

Appendix B
Kentucky State Plan
FY 2010 Enhanced FAME Follow-up Report Prepared by Region IV
Status of Findings, Recommendations, and Corrective Actions

Rec #	Findings	Recommendations	Corrective Action Plan	State Action Taken	Status
09-1	The state conducts inspections for all formalized complaints regardless of the nature of the hazard(s). 49% of the 245 complaint inspections were in-compliance.	Management should evaluate all complaints including formal complaints to determine when an investigation, rather than an inspection, would be more appropriate to allow a more effective use of their resources.	OSHA does not agree with the State's response on this item and related recommendations #9 (high in-compliance rate in programmed inspections) and #11 (untrained/inadequate staffing). OSHA expects State Plans to direct their resources to the highest hazard situations and to timely address the hazards identified. OSHA continues to believe that Kentucky needs to reconsider its program priorities.	None. The Division of OSH compliance believes its practice is a very appropriate, very efficient, and very effective use of resources.	PENDING Continue to be evaluated during monitoring activities in FY 2011.
09-2	Several standard IMIS reports were reviewed and IMIS is not updated accurately and consistently (complaints).	The state should accurately enter and update all complaints and complaint related actions in the IMIS in accordance with the IMIS manual. IMIS reports should be used on a weekly basis to track the status and complaint due dates.	OSHA's Regional Office in Region IV provided IMIS training in April 2010 to the Kentucky OSH Program after OSHA's Enhanced FAME audit.	The Division of OSH compliance now produces weekly IMIS reports which are provided to the division Director and both division Program Managers. The program managers disseminate the information to the staff. All complaint and complaint related items have been corrected in the IMIS. All complaint and complaint related items have been corrected in the IMIS. IMIS Complaint Tracking reports provided indicate that complaints are being tracked and the status of complaints.	COMPLETED
09-3	Complaints addressed through the phone and fax process were not coded as such, which will prevent them from being tracked. In addition, complaints filed through OSHA's Email Complaint System were not coded as electronic complaints.	All electronic complaints (e-complaints) and complaints handled by phone, fax, and letter should be coded with the applicable national, local, and strategic codes.		A list of federal and local codes was disseminated to staff with instructions to code all complaints where applicable.	COMPLETED Case file reviews will be conducted during FY 2011.

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09-4	All complaints investigated by letter were addressed appropriately in accordance with the State's directive. Complainants were notified of the result of the investigation, but this only included that the employer response was adequate. Complainants were never provided with a copy of the employer's response and a checklist in each file indicated that the employee did not agree with the employer's response, but no further action was taken.	All complainants should be timely notified and provided a copy of the employer's response following a complaint investigation. The notification should provide the complainant with the opportunity to dispute the employer's response. In addition, employer responses that are disputed should be considered, appropriately responded to, and documented in the file.		The Division of OSH Compliance provided the complaint letter that is sent to complainants following a complaint investigation. However, the employer response is only provided when it is requested by the complainant. Complaint investigations are not closed out without a program manager's review and agreement the case is ripe for closure. A complainant's disputed response of an employer's reply is evaluated on a case-by-case basis.	COMPLETED Case file reviews will be conducted during FY 2011.
09-5	The complainants were not made aware of specific official findings.	All complainants should be timely notified of the inspection results addressing the state's findings of each complaint item. The notification should provide the complainant with the opportunity to appeal the inspection results.		The Division of OSH Compliance has augmented its procedure by addressing each complaint item individually in the letter to complainants. The letter also describes the complainant's appeal rights pursuant to Kentucky law. The Division of OSH Compliance provided copies of the complaint letters that are sent to complainants following a complaint inspection. Complaint inspections are not closed out without a program manager's review and agreement the case is ripe for closure.	COMPLETED Case file reviews will be conducted during FY 2011.

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09-6	In fatality cases, the compliance officer is required to contact the next of kin by phone and inform them of the investigation, provide contact information for the CSHO and OSHA office, solicit input or information regarding the investigation, and explain the inspection process.	KY OSH should send written correspondence to the next of kin providing them with information regarding the investigation. This letter should be signed by the Director of OSH Compliance or the Commissioner.		Following an inquiry by the Regional Administrator in mid-FY09 regarding KY OSH's fatality correspondence, KY OSH revised its process to include a follow-up letter after the compliance officer makes contact via phone.	COMPLETED Case file reviews of fatality investigation files will be conducted during FY 2011
09-7	Mid-FY09, the Region IV Regional Administrator inquired about this process (next of kin) and KY OSH revised its procedures to include a follow-up letter. However, these procedures have yet to be fully implemented and the final letter sent to family members at the conclusion of the investigation was a generic letter indicating that citations were or were not issued with a copy of the citations attached.	At the conclusion of the fatality investigation the letter sent to the next of kin should be signed by the Director of OSH Compliance or Commissioner and explain the state's findings or the results of the investigation with a copy of the citations if any are issued. The next of kin should be informed of informal conferences, as well as any changes in the citations as a result of a settlement.		The Division of OSH Compliance now sends a letter to the next of kin who desire to be informed advising them of informal conferences and any changes in the citations as a result of an informal conference settlement. The letters that are provided to the next of kin were provided for review. OSHA believes that all next of kin should be provided full disclosure, including notification of the informal conferences and any changes in the citations as a result of an informal conference settlement.	COMPLETED Case file reviews of fatality investigation files will be conducted during FY 2011
09-8	Settlement agreements did not contain employer commitments or justifications for changes or penalty reductions other than "for settlement purposes only."	Settlement agreements need to include employer commitments and justification for penalty reductions and/or modifications documented in the case file.		This recommendation has been partially implemented. A copy of the Informal Conference Summary – Internal Memorandum and Draft Informal Settlement Agreement was provided. The Division of OSH Compliance is including "employer commitments" in informal conference documentation.	PENDING Case file reviews will be conducted during FY 2011

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				The development of a procedure that will address this recommendation for formal settlement agreements is being worked on with the General Counsel. The procedure being developed for formal settlement agreements will be provided when it is completed.	
09-9	Of the 50 programmed inspection case files in general industry, 48% were in compliance.	It is recommended that the state evaluate and determine the cause of the high in-compliance rate for programmed inspections.		The state and federal OSHA have not come to agreement on this recommendation. Kentucky's position is they have evaluated and determined the cause of the high "in compliance" rate for programmed inspections and determined that several factors have an impact on the rate for programmed inspections.	PENDING This issue will continue to be evaluated during monitoring activities in FY 2011.
09-10	Inspection files were only coded for multi-employer and construction. Inspections were not coded with the appropriate emphasis and strategic codes.	It is recommended that all inspections be coded with the applicable national, local, and strategic codes.		The Division of OSH Compliance emphasized coding with the compliance staff. Copies of federal and local codes were disseminated to the staff with instructions to include the coding on OSHA-1s where applicable.	COMPLETED Reviews of IMIS reports and case files will be conducted during FY 2011
09-11	The average lapse time from opening conference to citation issuance was 57.13 days for safety and 98 days for health, which is much higher than the national rate of 43.8 days for safety and 57.4 days for health	Evaluate and determine the cause of the high citation lapse time for safety and health.	OSHA suggests that staff training and use of administrative tracking tools may be helpful in addressing this problem.	The state and federal OSHA have not come to agreement on this recommendation. Kentucky's position is that they have reviewed the lapse times and the high lapse times are a result of the in-experience of the	PENDING This issue will continue to be evaluated during monitoring activities in FY 2011.

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				compliance staff and the increasing case load. The Division of OSH Compliance experienced massive staff turnover in the last five (5) years. Approximately twenty-one (21) of the thirty-eight (38) current compliance officers have less than five (5) years experience.	
09-12	Kentucky does not have a written procedure for abatement verification or a tracking mechanism. At the time of review, there were 80 cases with open abatements for FY 2009, many of which were greater than 60 days. There were a total of 546 cases without abatement. Many cases had abatement, but officials were not updating IMIS when abatement was received or verified.	A tracking system for abatements should be implemented to ensure abatements are tracked and followed up on in a timely manner.	The IMIS training conducted by Region IV has resulted in Division of OSH Compliance staff utilizing the IMIS system to assist in abatement tracking.	Program Managers now review the IMIS Violation Abatement Report on a weekly basis to determine which case files can be closed and to document employer contact, a dunning letter, or a follow-up inspection. IMIS Abatement Tracking Reports were provided indicate that abatement is being tracked more effectively.	COMPLETED Reviews of IMIS reports will be conducted during FY 2011
09-13	Kentucky only uses a few of the available IMIS reports and has established internal logs, but these were found to be “minimally effective.” Audit reports were run using the earliest date on the system and found cases dating back to 1993, where IMIS shows no action taken due to information not being entered into the system.	Ensure data is entered and updated in the IMIS and timely corrections are made from opening to closing of inspection files. Utilize IMIS reports weekly to track and manage enforcement activity.		The Division of OSH Compliance is now using additional IMIS resources to ensure accurate data entry, as well as updating, tracking, and managing enforcement activity. IMIS reports were provided verifying that the corrections have been made and data in the IMIS is being maintained. All of the open cases and open abatements have been updated and closed where appropriate.	COMPLETED Reviews of IMIS reports will be conducted during FY 2011

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09-14	Kentucky has procedures for the receipt of payments and handling of past due penalties, but these are followed inconsistently. In addition, final contest dates have not been entered into IMIS and IMIS reports are not utilized to track debt collection.	Develop and implement a debt collection procedure to ensure debts are collected. In addition, IMIS generated reports should be utilized to track cases with penalties due.		The debt collection system in IMIS is being utilized to track penalty payments and collect debt. Debt collection reports are run weekly. After twenty days, a debt collection letter is sent to the employer. If the payment is not received in the specified time, the case is forwarded to the Legal Department for collection. A pre-lien letter is sent to the employer. If the payment is not received, a lien is placed on the employer's property and the debt is collected in accordance with state law.	PENDING Further discussions will be conducted with the state to determine the status of the cases listed on the report that was provided.
09-15	Discrimination case files did not contain a telephone log or any other documentation to show what transpired during the course of the investigation even though the State's Field Operations Manual requires the use of a telephone log to record contact with parties involved in the investigation.	Whistleblower investigators should document all contacts related to the investigation in a telephone log.		The Whistleblower Investigator is required to document all contacts related to the investigation on a telephone log. Cases are reviewed by the Director of OSH Compliance to assure that this requirement is met and that cases are properly documented. A copy of the telephone log being utilized in all whistleblower files was provided.	COMPLETED Case file reviews of whistleblower investigations will be conducted during FY 2011.
09-16	A majority of the discrimination cases did not document personal interviews of Complainants and/or Respondents.	Conduct personal interviews (as much as possible) with Whistleblower complainants, witnesses and management and memorialize all interviews in signed statements. If signed		The investigator is conducting interviews and including written and signed statements in all case files as much as possible and the file is documented	COMPLETED Case file reviews of whistleblower investigations will be

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		statements are not possible, at a minimum make a memo to the file regarding the interview.		when statements are not obtained. Review procedures are in place to ensure this is done. The Director of OSH Compliance reviews all investigative files to assure all pertinent and required documentation is contained in the files.	conducted during FY 2011
09-17	The Final Investigative Reports (FIR) in discrimination case files were incomplete and only contained short scripted sentences confirming or refuting whether the element was met.	Clearly record Whistleblower investigation findings in the final investigative report to include at a minimum: tell the story about what happened that led to the adverse action, to include protected activity; include complainant's allegations, respondent's assertions and what was found to be factual; analyze the timing of the adverse action to the protected activity; analyze whether respondent was angry at complainant for participating in protected activity; and analyze whether complainant was treated different than other employees similarly situated.		Whistleblower investigative files are being thoroughly documented with sufficient evidence to support the findings. Whistleblower investigations now include documentation in the final investigative report that addresses this recommendation. Review procedures are in place to ensure this is done. Case file reviews of whistleblower investigations will be conducted during FY 2011 to verify that files contain statements and/or justification for not obtaining statements.	COMPLETED Case file reviews of whistleblower investigations will be conducted during FY 2011
09-18	Discrimination case files lacked copies of the Settlement Agreements, back pay amounts, and explanations of the settlements in the FIR. In addition, Kentucky is not reviewing the settlement provisions to ensure the complainant's rights are protected and it does not have any guidelines related to cases settled between the two parties.	When a Whistleblower case is settled between the parties and a Kentucky OSH settlement agreement is not used, the investigator should obtain a copy of the agreement for the file. In addition, the state should develop guidelines to review and approve all settlement agreements to ensure that the complainant's rights are		This recommendation has been partially implemented. When a Kentucky settlement agreement is not used, third party settlement agreements are being obtained to include in the investigative file. The Division of OSH Compliance is currently working with the Cabinet's	PENDING Case file reviews of whistleblower investigations will be conducted during FY 2011

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09-19	From a review of 20 consultation files, the Region found that the time from the closing conference to the date the employer received the report ranged from three to six months.	The Consultation Program should identify the factors affecting the issuance of the reports in order to reduce the time from the closing conference to the date the employer receives the report.		Office of General Counsel to develop guidelines to review all settlement agreements. All settlement agreements between the parties will be reviewed by the Office of General Counsel to ensure the overall purpose of the anti-retaliation provisions is served and any chilling effect of the alleged retaliation is addressed. At the end of the last administration, the division experienced a complete change of management personnel and responsibilities, which brought the report review and issuance process to a virtual standstill. That created a backlog of reports which remained until the division's management structure was fully re-staffed and operational. Staff was relieved of other duties and assigned to work on reports and reduce the number of overage reports until they were current. Reports are on track and are currently being issued in a timely manner. Current tracking reports related to Consultation were provided.	COMPLETED

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09-20	Kentucky does not have an internal evaluation program as required by the State Plan Policies and Procedures Manual.	Kentucky should develop and implement a formal program for conducting periodic internal evaluations. The procedure should assure that internal evaluations possess integrity and independence. Reports resulting from internal evaluations will be made available to federal OSHA.		<p>Kentucky notes that a written, single document internal evaluation program is not required by the CPL. The Division of OSH Compliance and the Division of OSH Education and Training have always approached and conducted internal evaluations on several fronts, such as internal fiscal checks and balances, employee on the job evaluations, and review of employee work product, to compliment the host of other internal policies and procedures.</p> <p>The Division of Training and Education developed a written "Internal Quality Assurance Program" in April 2010. The Division of OSH Compliance is in the process of developing a written program.</p>	PENDING This issue will continue to be evaluated during monitoring activities in FY 2011.