copied by MOSH staff and included in the case file. Some cases had abatement action beyond 30 days documented in the case file and others indicated a dunning letter had been sent to the employer requesting abatement information. Cases which were not contested did not have the abatement tracking performed.

Another issue contributing to numerous outliers in the abatement certification measure is that case file diary sheets are not used to track phone calls to employers, so it was not clear from file reviews whether MOSH staff were calling employers for abatement documents. Some case files did contain letters from MOSH to employers formally requesting abatement documentation, and this was done within a reasonable amount of time after the failure of the employer to provide the documentation to MOSH. Since this was not documented on a case diary sheet, it was difficult to determine if the letters had been sent to the employer without searching through the entire case file. When follow-up inspections were indicated where an employer failed to provide abatement documentation, MOSH should properly schedule follow-up inspections.

There is some relation between this indicator, which measures violations verified, and the timeliness of abatement. If extensions are given for the date of abatement, the dates must be updated in the database. Since the database updates are conducted in the Baltimore Central Office for all case files, this may contribute to the number of violations for which abatement verification exceeded the 30 day abatement requirement. This indicator indirectly denotes the timeliness of abatement and the use of the extension process for abatement. Maryland should continue to focus

on improving their performance in abatement verification and to properly update the database to reflect that abatement evidence has been received from employers or update the database if extensions have been properly granted to employers and document the case.

MOSH has indicated that it has dedicated more resources to tracking abatement by using weekly reports, dunning letters and initiating follow-up inspections. MOSH has reviewed practices on maintaining information from their informal conferences. These actions have resulted in improvement in the data.

Recommendation 9: Promptly enter abatement verification data into database.

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

Recommendation 11: MOSH should also, in accordance with its own procedures as outlined in its FOM, call employers for outstanding abatement documentation and/or send abatement letters on all cases where abatement documentation has not been received by MOSH.

Recommendation 12: Abatement tracker reports should be carefully reviewed weekly by all Regional Supervisors. If necessary, additional training should be provided to Regional Supervisors to ensure that this report is being properly utilized to track abatement.

Review Process

The Acting Chief of Compliance Services is directly involved in the enforcement program. He reviews the technicality of all inspection case files, which are sent to his office prior to the issuance of any citations. This review also includes all fatalities, general duty clause violations, all media referrals and contested cases. The Acting Chief of Compliance Services also sits on a Review Committee for case file review, which consists of the Acting Chiefs of Safety and Health Compliance and the Chief of Operations. This review process was recently implemented. The new review process has had an impact on lag time from opening conference to the time of citation issuance. All data entry regarding updates to a case file is also now completed in the Baltimore Central Office.

Regional Supervisors have the authority to reduce the penalties by an additional ten percent (10%) if the employer has the penalty check available at the time of the informal conference.

Informal conferences almost universally resulted in a reduction in penalties with adequate documentation of the reasons for the reduction. The average penalty reduction given by Regional Supervisors during Informal Conferences is approximately 54% when taking all penalty reduction factors into consideration, which is greater than that offered by the Federal OSHA program.

The average lapse time from receipt of contest to first level decision for Maryland was zero days on the SAMM report for FY 2009. This data is not correct due to apparent coding errors when entering contest dates into the database. A review of the SAMM data for FY 2008 indicated that the average lapse time from receipt of contest to first level decision for Maryland was 308.75 in contrast to the Federal rate of 258.1 days. Therefore, a review of cases where decisions were issued during 2009 by

Administrative Law Judges under the Maryland Occupational Safety and Health Act was conducted. In one case the Administrative Law Judge affirmed three (3) of the citations and dismissed three (3). Three (3) decisions upheld the MOSH citations in full and one (1) decision dismissed the citations.

Recommendation 13: Retrain staff in the proper database entries for contested cases. Supervisors should review these data entry issues on a weekly basis to ensure that coding is being completed.

No specific issues were identified with the method of MOSH’s reclassification and/or vacation of violations during this evaluation period.

MOSH Regional Supervisors review all citations prior to issuance. The cases are then transmitted to the Laurel office where a committee reviews the case in detail. If changes need to be made to the citations, the case is referred back to the Regional Office. If no changes are necessary on the citations, the case is referred back to the Regional Office to transmit the information in the database. The Regional Office then sends the file to the Baltimore Central Office for issuance of the citations. Guidelines for all aspects of the Enforcement Program are found in the MOSH FOM, which is patterned after the Federal OSHA FOM issued in September 1994. The latest revision of the MOSH FOM was in 2001. State specific changes were incorporated into this program guideline to reflect the state program elements. Regional Supervisors conduct Informal Conferences and assign inspections. All significant cases are also reviewed by the Assistant Attorney General’s Office prior to citation issuance.

Compliance officers input case file information via the CSHO application. Weekly computer backups are performed to ensure inspection data is updated and retained.

General Inspection Statistics

23(g) Compliance & Consultation	Projected FY 2009		Actual FY 2009		Percent of Goal -vs- Actual FY 2009	
	Safety	Health	Safety	Health	Safety	Health
Private Sector Inspections	900	150	960	191	107%	127%
Public Sector Inspections	20	16	61	16	305%	100%
Total Inspections	920	166	1,021	207	111%	125%
Public Sector Consultation Visits	8	15	9	9	113%	60%
Total Consultation Visits	8	15	9	9	113%	60%

Most Frequently Cited Standards

A review was conducted of the most frequently cited standards by Maryland OSHA. The top cited standard in general industry was Control of Hazardous Energy with 122 serious and 93 other-than-

serious violations. Fifty-seven percent (57%) of the violations were classified as serious compared to 81% for Federal OSHA. The second most frequently cited standard was flexible cords with 77 serious and 119 other-than-serious violations. This indicates that 40% of these violations were classified as serious compared to Federal OSHA's serious rate of 78%.

Maryland OSHA Most Frequently Cited Standards – General Industry
October 1, 2008 to September 30, 2009

	Standard		Serious	Other	Repeat	Total	% Serious
1	1910.147c	Control of Hazardous Energy	122	93	0	216	57%
2	1910.305g	Flexible cords	77	119	0	196	40%
3	1910.303g	Working spaces about electrical equipment	72	119	0	191	38%
4	1910.1200f	Labeling hazardous chemicals	59	111	0	170	35%
5	1910.1200h	Hazard communications training	104	57	0	161	65%
6	1910.1200e	Hazard Communication	88	52	0	140	63%
7	1910.212	Machine guarding	130	6	0	138	95%
8	1910.305b	Electrical cabinets, boxes and fittings	97	41	0	138	71%
9	1910.178l	Powered Industrial Vehicle training	52	69	0	121	43%
10	1910.132f	Personal Protective Equipment training	27	93	0	120	23%

Federal OSHA Most Frequently Cited Standards – General Industry
October 1, 2008 to September 30, 2009

	Standard		Serious	Other	Repeat	Total	% Serious
1	1910.147	Lockout tagout program	2175	437	60	2687	81%
2	1910.212	Machine guarding	1890	132	35	2071	91%
3	1910.178	PIV training	1075	328	17	1421	76%
4	1910.1200e	Hazard communications program	677	469	18	1164	58%
5	1910.305g	Flexible cords	886	230	18	1134	78%
6	1910.305b	Electrical cabinets, boxes and fittings	819	187	15	1021	80%
7	1910.1200h	Hazard communications	670	294	23	994	67%

		training					
8	1910.303b	Electrical examination, installation and use of equipment	679	159	5	844	80%
9	1910.303g	Working spaces about electrical equipment	636	170	12	818	78%
10	1910.134	Respiratory protection program	391	348	8	747	52%

Comparison of the Maryland OSHA's and Federal OSHA's top ten cited standards for general industry reveals that Maryland OSHA shared six standards with Federal OSHA. These included hazard communication, hazard communication training, electrical cabinets, boxes and fittings, flexible cords, working spaces about electrical equipment and power industrial vehicle training.

An overall statistical analysis of the general industry tables revealed that Maryland OSHA issued 828 (52%) serious violations out of 1,591 total violations. Federal OSHA issued 9,898 (77%) serious violations out of 12,901 total violations. This represents a percentage difference of 25%.

Maryland OSHA Most Frequently Cited Standards – Construction October 1, 2008 to September 30, 2009

	Standard		Serious	Other	Repeat	Total	% Serious
1	1926.501	Unprotected edges and sides	226	16	11	254	89%
2	1926.1053b	Use of ladders	86	49	3	138	63%
3	1926.503b	Fall protection – certification of training	0	93	2	95	0
4	1926.451g	Fall protection	93	1	0	94	99%
5	1926.503a	Fall Protection – training program	79	3	1	84	94%
6	1926.020b	Accident prevention responsibilities	73	4	1	78	94%
7	1926.451b	Scaffold platform	56	5	1	62	91%
8	1926.454a	Scaffolds – training requirements	58	1	0	59	99%
9	1926.100	Head protection	54	3	0	57	95%
10	1926.1060a	Ladders – training requirements	37	15	1	53	70%

Federal OSHA Most Frequently Cited Standards – Construction October 1, 2008 to September 30, 2009

	Standard		Serious	Other	Repeat	Total	% Serious
1	1926.501	Unprotected sides and	6036	312	450	6838	88%

		edges					
2	1926.1053	Use of ladders	2763	256	65	3088	89%
3	1926.451g	Fall protection	2651	57	193	2915	91%
4	1926.503	Training	1672	107	8	1861	90%
5	1926.020	Accident prevention responsibilities	1451	334	40	1825	80%
6	1926.451b	Scaffold platform	1654	49	79	1790	92%
7	1926.453	Aerial lift requirement	1521	79	94	1697	90%
8	1926.100	Head protection	1492	98	63	1653	90%
9	1926.451e	Scaffold access	1239	35	87	1372	90%
10	1926.451c	Criteria for support scaffold.	1210	58	32	1301	93%

Comparison of the Maryland OSHA's and Federal OSHA's top ten cited standards for construction reveals that Maryland OSHA shared six standards with Federal OSHA. Those standards included unprotected sides and edges, fall protection and training program, use of ladders, head protection, and scaffold platforms.

An overall statistical analysis of the tables revealed that Maryland OSHA issued 762 (79%) serious violations out of 974 total violations. Federal OSHA issued 21,689 (89%) serious violations out of 24,340 total violations. This represents a percentage difference of 10%. This further indicates the misclassification of violations and a need for a special study by Federal OSHA.

Debt Collection

The Assistant Commissioner or his authorized representative is responsible for initiating the debt collection process when a MOSH penalty becomes a final order and coordinates collection activities with the Maryland Central Collection Unit when files are forwarded to that office for collection action. MOSH is required to refer all delinquent debts to the Central Collection Unit in a timely manner, usually within 75 days of the original demand for payment if the debtor fails to respond positively to demands for payment. MOSH is also required to send collection letters to debtors at 30-day intervals. Three written demands will normally be made before an account is considered delinquent. The Central Collection Unit has various avenues available to it for collection attempts, such as suspension or revocation of licenses or other privileges permitted within the state of Maryland, collection by offset, or legal prosecution. All debts over \$30.00 are transferred to the Central Collection Unit if they remain unpaid.

The Collections Unit for the State of Maryland is governed by Maryland Code Annotated, State Fin. & Proc. 3-301 to 3-306 and COMAR Maryland Regulations Code Title 17 §01.01.01-07. Once a case has been referred to the Collections Unit, it is no longer within the authority of MOSH. Only the Collections Unit has the authority to determine if legal action will be initiated for an unpaid penalty and this unit also determines if any debts are written off as uncollectible.

Public Employee Programs

MOSH conducted 77 inspections in the public sector, 6.3% of its total inspection activity for FY 2009. The three-year MOSH average is 5.5%, and MOSH exceeded its goal of 36 public sector inspections for FY 2009. The average number of violations cited per initial inspection in the public sector was 4.8 and 70% of the violations were cited as serious compared to other state plans which issued serious citations in 59% of its total violations and had an average violation per initial inspection of 4.3. Although no penalties are assessed against public agencies, MOSH has worked successfully with these agencies to bring them into compliance with current safety and health standards.

IMIS/Program Management

All transmissions to the host computer (e.g., End-of Day (EOD) and Start-of-Day (SOD)) are conducted on a daily basis by administrative staff. Daily back-ups of local databases are also performed on a daily basis by administrative staff. A detailed review was made of various management reports to determine if MOSH was timely processing data and updating the system appropriately. Forms rejected by the host computer in Washington, D.C. are handled as expeditiously as possible by administrative staff. Discussions with Compliance Supervisors and Program Chiefs indicated that local reports were not always run and reviewed on a weekly basis. However, this issue has been implemented and a review of reports revealed that the following local reports are now run on a weekly basis:

Complaint Tracking Report: The Complaint tracking report is used to determine if complaints need to be closed that are still open. This report is generated and distributed to supervisors monthly.

Referral Tracking Report: The Referral tracking report is used to determine if referrals need to be closed that are still open. This report is generated and distributed to supervisors monthly.

Complaint - Employer Response Due Report: This report lists all complaint inquiries where the employer's response to OSHA's request to investigate the complaint allegations has not been received. This report is available for use by management to contact the employer and remind them that their abatement response is past due or to schedule the complaint for an inspection due to the lack of response.

Complaint – OSHA-7 for Signature: This report lists all complaint inquiries where the employee's requested signature has not been received. This report is available for use by management to contact the employee and remind them that their signed complaint form is past due, or maintain the "non-formal" classification due to the lack of the employee's signature and process the complaint as an inquiry.

Unsatisfied Activity Report: This report lists all complaint, referral and accident/event records that have been selected for an inspection yet no inspection has been initiated. These reports are run on a weekly basis and distributed to supervisors for review and action. All coding issues are immediately identified and eliminated by the system administrator.

Citations Pending Report: This report lists all open inspections where the citations have not been issued. This report is available for use by management to track the six-month statute of limitation for issuing citations. There were no instances found where citations were not issued within the six month time frame.

Violation Abatement Report: This report lists all cases with abatement past due for specific violations and is available for use by management to contact the employer and remind them of their past due abatement, or schedule a follow-up inspection because of the lack of the employer's abatement response. Although this report is generated and distributed to the management team on a monthly basis, abatement verification (SAMM Measure #8) has been an outlier for a number of years.

Staff interviews revealed that the IMIS is not consistently updated when abatement is received by MOSH. However, appropriate abatement time was established by supervisors on most case files that were reviewed. In a number of cases timely abatement action beyond 30 days was not documented in the case file. Other files had abatement notes from informal conferences without certification or documentation such as photos, invoices, or job orders. More recent files had better abatement information as new policies have been implemented to ensure adequate abatement documentation in obtained and placed in case files.

Open Inspection Report: This report lists all open inspections for each office. For internal audit purposes, this report can be reviewed to determine if case file management is being handled properly. The review will identify all cases that have all abatements completed and all penalties paid, so the cases can be effectively closed on the IMIS system.

Fatality/Catastrophe Report: The fatality/catastrophe report lists all inspections in which an OSHA-170 has not yet been entered into the system. This report is reviewed on a weekly basis by management.

Most data is timely updated in the NCR either by compliance officers, administrative staff or Compliance Managers. However, it has been determined that there are coding issues with regard to abatement verification as mentioned above in section B.i. This has been stressed to MOSH management as a problem and that appropriate action in accordance with MOSH internal procedures need to be taken to remedy this situation.

See Recommendation 12: Abatement tracking reports need to be reviewed weekly by Compliance Managers and/or Division Chiefs to ensure that proper abatement is being received and the data is being entered properly in the database.

BLS Rates

The Survey of Occupational Injuries and Illnesses, conducted in cooperation with the U.S. Department of Labor, Bureau of Labor Statistics (BLS), produces estimated work-related injury and illness rates and numbers for Maryland. The survey is a statistically valid sample of incidents reported by Maryland employers from the OSHA 300 Form. The survey also produces case and

demographic data in Maryland on injury and illness cases involving days away from work. The information collected includes the employee's age, length of service, occupation, as well as, the nature and sources of the injury and illness, events and types of exposures, and the part of the body affected. The results are published annually. Based on the results for Maryland and a review of the local emphasis programs developed for FY 2009, it appears that MOSH is properly directing its inspection activities to industries that have high incidences of injuries, illnesses and/or fatalities.

Occupational injury and illness rates for Maryland have declined steadily over the last five years. The trend for fatalities is similar.

MARYLAND (INJURIES, ILLNESSES AND FATALITIES) PRIVATE SECTOR

YEAR	2008	2007	2006	2005	2004
INJURY/ ILLNESS *	3.3	3.7	3.8	4.2	4.2
FATALITY NUMBERS**	52	70	95	84	73

Source: Bureau of Labor Statistics

* TCIR

**Census of Fatal Occupational Injuries Data. These numbers include all fatalities in Maryland, including fatalities that are not within the jurisdiction of MOSH.

MARYLAND (INJURIES, ILLNESSES AND FATALITIES) PUBLIC SECTOR

YEAR	2008	2007	2006	2005	2004
INJURY/ ILLNESS *	6.6	7.1	--	5.4	7.8
FATALITY NUMBERS**	8	12	10	11	8

Source: Bureau of Labor Statistics

* TCIR

**Census of Fatal Occupational Injuries Data. These numbers include all fatalities in Maryland, including fatalities that are not within the jurisdiction of MOSH.

ii. Standards Adoption and Plan Changes

Federal Initiated Standard Changes

Maryland agreed to adopt the following 2008 and 2009 Federal Initiated Standard Changes. These changes were timely adopted:

- Clarification of Employer Duty to Provide Personal Protective Equipment and Train Each Employee
- Employer Payment for Personal Protective Equipment

Federal Program Changes

Maryland agreed to and adopted the following 2008 and 2009 Federal Program Changes:

- Inspection Procedures for Chromium (VI) Standards
- Control of Hazardous Energy (Lockout/Tagout)
- NEP – Combustible Dust
- Voluntary Protection Programs (VPP) Policies and Procedures Manual
- Site-Specific Targeting 2009 (SST-09)

Maryland agreed to adopt the following 2008 and 2009 Federal Program Changes:

- Initial Training Program for OSHA Compliance Personnel
- NEP –Injury and Illness Recordkeeping
- Tree Care and Tree Removal

MOSH participates in the Automated Tracking System (ATS) regarding federal program and state program changes. Maryland does not always timely respond to Federal Initiated Standard Changes and Federal Program Changes indicating their intention to adopt or not adopt. Actual adoption dates and submission of adoption documents were not always timely submitted by Maryland but when contacted Federal OSHA was promptly provided with the required information.

The Maryland Occupational Safety and Health Advisory Board first organized in 1955 as the Occupational Safety Advisory Board. The MOSH Advisory Board adopted its present name in 1968. This Board formulates and proposes rules and regulations to prevent occupational injuries and occupational diseases in almost every occupation or place of employment in Maryland. The Board generally meets the first Wednesday of each month to discuss issues relating to Occupational Safety and Health.

MOSH has not yet adopted the Federal Program Change for the Field Operations Manual (FOM) but has indicated that it will be adopting this change after it has made appropriate state-specific changes to the document. MOSH will at that time submit a detailed comparison document identifying differing state policies.

Recommendation 14: It is recommended that MOSH adopt Federal Program Changes within the six month period.

State Initiated Changes

In response to increased crane failures and fatalities around the nation MOSH took aggressive steps to implement more stringent crane operation regulations. The industry, including crane manufacturers, general contractors, trade contractors, rental companies, labor organizations, and certifying agencies were brought together to develop this standard by MOSH Commissioner, a former crane operator. On April 6, 2009 COMAR 09.12.26 became a final rule. It sets forth regulations for crane operators, riggers and signal persons. The regulation addresses training and certification, inspections, physical exams, and drug testing for most cranes used in construction. Also covered are additional requirements for tower crane usage. These standards require extensive training for all riggers and signalpersons as well as the operator. MOSH compliance staff began

issuing “crane letters” to employers who were not compliant with the new standard as the standard was phased in this summer. Citations with penalties for non-compliant employers will begin to be issued January 1, 2010.

During FY 2009 MOSH began the process to revoke its interim fall protection standard and is hopeful that this will be completed in early 2010. MOSH also began drafting requirements for Class II work vests on roadways, and this instruction is still going through the regulatory process and will be completed sometime in 2010.

In response to the Occupational Safety and Health Administration’s (OSHA) instruction CPL 02-01-045 ‘Citation Guidance Related to Tree Trimming and Tree Removal Operations’, MOSH began the process of developing its own standard. A committee was formed using the expertise of four compliance officers who were charged with developing specific regulations for Maryland that combined this instruction with OSHA’s logging standard. The committee is hopeful that the regulations will be ready for legal review in early 2010.

iii. Variances

No variances have been requested during FY 2009.

iv. Public Sector Consultation

The Maryland FY 2009 MARC report for the public sector is attached hereto at Appendix F. Maryland Consultants conducted 19 public sector consultation visits in FY 2009. MARC measures 1 and 2 do not apply to the public sector, although data is included in the printout in Appendix F.

- | | |
|----------|--|
| MARC 3 | Percent of Visits where Consultant Conferred with Employees.

Consultants conferred with employees during 100% (18/18) of initial visits. |
| MARC 4.A | Percent of Serious Hazards Verified Corrected in a Timely Manner (within 14 days of latest correction due date).

There were 318 total serious hazards identified during this evaluation period of which 296 were verified corrected. Additional information was requested from Maryland and it was determined that the 22 hazards identified as not verified corrected were actually corrected on-site. These were determined to be coding errors. Therefore, 100% of serious hazards were verified corrected in a timely manner. |
| MARC 4.B | Percent of Serious Hazards Not Verified Corrected in a Timely Manner (within 14 days of latest correction due date).

See MARC 4.A. |

MARC 4.C Percent of Serious Hazards Referred to Enforcement.

No serious hazards identified during the period were referred to enforcement.

MARC 4.D Percent of Serious Hazards Verified Corrected in Original Timeframe or Onsite

Of the 318 serious hazards identified, 140 (44.03%) were verified within the original timeframe or onsite. The reference for this measure is 65% and Maryland to strive to increase its hazard verification rate.

MARC 5 Number of Uncorrected Serious Hazards with Correction Date more than 90 Days Past Due.

There were no serious hazards with correction due date more than 90 days past due.

Recommendation 15: Maryland should regularly monitor its hazard verifications and ensure that data is promptly entered into the database and any coding errors are corrected.

v. Discrimination Program

During the opening conference of the on-site review, the auditor was advised by the Whistleblower program manager that MOSH was using the current Federal Discrimination Manual as their reference guide.

During the period of evaluation, there was one Whistleblower investigator.

A review of the case files was performed as well as a review of the Web IMIS system. There was a beginning case load of ten (10) cases with a total of eight (8) cases received during this evaluation period. A review of Web IMIS did not show that any of the cases had been closed, and none of these cases were completed during the evaluation period. The auditor also reviewed sixteen (16) screen-out matters during the on-site review.

At the time of review, two cases had been closed; one case had been transferred to Federal OSHA because of a possible conflict of interest with MOSH's whistleblower investigator and one was pending settlement.

A review of all the case files revealed none of the case files were set up in accordance with the Discrimination Manual (Reference Chapters 2 through Chapter 5).

Recommendation 16: Files should be set up and maintained in accordance with the Discrimination Manual, Chapter 2 through Chapter 5.

There were no opening (Docketing and Notification) letters to the complainants and respondents contained in the files.

Recommendation 17: Letters must be prepared, sent out and maintained in accordance with the Discrimination Manual, Chapter 2, § III(E) and Chapter 5, § III(B).

Case file documentation was inserted into the case file with no order and the files were not tabbed.

Recommendation 18: Case files be prepared and tabbed in accordance with the Discrimination Manual, Chapter 5, § III.

A recently closed case had no dismissal letters in the file.

Recommendation 19: Cases be closed in accordance with the Discrimination Manual, Chapter 4, § IV.

Management and non-management interviews were not always conducted.

Recommendation 20: Interviews must be conducted and documented in accordance with the Discrimination Manual, Chapter 3, § IV.

There was incomplete case information in Web IMIS.

Recommendation 21: Input complete case information into the Web IMIS in accordance with the Web IMIS guide.

There was no documentation of settlement of Whistleblower cases.

Recommendation 22: Settlements must conform to and be documented in accordance with the Discrimination Manual, Chapter 6, § IV.

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

Case file review indicated that when documentation was requested from complainant, there was no due date included in that correspondence. One way to cut down on lapse time would be to include a due date for response to MOSH. If there is no response the case could be closed for lack of cooperation from the complainant.

Recommendation 23: Investigations must be completed within 90 days in accordance with MOSH FOM and the MOSH Act.

Numerous case files were open for extended periods of time with no current activity documented in the case files.

Recommendation 24: The Whistleblower program manager should monitor the Web IMIS system to determine what cases are open and determine what appropriate action is required in accordance with the Discrimination Manual and MOSH FOM.

vi. Complaints About State Program Administration (CASPA)

There were no Complaints About State Program Administration received during this evaluation period regarding MOSH.

vii. Voluntary compliance programs/outreach

The Maryland Voluntary Protection Program (VPP) is designed to recognize and promote exceptional safety and health management programs. In VPP, the Division of Labor and Industry's Occupational Safety and Health Program, management and labor establish a cooperative relationship at a general industry or public sector workplace that has implemented a strong safety and health program. MOSH's VPP program and its guidance follow the procedures set out in the Federal VPP program with minor modifications (MOSH's participation is limited to fixed general industry sites and STAR sites).

The MOSH program added four additional STAR level sites to its Voluntary Protection Program (VPP). Safety and Health Achievement Recognition Program (SHARP) activities during this evaluation period resulted in two SHARP renewals, two sites pending renewal, and three SHARP deferrals.

VPP Sites Awarded in FY 2009

VPP Sites Approved in FY09	
Company	Location
BlueLinx Corporation	Frederick
Clean Harbors Environmental Services	Baltimore
Grace Davis Technical Center	Curtis Bay
Life Technologies Corporation	Frederick

Active VPP sites FY09

Active VPP Sites FY09	
Company	Location
BlueLinx Corporation	Frederick
Clean Harbors Environmental Services	Baltimore
Constellation Nuclear Power Plant	Lusby
Covanta Energy	Dickerson
FritoLay	Aberdeen
Grace Davis Technical Center	Curtis Bay

Life Technologies Corporation	Frederick
Millennium Organic Chemical	Curtis Bay
Mosanto Galena Research Station	Galena
Northrop Grumman Advanced Technologies Laboratories	Linthicum
Northrop Grumman Electronic Systems	Linthicum
Performance Pipe	Hagerstown
Sherwin Williams	Crisfield
Wheelabrator	Baltimore

During FY 2009 the Training and Education Unit was able to offer 88 educational seminars covering 38 topics at no cost to the employees and employers in Maryland. Most of these seminars were taught by MOSH compliance officers and were offered at locations throughout the state. Topics included everything from Accident Investigation to Injury Prevention in Nursing Homes to Workplace Hazard Assessment. Three of the 88 classes held were conducted in Spanish (Excavation and Trenching, Construction Site Safety and Fall Protection). Over 2,500 employees and employers participated in the seminars that were given. Another 4,200 employees attended speaking engagements given by MOSH staff.

Educational Seminars Offered in FY 2009

Educational Seminars	
Course Name	Course Name
Accident Investigation	Introduction to IH for Construction
Basic Rigging Seminar	Introduction to OSHA Recordkeeping
Bloodborne Pathogens	Introduction to Safety and Health for Supervisors
Characteristics of an Effective Safety & Health Program	Machine Guarding
Construction Equipment Awareness	MSDS/Right-to-Know & Personal Protective Equipment
Construction Site Safety	Nursing Home - Injury Prevention
Construction Site Safety - Fall Protection	Occupational Exposure to Noise
Construction Site Safety II	OSHA 10 Hour
Crane Safety Awareness	Permit Required Confined Spaces
Cranes - New Maryland Regulations	Powered Industrial Truck Safety

Electrical Hazard Awareness	Proteccion contra caidas para trabajos sobre techo
Electrical Safety & Lockout Tagout	Residential Fall Protection
Emergency Response and Disaster Preparedness	Respiratory Protection
Excavacion de trincheras	Scaffolding Safety in Construction
Excavation & Trenching	Seguridad en la Construccion
Excavation Safety	This is MOSH
Fair Practice/Personnel Training	Topics in OSHA Recordkeeping
Hand and Power Tool Safety	Workplace Hazard Assessment
Heat Stress	Workplace Violence

Additionally MOSH held it's Annual Update for all staff where training on customer service, hazard communication, blood borne pathogens, respiratory protection, focused inspections, and the instruction of Fiscal Year 2010's new annual goals, strategic targeting, and emphasis programs were covered and provided in our Red Book (a system used to ensure each employee has the latest copy of the annual plan and has received training on it).

viii. Program Administration

The MOSH program is allocated fifty-three and a half (53.5) benchmark positions in accordance with their State Plan. They were allocated thirty-six and a half (36.5) safety specialist positions and seventeen (17) industrial hygienist positions. Currently, they are staffed with thirty-four (34) safety specialists and fourteen (14) industrial hygienists. MOSH is recruiting to fill vacant positions. As a result of the on-site review of the MOSH program, it has been determined that the current vacancies do not have an adverse effect on the overall effectiveness of the MOSH Program.

During this evaluation, it was determined that numerous compliance staff, designated as enforcement health and/or safety positions in the supportive cost breakout worksheet attached to the grant application for FY 2009, are performing administrative functions such as running IMIS reports, providing grant application updates and budget report updates. While some administrative activities are permitted for positions designated as benchmarks, the amount of time dedicated to enforcement activities should be significant. Micro-to-Host reports were run for various staff, designated as enforcement personnel, working in the Outreach Unit, for FY 2009 and no inspection activity was found for these individuals.

Recommendation 25: MOSH must ensure that personnel designated as fulfilling its benchmark requirements pursuant to 29 CFR §1952.213 are performing enforcement activities and conducting inspections for the majority of their work time.

Furloughs and temporary salary reductions occurred during FY 2009. The salary reductions occurred over a 90 day period in addition to 3 to 5 days of floating furloughs. In FY 2010 it is anticipated that

5 service reduction days will be used for a temporary salary reduction as well as 2 to 4 floating furlough days based on the salary of each employee. These reductions will not negatively affect the Maryland Occupational Safety and Health Program, which will continue to provide safety and health coverage for the state, responding to all workplace fatalities and complaints as required by MOSH's policies and procedures; however, inspection numbers may decline.

MOSH currently has a program directive that outlines its professional development training for compliance personnel. MOSH is in the process of adopting Federal OSHA's directive, TED 01-00-018, Initial Training Program for OSHA Compliance Personnel.

A trend was observed during the on-site evaluation process wherein compliance officers' field notes were not contained in case files. According to MOSH management personnel, their attorneys advised them to discard any field notes from inspection files. The reason provided to the auditors was that the field notes may be inadvertently released during a Maryland Public Information Act request.

MOSH's current FOM, Chapter 1.C.6 "Disposition of Inspection Records" states in part that "copies of documents, notes or other recorded information not necessary or pertinent or not suitable for inclusion in the case file shall, with the concurrence and permission of the MOSH Supervisor, be destroyed."

Recommendation 26: Compliance officers' field notes must be maintained in case files. OSHA FOM Chapter 5, Section XII, Inspection Records, should be adopted.

ix. State Internal Evaluation Program

During FY 2009 MOSH performed an internal audit of its organizational structure from compliance staff to consultation staff. Senior Management met and recommended potential areas of growth that were needed as well as anticipated issues arising from retirements and attrition. In order to stave off future issues with lack of institutional knowledge and experience two core solutions were identified and implemented. The first was a reorganization to begin moving those who are coming close to retirement into positions where those who could potentially replace retirees could begin to assume those duties with a mentor. This led to the need for a more centralized headquarters to consolidate management and battle the "silo" effect. This resulted in positive transition with support from all staff that were involved in the process. MOSH also realized that job duties within the agency needed to have back up personnel in place and written procedures needed to be established. This has assisted MOSH staff in developing additional skills, practices and ideas that can be shared throughout the agency.

Appendix A

FY 2009 Maryland State Plan (MOSH) Enhanced FAME Report

Findings and Recommendations Summary Chart

FY 2009 Maryland State Plan (MOSH) Enhanced FAME Report
Summary of Findings and Recommendations

	Special Study Findings	Recommendations
1	<p>Formal complaint letters to employers and letters to complainants with inspection findings were maintained in separate files at the central office in Baltimore rather than in each Regional Office servicing the complaint.</p> <p>Information from the complaint letter is often re-typed or re-worded on the OSHA-7 complaint form to maintain complainant anonymity. This practice is problematic in that complaint inspection files are incomplete without the supporting documentation of a signed complaint letter or OSHA-7. Additionally, specific information about a hazard or facility is sometimes omitted from a re-typed or re-worded complaint.</p>	Letters received from complainants must be maintained in the inspection file.
2	Response letters to complainants were found in files that are maintained in the Baltimore office as mentioned above. However, the response letters are not maintained in the inspection files after they are closed.	Response letters to complainants must be maintained in the inspection file.
3	During the period October 1, 2008 through September 30, 2009, Maryland received 110 serious complaints and 102 were inspected within five days for a response rate of 92%. MOSH's FOM outlines that formal complaints involving potentially serious hazards shall be investigated within 3 working days of assignment.	MOSH must respond to serious complaints within 3 days of assignment pursuant to its FOM or change its FOM.
4	Case file review revealed that no next-of-kin letters were sent on fatality inspections. MOSH began to send next-of-kin letters in December 2009. Another trend observed was that there was little or no communication with families at the conclusion of the inspections to inform the next-of-kin of inspection findings.	Continue to send condolence letters to next-of-kin at start of investigation. Families of fatality victims must be kept up-to-date about investigations and informed of the outcome of MOSH investigations.
5	A number of OSHA-170 forms contained inappropriate information in the narrative, e.g., name of compliance officer who conducted the inspection and/or the names of decedents and/or injured employees.	Retrain compliance officers and supervisors in the proper completion of OSHA-170 forms to ensure that names of compliance officers, decedents and/or injured employees are not contained in narrative portion of the OSHA-170 forms.
6	<p>Violations cited on programmed inspections include a high percentage of other-than-serious citations for hazards that should be classified as serious.</p> <p>A number of files reviewed which had violations that were cited as other-than-serious and could have been classified as serious. Health compliance officers have a serious violation percentage of 28%, less than half the Federal rate of 70%.</p>	Conduct training on hazard classification for compliance officers and supervisors to ensure consistency with violation classification.
7	MOSH does not assess penalties for first instance other-than-serious violations.	Revise MOSH Instruction 98-3 dated September 28, 1998 to eliminate Section C.3 that does not permit penalty assessment for first instance other-than-serious violations.
8	MOSH offers penalty reductions of approximately 54% and has a penalty retention rate of 46% percent compared to Federal rate of 63.2%.	Rescind Memorandum 01-2 dated April 9, 2001 titled "Employer Incentive 50% Penalty Reduction."
9	Abatement data was not being entered into the database.	Promptly enter abatement verification data into database.
10	Case file diary sheets were not found in inspection	Institute the use of a case file diary sheet. This form

	Special Study Findings	Recommendations
	files.	needs to be kept at the top of the case file so that a reviewer can tell at first glance the status of that case.
11	MOSH was not calling employers or sending abatement letters on all cases where abatement had not been received by MOSH.	MOSH should, in accordance with its own procedures as outlined in its FOM, call employers for outstanding abatement documentation and/or send abatement letters on all cases where abatement documentation has not been received by MOSH.
12	Abatement tracking reports are not routinely reviewed by management on a weekly basis.	Abatement tracker reports should be carefully reviewed weekly by all Regional Supervisors. If necessary, additional training should be provided to Regional Supervisors to ensure that this report is being properly utilized to track abatement.
13	Contested case information was not being entered into the database.	Retrain staff in the proper database entries for contested cases. Supervisors should review these data entry issues on a weekly basis to ensure that coding is being completed.
14	Not all Federal Program Changes are adopted within the six month period.	It is recommended that MOSH adopt Federal Program Changes within the six month period. (New FOM not yet adopted.)
15	Abatement verification data was not being properly entered into the database for 23(g) public sector consultation.	Maryland should regularly monitor its hazard verifications and ensure that data is promptly entered into the database and any coding errors are corrected.
16	Files were not properly maintained in accordance with the Discrimination Manual, Chapter 2 through Chapter 5.	Files should be set up and maintained in accordance with the Discrimination Manual, Chapter 2 through Chapter 5.
17	There were no opening (Docketing and Notification) letters to the complainants and respondents contained in the files.	Letters must be prepared, sent out and maintained in accordance with the Discrimination Manual, Chapter 2, § III(E) and Chapter 5, § III(B).
18	Case file documentation was inserted into the case file with no order and the files were not tabbed.	Case files be prepared and tabbed in accordance with the Discrimination Manual, Chapter 5, § III.
19	A recently closed case had no dismissal letters in the file.	Cases must be closed in accordance with the Discrimination Manual, Chapter 4, § IV.
20	Management and non-management interviews were not always conducted.	Interviews must be conducted and documented in accordance with the Discrimination Manual, Chapter 3, § IV.
21	There was incomplete case information in Web IMIS.	Input complete case information into the Web IMIS in accordance with the Web IMIS guide.
22	There was no documentation of settlement of Whistleblower cases.	Settlements must conform to and be documented in accordance with the Discrimination Manual, Chapter 6, § IV.
23	Investigations were not completed in accordance with MOSH FOM, Chapter X, § A3(b), which requires investigations to be completed with 90 days of filing. Section 5-604(d)(3) of the MOSH Act requires that "within 90 days after the Commissioner receives a complaint, the Commissioner shall notify the employee of the determination under this subsection."	Investigations must be completed within 90 days in accordance with MOSH FOM and the MOSH Act.
24	Numerous case files were open for extended periods of time with no current activity documented in the case files.	The Whistleblower program manager should monitor the Web IMIS system to determine what cases are open and determine what appropriate action is required in accordance with the Discrimination Manual and MOSH FOM.
25	Enforcement staff, designated as benchmark positions, are not performing enforcement activities.	MOSH must ensure that personnel designated as fulfilling its benchmark requirements pursuant to 29

	Special Study Findings	Recommendations
		CFR §1952.213 are performing enforcement activities and conducting inspections for the majority of their work time.
26	Compliance officers' field notes were not contained in case files. (Are destroyed per State policy.)	Compliance officers' field notes must be maintained in case files. OSHA FOM Chapter XII, Inspection Records, should be adopted.

Appendix B
FY 2009 Maryland State Plan (MOSH) Enhanced FAME Report

Enforcement Comparison Summary Chart

FY 2009 Maryland (MOSH) Enforcement Activity

	Maryland	State Plan Total	Federal OSHA
Total Inspections	1,228	61,016	39,004
Safety	1,021	48,002	33,221
% Safety	83%	79%	85%
Health	207	13,014	5,783
% Health	17%	21%	15%
Construction	708	26,103	23,935
% Construction	58%	43%	61%
Public Sector	77	7,749	N/A
% Public Sector	6%	13%	N/A
Programmed	885	39,538	24,316
% Programmed	72%	65%	62%
Complaint	145	8,573	6,661
% Complaint	12%	14%	17%
Accident	107	3,098	836
Insp w/ Viols Cited	1,004	37,978	27,165
% Insp w/ Viols Cited (NIC)	82%	62%	70%
% NIC w/ Serious Violations	77%	62%	87%
Total Violations	5,277	129,363	87,663
Serious	2,363	55,309	67,668
% Serious	45%	43%	77%
Willful	12	171	401
Repeat	39	2,040	2,762
Serious/Willful/Repeat	2,414	57,520	70,831
% S/W/R	46%	44%	81%
Failure to Abate	15	494	207
Other than Serious	2,848	71,336	16,615
% Other	54%	55%	19%
Avg # Violations/ Initial Inspection	4.9	3.3	3.1
Total Penalties	\$ 2,198,574	\$ 60,556,670	\$ 96,254,766
Avg Current Penalty / Serious Violation	\$ 701.80	\$ 800.40	\$ 970.20
Avg Current Penalty / Serious Viol- Private Sector Only	\$ 758.50	\$ 934.70	\$ 977.50
% Penalty Reduced	54.4%	51.9%	43.7%
% Insp w/ Contested Viols	0.0%	13.0%	7.0%
Avg Case Hrs/Insp- Safety	24.4	15.7	17.7
Avg Case Hrs/Insp- Health	41.6	26.6	33.1
Lapse Days Insp to Citation Issued- Safety	21.8	31.6	34.3
Lapse Days Insp to Citation Issued- Health	46.1	40.3	46.7
Open, Non-Contested Cases w/ Incomplete Abatement >60 days	4	2,010	2,234

Source:

DOL-OSHA. State Plan INSP & ENFC Reports, 11-19-2009. Federal INSP & ENFC Reports, 11-9-2009. Private Sector ENFC- State Plans 12.4.09 & Federal 12.14.09

Appendix C

FY 2009 Maryland State Plan (MOSH) Enhanced FAME Report

FY 2009 State OSHA Annual Report (SOAR)
(Available Separately)

Appendix D
FY 2009 Maryland State Plan (MOSH) Enhanced FAME Report

FY 2009 State Activity Mandated Measures (SAMM)

U. S. D E P A R T M E N T O F L A B O R
 OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION
 STATE ACTIVITY MANDATED MEASURES (SAMMs)

OCT 23, 2009
 PAGE 1 OF 2

State: MARYLAND

RID: 0352400

MEASURE	From: 10/01/2008		CURRENT		REFERENCE/STANDARD
	To: 09/30/2009		FY-TO-DATE		
1. Average number of days to initiate Complaint Inspections	452	3.22	0	140	Negotiated fixed number for each State
2. Average number of days to initiate Complaint Investigations	223	1.59	0	140	Negotiated fixed number for each State
3. Percent of Complaints where Complainants were notified on time	141	97.92	0	144	100%
4. Percent of Complaints and Referrals responded to within 1 day -ImmDanger	12	92.31	0	13	100%
5. Number of Denials where entry not obtained	0		0	0	
6. Percent of S/W/R Violations verified					
Private	1557	66.74	20	371	100%
Public	114	52.05	0	55	100%
7. Average number of calendar days from Opening Conference to Citation Issue					
Safety	27018	30.39	286	13	2489573 43.8 56880
Health	10567	62.15	346	8	692926 57.4 12071

*FY09MD

**PRELIMINARY DATA SUBJECT TO ANALYSIS AND REVISION

U. S. D E P A R T M E N T O F L A B O R
 OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION
 STATE ACTIVITY MANDATED MEASURES (SAMMs)

OCT 23, 2009
 PAGE 2 OF 2

State: MARYLAND

RID: 0352400

MEASURE	From: 10/01/2008		CURRENT		REFERENCE/STANDARD
	To: 09/30/2009		FY-TO-DATE		
8. Percent of Programmed Inspections with S/W/R Violations					
	585		12		92328
Safety	72.13		63.16		58.6 National Data (3 years)
	811		19		157566
	76		3		11007
Health	82.61		100.00		51.2 National Data (3 years)
	92		3		21510
9. Average Violations per Inspection with Vioations					
	2584		52		420601
S/W/R	2.44		2.47		2.1 National Data (3 years)
	1059		21		201241
	2776		61		243346
Other	2.62		2.90		1.2 National Data (3 years)
	1059		21		201241
10. Average Initial Penalty per Serious Violation (Private Sector Only)	2935747		72297		492362261
	1262.14		1390.32		1335.2 National Data (3 years)
	2326		52		368756
11. Percent of Total Inspections in Public Sector	76		0		221
	6.47		.00		5.5 Data for this State (3 years)
	1175		4		3996
12. Average lapse time from receipt of Contest to first level decision	0		0		4382038
					246.1 National Data (3 years)
	0		0		17807
13. Percent of 11c Investigations Completed within 90 days	1		0		100%
	100.00				
	1		0		
14. Percent of 11c Complaints that are Meritorious	1		0		1466
	100.00				20.8 National Data (3 years)
	1		0		7052
15. Percent of Meritorious 11c Complaints that are Settled	1		0		1263
	100.00				86.2 National Data (3 years)
	1		0		1466

*FY09MD

**PRELIMINARY DATA SUBJECT TO ANALYSIS AND REVISION

Appendix E
FY 2009 Maryland State Plan (MOSH) Enhanced FAME Report

FY 2009 State Indicator Report (SIR)

OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION

CURRENT MONTH = SEPTEMBER 2009

INTERIM STATE INDICATOR REPORT (SIR)

STATE = MARYLAND

PERFORMANCE MEASURE	----- 3 MONTHS-----		----- 6 MONTHS-----		-----12 MONTHS-----		-----24 MONTHS-----	
	FED	STATE	FED	STATE	FED	STATE	FED	STATE
C. ENFORCEMENT (PRIVATE SECTOR)								
1. PROGRAMMED INSPECTIONS (%)								
A. SAFETY	6212	213	11892	414	21855	740	42572	1689
	67.3	84.2	67.5	82.0	66.8	79.3	65.2	78.3
	9230	253	17617	505	32713	933	65304	2158
B. HEALTH	508	15	1004	36	1963	83	3678	165
	34.5	35.7	34.1	36.4	35.3	43.5	34.0	40.8
	1471	42	2946	99	5559	191	10829	404
2. PROGRAMMED INSPECTIONS WITH VIOLATIONS (%)								
A. SAFETY	4645	223	8997	370	16745	687	32019	1534
	67.7	82.6	65.9	81.5	65.8	82.0	65.9	83.2
	6860	270	13654	454	25453	838	48603	1844
B. HEALTH	368	20	746	46	1486	85	2884	161
	52.2	58.8	50.8	67.6	51.7	64.9	55.6	60.5
	705	34	1468	68	2873	131	5187	266
3. SERIOUS VIOLATIONS (%)								
A. SAFETY	15510	434	29490	879	56535	1778	111717	3853
	81.8	51.1	81.1	50.8	80.0	51.0	79.4	50.3
	18952	850	36371	1730	70692	3485	140747	7667
B. HEALTH	2802	92	5343	229	10035	392	19393	708
	70.1	26.8	69.9	28.0	69.7	27.6	67.7	28.6
	4000	343	7645	817	14395	1420	28659	2477
4. ABATEMENT PERIOD FOR VIOLS								
A. SAFETY PERCENT >30 DAYS	2938	154	5782	256	12109	526	25516	1115
	15.9	23.4	16.2	19.9	17.6	19.9	18.7	19.4
	18492	658	35597	1285	68607	2647	136812	5744
B. HEALTH PERCENT >60 DAYS	256	0	577	0	1452	0	3111	0
	6.3	.0	7.5	.0	10.0	.0	10.9	.0
	4078	170	7720	400	14561	669	28488	1194

OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION

CURRENT MONTH = SEPTEMBER 2009

INTERIM STATE INDICATOR REPORT (SIR)

STATE = MARYLAND

PERFORMANCE MEASURE	----- 3 MONTHS-----		----- 6 MONTHS-----		-----12 MONTHS-----		-----24 MONTHS-----	
	FED	STATE	FED	STATE	FED	STATE	FED	STATE
C. ENFORCEMENT (PRIVATE SECTOR)								
5. AVERAGE PENALTY								
A. SAFETY								
	280876	39450	628826	79835	1303857	186321	2663433	375231
OTHER-THAN-SERIOUS	923.9	499.4	998.1	446.0	1030.7	519.0	1049.4	480.4
	304	79	630	179	1265	359	2538	781
B. HEALTH								
	83100	21900	142950	47300	294225	69812	654830	110590
OTHER-THAN-SERIOUS	799.0	521.4	803.1	433.9	855.3	447.5	867.3	432.0
	104	42	178	109	344	156	755	256
6. INSPECTIONS PER 100 HOURS								
A. SAFETY								
	10459	276	19991	569	37160	1053	73338	2351
	6.1	2.8	5.7	3.0	5.5	2.8	5.3	3.4
	1722	99	3533	192	6727	375	13759	694
B. HEALTH								
	1764	53	3581	127	6701	251	12705	547
	1.8	1.5	1.7	1.6	1.6	1.5	1.5	1.7
	994	35	2112	79	4125	165	8503	319
7. VIOLATIONS VACATED %								
	1278	29	2561	42	5139	125	10097	302
	4.9	1.8	5.0	1.3	5.1	1.9	5.0	2.2
	26336	1589	51387	3325	100187	6417	201495	13434
8. VIOLATIONS RECLASSIFIED %								
	1130	19	2440	51	4798	138	9539	282
	4.3	1.2	4.7	1.5	4.8	2.2	4.7	2.1
	26336	1589	51387	3325	100187	6417	201495	13434
9. PENALTY RETENTION %								
	13523966	396602	27149245	745344	54889469	1426302	111585445	3017540
	63.4	44.3	62.9	46.4	63.2	46.0	62.9	48.8
	21315664	895383	43130384	1604958	86796382	3103457	177346966	6178746

OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION

CURRENT MONTH = SEPTEMBER 2009

INTERIM STATE INDICATOR REPORT

STATE = MARYLAND

PERFORMANCE MEASURE	----- 3 MONTHS-----		----- 6 MONTHS-----		----- 12 MONTHS-----		----- 24 MONTHS-----	
	PRIVATE	PUBLIC	PRIVATE	PUBLIC	PRIVATE	PUBLIC	PRIVATE	PUBLIC
D. ENFORCEMENT (PUBLIC SECTOR)								
1. PROGRAMMED INSPECTIONS %								
A. SAFETY	213 84.2 253	1 25.0 4	414 82.0 505	23 76.7 30	740 79.3 933	43 70.5 61	1689 78.3 2158	55 66.3 83
B. HEALTH	15 35.7 42	0 .0 2	36 36.4 99	0 .0 7	83 43.5 191	0 .0 15	165 40.8 404	5 11.6 43
2. SERIOUS VIOLATIONS (%)								
A. SAFETY	434 51.1 850	24 55.8 43	879 50.8 1730	118 54.4 217	1778 51.0 3485	183 55.3 331	3853 50.3 7667	271 56.7 478
B. HEALTH	92 26.8 343	0 .0 1	229 28.0 817	5 21.7 23	392 27.6 1420	18 50.0 36	708 28.6 2477	93 37.1 251

OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION

CURRENT MONTH = SEPTEMBER 2009

COMPUTERIZED STATE PLAN ACTIVITY MEASURES

STATE = MARYLAND

PERFORMANCE MEASURE	----- 3 MONTHS-----		----- 6 MONTHS-----		----- 12 MONTHS-----		----- 24 MONTHS-----	
	FED	STATE	FED	STATE	FED	STATE	FED	STATE
E. REVIEW PROCEDURES								
1. VIOLATIONS VACATED %	446 22.8 1956	1 33.3 3	875 24.2 3609	1 33.3 3	1756 23.4 7506	1 33.3 3	3749 24.1 15528	4 28.6 14
2. VIOLATIONS RECLASSIFIED %	282 14.4 1956	0 .0 3	563 15.6 3609	0 .0 3	1133 15.1 7506	0 .0 3	2274 14.6 15528	3 21.4 14
3. PENALTY RETENTION %	2319074 54.1 4286744	1750 100.0 1750	4080249 51.5 7922126	1750 100.0 1750	10792902 58.5 18457526	1750 100.0 1750	20045599 55.9 35865959	16677 61.9 26950

Appendix F

FY 2009 Maryland State Plan (MOSH) Enhanced FAME Report

FY 2009 Mandated Activities Report for Consultation (MARC)

CCNOMARC
DOL-OSHA-OMDS
(RSCCOVER)

U. S. D E P A R T M E N T O F L A B O R
OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION

11/05/09

CONSULTATION REPORT

KEEP THIS PAGE WITH THIS REPORT.
IT CONTAINS IMPORTANT INFORMATION ABOUT
THE WAY CASES WERE SELECTED

TYPE OF REPORT: MANDATE ACTIVITIES

USER SELECTION NAME: MAR4-MDE

REQUESTOR: OSH090

***** SELECTION CRITERIA *****

FISCAL YEAR: 2009

QUARTER: 4

OWNERSHIP: PUBLIC

REGION: 03 AREA: 924 DISTRICT:

SAFETY/HEALTH ID: BOTH

PRINT OPTION: Y

PROJECT NAME: Maryland PUBLIC SECTOR

MEASURE	QUARTER	FY-TO-DATE	REFERENCE/STANDARD
TOTAL VISITS	3	18	
1. Percent of Initial Visits in High Hazard Establishments			Not Less than 90%
Number High Hazard Visits	1	5	
Percent	33.33	29.41	
Number of Initial Visits	3	17	
2. Percent of Initial Visits to Smaller Businesses			Not Less than 90%
Initial Visits	3	17	
Visits <= 250 Employees in Estab	2	15	
Percent	66.67	88.24	
Visits <= 500 Employees CB by Empr	1	9	
Percent	33.33	52.94	
3. Percent of Visits where Consultant Conferred with Employees			100%
Initial			
Number with Empe Conferences	3	17	
Percent	100.00	100.00	
Number of Initial Visits	3	17	
Follow-Up			
Number with Empe Conferences	0	1	
		100.00	

Percent		0			1	
Number of Follow-Up Visits						
Training & Assistance Visits with Compliance Assistance ONLY						
Number with Empe Conferences		0			0	
Percent						
Number of T&A Visits		0			0	

**PRELIMINARY DATA SUBJECT TO ANALYSIS AND REVISION

PROJECT NAME: Maryland PUBLIC SECTOR

MEASURE	QUARTER	FY-TO-DATE	REFERENCE/STANDARD
4A Thru 4D based on Closed Cases ONLY			
4A. Percent of Serious Hazards Verified Corrected in a Timely Manner (<=14 Days of Latest Correction Due Date)			100%
Number Verified Timely	2	279	
Percent	100.00	87.74	
Total Serious Hazards	2	318	
Number of Serious Hazards Verified Corrected:	2	279	
On-Site	0	36	
Within Original Time Frame	2	84	
Within Extension Time Frame	0	37	
Within 14 Days of Latest Correction Due Date	0	122	
4B. Percent of Serious Hazards NOT Verified Corrected in a Timely Manner (> 14 days after Latest Correction Due Date)			
Number NOT Verified Timely	0	39	
Percent	.00	12.26	
Total Serious Hazards	2	318	
4C. Percent of Serious Hazards Referred			

to Enforcement			
Number Referred to Enforcement	0		0
Percent	.00		.00
Total Serious Hazards	2		318
4D. PERCENT OF SERIOUS HAZARDS VERIFIED CORRECTED (IN ORIGINAL TIME OR ONSITE)			65%
NUMBER VERIFIED	2		120
Percent	100.00		37.74
Total Serious Hazards	2		318
Number of Serious Hazards Verified CORRECTED (IN ORIGINAL TIME OR ONSITE)	2		120
On-Site	0		36
Within Original Time Frame	2		84
5. Number of Uncorrected Serious Hazards with Correction Date > 90 Days Past Due (Open Cases for last 3 Years, excluding Current Quarter)			0

**PRELIMINARY DATA SUBJECT TO ANALYSIS AND REVISION