

Federal Annual Monitoring and Evaluation (FAME) Report

Michigan Occupational Safety and Health Administration (MIOSHA)

October 1, 2008 to September 30, 2009

Report Prepared By:



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I. Executive Summary

A. Introduction

The Department of Energy, Labor and Economic Growth (DELEG) administers the Michigan Occupational Safety and Health Administration (MIOSHA). The program became effective on July 1, 1975. MIOSHA operates under an Operational Status Agreement with Federal OSHA. At the time of the Study, Stanley Pruss was the Director for DELEG and is the State Designee. Effective July 26, 2010, the Designee is Andrew S. Levin. The Director of MIOSHA is Douglas Kalinowski, and the Deputy Director is Martha Yoder. MIOSHA includes: Administration, Construction Safety and Health Division, Consultation Education and Training Division, General Industry Safety and Health Division, Management and Technical Services Division, and the MIOSHA Appeals Division. The Management and Technical Services Division is responsible for standards adoption, information technology and laboratory operations. The General Industry Safety and Health Division is responsible for compliance program administration through conducting enforcement inspections in general industry workplaces. The Employee Discrimination Section is also included in the General Industry Safety and Health Division. The Construction Safety and Health Division (CSHD) is responsible for compliance program administration through conducting enforcement inspections related to construction. The MIOSHA Appeals Division represents the Agency in contested cases.

In FY 2009, the State's 23(g) enforcement grant included State and Federal funds totaling \$20,858,000. MIOSHA overmatched the Federal grant by \$1,418,200. The State's current enforcement staff consists of 47 safety compliance officers and 25 industrial hygienists.

The State program extends its protection to private, public, and municipal workers within the State. MIOSHA does not have jurisdiction over Federal agencies, maritime workers, household domestic workers, and mine workers.

MIOSHA may promulgate standards which may be more stringent or more specific than those of Federal OSHA. Some examples of those standards are Fire Fighting, Automotive Services, and Telecommunication Towers. MIOSHA has moved forward with the promulgation of an ergonomics standard. The General Industry Safety Standards Commission and Occupational Health Standards Commission conducted a joint meeting on January 14, 2009 to address the proposed ergonomics standard. Both the General Industry Safety Standards and Occupational Health Commissions voted unanimously to move the proposed ergonomics standard forward to the Department Director and to the State Office of Administrative Hearings and Rules (SOAHR) for approval.

The mission of MIOSHA is to help assure the safety and health of Michigan workers. The vision of MIOSHA is to enhance the quality of life and contribute to the economic vitality in Michigan by serving as an effective leader in occupational safety and health. Through staff and stakeholder commitment and creativity, MIOSHA will provide:

- Credible, customized and responsive consultation, education and training,
- Firm, fair and targeted enforcement,
- Cooperative agreements with individual employers and employee and employer organizations, and
- Relevant, fact-based standards promulgation.

Most noteworthy, MIOSHA has implemented the MIOSHA Leadership Institute as an initiative for succession planning. It is offered internally and has a two tier class structure with Level I courses and Level II courses. Level II has more advanced courses and a more advanced core curriculum. Some of the courses include Emotional Intelligence, Leading through Vision and Values, Essentials of Leadership, Personal Goal Setting, Effective Listening, Effective Time Management, Basics of Effective Communication, Conflict Management, Team Building, and Facilitating Effective Meetings. Most classes are open to MIOSHA employees to attend on a first come first serve basis with preferential treatment afforded to new supervisors. A few Level II classes are reserved for supervisors with a minimum of six months of supervisory experience due to the assessment instruments that are used.

B. Summary of Report

The purpose of this report is to assess the State's progress towards achieving their annual performance goals established in their Fiscal Year (FY) 2009 Annual Performance Plan, and to review the effectiveness of the programmatic areas related to enforcement activities. This report incorporates baseline special evaluations for the State's 23(g) enforcement program.

The annual performance plan results, reported by the Michigan Occupational Safety and Health Administration (MIOSHA) in the State OSHA Annual Report (SOAR), indicate that the program has made advancements towards achieving its three strategic goals. Evaluation of goal achievement or significant progress toward goal accomplishment has been reviewed, and the results are identified in this report.

The special study audit was conducted on site at the MIOSHA Office in Lansing, Michigan during January 25, 2010 through February 4, 2010. The audit team consisted of five members. Significant findings were revealed as a result of case files reviewed, statistical data reviewed, as well as staff interviews. One of the most significant issues was the way MIOSHA classified some of their other-than serious violations when the probability and severity factors to be considered indicated that they should have been cited as serious violations. Additionally, this finding contributed to the penalty calculations for violations being lower than Federal OSHA.

The special study also revealed that MIOSHA has not been entering abatement verification information into the IMIS database. Instead, they have created an Excel spreadsheet to enter the abatement information that is shared with all divisions. Even though the Excel spreadsheet was determined to be an effective tool, as part of their required participation in IMIS, MIOSHA must also enter their abatement verification information into the IMIS system.

MIOSHA's staffing level is below their benchmark of 56 safety compliance officers and 45 health compliance officers. MIOSHA's grant application for FY 2009 indicated that there were 47 safety compliance officers and 25 health compliance officers. MIOSHA reorganized their enforcement divisions in 2003. Some of the changes that were made were intended to improve their overall productivity, which they felt would have some impact on their benchmarks. In order to be eligible for 18(e) final approval, Michigan will need to either increase its allocated staffing or seek approval of revised its benchmarks.

While there are some issues that need to be addressed, Michigan continues to operate an effective program and actively works in a positive manner to continuously improve program effectiveness. With

the exception of staffing levels, the State continues to meet its 23(g) enforcement program's operational requirements.

C. Study Methodology

A review of the Michigan OSHA workplace safety and health program was conducted from January 25, 2010 to February 4, 2010. Forty-four fatality inspection case files were evaluated. Fifty-four inspection cases, comprised of 31 safety and 23 health were randomly selected for review. In addition, 22 randomly selected complaint inspection cases, comprised of 10 safety and 12 health, were reviewed. Thirty-two non-formal complaints were reviewed. Seventeen cases with current penalties in excess of \$20,000 were identified and all 17 were evaluated. All cases occurred from October 1, 2008 through September 30, 2009.

Thirteen of 31 Michigan Voluntary Protection Program (MVPP) files were reviewed. These files included new and recertification evaluations.

In addition to reviewing the above cited case files, the study team reviewed data gathered from all MIOSHA inspections conducted from October 1, 2008 through September 30, 2009, including general statistical information, complaint processing, and inspection targeting. Michigan data as contained in the Integrated Management Information System (IMIS), OSHA's database system used by the State to administer its program and by the State and OSHA to monitor the program, was examined. Compliance with legislative requirements regarding contact with families of fatality victims, training, and personnel retention was assessed.

The review also included interviews with MIOSHA's management and compliance staff. Comments from various stakeholder groups were also collected.

Throughout the entire process, MIOSHA was cooperative, shared information and ensured staff was available to discuss cases, policies, and procedures. Also, MIOSHA staff members were eager to work with the evaluation team.

D. Special Study Findings and Recommendations

- **Finding 1:** MIOSHA did not enter abatement verification into IMIS System. Instead it is entered into an Excel spreadsheet. (pages 14-15, 24-26, and 29-30)
- **Recommendation 1:** MIOSHA should enter abatement verification into the IMIS system as this is a Mandated Measure.

- **Finding 2:** MIOSHA penalty calculation policy has resulted in low average penalty assessments. MIOSHA's initial penalty, per serious violation, is \$692.37, which is below the national reference data by 51.9%. (pages 14-15)
- **Recommendation 2:** MIOSHA should follow their penalty calculation policy.

- **Finding 3:** The complaint files, formal and nonformal, did not include a mechanism to track actions taken while handling the file. (pages 15-17)
- **Recommendation 3:** Ensure a tracking mechanism, such as a Diary Sheet, is put in place and used effectively.

- **Finding 4:** MIOSHA did not always follow their policy and procedure manual. In one case, a complaint inspection was not conducted at a facility employing less than 10 employees. (pages 15-17)
- **Recommendation 4:** Provide refresher inspection training to include small employer exemptions/nonexemptions.

- **Finding 5:** MIOSHA maintained the initial letters to the next of kin in a separate binder. (pages 17-18)
- **Recommendation 5:** MIOSHA should maintain the next of kin letters in the case file.

- **Finding 6:** While MIOSHA recognized hazards and issued citations, not all of the hazards were appropriately classified per their FOM. (pages 18-23)
- **Recommendation 6:** Ensure all staff is retrained on hazard classification and penalty assessment guidelines.

- **Finding 7:** Documentation was not found in the file that copies of citations and/or ISAs were sent to the unions. (pages 23-24)
- **Recommendation 7:** Ensure that all inspection actions are documented and included in the case file.

- **Finding 8:** While MIOSHA had a hazard classification and penalty assessment system that was similar to Federal OSHA, they did not follow it in all cases. Hazard classification did not follow the guidelines established in MIOSHA's FOM. Penalty assessment, severity/probability and adjustment factors did not follow established MIOSHA guidance documents in all cases. (pages 24-26)
- **Recommendation 8:** Ensure all staff is retrained on hazard classification and penalty assessment guidelines.

- **Finding 9:** There was a lack of documentation that noted that the employee or employee representative had been contacted regarding the final Informal Settlement Agreement. (pages 27-29)
- **Recommendation 9:** MIOSHA should note within the case file when an employee or employee representative has been contacted.

- **Finding 10:** There was no documentation to support or explain why changes were made to the violations and penalties in some case files. (pages 27-29)
- **Recommendation 10:** Changes that are made to violations and penalties through the first appeal level should be documented in the case file.

- **Finding 11:** While MIOSHA had a hazard classification and penalty assessment system that was similar to Federal OSHA, they did not follow it in some case files. Hazard classification did not follow the guidelines established in MIOSHA's FOM. Penalty assessment, severity/probability and adjustment factors did not follow established MIOSHA guidance documents in some case files. (page 29)
- **Recommendation 11:** Ensure all staff is retrained on hazard classification and penalty assessment guidelines.

- **Finding 12:** MIOSHA does not use IMIS management reports. (pages 29-30)
- **Recommendation 12:** To prevent duplicative work, MIOSHA should use IMIS management reports.

- **Finding 13:** Review of the cases revealed that MIOSHA's Employee Discrimination Section has adopted their own forms, letters, and Final Investigative Report (FIR) rather than using the forms provided by the OSHA Whistleblower Program. Case file organization does not follow DIS 0-0.9. However, the outcomes of the cases reviewed were appropriate. (pages 35-39)
- **Recommendation 13:** Follow DIS 0-0.9 to ensure consistency with case file organization and contents, including forms, letters and Final Investigative Reports (FIRs).

- **Finding 14:** While MIOSHA has improved in timely completion of 11(c) investigations, they completed only 68% in 90 days. (pages 35-39)
- **Recommendation 14:** MIOSHA should continue to improve case management to ensure completion of all cases in a timely manner.

- **Finding 15:** MIOSHA's current policy recognizes the need to obtain medical information during VPP evaluations. However, it did not include procedures for obtaining a WAO. (pages 39-40)
- **Recommendation 15:** Continue revision to VPPPPM that will address WAO order procedures. Train staff on procedures and ensure WAOs are obtained.

- **Finding 16:** In 35% of the MVPP files, it was noted that the MVPP team observed an excessively high number of 90 day items. (pages 39-40)
- **Recommendation 16:** Review with the MVPP Team Leader the need to assess those sites with a high number of 90 day items to ensure that all MVPP principles are in place.

- **Finding 17:** Approval letters to the unions, as appropriate, were not consistently sent in all cases. (pages 39-40)
- **Recommendation 17:** Provide refresher training to ensure that approval letters are sent to the union as appropriate and a copy is included in the file.

- **Finding 18:** MIOSHA's staffing levels are below the currently approved benchmarks. MIOSHA has considered recalculation to lower its benchmark levels as part of the SIEP in each of the past three years. (pages 41-42)
- **Recommendation 18:** The State should continue to work with OSHA, regarding benchmarks, and continue to increase staffing levels to the extent feasible.

II. Summary of Recommendations and State Actions from FY 2008 FAME

The only recommendation for the MIOSHA program from Fiscal Year 2008 was to revise and/or modify their benchmarks, in order for the program to move forward with receiving final State Plan approval under Section 18(e).

MIOSHA has identified the benchmark project over the last several years in their State Internal Evaluation Plan (SIEP).

III. Major New Issues

Michigan Senate Bill No. 784, known as the Municipal Fire Safety Act, was introduced on August 27, 2009. This Bill sets standards for municipal fire departments and their personnel, equipment, and operation and would return the occupational safety and health program to Federal OSHA. There has been no further action since the bill was introduced.

MIOSHA Instruction, Clarification of Records Retention and Disposal Schedule for MIOSHA Enforcement Divisions, dated March 14, 2008 stated that after an inspection file had been closed in IMIS, all non-record materials would be removed. Non-record materials included narratives, worksheets, Safety and Health Management System Evaluation, safety recommendations (only the one with the report), penalty payment, photos, overdue abatement penalty letters, any abatement, ISA cover letter and agreement, and any envelopes including First Appeal (PMA included) and Second Appeal. An agency memorandum was issued rescinding this policy on November 18, 2009. This policy hindered the review and evaluation of the case files during the special study audit. MIOSHA is now using Appendix A of the State of Michigan Department of History, Arts and Libraries – Records Management, Records and Retention and Disposal Schedule dated May 14, 2008. MIOSHA has identified records that must remain in the inspection files for a minimum of three years after the case has been closed.

As a result of the State of Michigan's budget deficit, State employees were required to take six furlough days during FY 2009. MIOSHA split their agency employees into two groups. Each group took a different furlough day, so that MIOSHA would be able to continue to provide the workers in the State of Michigan with safety and health protection in the workplace. The six days were taken over a course of four months from June through September.

IV. Assessment of State Performance

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

Information provided by MIOSHA has been reviewed and analyzed to assess its accuracy in meeting performance plan goals and the overall accomplishments. This is the first 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 Goals for Fiscal Year 2009 performance goals.

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

Performance Goal #1.1A-1-13: Reduce the rate of worker injuries and illnesses by 20% in high hazard industries by the end of the five-year plan, which is 2013. MIOSHA will focus on 13 different industries. Once the goal has been met, the industry may be dropped from the Annual Performance Plan (APP). The results are shown in the table below. At the end of the first year, MIOSHA has already met or exceeded four industry goals and has made progress towards meeting the five year goal for the others.

Goal #	Industry	Baseline	Results	Comments
1.1A-1	Beverage and Tobacco Product Manufacturing	9.2	10.0	Increase of 9% -5 year goal not met
1.1A-2	Wood Products Manufacturing	8.0	9.0	Increase of 12% - 5 year goal not met
1.1A-3	Plastics and Rubber Products Manufacturing	8.3	5.7	Decrease of 31% - goal met
1.1A-4	Nonmetallic Mineral Product Manufacturing	10.0	5.7	Decrease of 43% - 5 year goal met
1.1A-5	Primary Metal Manufacturing	8.4	7.2	Decrease of 14% - 5 year goal not met
1.1A-6	Fabricated Metal Product Manufacturing	8.9	8.0	Decrease of 10% - 5 year goal not met
1.1A-7	Machinery Manufacturing	6.3	6.4	Increase of 2% - 5 year goal not met
1.1A-8	Transportation Equipment Manufacturing	8.2	7.0	Decrease of 15% - 5 year goal not met
1.1A-9	Recyclable Material Merchant Wholesaler	4.6	3.4	Decrease of 26% - 5 year goal met
1.1A-10	Merchant Wholesalers, Nondurable Goods	5.6	3.9	Decrease of 30% - 5 year goal met
1.1A-11	Landscaping Services	N/A	N/A	**
1.1A-12	Hospitals	9.0	8.6	Decrease of 4% - 5 year goal not met
1.1A-13	Nursing and Residential Care Facilities	9.0	8.9	Decrease of 1% - 5 year goal not met

** Goal 1.1A-11 – Although Michigan specific BLS injury illness data is not available for Landscaping Services, MIOSHA has conducted 10 seminars, and 66 inspections in this industry. A total of fifty-eight serious citations have been issued. MIOSHA will continue to work with BLS to obtain State injury/illness data for this industry.

Performance Goal 1.2: Reduce by 20% the rate of worker injuries, illnesses, and fatalities in general industry workplaces experiencing high rates or with targeted hazards or exposures not covered by Emphasis 1.1. **(4% reduction for 2009)**

Results: This goal was a two part goal.

- Part 1 was to reduce the incidence rate, total recordable cases (TRC) per 100 full time

workers. MIOSHA exceeded this goal. A 11% reduction to 6.3 was obtained.

- Part 2 was to reduce the number of fatalities. This goal was met. General industry fatalities for calendar year 2008 were 22 compared to 14 in calendar year 2009. This is a reduction of 36%.

Performance Goal 1.3A: Decrease fatalities in the construction industry by 20%. **(4% in 2009)**

Results: MIOSHA exceeded this goal. A five-year calendar year average, 10.86, was used as the baseline. The new five year average is 10.18, which is a 6% decrease, which exceeds the goal.

Performance Goal 1.3B: Reduce injuries and illnesses in the construction industry by 20%. **(4% in 2009)**

Results: The goal for FY 2009 was a five-year rolling average of 3.0. The new five year average is 2.66, which is an 11% decrease. This exceeds the year one goal of 4% reduction.

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

Results: MIOSHA promoted the safety and health management system on 100% of the MIOSHA visits conducted. Multiple press releases, media advisories and seminars were issued/conducted to further promote SHMSs.

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

Results: MIOSHA exceeded their targeted reduction for this goal. In FY 2008, MIOSHA issued 30 certificates. In FY 2009, MIOSHA issued 121 certificates. The goal was exceeded by 91.

In FY 2008, a total of 1,801 students attended a course at the MIOSHA Training Institute (MTI). In FY 2009, 2,131 students attended, which was an 18% increase.

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

Results: MIOSHA continued to promote their cooperative programs through press releases, media advisories, MIOSHA News and seminars. The results of their activities are noted below.

	FY 2009 Goal	FY 2009 Results	Comments
MVPP	3	2	Did not meet goal
MSHARP	2	3	Exceeded goal
New CET	10	9	Did not meet goal
Michigan	6	11	Exceeded goal

Challenge			
Alliances	2	2	Met goal
Partnerships	1 or 2	2	Met goal

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

Results: The baseline injury and illness rates for all Michigan industries (including state and local government) were DART of 2.4 and TRC of 4.9 (BLS, 2007). In FY 2008, MIOSHA received 507 Comment/Suggestion Cards, with a 99% response of “useful” on “How would you rate overall experience with MIOSHA?”

In FY 2009, the Michigan DART of 2.2 and TRC of 4.5 (BLS, 2008) equals an 8% decrease and an 8% decrease, respectively, for year one. In FY 2009, MIOSHA received 720 Comment/Suggestion Cards with a 99.2% “Useful” on “How would you rate your overall experience with MIOSHA?”

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

Results: MIOSHA conducted an internal culture survey in 2009. MIOSHA staff took an on-line Organizational Cultural Inventory. The results were compared with a 2005 survey using the same instrument. MIOSHA improved in one of four Constructive styles, in one of four Passive/Defensive styles, and one of four Aggressive/Defensive styles for the OCI from 2005 to 2009. From 2000 to 2009, MIOSHA improved in all four Constructive styles, in three of four Passive/Defensive styles (the fourth was unchanged), and in three of four Aggressive/Defensive styles (the fourth increased 1%). MIOSHA will continue to assess the agency’s development.

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

Results: MIOSHA received 720 Comment/Suggestion Cards during Fiscal Year 2009. Results included the following.

- 99.2% “Useful” on “How would you rate your overall experience with MIOSHA?” (707/713)
- 99.8% “Yes” on “Did you find the staff to be knowledgeable about employee safety and health issues?” (702/704)
- 99.0% “Yes” on “Did the staff explain how to correct the safety and health hazards they identified?” (676/683)

Performance Goal 3.2A: Respond to 97% of complaints within 10 working days for enforcement division.

Results: MIOSHA exceeded their goal by 1.5%. MIOSHA conducted 451 out of 458 complaints within 10 days (98.5%).

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

Results: MIOSHA initiated all fatalities and catastrophe investigations within one day and met this goal.

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

Results: MIOSHA targeted a 10% reduction for all four compliance programs units. The results for each unit at noted in the table below.

	FY 2008 Baseline	FY 2013 Goal	FY 09 Results	Comments
General Industry Safety	65.28	58.75	44.87	31% decrease
General Industry Health	67.70	60.93	66.04	2% decrease
Construction Safety	43.32	38.99	43.21	0% decrease
Construction Health	60.6	54.54	58.13	4% decrease

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

Results: In FY 2009, no OSHA standards were promulgated. Eleven of 14 State standards achieved the planned level of completion. These include the following:

- CS Part 29 Communication Towers – final promulgation April 2009.
- CS Part 2 Masonry Wall Bracing – public hearing in September 2009.
- OH Part 316 Diisocyanates – public hearing in September 2009.
- OH Part 301 Air Contaminants for General Industry – public hearing in September 2009.
- OH Part 601 Air Contaminants for Construction – public hearing in September 2009.
- CS Part 10 Lifting and Digging – advisory committee completed review September 2009.
- CS Part 1 General Rules – advisory committee authorized May 2009.
- GI Part 17 Refuse Packers – advisory committee authorized May 2009.
- CS Part 12 Scaffolds and Scaffold Platforms – advisory committee authorized May 2009.
- CS Part 6, GI Part 33, and OH Part 433 Personal Protective Equipment – opened for internal review August 2009.
- GI Part 1A Abrasive Wheels – opened for internal review February 2009.

In addition, MIOSHA also started revisions to GI Part 69 Compressed Gases in August 2009. This was not originally in the standards promulgation plan.

MIOSHA standards that did not meet this goal include the following.

- Welding, Cutting, and Brazing
- Ergonomics in General Industry
- Latex Gloves

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

Results: MIOSHA filled a vacant data analyst position in MISS/MTSD; obtained secure ID/VPN for field staff; and continues to support existing systems.

B. Assessment of State Performance of Mandated Activities
i. Enforcement

The information used in this section was gathered from an on site special study audit that was conducted January 25, 2010 through February 4, 2010, State Activity Mandated Measures (SAMM's), State Indicator Report, case file reviews, quarterly monitoring meetings and other relevant information.

a. State Activity Mandated Measures (SAMM)

Measure		State Data	Reference Data	Comment
1. Average number of days to initiate complaint inspections		4.84	10	Goal was met.
2. Average number of days to initiate complaint investigations		1.0	2	Goal was met.
3. Percent of complaints where Complainants were notified on time		100%	100%	Goal was met.
4. Percent of complaints and referrals responded to within one day		0%	100%	Data is not entered.
5. Number of denials where entry was not obtained		0	0	There were none.
6. Percent of S/W/R violations verified	Private	0.6%	100%	MIOSHA does not enter abatement data in IMIS.
	Public	.00		
7. Average number of calendar days from opening conference to citation issue	Safety	47.35	43.8	MIOSHA has continued to improve. This is a strategic plan goal.
	Health	74.93	57.4	MIOSHA has improved with this goal but did increase this quarter as opposed to previous quarters. This is a measure that is closely monitored.
8. Percent of programmed inspections with S/W/R violations – safety	Safety	67.02	58.6	Goal was met.
	Health	47.83	51.2	Goal not met.
9. Average violations per inspection with violations	S/W/R	1.97	2.1	This measure has decreased over previous quarters.
	Other	2.46	1.2	Above national average
10. Average initial penalty per serious violation – private sector only		\$692.37	\$1335.20	Revising the FOM penalty policy
11. Percent of total inspection in public sector		3.28	4.6	Goal not met.
12. Average lapse time from receipt of contest to first level of decision		0	245.1	Previous quarter was 40.50
13. Percent of 11c investigations completed within 90 days		75.00	100%	Improved
14. Percent of 11c complaints that are meritorious		12.50	20.8	Lower than the national average
15. Percent of meritorious 11c complaints that are settled		100	86.2	Above national average 1 case

Findings and Recommendations

Finding 1: MIOSHA did not enter abatement verification into IMIS System. Instead it is entered into an Excel spreadsheet.

Recommendation 1: MIOSHA should enter abatement verification into the IMIS system as this is a Mandated Measure.

Finding 2: MIOSHA penalty calculation policy has resulted in low average penalty assessments. MIOSHA's initial penalty, per serious violation, is \$692.37, which is below the national reference data by 51.9%.

Recommendation 2: MIOSHA should follow their penalty calculation policy.

b. Complaints

MIOSHA supervisors take all complaints; written, phone and fax. The supervisor then reviews the complaint to determine if an inspection or investigation is necessary. The complaint is reviewed by the lead worker, who researches the complaint to determine if there are any outstanding inspections or if the site is on their priority list. If a nonformal investigation is conducted, it is completed by the supervisor. If a formal inspection is necessary, the complaint is assigned to an enforcement division manager and entered into IMIS and the MIOSHA Excel spreadsheet.

MIOSHA received a total of 1,192 complaints, of which 436 were formal and 756 were nonformal. According to the SAMM report, the average number of days to initiate a complaint inspection was 3.2, which is well below the negotiated standard of 10 days. The average number of days to initiate a complaint investigation was 1.2, which is well below the negotiated standard of two days. A total of 54 closed complaint files, 22 formal and 32 non-formal, were randomly selected for review. Upon that review, it was noted that none of the complaint files contained any summary of activities, such as a diary sheet. MIOSHA maintains a complaint tracking log that records dates and actions taken to process and track complaints.

MIOSHA Instruction, Clarification of Records Retention and Disposal Schedule for MIOSHA Enforcement Divisions, dated March 14, 2008, stated that after an inspection file had been closed in IMIS for 90 days, all non-record materials would be removed. Non-record materials included narratives, worksheets, Safety and Health Management System Evaluation, safety recommendations (only the one with the report), penalty payment, photos, overdue abatement penalty letters, any abatement, ISA cover letter and agreement, and any envelopes including First Appeal (PMA included) and Second Appeal. An agency memorandum was issued rescinding this policy on November 18, 2009. This policy hindered the review and evaluation of the case files during the special study audit. MIOSHA is now using Appendix A of the State of Michigan Department of History, Arts and Libraries – Records Management, Records and Retention and Disposal Schedule, dated May 14, 2008. MIOSHA has identified records that must remain in the inspection files for a minimum of three years after the case has been closed.

The State accepted and processed e-complaints filed through the www.osha.gov website and from their state website www.michigan.gov/miosha.

Formal

Inspections were attempted for all 21 formal complaints files reviewed. Letters informing complainants of the results of MIOSHA's inspection were found in 43% of the files reviewed. In many cases only page one the OSHA 7 (complaint form) was included in the file. It was difficult to determine if the reason for the low number of complainant letters was due to not following policy and procedure or if the address of the complainant was not known.

Based on SAMM #1 (State Activity Mandated Measures), the State initiated inspections on average within five days. The established goal was 10 days. Due to MIOSHA's file purging policy, it was difficult to verify the timeliness of the State's response to the complaints. The files did not include the date the complaint was filed or any mechanism, such as a diary sheet, to follow all actions taken to resolve the complaint.

Based on review of documents in inspection files such as the complaint, draft 1-Bs, citation worksheets, and limited field notes, it appeared that all alleged hazards had been addressed. However, due to MIOSHA's file purge policy, it was difficult to verify.

In one case where the CSHO attempted to conduct a complaint inspection, the inspection was not conducted based on a misunderstanding of the Appropriations Act, which exempts small employers in certain industrial classifications from some types of inspections. The file showed that the supervisor was contacted by the CSHO once he/she was on site. The supervisor noted that the site was exempt from inspection due to its industry and size (less than 10 employees). Based on CPL 02-00-051 and MIOSHA-ADM-06-7, this inspection should have been conducted, as it was a complaint, not a general scheduled inspection. In this case, the complaint allegations were not addressed and no letter was sent to either complainant.

Nonformal

Complete OSHA 7s were included in each of the files reviewed. While on-site inspections were not conducted, hazards were investigated and abated as necessary with offsite inspections. MIOSHA does not use the phone/fax process as Federal OSHA does. MIOSHA investigates nonformal complaints by sending a certified letter to the employer noting allegations and requesting a response within a specific timeframe. These complaints are tracked and closed when abatement is provided.

As noted earlier in the report, SAMM #2, based on IMIS data, it was determined that the State responded to nonformal complaints in one day. The established goal for SAMM #2 is 2 days. Review of the files noted a response time ranging from one to 40 days with an average of 11 days.

All Complaint Files

For both formal and nonformal complaints, MIOSHA's policy for responding to the complainant and complainant rights were the same as Federal OSHA. In 86% of all complaint files, letters to the complainant were sent when the address was known. Following the completion of a formal complaint inspection, the results are sent to the complainant.

Findings and Recommendations

Finding 3: The complaint files, formal and nonformal, did not include a mechanism to track actions taken while handling the file.

Recommendation 3: Ensure a tracking mechanism, such as a Diary Sheet, is put in place and used effectively.

Finding 4: MIOSHA did not always follow their policy and procedure manual. In one case, a complaint inspection was not conducted at a facility employing less than 10 employees.

Recommendation 4: Provide refresher inspection training to include small employer exemptions/nonexemptions.

c. Fatalities

A total of 44 inspections were coded as fatality inspections in FY 09, and all of them were selected for review. Of the 44 case files that were reviewed, six of them were not fatality inspections. Four of the inspections were non-fatal accidents and two were no inspections. One of the “no inspections” was in the Mine Safety and Health Administration’s (MSHA) jurisdiction. The other one was an inspection of an employer that was not directly involved in the accident. The remaining 38 case files were reviewed.

Eighteen (47%) of the fatality inspection case files reviewed did not have the initial contact letters sent to the next of kin (NOK) in the case files. Even though the letters are not in the case files, they are sent out by the supervisors and are maintained in a separate file. The safety supervisor interviewed indicated letters are tracked by individual units by the safety and health clerks. Based on discussion with MIOSHA, it was found that the Director for the Department of Energy, Labor and Economic Growth had instructed MIOSHA in 2008 to send a follow up letter to the NOK along with a complimentary redacted copy of the case file related to all fatality investigations. MIOSHA is currently revising their instruction on “Inclusion of Victim’s Families in Fatality Investigation” to formalize this policy. The files are tracked by the Freedom of Information Act (FOIA) unit after the initial letters are sent. After the green card is returned (indicating that the employer received the citation), the FOIA request unit will redacted the case file and send the NOK a follow-up letter with a copy of the redacted case file. If the NOK wants any additional information, they are informed to contact the office. According to the FOIA unit, it is rare that the NOK would have any follow-up with the office subsequent to the release of the complimentary redacted case file to them. No additional letters are sent to the NOK, such as outcomes of informal or formal settlement agreements.

MIOSHA policy for inclusion of the victim’s families in fatality investigations was similar to Federal OSHA’s. It required that the initial contact letter and the information form be sent to family members within five working days, issuance of the letter be documented in the case file, and the victim’s family members be provided with a copy of all of the citations issued as a result of the accident inspection within five days of issuance if requested. In practice, MIOSHA automatically sends a sanitized copy of the case file, including citations, to the next of kin, as noted above.

Eighteen of the 38 (47%) case files contained good documentation and appropriate violations were issued related to the fatality inspections. Twenty of the 38 (53%) case files did not contain adequate supporting documentation. There were no violation worksheets, interview statements from

employees, or documented union involvement. As mentioned earlier, the lack of supporting documentation is attributed to MIOSHA's now rescinded purging policy for closed case files.

All fatality inspections were initiated within one working day of MIOSHA becoming aware of the incident. One fatality was not reported to MIOSHA by the company's owner. It was reported through the Michigan Fatality Assessment and Control Evaluation (MIFACE) program. Based on the inspection documentation, it was a family owned and operated business and the deceased was the father-in-law of the owner of the company. MIOSHA cited the owner for not reporting the fatality within eight hours.

Findings and Recommendations

Finding 5: MIOSHA maintained the initial letters to the next of kin in a separate binder.

Recommendation 5: MIOSHA should maintain the next of kin letters in the case file.

d. Targeting/Inspection Statistics

MIOSHA conducted 5,094 inspections with 85% as programmed inspections. MIOSHA focused its programmed inspections to reduce injuries, illnesses and fatalities in certain targeted industries. MIOSHA has a guidance document that outlines its policies for inspection targeting, and General Industry Inspection Priority System for Programmed Scheduled Inspections.

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

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

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

MIOSHA participates in several National Emphasis Programs (NEPs). These include Combustible Dust, Process Safety Management, and Facilities that Manufacture Food Flavorings that contain Diacetyl.

MIOSHA has several Local Emphasis Programs (LEPs) which include field sanitation, process safety management, residential construction bridge painting and ergonomics.

MIOSHA's primary scheduling methods for construction inspections come from the University of Tennessee's data (Dodge Reports) and a compliance observance of construction activities being conducted, as well as serious hazards noted. Also, MIOSHA receives a list of bridge renovations and repairs from the Michigan Department of Transportation.

Inspections

For 64.4% (3387) of MIOSHA's inspections, at least one serious citation was issued, which was less than Federal OSHA (87.1%). While MIOSHA averages 4.2 citations per inspection, Federal OSHA issued 3.1. Thirty-seven percent of all MIOSHA citations issued were serious and 58% were other-than-serious. Federal OSHA issued 77% serious and 19% other-than-serious. As noted in the Penalties and Citations section of this report, MIOSHA did not follow their FOM with classifying hazards.

Violations per Inspection

During FY2009, Michigan issued a total 14,623 violations with 5,464 classified as serious (37.4%), 606 (4.1%) classified as repeat, 21 (0.1%) classified as willful, 21 (0.3%) classified as failure to abate, and 8487 (58.0%) classified as other-than-serious. Comparatively, Michigan's percentage of violations classified as serious is lower than the average of 43% for all State Plans and lower than that of OSHA's 77%. Based on information contained in SAMM Measure #9, Michigan issued 1.73 violations per inspection, which is lower than the three-year national average of 2.1 violations per inspection.

Willful Violations

During FY2009, the State issued 21 Willful violations.

Follow-Up Inspection Statistics

During FY2009, Michigan performed 61 follow-up inspections.

Most Frequently Cited Standards

A review was conducted of the most frequently cited standards by Michigan OSHA and OSHA. Comparison of the Michigan OSHA's and OSHA's top 10 cited standards for all industries provides that MIOSHA and OSHA shared four standards in their top 10 frequently cited standards and these were control of hazardous energy, hazard communication program, powered industrial vehicles, and accident prevention programs. Michigan OSHA's top three standards cited as serious were general industry standards with a total of 501 for all three standards and OSHA's were construction with total serious violations of 11,648.

**Michigan OSHA Most Frequently Cited Standards – All Industries
October 1, 2008 to September 30, 2009**

	<i>Rule</i>		<i>Serious</i>	<i>Other</i>	<i>Repeat</i>	<i>Total</i>	<i>% Serious</i>
1	4084.1140	General Rules - Accident Prevention Program (Construction)	15	555	29	599	2%
2	1910.1200	Hazard Communication	65	291	5	361	18%
3	4081.0727 (1)	Power Transmission - Belts	205	8	27	240	85%
4	4084.13203	General Rules - First Aid Certified Person (Construction)	2	221	8	231	1%
5	1910.0147	Control of Hazardous Energy Sources	137	51	17	205	67%
6	4081.2154 (1)	Powered Industrial Truck – Permit	60	124	6	190	32%
7	1910.0303	Design Safety Standards for Electrical Systems – General	159	17	12	188	85%
8	4084.62201	Personal Protective Equipment (Construction)	97	68	9	174	56%
9	1910.0305	Design Safety Standards for Electrical Systems- Wiring, methods, components and equipment for general use	6	143	9	158	4%
10	4081.0034(09)	General Provisions – Pinch Point	116	9	23	148	78%

**Federal OSHA Most Frequently Cited Standards – All Industries
October 1, 2008 to September 30, 2009**

	<i>Standard</i>		<i>Serious</i>	<i>Other</i>	<i>Repeat</i>	<i>Total</i>	<i>% Serious</i>
1	1926.501b	Unprotected sides and edges	6143	319	451	6953	88
2	1926.1053b	Use of ladders	2813	257	65	3139	90
3	1910.147c	Lockout tagout program	2394	492	68	2969	81
4	1926.451g	Fall protection	2696	58	193	2961	91
5	1910.1200e	Hazard communications program	1378	1075	51	2504	55
6	1910.212a	Machine guarding	2074	149	48	2284	91
7	1910.1200h	Hazard communication training	1355	701	41	2104	64
8	1926.503a	Training – fall	1704	112	80	1898	90
9	1910.178L	PIV training	1421	419	23	1864	76
10	1926.20b	Accident prevention responsibilities	1479	343	40	1862	79

Three of the top 10 most frequently cited standards in general industry and two of the top 10 most frequently cited standards in construction were related to electrical hazards.

While these standards were cited a total of 758 times, only 363 (48%) were classified as serious violations. It is interesting to note that the fourth most frequently cited construction standard is Construction Administrative Rule Part 13, Inspections and Investigations, Citations and Proposed Penalties Rule 1349(1), Failure to Provide Notification of Abatement, which was cited 125 times as other than serious.

**Michigan OSHA Most Frequently Cited Standards - Construction
October 1, 2008 to September 30, 2009**

	<i>Standard</i>		<i>Serious</i>	<i>Other</i>	<i>Repeat</i>	<i>Total</i>	<i>% Serious</i>
1	4084.11401	General Rules - Accident Prevention	15	553	29	597	3%
2	4084.13203	General Rules - First Aid (Certified Person)	2	219	8	229	1%
3	4084.62201	Personal Protective Equipment (hard hat)	97	67	8	173	56%
4	4084.234901	Failure to Provide Notification of Abatement	0	125	0	125	0%
5	4084.121301	Scaffolds and Scaffold Platforms - Guardrail on Scaffold	94	5	12	111	85%
6	4084.171901	Electrical Installations -improper installations	20	86	5	111	18%
7	1926.501	Fall Protection	96	5	6	110	87%
8	4084.62401	Personal Protective Equipment -face or eye protection	66	37	2	105	63%
9	4084.172511	Electrical Installations -ground fault circuit interrupter	62	35	3	100	62%
10	4084.121011	Scaffolds and Scaffold Platforms – Construction and capacity generally	34	53	3	90	38%

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

MIOSHA's and Federal OSHA's top 10 most frequently cited standards for construction revealed that MIOSHA shared four standards with Federal OSHA. Those standards included fall protection, accident prevention, scaffold platform, and head protection. Each of these standards were cited by Federal OSHA at a higher percent serious than MIOSHA.

	Standard		Serious	Other	Repeat	Total	% Serious
1	1926.501b	Unprotected sides and edges	6036	312	450	6838	88
2	1926.1053b	Use of ladder	2763	256	65	3088	89
3	1926.451g	Fall protection	2651	57	193	2915	91
4	1926.503a	Training	1672	107	8	1861	90
5	1926.020b	Accident prevention responsibilities	1451	334	40	1825	80
6	1926.451b	Scaffold platform	1654	49	79	1790	92
7	1926.453b	Aerial lift requirement	1521	79	94	1697	90
8	1926.100a	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

An overall statistical analysis of the Construction tables revealed that MIOSHA issued 486 (28%) serious violations out of 1,751 total violations. Federal OSHA issued 21,689 (89%) serious violations out of 23,340 total violations. This represents a 61% difference. An analytical comparison of total repeat violations showed that MIOSHA issued (4%) repeat violations out of a total of 1,751 total violations. Federal OSHA issued 1,111 (5%) repeat violations out of 24,340 total violations.

This represents a 1% difference. MIOSHA cited their number one top most frequently cited standard as other-than-serious 93% of the time, while Federal OSHA cited their number one top most frequently cited standard as other- than-serious 5% of the time.

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

	<i>Standard</i>		<i>Serious</i>	<i>Other</i>	<i>Repeat</i>	<i>Total</i>	<i>% Serious</i>
1	1910.1200 (e)	Hazard Communication – Written Program	56	184	2	242	23%
2	4081.0727 (1)	Guards for Power Transmission – Belt and Pulley	191	842	26	225	85%
3	1910.0147 (c)	Lockout/Tagout - General	131	49	17	197	41%
4	4081.2154(01)	Power Industrial Truck - Permit	57	117	5	179	41%
5	1910.0303(g)	Design Safety Standards for Electrical Systems – General	145	15	12	172	32%
6	1910.0305	Design Safety Standards for Electrical Systems - wiring methods, components and equipment for general use	5	136	9	150	3%
7	4081.0034 (09)	General Provisions - Pinch Point	112	9	23	144	78%
8	4081.3308 (2)	Personal Protective Equipment - Written Assessment	6	111	2	119	5%
9	4081.0731 (01)	Guards for Power Transmission -Gears Chains and Sprockets	105	3	9	117	90%
10	4081.0036 (01)	General Provisions - Air blow Gun over 30 PSI	1	12	95	108	1%

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

	Standard		Serious	Other	Repeat	Total	% Serious
1	1910.147c	Lockout tagout program	2175	437	60	2687	81
2	1910.212a	Machine guarding	1890	132	35	2071	91
3	1910.178l	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 training	670	294	23	994	67
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	1910.134c	Respiratory protection program	391	348	8	747	52

Comparison of Michigan OSHA's and OSHA's top 10 cited standards for general industry revealed that MIOSHA shared four standards with OSHA. These included control of hazardous energy, powered industrial vehicle, hazard communication program, and electrical cabinets, boxes and fittings. MIOSHA cited hazard communication as their most frequently cited general industry standard, as serious 23% of the time. OSHA cited hazard communication, listed as #4 on the table, as serious 62% of the time. OSHA cited control of hazardous energy and issued serious violations 81% of the time. For MIOSHA, control of hazardous energy was their third most frequently cited standard and serious violations were issued 41% of the time.

An overall statistical analysis of the general industry tables revealed that MIOSHA issued 803 (50%) serious violations out of 1,653 total violations. OSHA issued 9,898 (77%) serious violations out of 12,901 total violations. This represents a percentage difference of (27%). An analytical comparison of the total repeat violations showed that MIOSHA issued 200 (12%) out of 1,653 total violations as repeat violations. OSHA issued 211 (2%) repeat violations out of 12,901 total violations. This represents a percentage difference of 10%. MIOSHA cited their number one top most frequently cited standard as other-than-serious 76% of the time, while OSHA cited their number one top most frequently cited standard as other-than serious 16% of the time.

Finding and recommendation

Finding 6: While MIOSHA recognized hazards and issued citations, not all of the hazards were appropriately classified per their FOM.

Recommendation 6: Ensure all staff is retrained on hazard classification and penalty assessment guidelines.

e. Employee and Union Involvement

MIOSHA Field Operations Manual (FOM) requires employee representatives and safety and health committee members to be offered the opportunity to participate in the inspection process. The inspection process includes the opening conference, walk around, and closing conference.

In most of the case files reviewed, the compliance officer indicated either on the MIOSHA-1, initial inspection report, which is similar to the federal OSHA-1, or the abbreviated narrative report, where there was a union; the union representative was involved in the opening conference and/or the walk around. Documentation of employee interviews was not found in most of the case files reviewed. MIOSHA used and completed an "Inspection Guidelines" checklist, which indicated employee inspection participation.

The MIOSHA FOM states that citations "may" be mailed to the employees and/or their representatives no sooner than three days after the citation is sent to the employer. Interviews with MIOSHA staff noted that citations were sent to employees/unions. Documentation showing that the citations were sent to employees/unions was not found in the purged files.

The MIOSHA Informal Settlement Agreement (ISA) procedure does not include contacting unions. However, in discussions MIOSHA informed the Audit Team that they generally attempt to make contact with the union when a settlement agreement is reached. The form MIOSHA uses to

document actions taken related to the ISA process was found in some of the case files reviewed. However, information related to notifying the union representative was not documented.

Findings and Recommendations

Finding 7: Documentation was not found in the file that copies of citations and/or ISAs were sent to the unions.

Recommendation 7: Ensure that all inspection actions are documented and included in the case file.

f. Citations and Penalties

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

	Average Lapse Time
Safety	30.8 days
Health	46.7 days
Total Average	32.6 days

One hundred twenty-eight files were reviewed to assess adequacy of violation classification and penalty assessment. Due to MIOSHA’s purging policy for closed cases, documentation was not always available for review. This made it difficult to determine whether policies and procedures had been followed.

In those case files that were considered to be significant cases and where willful violations were issued, documentation that was in the case file was adequate for the type of violation cited, such as narratives, photographs, interview statements, and worksheets. Repeat violations were issued in many of the case files reviewed and the previous inspection activity was in the case file to support the violation.

Hazard classification, serious versus other-than-serious (OTS), did not always follow the MIOSHA FOM. Hazards which would meet the MIOSHA definition for serious were classified as OTS. Hazards inappropriately classified as other-than-serious included personal protective equipment for corrosive chemicals, hazard communication program, employees working with corrosive chemicals, emergency exits with turnkeys in place, unlabeled electrical boxes, unguarded fan, unguarded floor opening, damaged welding cables, and unlabeled crane control buttons. MIOSHA issued significantly more OTS citations than OSHA.

	MIOSHA	Federal OSHA	difference
Serious	37.4%	76.8%	-39.4
OTS	58.05%	19.4%	+38.6

Severity and probability ratings were inconsistent with the associated hazards and did not follow the MIOSHA FOM in some case files. Examples include the following:

- Amputation hazards (permanent disabling injuries) were rated as medium severity (\$2,000 - \$3,500 base penalty). According to MIOSHA's and OSHA's FOM, this should have been rated as a high severity (\$2,500 - \$5,000 base penalty).
- Fracture injuries were rated low severity (\$1,500 - \$2,500 based penalty). According to MIOSHA's and OSHA's FOM, this should have been rated as a high severity (\$2,500 - \$5,000 base penalty).
- The lack of an eyewash station for employees dispensing corrosive liquids on a daily basis was rated a lower probability (\$1,500 - \$2,500 based penalty) since "no employees were hospitalized due to burns." These employees did not wear face or eye protection. According to MIOSHA's and OSHA's FOM, this should have been rated as a greater probability (\$2,500 - \$5,000 base penalty).
- An overexposure to carbon monoxide based on carboxyhemoglobin results obtained after treatment at the hospital was evaluated as a low severity-greater probability (\$2,500 based penalty). According to MIOSHA's and OSHA's FOM, this should have been rated as a high severity – great probability (\$5,000 base penalty).

The reduction for size is based on the number of employees at the site as opposed to OSHA's requirement to base the reduction on the total number of employees controlled by the employer. This allowed a greater penalty reduction for size for multi-location employers than OSHA allowed.

Effective March 13, 2009, MIOSHA implemented the Memorandum - Penalty Considerations During Economic Downturn. This memorandum addressed timely correction of the cited hazards and payment of penalties. An additional 10% reduction in penalty may be given during the settlement process for those items abated during the inspection or during the settlement negotiation process. Abatement verification must be provided prior to the conclusion of the settlement process. An employer could receive up to 60% penalty reduction for all abated hazards.

A specific worksheet for assessing Good Faith was developed and implemented. While copies of this worksheet were included in the files reviewed, they contained little or no documentation to justify rating. A total of eight categories were assessed, such as compliance, housekeeping, postings and logs, PPE, and MIOSHA Training Institute. Point values and descriptions for assigning the points for each category were included on each form. While generally the memorandum was followed appropriately, the points assessed for "Compliance Factor" did not follow the guidelines noted on the form. For example, a company with serious citations could not receive the maximum number of points. In all of the cases reviewed, employers with serious citations recommended were given the full points.

In FY 2008, MIOSHA's average penalty reduction after citation issuance was 49.5%. In FY 2009, with the Instruction noted above in place, MIOSHA's average penalty reduction increased to 53.7%,

with the national average Federal reduction being 42%. As a result of MIOSHA's classification, severity/probability assessment, and the Memorandum - Penalty Considerations During Economic Downturn noted above, penalties are significantly lower than OSHA's, as noted in the chart below.

Classification	MIOSHA	OSHA	% difference
Willful	\$13,302	\$32,796	-59%
Repeat	\$1,216	\$3,658	-67%
Serious	\$441	\$985	-55%

Findings and Recommendations

Finding 8: While MIOSHA had a hazard classification and penalty assessment system that was similar to Federal OSHA, they did not follow it in all cases. Hazard classification did not follow the guidelines established in MIOSHA's FOM. Penalty assessment, severity/probability and adjustment factors did not follow established MIOSHA guidance documents in all cases.

Recommendation 8: Ensure all staff is retrained on hazard classification and penalty assessment guidelines.

g. Abatement

There were 67 case files reviewed for abatement verification. Twelve (18%) of the files did not contain abatement documentation. As noted earlier in the report, as a result of MIOSHA's purging policy on closed files, file review was limited. Therefore, we could not determine if abatement was received and then purged or if abatement documentation had not been obtained. When interviewed, MIOSHA managers stressed that abatement documentation was closely tracked and obtained.

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

MIOSHA does not track abatement through the use of IMIS. Participation in IMIS, including use of all of its components, is a State Plan requirement. As a result, SAMM indicator #6 did not properly reflect that all hazards have been abated. MIOSHA created an Excel spreadsheet that was accessible to all Division personnel responsible for abatement verification. The Duty Officer for both the General Industry Safety and Health Division and the Construction Safety and Health Division was responsible for tracking and obtaining abatement verification. Interviews with MIOSHA determined that the Excel spreadsheet used to track abatement is monitored closely to insure abatement documentation is received. While this system is different from OSHA's, it appears to be an effective tracking tool.

Case file review showed that formal letters requesting abatement documentation were sent to employers. Some of the case files contained abatement documentation from employers in the form of photos, purchase orders, and other pertinent documentation. Those files which did not contain such documentation may have been purged, in accordance with MIOSHA policy. In addition, the duty officers and supervisors follow up with a telephone call to secure abatement.

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

See Finding 1 and Recommendation 1

Finding: MIOSHA did not enter abatement information into IMIS. Instead, they entered into their Excel spreadsheet.

Recommendation: Consider entering all abatement information into IMIS.

h. Review Process

There were 1,156 cases which resulted in Informal Settlement Agreements (ISA), 451 cases with First Appeal Level (settled), and 242 with Second Appeal Level. Twenty-two case files were reviewed. Eight were Informal Settlement Agreement (ISA), seven were First Appeal level, and seven were Second Appeal Level. The evaluation process included interviews with the supervisors, compliance officers, and the program analyst.

MIOSHA's review procedures are different than OSHA. MIOSHA has implemented a program negotiating an Informal Settlement Agreement (ISA) with the employer, preferably within five working days upon receipt of citation, but prior to 15 days after citation issuance. This is a program designed to obtain abatement of the hazard at the earliest possible opportunity and reduce the need for appeal. The ISA can result in a penalty reduction of up to 50%, provided the issuing division and the employer agree to a number of specified conditions. These conditions include agreement that the employer 1) will not appeal the citation, 2) abate all items within the abatement period, 3) provide proof of abatement, 4) pay all agreed upon penalties, and 5) abide by any other mutually agreed upon actions. An employer that is interested in pursuing an ISA can contact the issuing division by phone, fax, letter, etc. ISAs are offered on all citations regardless of the severity or classification of violations. Sixty-three percent of the case files with citations have been settled through the ISA process. The eight case files reviewed that had ISAs showed that adequate procedures were followed. Penalty reductions ranged from 40% to 50%, in accordance with MIOSHA policy. No changes were made to violation classification.

The MIOSHA Informal Settlement Agreement (ISA) procedure does not include contacting unions. However, in discussions, MIOSHA informed the Audit Team that they generally attempt to make contact with the union when a settlement agreement is reached. The form MIOSHA uses to document actions taken related to the ISA process was found in some of the case files reviewed. However, information related to notifying the union representative was not documented. The General Industry Safety and Health Division (GISHD) uses a form to track the ISA process. The employee or employee representative's contact information should be included on the form when contact is made. However, there was no employee or employee representative contact noted on the form in the case files reviewed. Based on discussions with the program analyst and supervisors, attempts were made to contact the employee or employee representatives. The Director for the Construction Safety and Health Division stated that the employee or employee representative is notified of the ISA after it had been signed.

Within 15 work days following receipt of a citation, an employer may file a first appeal to the issuing Division for modification or dismissal of a citation item and/or any proposed penalty or an extension of time for abatement. The first appeal can result in a penalty reduction of up to 50%, providing the issuing Division and the employer agree to certain conditions, such as abatement completion and submission of this information, that are noted in the formal settlement agreement. An employee or employee representative may appeal, in writing, the reasonableness of the abatement date(s).

If a citation is not appealed within 15 workdays of receipt, the citation becomes a Final Order of the Board of Health and Safety Compliance and Appeals (Board). Final Order citations are not subject to review by the issuing Division, unless the Bureau of Hearings establishes good cause for a late appeal.

An appeal must specify the item(s) appealed and that portion of the item (e.g., violation, abatement date, and penalty) which is being appealed and include a certification that the appeal has been posted or given to effected employees or their representatives. If the issuing Division meets with the employer to discuss an appeal, the issuing Division will notify the employee representative and allow attendance at the meeting.

The issuing Division will notify an employer of its decision within 15 workdays of the receipt of the employer's written appeal. The decision must be posted at the location of the subject citation.

Seven Formal Settlement Agreements resulting from First Level of Appeal were reviewed. In three of the cases, the citations were dismissed because the employer provided evidence that there was employee misconduct. The employer's written documentation was in the case file. In four of the case files, the violations were reclassified; two of the case files had willful violations that were changed to serious and the penalties were reduced substantially. There was a lack of documentation in those case files explaining why those changes were made.

If an employer, employee or employee representative is not satisfied with the result of the First Level appeal, they may file a Second Level appeal with the Board. The appeal must be in writing and the envelope containing the second appeal must be postmarked within 15 workdays of the receipt of the issuing Division's decision on the first appeal. If the issuing Division's decision is not appealed, then the citation becomes a Final Order of the Board.

Of the seven decisions from Second Level Appeal, two of the cases had citations that had been vacated, three cases had penalty reductions for 60 percent, and in two cases, the violations were reclassified as a result of a lack of documentation to support employee exposure.

There were a sufficient number of hearing specialists in the MIOSHA Appeals Division. There were 72 (30%) cases that had been filed at the Second Appeal Level pending pre-hearing and 17 (7%) of the cases pending a hearing with an ALJ. The public has access to MIOSHA decisions through the State Office of Administrative Hearings and Rules via their web page at [BHEAR Search Page](#).

Findings and Recommendations:

Finding 9: There was a lack of documentation that noted that the employee or employee representative had been contacted regarding the final Informal Settlement Agreement.

Recommendation 9: MIOSHA should note within the case file when an employee or employee representative has been contacted.

Finding 10: There was no documentation to support or explain why changes were made to the violations and penalties in some case files.

Recommendation 10: Changes that are made to violations and penalties through the first appeal level should be documented in the case file.

i. Public Employee Programs

MIOSHA conducted 243 public sector inspections in FY 2009, or 3.28% of all inspections. This was less than the SAMM # 11 reference value of 4.6%. These inspections included complaints and programmed activity. While the State imposed penalties for the first instance, as with all inspections, the amounts were well below the National average. Case file review showed that the same concerns noted in Section VIII.B.i.f for private sector inspections concerning citations and penalties were also present for public sector files.

Finding and Recommendation

Finding 11: While MIOSHA had a hazard classification and penalty assessment system that was similar to Federal OSHA, they did not follow it in some case files. Hazard classification did not follow the guidelines established in MIOSHA's FOM. Penalty assessment, severity/probability and adjustment factors did not follow established MIOSHA guidance documents in some case files.

Recommendation 11: Ensure all staff is retrained on hazard classification and penalty assessment guidelines.

j. Information Management

While MIOSHA enters inspection data into IMIS, they have developed and used an alternative manual tracking system, rather than using the IMIS management reports. This tracking system, an Excel spreadsheet, tracks all complaint and inspection activity from receipt to inspection, as appropriate, to final abatement and file closeout. While the spreadsheet appeared to be effective, this was duplication of work, since IMIS reports were available. In addition, MIOSHA does not enter abatement information in IMIS thus making the data in IMIS inaccurate/incomplete. Instead, they enter the information on their internal tracking system. One employee routinely monitored the system for outstanding abatement deficiencies to ensure all abatement was submitted and the file closed out.

Data entry is completed in one central location. Since not all CSHOs work in this location, they sent files to the MIOSHA offices via disk for submission into the OSHA's IMIS, which created some delay in IMIS data entry. The administrative staff entered the files, and made a copy for the supervisors to review. After the file was finalized, the citations were assembled, printed, signed by the supervisor, and mailed. MIOSHA's tracking system was updated manually as the file moved through the system. This MIOSHA tracking system has been in place since MIOSHA joined IMIS.

MIOSHA GISHD has been working with the Management and Technical Services Division to complete work on creating a universal log in the Access computer program. The purpose for the

development of this universal log is to combine the tracking spreadsheets that were being used into one central database. MIOSHA forecasts this universal log will aid in the workflow as several staff members have the ability to access the log and work in it at the same time. GISHD will be able to customize reports based on specific needs, and will be able to preload the priority list. The estimated completion time is October 1, 2010.

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

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

MIOSHA closes cases in the IMIS once satisfactory abatement has been documented, including cases with unpaid penalties. Unpaid penalty cases are sent to the Michigan Department of Treasury for collection. The cases are tracked by MIOSHA. Treasury notifies MIOSHA when a collection is made and the company is removed from the list. The current CSHD Treasury tracking report form indicated that 259 cases have been sent to Treasury since October 2008. The current GISHD Treasury tracking report indicates 60 case files had been transferred to Treasury since October 2008.

Findings and Recommendations

See Finding and Recommendation 1

Finding: MIOSHA did not enter abatement information into IMIS. Instead, they entered into their Excel spreadsheet.

Recommendation: Consider entering all abatement information into IMIS.

Finding 12: MIOSHA does not use IMIS management reports.

Recommendation 12: To prevent duplicative work, MIOSHA should use IMIS management reports.

k. BLS RATES (illness, injury and fatality)

Occupational injury and illness rates, specifically the TRC and DART rates have declined for Michigan over the last five years. Although the number of fatalities has fluctuated over the last five years, there has been a general downward trend.

MIOSHA used the BLS rates to identify the 13 targeted industries in their five-year strategic plan for 2009-2013. They also used the BLS data to establish baselines for those industries.

Michigan BLS Data Chart

		2004	2005	2006	2007	2008	2009
TRC ^{1,3}	National	4.8	4.6	4.4	4.2	3.9	N/A
	Michigan	5.6	5.3	5.0	4.9	4.4	N/A
DART ^{2,3}	National	2.5	2.4	2.3	2.1	2.0	N/A
	Michigan	2.8	2.7	2.5	2.3	2.2	N/A
Fatality Count ⁴	Michigan	44	37	52	31	37	24

¹ Total Recordable Case (TRC)

² Days Away Restricted or Transferred (DART)

³ Rate for Private industry as defined by the Department of Labor – Bureau of Labor Statistics

⁴ State fatality rates unavailable - Counts includes program related fatalities within Michigan OSHA's jurisdiction.

During calendar year 2009, MIOSHA conducted 10 fatality investigations related to construction. MIOSHA has reduced the number of construction related fatalities over the last six years. There are two strategic goals related to the reduction of injuries, illnesses and fatalities in the construction industry. As indicated in the table below, during this evaluation time period there was one fall fatality. Over the previous six years, falls accounted for highest number of fatalities. MIOSHA exceeded both of their targeted goals related to this industry. MIOSHA Construction Safety and Health Division has created a number of fact sheets that are related to types of fatalities that have occurred.

The breakdown in Construction fatalities for years 2004-2009 is as follows:

Program-Related Fatalities

Fatalities Category	2004	2005	2006	2007	2008	2009	TOTAL
Fall	10	9	9	5	5	1	39
Electrocution	3	4	3	2	3	2	17
Struck By	1	1	5	3	5	1	16
Crushed By	4	0	2	1	2	2	11
Cave In	1	3	3	0	0	1	8
Caught By	2	0	1	0	0	0	3
Explosion	0	0	2	0	0	1	3
Head Trauma	1	0	0	0	0	1	2
Chemical Exposure	0	0	1	0	0	0	1
Run Over	0	0	0	0	0	1	1
TOTAL:	22	17	26	11	15	10	101

ii. Standards Adoption and Plan Changes

a. Standards Adoption

Two Federal standards were required to be adopted by MIOSHA during FY 2009. The adoption of the Federal standards was handled by MIOSHA in a timely manner. Standards adopted by MIOSHA become effective 60 days after the effective date of Federal standards.

**Federally Initiated Standards Log
Summary for MI Report**

04/12/2010

Federal Standard Number	Intent to Adopt	Adopt Identical	State Standard Number	Date Promulgated	Effective Date	FR Published Date
1926.200-203 2004 1	YES	YES		November 20, 2006	November 20, 2006	N/A
1910SubpartE 2004 2	NO	N/A	N/A	N/A	N/A	N/A
1911,1915,1926 2004 3	NO	N/A	N/A	N/A	N/A	N/A
1910.178 2004 4	NO	N/A	N/A	N/A	N/A	N/A
1910.139,1910.134 2004 5	NO	N/A	N/A	N/A	N/A	N/A
1910SubpartT 2004 6	NO	N/A	N/A	N/A	N/A	N/A
1910.219,217,268,103 2004 7	NO	N/A	N/A	N/A	N/A	N/A
1910.134AppendixA 2004 8	NO	N/A	Part 451 Respiratory Protection	04/12/2005	04/12/2005	N/A
1915SubpartP 2004 9	----	----				----
,1910 2005 14	YES	YES				N/A
,1926 2006 16	YES	YES				N/A
,1910,1915-18,1926 2006 17	YES	YES	OH Part 315 and 604 Chromium (VI)	07/31/2006	08/07/2006	N/A
,1926,1928 2006 18	NO	N/A	N/A	N/A	N/A	N/A
,1910,1915,1926 2007 20	YES	YES	OH Part 451 Respiratory Protection	02/08/2007	02/08/2007	N/A
,1915 2007 22	NO	N/A	N/A	N/A	N/A	N/A
,1910SubpartS 2007 23	YES	YES	GI Part 39 Electrical Systems	06/11/2007	06/27/2007	N/A
,1910.132,1926.95 2008 25	NO	N/A	N/A	N/A	N/A	N/A
,1910(various) 2008 26	NO	N/A	N/A	N/A	N/A	N/A
,1917,1918 2009 35	NO	N/A	N/A	N/A	N/A	N/A
,1910,1915,1917,1926 2009 36	NO	N/A	N/A	N/A	N/A	N/A
,1910,1915,1917,1918 2009 37	YES	NO				
,1910.102 2010 38	----	----		01/22/2010	02/08/2010	----
Total	8	7		0		

The MIOASH Act established the General Industry Safety Standards Commission, the Construction Safety Standards Commission, and the Occupational Health Standards Commission. The Commissions are responsible for developing standards in consultation with advisory committees whose members represent the major interests affected by the proposed standard. The standards are intended to protect the health and safety of Michigan's employees. The Commission meetings

are open to the general public and their comments are addressed during the meetings. Each Commission held four meetings during FY 2009. These meetings are conducted according to Act 267 of the Public Acts of 1976, Open Meeting Act.

Annually, the MIOSHA Standards Section, along with the three standard Commissions, develops a table that lists the MIOSHA standards that will either be revised or promulgated. During FY 2009, there were 17 standards on the list to be updated or revised.

MIOSHA has moved forward with the promulgation of an ergonomics standard. The General Industry Safety Standards Commission and Occupational Health Standards Commission conducted a joint meeting on January 14, 2009 to address the proposed ergonomics standard. After significant discussion, the Commissions made changes to the proposed ergonomics standard, including the addition of an exemption for the jurisdiction covered exclusively by the Federal Railroad Administration. The Commissions also deliberated on two exemptions within the draft for an existing "effective program," which appeared confusing and subjective. Therefore, the commissions voted and removed this clause. The Commissions added another change, by incorporating a phase-in provision of six months after the final rule is filed with the Michigan Secretary of State. Both Commissions voted unanimously to move the proposed ergonomics standard, as amended, forward to the State Office of Administrative Hearings and Rules (SOAHR) for informal approval.

Michigan's standard for personnel hoisting (408.42809(2)) permits no more than two connectors to ride the headache ball of the crane in order to gain access to work areas that are otherwise inaccessible or hazardous to reach by other means when thirteen additional provisions are met. The State's standard is not considered to be at least as effective as and is in direct conflict with the OSHA standard (1926.753(c)(3)). The OSHA standard prohibits the use of the headache ball for worker transport under any circumstance to prevent falls or being crushed, which can result in serious injury or death. OSHA's position is supported by existing consensus standards. Action to formally reject the MIOSHA standard is pending.

At the last Occupational Health Standards Commission meeting held in December 2009, the Commission voted on and appointed an advisory committee to open up and revise the air contaminants standards. The advisory committee members are charged to develop a list of 10 air contaminant standards that should be revised.

Federal Program Changes (FPCs):

MIOSHA has continued to provide timely responses to OSHA regarding their intentions to adopt all federally initiated program changes, including those initiated during 2009.

Also, during FY 2009, MIOSHA has started to make revisions to their Field Operations Manual (FOM).

**Federal Program Change
Summary for MI Report**

Directive Number	Adoption Required	Intent Required	Intent to Adopt	Adopt Identical	State Adoption Date	State Submission Date	FR Published
CPL-03-00-007 2008 308	NO	YES	YES	Y	1-24-2008	N/A	N/A
CPL-02-02-074 2008 309	NO	YES	YES	NO	2/7/2008	10/30/2008	N/A
CPL-02-00-147 2008 311	NO	YES	YES	YES	4/1/2008	N/A	N/A
CPL-03-00-008 2008 312	NO	YES	YES	Y	3/12/2008	N/A	N/A
CPL-02-00-146 2008 313	NO	YES	NO	N	8/4/2006	N/A	N/A
CSP0301003 2008 314	NO	YES	NO	N/A	N/A	11/5/2008	N/A
CPL-02(08-03) 2008 327	NO	YES	NO	N/A	N/A	6/4/2008	N/A
CPL-02-01-045 2008 329	NO	YES	NO	N	N/A	10/30/2008	N/A
TED-01-00-018 2008 330	YES	YES	NO	NO	-----	10/30/2008	----
CPL-03-00-009 2008 331	NO	YES	NO	N	N/A	11/5/2008	N/A
CPL-02-00-148 2009 332	YES	YES	YES	YES	9/26/2009	4/7/2010	N/A
CPL-2(09-05) 2009 333	NO	YES	NO	N	N/A	9/22/2009	N/A
CPL-02(09-06) 2009 334	NO	YES	YES	YES	10/1/2009	N/A	N/A
CPL-03-00-010 2009 353	NO	YES	YES	YES	7/5/2007	N/A	N/A
CPL-02-01-046 2010 354	NO	YES	YES	YES	11/9/2009	N/A	N/A
CPL-02-09-08 2010 355	NO	YES	YES	YES	12/1/2009	N/A	N/A
CPL-0200148 2010 374	YES	YES	Y	Y	5/9/2010	4/7/2010	----
CPL-02-02-075 2010 375	NO	YES	YES	YES	1/26/2010	3/8/2010	N/A
CPL-03-00-011 2010 376	NO	YES	YES	YES	1/30/2010	2/25/2010	N/A
CPL-02-02-076 2010 377	NO	YES	Y	N	N/A	5/31/2010	N/A
CPL-02(10-02) 2010 378	YES	YES	----	Y	4/20/2010	4/30/2010	----
Total							

iii. Variances

There were 38 permanent variances and seven interim variances granted in FY 2009. All of the variances were entered in the Automated Tracking System. Over the years, the State has put a lot of work into maintaining and updating variance status. MIOSHA sent letters to each one of the companies and asked them to update their variance information. The variance procedures are outlined in and followed in accordance with Section 27 of the MIOSH Act.

iv. Discrimination Program

MIOSHA's Employee Discrimination Section consists of a supervisor, two investigators, an administrative support person and a General Industry Safety and Health Division compliance officer detailed to the Employee Discrimination Section. The MIOSHA Deputy Director indicated that the MIOSHA Employee Discrimination Section follows OSHA's DIS 0-0.9 for guidance during their investigations and there are no MIOSHA policies, or procedures manual applicable to the Employee Discrimination Section. Three members of the discrimination staff were interviewed.

Procedurally the MIOSHA Employee Discrimination Section differs greatly from the OSHA DIS Manual 0-0.9, and the applicable directives, policies, etc. MIOSHA has, for example, created their own version of forms, documents and sample writings, instead of using those provided through the OSHA Whistleblower Program. Documentation is one of the common discrepancies noted in the files reviewed. Documentation was lacking; often author and/or source of the document or information was unclear or missing. However, the outcomes of the cases reviewed were appropriate.

The case files ranged in age from 0 to 242 days old. MIOSHA used an in-house complaint form entitled, "A Discrimination Complaint." The form is used for the intake and screening of discrimination complaints. MIOSHA informs the complainants of their right to file with Federal OSHA as well.

Web System Information

The information in each case file was compared with that entered in the Whistleblower Web Based (IMIS) System. It appears that the majority of the data entries in the IMIS are made by the MIOSHA Employee Discrimination Section secretary, rather than the Investigator of Record. The information reveals a limited use of the IMIS with only basic allegation and respective party information. It does not appear that MIOSHA uses the Case Activity Worksheet, or utilizes case comment, additional tracking information, or adverse employment action.

MIOSHA has created their own sample letters, forms, reports, etc. utilized in the Whistleblower Program. Deference was granted where the document could be related to a form or sample document provided in DIS 0-0.9. Some examples were the "Investigation Report" that was accepted in lieu of a Final Investigation Report and closing letter to Complainant and/or Respondent in lieu of a Secretary's Finding.

Data and procedural discrepancies were noted in several of the files reviewed. For example, it appears that the FIR and Determination dates are often entered as the same date regardless of the date on the document in the case file. Various data discrepancies between the date in the IMIS and the information in the 10 case files were discovered.

Complaint Intake and Screening:

MIOSHA has created a "MIOSHA Discrimination Complaint" form that appears to be the official document used when docketing a complaint. It appears that any member of the MIOSHA Employee Discrimination Section who may be in the office can/will complete the intake and screening of a complaint. Information in some files suggests that the intake and screening of most complaints are conducted by the Program Manager or secretary.

In three of the case files there were discrepancies between the filing date in the IMIS and the case file. There is no explanation in the file to explain these discrepancies, such as tolling, etc. related to these complaints. Two of the cases did not contain a Complainant acknowledgement letter.

Case Activity Worksheet

The MIOSHA Employee Discrimination Section does not use Case Activity Worksheets/OSHA 87s generated by the Whistleblower IMIS Web System. MIOSHA has created "A Discrimination Complaint" form that contains essentially the same information contained on the Case Activity Worksheet form, with the exception of a final worksheet revealing the determination/disposition of the complaint. The final disposition is recorded in other documents in the case file, such as the MIOSHA Investigation Report.

Complainant and Witness Interviews

MIOSHA utilizes its own version of an interview statement, rather than the form provided in DIS 0-0.9. These forms were typically hand written; most Complainant interview statements were signed and dated but other witness statements were a mix of signed and unsigned documents. In many instances, the files contained "Narratives" memorializing information obtained during the investigation. These "Narratives" were similar to memos to file but did not contain the identity of the author, date written, etc. In some instances, it appears the "Narrative" was a typed version or summary of the hand written statement contained in the file. In other instances, it was difficult to know, with certainty, the source of the information, author, date written, etc. A reasonable assumption appears to be that the "Narratives" are written by the Investigator of Record, but in many instances, the source of the information and the date written remains an uncertainty.

In one case it does not appear that the Investigator of Record met with or interviewed the Complainant. Two of the cases were both withdrawn in 11 and six days respectively and did not contain Complainant interview statements. Three cases were dismissed after 49, 42 and 37 days respectively, due to lack of cooperation and thus did not contain Complainant interview statements.

Two cases were dismissed as not timely, and thus did not contain Complainant interview statements.

Respondent Notification

In 12 of the files reviewed, Respondents were served notice of the complaint. Method of service was not well documented and often could not be determined. It appears that in these cases, Respondents were provided a copy of the complaint and the MIOSHA Act. Information regarding on site activity was limited, and not well documented or memorialized in the case files reviewed.

In eight of the files reviewed, Respondents were not served notice of the complaint or determination.

Final Investigation Report

MIOSHA has created its own version of a Final Investigation Report (FIR), an "Investigation Report" that contains the basic Complainant and Respondent information, complaint allegation, date filed, etc. that is signed and dated by the Investigator of Record. The files also contain a "Recommendation" wherein the author is not identified and it is neither signed, nor dated. However, it appears these "Recommendations" may be written by the Investigator of Record. These "recommendations" appear to be a chronology of narratives from the file that are copied and pasted into this report, and ends by making a recommendation regarding the merits of the complaint. Narratives are MIOSHA created documents that appear to be a form of memos to file wherein the author is not identified and it is neither dated nor signed. A reviewer must assume the identity of the author and source of the information. A reasonable assumption appears to be that the Investigator of Record assigned to the specific complaint is the author.

One case did not contain a MIOSHA "Investigation Report" but it did contain a "recommendation" that was neither signed nor dated. Another case did not contain a MIOSHA "Investigation Report" or a "Recommendation."

In yet another case, there were unanswered questions based on the content of the case file that should have been resolved during the investigation. However, clarification of these questions would not likely change the ultimate determination in this case.

Secretary's Finding

MIOSHA does not utilize a Secretary's Finding as in the OSHA Whistleblower Program. MIOSHA utilizes a written determination that adequately sets forth the determination and provides the respective party their right to appeal the MIOSHA finding.

Settlement Agreement

Three of the files reviewed contained a determination of "Settled." Each of these files contained a copy of fully executed agreement. There was nothing in the files to enable this reviewer to understand why or how this complaint was resolved through a settlement, the adequacy of the agreement or why the agreement was an appropriate resolution of the complaint.

One case contained a determination of "Litigation/Merit." However, according to the available information, this complaint was resolved by agreement prior to hearing. The agreement was a unilateral agreement between MIOSHA and Respondent; Complainant did not agree or accept the agreement according to an e-mail communiqué contained in the case file. DIS 0-0.9 and national policy sets forth specific procedures that must be followed for any unilateral agreement.

Another case contained a determination of "Withdrawn." According to the information in the file, Complainant informed the Investigator of Record that he had negotiated a settlement agreement with Respondent that included reinstatement, effective March 5, 2009. Neither Complainant's reinstatement nor their agreement with Respondent was reviewed or discussed in the case file. Complainant withdrew their complaint and the withdrawal was accepted.

Withdrawn Complaints

Six of the files reviewed contained a determination of “Withdrawn.” Each file contained a written withdrawal request, presented by Complainant or their authorized representative. These complaints range from six to 335 days open before withdrawal.

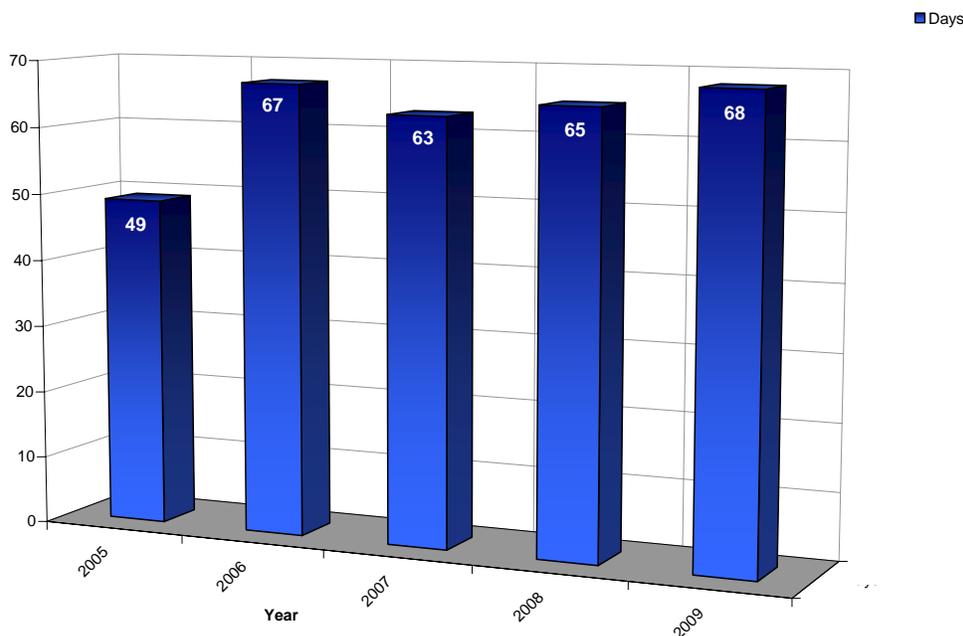
One case contained a determination of “Withdrawn.” According to the information in the file, Complainant informed the Investigator of Record that he had negotiated a settlement agreement with Respondent that included reinstatement effective March 5, 2009. Neither Complainant’s reinstatement nor his agreement with Respondent was reviewed or discussed in the case file. Complainant withdrew his complaint and his withdrawal was accepted.

Overall Organization

The content of the files reviewed, with a couple of exceptions, were loose, not secured as set forth in DIS 0-0.9 and do not follow DIS 0-0.9 organization guidelines. As such, these files are difficult to review or ensure that all relevant documents obtained and/or generated during the investigation are properly maintained in the case file. MIOSHA has created its own version of various forms, reports, findings, etc. that were difficult to follow in some instances. Most of the files reviewed contained a copy of the Whistleblower IMIS Case Summary for the complaint. This form is not required and should not be part of a case file.

Over previous quarters in FY 2009, MIOSHA Employee Discrimination Section has improved their percentage of cases completed within 90 days. The chart below reflects information contained in the SAMMs Measure 13, percent of 11(c) investigations completed within 90 days. Although significant improvement has been made, MIOSHA is still below the referenced standard of 100%.

MI Percent of 11c Investigations Completed within 90 days



Findings and Recommendations

Finding 13: Review of the cases revealed that MIOSHA's Employee Discrimination Section has adopted their own forms, letters, and Final Investigative Report (FIR) rather than using the forms provided by the OSHA Whistleblower Program. Case file organization does not follow DIS 0-0.9. However, the outcomes of the cases reviewed were appropriate.

Recommendation 13: Follow DIS 0-0.9 to ensure consistency with case file organization and contents, including forms, letters and Final Investigative Reports (FIR s).

Finding 14: While MIOSHA has improved in timely completion of 11(c) investigations, they completed only 68% in 90 days.

Recommendation 14: MIOSHA should continue to improve case management to ensure completion of all cases in a timely manner.

v. CASPA

There were no CASPAs filed during this evaluation timeframe.

vi. Voluntary Compliance Programs

The MIOSHA Voluntary Protection Programs Policy and Procedures Manual (VPPPPM) was reviewed and found to be as effective as OSHA's policy.

Overall, the VPPPPM was consistent with OSHA's, with two exceptions: Medical Access Orders (MAOs) and injury/illness rate assessments. (MIOSHA's Written Access Order (WAO) is comparable to OSHA's MAO.) While MIOSHA does not currently require the VPP team to obtain a WAO, the need for obtaining employee medical information is noted in MIOSHA's Instruction, MIOSHA-COM-08-2: Access to Employee Medical Records.

This difference was discussed with MIOSHA. The VPPPPM is under review and will be updated to include the need and process for obtaining a WAO.

MIOSHA required employers to have TCIR/DART rates below BLS rates for each of the three years reviewed, rather than below the three year average for that industry. This requirement is more stringent than OSHA's requirement.

MIOSHA's VPP afforded the same exemptions as the Federal program. MVPP companies were exempt from programmed inspections while in the program.

Thirteen of the 31 VPP files were reviewed.

It was determined that MIOSHA did not consistently follow all procedures established in the VPPPPM in all cases. The VPPPPM stated that if unions were present at the facility, the approval letter should be sent to the union. In the four files reviewed where employees were represented by unions, approval letters had not been sent to the union.

In 11 of the files reviewed, during the initial and/or recertification visit(s), the MVPP Evaluation Team identified and documented a high number of hazards (90 day items). The number of hazards ranged from 14 to as high as 93. In at least two cases at the time of the recertification evaluation, some of the hazards observed were the same or similar to hazards observed during the initial visit. The files documented hazard abatement and these companies were approved or reapproved as MVPP companies.

The make up of the Evaluation Team was appropriate. The Team Leader was trained and experienced. Team Members brought necessary experience and knowledge to ensure all aspects of the company would be fully reviewed. Prior to the Team conducting an evaluation at a process safety management (PSM) site, a PSM expert from MIOSHA's General Industry Safety and Health Division completed their evaluation of the company. The evaluation of the company could not move forward if all PSM issues were not in good order.

Findings and Recommendations

Finding 15: MIOSHA's current policy recognizes the need to obtain medical information during VPP evaluations. However, it did not include procedures for obtaining a WAO.

Recommendation 15: Continue revision to VPPPPM that will address WAO order procedures. Train staff on procedures and ensure WAOs are obtained.

Finding 16: In 35% of the MVPP files, it was noted that the MVPP team observed an excessively high number of 90 day items.

Recommendation 16: Review with the MVPP Team Leader the need to assess those sites with a high number of 90 day items to ensure that all MVPP principles are in place.

Finding 17: Approval letters to the unions, as appropriate, were not consistently sent in all cases.

Recommendation 17: Provide refresher training to ensure that approval letters are sent to the union as appropriate and a copy is included in the file.

vii. Program Administration

a. Training

MIOSHA has developed and implemented their own training program, Training Instruction, MIOSHA-TRG-04-1R4, which addressed the overall training needs of the MIOSHA staff. The Instruction states:

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

The Instruction does not include a specific listing of required courses for new hire CSHOs. A list of the specific training classes required for new CSHOs is established by each enforcement division and included in division training instructions, CSHD TRG 09-1 CSHD Staff Training effective January 8, 2009 and GISHD TRG 051R1 GISHD Staff Training effective February 25, 2009.

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

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

MIOSHA maintained all training records in a database. Training records were reviewed and found to be in good order. Each MIOSHA employee received training annually. This training varies from formal training at the MIOSHA Training Institute (MTI) or OTI to in-house training. The Training Instruction included a specific listing of core classes for Managers which is similar to Federal OSHA’s requirements.

The MIOSHA Leadership Institute is a succession training program that was developed by the State. It was very helpful for them in 2001, and continues to be, when 34 staff members retired as a result of an early out retirement plan. Over the last couple of years, the Institute has not been as active due to budget restrictions. However, in 2010 MIOSHA Leadership Institute will reconvene. Some of the core courses will be: Emotional Intelligence, Leading through Vision and Values, Essentials of Leadership, Personal Goal Setting, Effective Listening, Effective Time Management, Basics of Effective Communication, Conflict Management, Team Building, and Facilitating Effective Meetings. It will be offered internally and will have a two tier class structure with Level One Courses and Level Two Courses, which are more advanced courses and are more advanced core and electives. There will be a MIOSHA Leadership Institute in 2010 with classes starting in May.

b. Benchmarks/Furloughs/Funding

As a result of the State of Michigan’s budget deficit State employees were required to take six furlough days during FY 2009. MIOSHA split their agency employees into two groups. Each group took a different furlough day, so that MIOSHA would be able to continue to provide the workers in the State of Michigan with safety and health protection in the workplace. The six days were taken over a course of four months, June through September.

During the evaluation timeframe the MIOSHA program operated within the State budget restrictions placed on the agency, especially as it related to out of State travel. State staff had to obtain pre-approval six weeks in advance for this kind of travel.

Total State and Federal funds allocated to the MIOSHA 23(g) program for FY 2009 was \$20,858,800. MIOSHA overmatched the Federal grant by \$1,418,200. MIOSHA did not de-obligate any funds during the Fiscal Year. As a result of MIOSHA having to take the six furlough days and the budget restrictions placed on the program, they did not request the one-time funding.

The benchmark for safety compliance officers is 56. MIOSHA has only 44, or 79%, of these positions filled. The benchmark for health compliance officers is 45 with only 24, or 56% filled. MIOSHA has been unable to meet staffing benchmarks, specifically for health compliance officers, but is not required to do so as the State has not sought final approval/18(e) status. If MIOSHA decides to pursue final approval, they will need to either meet or seek approval to lower their benchmarks.

Michigan Benchmarks and Staffing

		FY 2006	FY 2007	FY 2008	FY 2009
Safety	Benchmark	56	56	56	56
	Positions Allocated	56	49	51	47
	Positions Filled	56	49	50	44
	Vacancies	1	0	1	3
	Percent of Benchmarks Filled	100%	88%	89%	79%
Health	Benchmark	45	45	45	45
	Positions Allocated	24	23	31	25
	Positions Filled	24	23	30	24
	Vacancies	0	0	1	1
	Percent of Benchmarks Filled	53%	51%	67%	53%

Findings and Recommendations

Finding 18: MIOSHA's staffing levels are below the currently approved benchmarks. MIOSHA has considered recalculation to lower its benchmark levels as part of the SIEP in each of the past three years.

Recommendation 18: The State should continue to work with OSHA, regarding benchmarks, and continue to increase staffing levels to the extent feasible.

viii. State Internal Evaluation Plan

MIOSHA State Internal Evaluation Plan (SIEP) for FY 2009

MIOSHA developed two SIEPs for Fiscal Year 2009, one which focused on re-calculation of their benchmarks and the other was to rewrite their General Industry Safety and Health Division Common Violations (CVs) and Standard Alleged Violation Elements (SAVEs).

As part of its consideration of seeking final approval status, MIOSHA would need to either increase its compliance staffing or seek approval of reduced benchmarks.

MIOSHA has continued their work on the SAVE project. Six hundred and seventy nine new SAVEs were printed, issued, uploaded to their "S" drive and entered into the IMIS system. Employee training was provided on the new SAVEs during divisional and regional meetings.

In addition to the current SIEP, MIOSHA should conduct internal audits to ensure the MIOSHA program continues to follow the requirements of the OSHA program.

V. Public Comments

As a part of the special study, interviews were conducted with organizations that represent employees and employers in order to obtain a perspective of how their constituents feel MIOSHA is being operated and what challenges the program may face now and in the future. The UAW has had a long standing history with MIOSHA and has served on various advisory committees. The UAW representatives had a lot of confidence in MIOSHA. They did not have any major issues or concerns related to the program and are in support of the proposed ergonomic standard.

The Michigan Chamber of Commerce felt MIOSHA had a good Director and that the organization has worked well with the Director. There have been members that have had problems with workplace inspections. Specifically, the employers did not find out that there were serious hazards in their workplace that they would be cited for until it appeared in press releases, and in some cases, the employer felt that they were not given enough time to respond to the findings from an inspection. The Chamber of Commerce worked with those employers and MIOSHA to resolve some of the issues. Apparently, MIOSHA recognized that there were problems with the inspection process and immediately resolved the issues.

The Michigan Chamber of Commerce does not perceive MIOSHA as being hostile towards employers, but is concerned about MIOSHA implementing rules that exceed Federal OSHA's standards. One of these concerns is MIOSHA's intent to move forward with the promulgation of the proposed ergonomic standard, which would be an additional cost for the employers in the State of Michigan. Additionally, the standard is written to cover all employers, which they feel is not practical. Employers were also concerned about MIOSHA's attempt to promulgate a rule for diisocyanates in which there was a lot of disagreement with the medical surveillance portion of that rule and the signage requirement. Due to concerns raised by several affected groups, the Department Director requested that the Commission consider the issues raised and revisit the draft for potential changes.

The Michigan Manufacturer's Association (MMA) also represents employers and expressed concerns about MIOSHA. Based on discussion with a representative, a brief poll was conducted of their members a year ago to assess how the membership felt about legislation of interest to reduce the size of government. It appeared that there was an overwhelming response in supporting the return of MIOSHA back to the Federal government. The results of the poll further indicated that the MIOSHA program was doing a good job with outreach and safety and health training. There were concerns with MIOSHA being more stringent with promulgating rules that would be more burdensome on the employers in terms of costs. The proposed ergonomic standard was provided as an example. Members do not see the necessity of having an ergonomic standard.

In October of 2009, The Detroit News published an article entitled "Eliminate Redundant State Programs." The article stated that Michigan's workplace safety and health programs were duplicative of Federal OSHA, and by eliminating several programs, the state of Michigan could save ten of millions of dollars. Stanley Pruss, Director of DELEG, responded to the editor by letter informing him of the difference between the Federal OSHA enforcement program and the State program. Specifically, it stated *"If federal OSHA operated the safety and health program in Michigan – the State would lose control and it would primarily become an enforcement program."*

The federal program would include: first instance sanctions, higher penalties for serious violations, and a federally targeted program for inspecting Michigan workplaces.” The letter also identifies other differences.

Appendix A

FY 2009 Michigan State Plan (MIOSHA) Enhance FAME Report prepared by Region V

Summary of Findings and Recommendations

	Findings	Recommendations
State Activity Mandated Measures (SAMMs) (p. 14-15)		
1	MIOSHA did not enter abatement verification into the IMIS System. Instead it is entered into an Excel spreadsheet. (See also Abatement p. 24-26 and Information Management 29-30)	MIOSHA should enter abatement verification into the IMIS system as this is a Mandated Measure.
2	MIOSHA penalty calculation policy has resulted in low average penalty assessments. MIOSHA's initial penalty per serious violation is \$692.37, which is below the national reference data by 51.9%.	MIOSHA should follow their penalty calculation policy.
Complaints (p. 15-17)		
3	The complaint files, formal and nonformal, did not include a mechanism to track actions taken while handling the file.	Ensure a tracking mechanism, such as a Diary Sheet, is put in place and used effectively.
4	MIOSHA did not always follow their policy and procedure manual. In one case, a complaint inspection was not conducted at a facility employing less than 10 employees.	Provide refresher inspection training to include small employer exemptions/nonexemptions.
Fatalities (p. 17-18)		
5	MIOSHA maintained the initial letters to the next of kin in a separate binder.	MIOSHA should maintain the next of kin letters in the case file.
Targeting and Inspection Statistics (p. 18-23)		
6	While MIOSHA recognized hazards and issued citations, not all of the hazards were appropriately classified per their FOM.	Ensure all staff is retrained on hazard classification and penalty assessment guidelines.
Employee and Union Involvement (p. 23-24)		
7	Documentation was not found in the file that copies of citations and/or ISAs were sent to the unions.	Ensure that all inspection actions are documented and included in the case file.
Citations and Penalties (p. 24-26)		
8	While MIOSHA had a hazard classification and penalty assessment system that was similar to Federal OSHA, they did not follow it in all cases. Hazard classification did not follow the guidelines established in MIOSHA's FOM. Penalty assessment, severity/probability and adjustment factors did not follow established MIOSHA guidance documents in all cases.	Ensure all staff is retrained on hazard classification and penalty assessment guidelines.
Review Process (p. 27-29)		
9	There was a lack of documentation that noted that the employee or employee representative had been contacted regarding the final Informal Settlement Agreement.	MIOSHA should note within the case file when an employee or employee representative has been contacted.
10	There was no documentation to support or explain why changes were made to the violations and penalties in some case files.	Changes that are made to violations and penalties through the first appeal level should be documented in the case file.
Public Employee Programs (p. 29)		
11	While MIOSHA had a hazard classification and penalty assessment system that was similar to Federal OSHA, they did not follow it. Hazard classification did not follow the guidelines established in MIOSHA's FOM in all cases. Penalty assessment, severity/probability and adjustment factors did not follow established MIOSHA guidance documents in some case files.	Ensure all staff is retrained on hazard classification and penalty assessment guidelines.

	Findings	Recommendations
Information Management (p. 29-30)		
12	MIOSHA does not use IMIS management reports.	To prevent duplicative work, MIOSHA should use IMIS management reports.
Discrimination (p. 35-39)		
13	Review of the cases revealed that MIOSHA's Employee Discrimination Section has adopted their own forms, letters, and Final Investigative Report (FIR) rather than using the forms provided by the OSHA Whistleblower Program. Case file organization does not follow DIS 0-0.9. However, the outcomes of the cases reviewed were appropriate.	Follow DIS 0-0.9 to ensure consistency with case file organization and contents, including forms, letters and Final Investigative Reports (FIRs).
14	While MIOSHA has improved in timely completion of 11(c) investigations, they completed only 68% in 90 days.	MIOSHA should continue to improve case management to ensure completion of all cases in a timely manner.
Voluntary Compliance Program (p. 39-40)		
15	MIOSHA's current policy recognizes the need to obtain medical information during VPP evaluations. However, it did not include procedures for obtaining a WAO.	Continue revision to VPPPPM that will address WAO order procedures. Train staff on procedures and ensure WAOs are obtained.
16	In 35% of the MVPP files, it was noted that the MVPP team observed an excessively high number of 90 day items.	Review with the MVPP Team Leader the need to assess those sites with a high number of 90 day items to ensure that all MVPP principles are in place.
17	Approval letters to the unions, as appropriate, were not consistently sent in all cases.	Provide refresher training to ensure that approval letters are sent to the union as appropriate and a copy is included in the file.
Benchmarks/Furloughs/Funding (p. 41-42)		
18	MIOSHA's staffing levels are below the currently approved benchmarks. MIOSHA has considered recalculation to lower its benchmark levels as part of the SIEP in each of the past three years.	The State should continue to work with OSHA, regarding benchmarks, and continue to increase staffing levels to the extent feasible.

Appendix B. Enforcement Comparison Chart

	Michigan	State Plan Total	Federal OSHA
Total Inspections	5,086	61,016	39,004
Safety	4,346	48,002	33,221
% Safety	85%	79%	85%
Health	740	13,014	5,783
% Health	15%	21%	15%
Construction	3,208	26,103	23,935
% Construction	63%	43%	61%
Public Sector	242	7,749	N/A
% Public Sector	5%	13%	N/A
Programmed	4,321	39,538	24,316
% Programmed	85%	65%	62%
Complaint	463	8,573	6,661
% Complaint	9%	14%	17%
Accident	41	3,098	836
Insp w/ Viols Cited	3,350	37,978	27,165
% Insp w/ Viols Cited (NIC)	66%	62%	70%
% NIC w/ Serious Violations	64%	62%	87%
Total Violations	14,639	129,363	87,663
Serious	5,480	55,309	67,668
% Serious	37%	43%	77%
Willful	21	171	401
Repeat	606	2,040	2,762
Serious/Willful/Repeat	6,107	57,520	70,831
% S/W/R	46%	44%	81%
Failure to Abate	45	494	207
Other than Serious	8,487	71,336	16,615
% Other	58%	55%	19%
Avg # Violations/ Initial Inspection	4.2	3.3	3.1
Total Penalties	\$ 3,605,100	\$ 60,556,670	\$ 96,254,766
Avg Current Penalty / Serious Violation	\$ 444.20	\$ 800.40	\$ 970.20
Avg Current Penalty / Serious Viol- Private Sector Only	\$ 446.40	\$ 934.70	\$ 977.50
% Penalty Reduced	53.7%	51.9%	43.7%
% Insp w/ Contested Viols	6.6%	13.0%	7.0%
Avg Case Hrs/Insp- Safety	15.3	15.7	17.7
Avg Case Hrs/Insp- Health	24.4	26.6	33.1
Lapse Days Insp to Citation Issued- Safety	30.8	31.6	34.3
Lapse Days Insp to Citation Issued- Health	46.7	40.3	46.7
Open, Non-Contested Cases w/ Incomplete Abatement >60 days	122	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 – Acronyms

ALJ – Administrative Law Judge

ATS – Automated Tracking System (National database used for tracking State Plan activities)

BLS – Bureau of Labor Statistics (Agency within the Department of Labor that maintains and issues statistics related to injury and illness rates)

CASPA – Complaints About State Program Administration (an avenue available to a complainant or individual in the State of Michigan that is covered by the MIOSHA program to file a complaint against the State)

CET – Consultation Education and Training (Training Division for MIOSHA program)

CIS – Consumer and Industry Services (former name for one of the State Departments that housed the MIOSHA program)

CSHD – Construction Safety and Health Division (a division within MIOSHA)

CSHO – Compliance Safety and Health Officer

DART – Days Away, Restricted, and Transfer (an injury and illness rate that can be calculated for a company)

DELEG – Department of Energy Labor and Economic Growth (Department in Michigan State Government where MIOSHA Program is located)

DLEG – Department of Labor and Economic Growth (former Department where MIOSHA was located)

FAME – Federal Annual Monitoring and Evaluation

FIR – Final Investigation Report

FOIA – Freedom of Information Act

FOM – Field Operations Manual (directive for compliance officer to follow pre, during and post inspections)

FPC – Federal Program Change

GISHD – General Industry Safety and Health Division (Division within MIOSHA)

IMIS - OSHA's Integrated Management Information System

IMMLANG – Immigrant Language Questionnaire (national database used to capture information related to fatalities of immigrant workers)

ISA – Informal Settlement Agreement

MAO – Medical Access Order

MIFACE – Michigan Fatality Assessment and Control Evaluation (initiative within Michigan State University that collects and analyzes results fatality information)

MIOSHA – Michigan Occupational Safety and Health Administration

MSEA – Michigan State Employees Association (one of the unions that represent State workers)

MSHA – Mine Safety and Health Administration

MTSD – Management and Technical Services Division (MIOSHA Division)

MTI – MIOSHA Training Institute

MVPP – Michigan Voluntary Protection Program (exemption program within MIOSHA)

MVPPPPM – Michigan Voluntary Protection Programs; Policies and Procedures Manual

NCR – OSHA Administration database

NOK – Next of Kin (letters to the families of victims of fatalities)

OSE – Office of State Employer (agency that represents governor in labor relations)

OSHA – Occupational Safety and Health Administration

OTI – OSHA Training Institute

OTS – Other than serious (a citation classification)

P.A. – Public Act

PMA – Petition for Modification of Abatement

PPE – Personal Protective Equipment

PSM – Process Safety Management

SAMM – State Activity Mandated Measures (statistical reports for State program mandated activities)

SIEP – State Internal Evaluation Plan (plan that the State develops to review a process, program, policy, etc. of State Plan activities)

SOAHR – State Office of Administrative Hearings and Rules

STAA – Surface Transportation Assistance Act (whistleblower complaint that can be filed with Federal OSHA related to violations of Department of Transportation violations)

S/W/R – Serious, Willful, Repeat

TCIR – Total Case Incidence Rate (calculated injury and illness rate)

TCR – Total Case Rate(calculated injury and illness rate)

TRC – Total Recordable Cases

UAW – United Auto Workers Union (Union that represents State employees)

WAO – Written Access Order

Appendix D FY 2009 Final SAMM

OCT 23, 2009

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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)

State: MICHIGAN COMBINED

RID: 0552600

MEASURE	From: 10/01/2008 To: 09/30/2009	CURRENT FY-TO-DATE	REFERENCE/STANDARD
1. Average number of days to initiate Complaint Inspections	2868 6.06 473	63 4.84 13	Negotiated fixed number for each State
2. Average number of days to initiate Complaint Investigations	8 .25 31	5 1.00 5	Negotiated fixed number for each State
3. Percent of Complaints where Complainants were notified on time	485 100.00 485	11 100.00 11	100%
4. Percent of Complaints and Referrals responded to within 1 day -ImmDanger	0 0	0 0	100%
5. Number of Denials where entry not obtained	0	0	0
6. Percent of S/W/R Violations verified			
Private	0 .00 4957	0 .00 4957	100%
Public	0 .00 210	0 .00 210	100%
7. Average number of calendar days from Opening Conference to Citation Issue			
Safety	137244 43.84	9707 47.35	2489573 43.8
	3130	205	56880
Health	30009 64.12	2398 74.93	692926 57.4
	468	32	12071

*FY09MI

**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)

State: MICHIGAN COMBINED

RID: 0552600

MEASURE	From: 10/01/2008 To: 09/30/2009	CURRENT FY-TO-DATE	REFERENCE/STANDARD	
8. Percent of Programmed Inspections with S/W/R Violations				
Safety	1899 46.95	128 67.02	92328 58.6	National Data (3 years)
Health	4045 141 36.25	191 11 47.83	157566 11007 51.2	National Data (3 years)
9. Average Violations per Inspection with Vioations	389	23	21510	
S/W/R	6341 1.73	475 1.97	420601 2.1	National Data (3 years)
Other	3652 8557 2.34	241 594 2.46	201241 243346 1.2	National Data (3 years)
10. Average Initial Penalty per Serious Violation (Private Sector Only)	3652	241	201241	
	3545740 650.35	285950 692.37	492362261 1335.2	National Data (3 years)
11. Percent of Total Inspections in Public Sector	5452	413	368756	
	243 4.77	2 3.28	702 4.6	Data for this State (3 yrs)
12. Average lapse time from receipt of Contest to first level decision	5092	61	15276	
	1539 40.50	0	4382038 246.1	National Data (3 years)
13. Percent of 11c Investigations Completed within 90 days	38	0	17807	
	80 67.80 118	6 75.00 8	100%	
14. Percent of 11c Complaints that are Meritorious	8 6.78	1 12.50	1466 20.8	National Data (3 years)
15. Percent of Meritorious 11c Complaints that are Settled	118	8	7052	
	4 50.00	1 100.00	1263 86.2	National Data (3 years)
	8	1	1466	

Appendix E. FY 2009 SOAR (State OSHA Annual Report)

(Available Separately)