

**ENHANCED FEDERAL ANNUAL MONITORING
EVALUATION (FAME) FOLLOW-UP REPORT**

FOR THE

KENTUCKY OCCUPATIONAL SAFETY AND HEALTH PROGRAM

DESIGNATED STATE AGENCY:

**KENTUCKY LABOR CABINET
DEPARTMENT OF WORKPLACE STANDARDS**

PERIOD COVERED BY THIS REPORT:

October 1, 2009 – September 30, 2010

KENTUCKY STATE PLAN APPROVED: JULY 31, 1973

18(e) FINAL APPROVAL RECEIVED: JUNE 13, 1985

REPORT PREPARED BY:

U.S. DEPARTMENT OF LABOR

OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION

REGION IV, ATLANTA

TABLE OF CONTENTS

1. Executive Summary

- a. Introduction**
- b. Summary of the Report**
- c. Monitoring Methodology**

2. Major New Issues

3. Assessment of State Actions and Performance Improvements to Recommendations from the FY 2009 EFAME.

4. FY 2010 State Enforcement

- a. Complaints**
- b. Fatalities**
- c. Targeting Inspections**
- d. Citations and Penalties**
- e. Abatement**
- f. Enforcement Program Management**
- g. Review Procedures**
- h. BLS Rates**

5. Other

- a. Discrimination Program**
- b. Standard Adoption and Federal Program Changes**
- c. Variances**
- d. Complaints About State Plan Administration (CASPA)**
- e. Cooperative Programs (Alliances, Consultation, Partnerships, Voluntary Protection Programs)**
- f. Program Administration**

6. Assessment of State's Progress in Achieving Annual Performance Goals

Appendices:

Appendix A: FY 2010 Findings and Recommendations

Appendix B: Status for FY 2009 EFAME Findings and Recommendations

Appendix C: Enforcement Comparison

Appendix D: FY 2010 State Activity Mandated Measures (SAMM) Report

Appendix E: FY 2010 State Indicator Report (SIR)

Appendix F: FY 2010 State OSHA Annual Report (SOAR)

Kentucky

FY 2010 EFAME Follow-up Report – a Follow-up to the FY 2009 EFAME

1. Executive Summary

This report assessed the Kentucky Labor Cabinet's Department of Workplace Standards progress towards achieving the performance goals established in their Federal Fiscal (FY) Year 2010 Annual Performance Plan and the recommendations given in the FY 2009 Enhanced FAME during the period of October 1, 2009 to September 30, 2010.

a. Introduction

The Kentucky Safety and Health Program (KY OSH) was established by the Kentucky General Assembly in 1972. The Kentucky State Plan was approved by federal OSHA in 1973. The Kentucky OSH program received final 18(e) approval on June 13, 1985. Kentucky was the first state plan approved under the revised federal benchmarks. On June 2, 2008, Kentucky Governor Steve Beshear signed Executive Order 2008-472, which re-established the Kentucky Labor Cabinet, effective June 16, 2008. The purpose of the reorganization was to streamline state services and concentrate limited resources on frontline, regulatory activity. The duties, personnel, and budgets of all organizational entities within, attached to, or associated with the former Department of Labor in the Environmental and Public Protection Cabinet were transferred to the Labor Cabinet, headed by a Secretary appointed by the Governor. The responsibility for enforcing occupational safety and health law in the Commonwealth of Kentucky is now vested in the Labor Cabinet and assigned to the Department of Workplace Standards, headed by a Commissioner appointed by the Secretary with the approval of the Governor. The Kentucky program covers all private and public-sector employees within the state with the exception of railroad employees, federal employees, maritime employees (longshoring, ship building/ship breaking, and marine terminals operations), private contractors working at Government-owned/contractor-operated (GOCO) facilities, Tennessee Valley Authority (TVA) employees and contractors operating on TVA sites, as well as U.S. Postal Service employees. The state and local government employers are covered under the state plan and are treated the same as private sector employers.

The General Assembly enacted legislation giving KY OSH the mission to prevent any detriment to the safety and health of all public and private sector employees arising out of exposure to harmful conditions or practices at their places of work. Kentucky's revised OSHA Program consists of: the OSH Federal-State Coordinator, standards specialists, and support staff, all of who are attached to the commissioner's office; the Division of Occupational Safety and Health Compliance; and the Division of Occupational Safety and Health Education and Training. The Division of OSH Compliance is responsible for the enforcement of Kentucky's OSHA standards. The Division of Education and Training assists employers and employees by promoting voluntary compliance with the KY OSH standards. The Division of Education and Training is also responsible for overseeing the Partnership Programs as well as conducting the Annual Survey of Occupational Injuries and Illnesses,

the Census of Fatal Occupational Injuries, and the OSHA Data Collection. The Office of the OSH Federal-State Coordinator oversees the Office of Standards Interpretation and Development. Safety and Health Standards Specialists from this office serve as support staff to the Kentucky OSH Program and OSH Standards Board, promulgate KY OSH regulations, respond to OSHA inquiries, and provide interpretations of KY OSH standards and regulations. This office is responsible for maintaining the Kentucky OSH State Plan, as well as handling day-to-day communications with other government agencies, both at the state and federal level, including the U.S. Department of Labor, OSHA, BLS, and other state OSHA programs. Based on the State Office Annual Report (SOAR), Kentucky currently staffed with 23 safety officers and 14 industrial hygienist positions, which is the established benchmark level for the program.

Kentucky's primary objective is to improve occupational safety and health in workplaces throughout the state. The worker population covered by the Kentucky Plan is approximately 1,729,700 employees in 114,570 establishments. This includes approximately 284,300 public sector employees. The program services are administered through a central office in Frankfort.

Employee protection from discrimination related to occupational safety and health [11(c)] is administered by KY OSH through the central office in Frankfort. There is one investigator who reports to a safety compliance supervisor and a safety program manager. Discrimination cases found to be meritorious are prosecuted by the Legal Department in the Kentucky Labor Cabinet.

The Division of Occupational Safety and Health Education and Training offers on-site consultation to employers in the state through the 23(g) grant. They also provide free training to employees and employers in the state of Kentucky. In addition to consultative surveys, the Division offers training and a number of voluntary and cooperative programs, such as the Voluntary Protection Programs (VPP), Construction Partnership Program (CPP), the Safety and Health Achievement Recognition Program (SHARP), OSHA Strategic Partnership (OSP), and Safety Partnership Program (SPP), focused on reducing injury and illness.

b. Summary of the Report

The FY 2010 EFAME Follow-up report is not a comprehensive FAME report. This report is focused on the State's progress in achieving their Corrective Action Plan (CAP) in response to the FY 2009 EFAME report. In addition, this report is also based on the results of quarterly onsite monitoring visit, the Kentucky OSH Program's State Office Annual Report (SOAR) for FY 2010, as well as the State Activity Mandated Measures (SAMM) and the State Indicator Report (SIR) reports ending September 30, 2010. FY 2010 was the second tier of a 2-year strategic plan. This report represents an evaluation of the state's performance during the year as well as the overall performance. This report indicates that KY OSH achieved or exceeded most of the established goals.

A review of the SAMM and SIR for FY 2010 indicated KY OSH generally met or exceeded

federal activity results. The reports show that hazards were identified during 70.0% of programmed health inspections (Federal data 55.4%); average initial penalty per serious was \$1,831.76 (Federal data \$1,360); Percent of complaints where complainants were notified on time was 100% (goal 100%); KY OSH only vacated 1.4% of violations (Federal data 4.7) and reclassified 0.5 % (Federal data 4.0). Penalties were retained on 63.0% of violations issued (Federal data 63.0%).

The FY 2009 Enhanced FAME report contained 20 findings and recommendations. Region IV and KY OSH have reached agreement on corrective action for all but six of the recommendations. In addition to six recommendations that were not resolved in the FY 2009 EFAME, two new recommendations for FY 2010 are being documented. The specific recommendations are as follows:

Finding 10-1: Of the 496 programmed construction inspections conducted, 85% were issued as in-compliance.

Recommendation 10-1 (New): It is recommended that the state evaluate, analyze, and determine the cause of the high in-compliance rate for programmed construction inspections and implement strategies to reduce the rate.

Eighty-five percent (85%) of the programmed construction inspections were in-compliance compared to 44.1% of the programmed construction inspections in FY 2009. The in-compliance rate for construction inspections has increased significantly and is extremely high compared to the federal rate of 23%. It is recommended that state evaluate and determine the causes of the high in-compliance rate for construction inspections and implement strategies to reduce the rate.

Finding 10-2 (New): The State has not adopted or completed the revision/implementation of the Federal OSHA Field Operations Manual (FOM), to include a side by side comparison.

Recommendation 10-2 (New): It is recommended that the state adopt the Federal FOM or complete the revision/development and implementation of the Kentucky FOM and submit the side-by-side comparison to the Regional Office.

Finding 10-3 (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.

Recommendation 10-3 (09-1): 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.

Finding 10-4 (09-8): Settlement agreements did not contain employer commitments or justifications for changes or penalty reductions other than “for settlement purposes only.”

Recommendation 10-4 (09-8): Settlement agreements need to include employer

commitments and justification for penalty reductions and/or modifications documented in the case file.

Finding 10-5 (09-9): Of the 50 programmed inspection case files in general industry, 48% were in compliance.

Recommendation 10-5 (09-9): It is recommended that the state evaluate and determine the cause of the high in-compliance rate for programmed inspections. It is unclear from the State's response how the identified problem with the targeting program has been addressed.

The areas of concern are that hazards were identified during only 34.0% of programmed safety inspections (Federal data 65.1%); serious classification of safety violations 65.9% (Federal data 81.0) and of health violations 45.2% (Federal data 70.2); lapse time for safety was 77.64 (Federal data 47.3 days) and health was 93.45 (Federal Data 61.9 days). These areas will continue to be an area of focus in FY 2011.

Finding 10-6 (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.

Recommendation 10-6 (09-11): 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 lapse time in FY 2010 was 58.8 for safety and 68.7 for health, lower than the lapse time during the 2009 enhanced fame study. However, this is still much higher than the national averages.

Finding 10-7 (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.

Recommendation 10-7 (09-18): 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 protected. This recommendation has been partially implemented.

Finding 10-8 (09-20): Kentucky does not have an internal evaluation program, as required by the State-Plan Policies and Procedures Manual.

Recommendation 10-8 (09-20): 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.

The state continues to meet the established Compliance Staffing Benchmarks. A review of State funding and other fiscal issues did not reveal any problems. A review of the State's Progress in Achieving Annual Performance Goals did not indicate any concerns. The program's effectiveness has largely been measured by evaluating their ability to achieve the goals contained in the plans. KY OSH has and continues to demonstrate a high degree of success accomplishing its targeted goals. During FY 2010, all executive branch merit and non-merit employees of the Commonwealth of Kentucky, including the Governor and the cabinet secretaries were furloughed for three days. The furloughs have continued in FY 2011 and it is highly likely there will be additional furloughs in FY 2012.

c. Monitoring Methodology

This report was prepared under the direction of Cindy A. Coe, Regional Administrator, in the Atlanta Regional Office. This report covers the period from October 1, 2009 through September 30, 2010. The Kentucky State Plan is administered by the Kentucky Labor Cabinet, Department of Workplace Standards, Occupational Safety and Health Program.

2. Major New Issues

The State did not experience any significant new issues during this fiscal year.

3. Assessment of State Actions and Performance Improvements in Response to Recommendations from the FY 2009 EFAME

Finding 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.

Recommendation 09-1: 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.

The Division of OSH Compliance indicated that this issue was evaluated and no additional action was warranted. They believe their current practice is very appropriate, very efficient, and a very effective use of resources however OSHA does not agree with the State's response on this item. 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. This issue will continue to be evaluated during monitoring activities in FY 2011.

This item is a carry-over recommendation (10-3) and will be examined in greater detail in the 2011 EFAME Report.

Finding 09-2: Several standard IMIS reports were reviewed and IMIS is not updated accurately and consistently (complaints).

Recommendation 09-2: 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.

This recommendation was fully implemented. OSHA's Regional Office in Region IV provided IMIS training in April 2010 to the Kentucky OSH Program after OSHA's Enhanced FAME audit. As a result of the training, 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.

Finding 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.

Recommendation 09-3: All electronic complaints (e-complaints) and complaints handled by phone, fax, and letter should be coded with the applicable national, local, and strategic codes.

This recommendation was implemented. A list of federal and local codes was disseminated to staff with instructions to code all complaints where applicable. Case file reviews of complaint files will be conducted during FY 2011 to verify proper coding of complaints.

Finding 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.

Recommendations 09-4: 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. Case file reviews of complaint investigation files will be conducted during FY 2011 to verify that complainants are properly informed of the results of the investigation.

Finding 09-5: The complainants were not made aware of specific official findings.

Recommendation 09-5: 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. Case file reviews of complaint inspection files will be conducted during FY 2011 to verify that complainants are properly informed of the results of the investigation.

Finding 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.

Recommendation 09-6: 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. However, this process had not been fully implemented during the period covered by the Enhanced FAME review however it was implemented and actions were completed at the end of FY 10. Case file reviews of fatality investigation files will be conducted during FY 2011 to verify that next-of-kin are properly informed of information regarding the investigation.

Finding 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.

Recommendation 09-7: 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.

This recommendation was implemented. At the conclusion of a fatality investigation, Kentucky's practice for over twenty-three (23) years has been for the Director of Compliance to send the next of kin a letter with a copy of the citations if citations were issued; or, a letter advising no violations were found if citations were not issued. 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. Case file reviews of fatality investigation files will be conducted during FY 2011 to verify that next-of-kin are properly informed of the results of the investigation, informal conferences, and any changes that are made to the citations.

Finding 09-8: Settlement agreements did not contain employer commitments or justifications for changes or penalty reductions other than “for settlement purposes only.”

Recommendation 09-8: 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.

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. Case file reviews will be conducted during FY 2011 to verify that settlement agreements include employer commitments and justification for penalty reductions and/or modifications are documented in the case file.

This item is a carry-over recommendation (10-4) and will be examined in greater detail in the 2011 EFAME Report.

Finding 09-9: Of the 50 programmed inspection case files in general industry, 48% were in compliance.

Recommendation 09-9: 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. Under the current targeting system, the Division of OSH Education and Training's Statistical Services Branch collects data through the OSHA Data Initiative. After analysis of the most current calendar year, the top ten (10) high hazard industries in Kentucky are identified using four (4) digit North American Industry Classification System codes. Following that identification, the Division of OSH

Education and Training sends a TOP letter to each employer in each industry offering free consultation services in an effort to reduce employee injuries and illnesses. Employers who do not request Division of OSH Education and Training assistance in response to a TOP letter may have strong OSH programs and do not need Division of OSH Education and Training's assistance. Subsequent Division of OSH Compliance inspection(s) may verify the strength of the employer's OSH program thus resulting in no citations being recommended. Kentucky's Division of OSH Compliance often inspects many of the same employers for programmed inspections. Employers may receive three (3) programmed inspections in six (6) or seven (7) years. It is very logical that such employers would be "in-compliance." Closely related to this is the fact that the Division of OSH Compliance often conducts programmed inspections at workplaces that have taken advantage of Kentucky's strong consultation program. Experience shows that those employers have worked diligently to create a workplace that is free from safety and health hazards. It is not uncommon that a compliance officer who inspects those worksites is likely to find an absence of hazards and thus no citations would be recommended or issued.

It is unclear from the State's response how the identified problem with the targeting program has been addressed. **This item is a carry-over recommendation (10-5) and will be examined in greater detail in the 2011 EFAME Report.**

Finding 09-10: Inspection files were only coded for multi-employer and construction. Inspections were not coded with the appropriate emphasis and strategic codes.

Recommendation 09-10: 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. Reviews of IMIS reports and case files will be conducted during FY 2011 to verify that inspections are coded with the appropriate codes.

Finding 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

Recommendation 09-11: Evaluate and determine the cause of the high citation lapse time for safety and health.

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 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. Many of the compliance officers are relatively young and still learning how to keep up with the ever increasing workload. Many are carrying high case loads including accident and fatality investigations. In addition, they may be dispatched at

any time as the need arises impacting their ability to complete inspection reports. Increasing the enforcement staff was not economically feasible at this time.

OSHA suggests that staff training and use of administrative tracking tools may be helpful in addressing this problem. The lapse time in FY 2010 was 58.8 for safety and 68.7 for health, lower than the lapse time during the 2009 enhanced fame study. However, this is still much higher than the national averages. This issue will continue to be evaluated during monitoring activities in FY 2011.

This item is a carry-over recommendation (10-6) and will be examined in greater detail in the 2011 EFAME Report.

Finding 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.

Recommendation 09-12: 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. Reviews of IMIS reports will be conducted during FY 2011 to verify effective and efficient abatement verification.

Finding 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.

Recommendation 09-13: 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.

As a result of the IMIS training, 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. The following reports are currently being utilized on a weekly basis:

Citations Pending

Complaint Tracking – Weekly Response Due
Complaint Tracking – Weekly OSHA 7
Open Inspections
Unsatisfied Activity by each individual Supervisor
Default Violation Abatement Report by Program Manager
31 Report

The following reports are currently being utilized on a monthly basis:

Monthly Tracking
Candidates for Follow-up
Fat/Cat
Micro to Host Inspection Activity Report for Director
Violations for both Programs
SIR/SAMM
CMPACT
CMPACMS
CACWO170

Reviews of IMIS reports will be conducted during FY 2011 to verify that the IMIS issues were corrected and the IMIS is being maintained.

Finding 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.

Recommendation 09-14: 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.

It does not appear that the debt collection system in IMIS is being utilized to track penalty payments and collect debt. The debt collection reports provided contain only a few cases where attempts were made to collect debt. There are cases listed that are more than a year old with no action. This may be an issue with updating the IMIS. Further discussions will be conducted with the state to determine the status of the cases listed on the report that was provided. Reviews of IMIS reports will be conducted during FY 2011 to verify that debts are being collected.

Finding 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.

Recommendation 09-15: 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. Case file reviews of whistleblower investigations will be conducted during FY 2011 to verify that contacts related to the investigations are documented.

Finding 09-16: A majority of the discrimination cases did not document personal interviews of Complainants and/or Respondents.

Recommendation 09-16: Conduct personal interviews (as much as possible) with Whistleblower complainants, witnesses and management and memorialize all interviews in signed statements. If signed statements are not possible, at a minimum make a memo to the file regarding the interview.

The investigator is conducting interviews and including written and signed statements in all case files as much as possible and the file is documented 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.

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.

Finding 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.

Recommendation 09-17: 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.

Case file reviews of whistleblower investigations will be conducted during FY 2011 to verify that files contain sufficient documentation.

Finding 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.

Recommendation 09-18: 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 protected.

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 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.

Case file reviews of whistleblower investigations will be conducted during FY 2011 to verify that third party settlement agreements are obtained and reviewed.

This item is a carry-over recommendation (10-7) and will be examined in greater detail in the 2011 EFAME Report.

Finding 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.

Recommendation 09-19: 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.

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. The State has made great progress in the issuance of reports and obtaining abatement information.

Finding 09-20: Kentucky does not have an internal evaluation program as required by the State Plan Policies and Procedures Manual.

Recommendation 09-20: 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.

This recommendation has been partially implemented. 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.

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. This issue will continue to be evaluated during monitoring activities in FY 2011.

This item is a carry-over recommendation (10-8) and will be examined in greater detail in the 2011 EFAME Report.

4. FY 2010 State Enforcement

a. Complaints

Kentucky’s procedures for handling complaints alleging unsafe or unhealthful working conditions are very similar to those of Federal OSHA. These procedures are covered in KY OSH Field Operations Manual Chapter IX (10/01/2001) – Complaint and Referral Policies and Procedures. All valid, formal complaints are scheduled for workplace inspections. Complaints are evaluated by the Compliance Program Managers, prioritized, and inspected or investigated based upon classification and gravity of the alleged hazard. Formal serious complaints, for example, are inspected within a negotiated goal of thirty (30) days.

The significant number of in-compliance inspections and inspections with only non-serious violations was addressed in the 2009 EFAME study and resulted in a recommendation that the state 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. Federal OSHA was unable to come to an agreement with the state on this issue and this recommendation remains unresolved.

Inspection data indicates that Kentucky handled 443 complaints and conducted 252 complaint inspections compared to 245 in 2009. According to the SAMM report, Kentucky responds timely to complaints. Complaint investigations were initiated within an average of 6.85 days from the time of receipt with a goal of 5 days compared to 2.65 in 2009, and complaint inspections were initiated within an average of 18.29 days from the time of receipt with a goal of 30 days compared to 6.63 in 2009.

b. Fatalities

In fiscal year 2010, Kentucky investigated 34 workplace accidents of which 25 were fatalities, 10 fewer than 2009. The number of construction deaths decreased from 8 in 2008 to 4 in 2009, while the number of fatalities in general industry decreased from 22 in 2008 to 18 in 2010. In addition, there were 3 public sector fatalities in fiscal year 2010, the same as FY 2009. Kentucky's procedures for the investigation of occupational fatalities are essentially the same as those of Federal OSHA. Investigations are initiated within one day of notification of the fatality.

c. Targeting Inspections

According to inspection statistics run for this report, Kentucky conducted 1,064 inspections in FY 2010 compared to 1,233 inspections 2009, 296 of which were programmed including construction and general industry compared to 450 in 2009. According to the State Indicator Report, 34.0% of the programmed safety inspections and 70.0% of programmed health inspections had violations compared to 31.8% (safety) and 51.1% (health) in 2009. In addition, 85% of the programmed construction inspections and 43.0% of the programmed general industry inspections were in-compliance compared to 56.3% of the programmed construction inspections and 44.1% of the programmed construction inspections in FY 2009. The in-compliance rate for construction inspections has increased significantly and is extremely high compared to the federal rate of 23%. It is recommended that state evaluate and determine the causes of the high in-compliance rate for construction inspections and implement strategies to reduce the rate. Also it was noted that programmed safety inspections continue to have a high in-compliance rate of 65%. This continues to be a recommendation as the rate has not improved since the last EFAME. The State needs to evaluate and determine the cause of this high in-compliance rate.

Additional data indicates that an average of 2.7 violations were cited per inspection compared to 3.3 in FY 2009, and that 32.7% (safety) and 40.0% (health) of the violations were classified as Serious/Willful/Repeat compared to 30.5%-safety and 42.1%–health in FY 2009. This is well below the target of 58.6 for safety and 51.2 for health. In addition, 0.4% Repeat (3), and 0.4% Willful (1 willful violation was a result of a programmed planned safety inspection.)

Kentucky State Law [KRS 338 “Occupational Safety and Health of Employees”] establishes definitions for employer and employee which do not exclude public employers and public employees. Kentucky's public employers and employees are subject to the same requirements, sanctions, and benefits Kentucky's private sector employers and employees.

Consequently Kentucky statutes, regulations, and policies make no distinction between public and private sector employers and employees. During FY 2010, the Division of OSH Compliance conducted 52 inspections including programmed inspections of public sector work sites compared to 55 in 2009.

The significant number of in-compliance programmed safety and construction inspections was addressed in the 2009 EFAME study and resulted in a recommendation 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. The recommendation will carry-over and will be examined in greater detail in the FY 2011 EFAME report.

d. Citations and Penalties

In fiscal year 2010, the 1,064 inspections conducted resulted in an average of 2.7 violations per inspection, with 62.0% of violations (65.9% safety violations and 45.2% of health) were classified as serious. The average initial penalty per serious violation for private sector inspections was \$1,468 compared to an average of \$1,069 for national data. In 2010, the average lapse time from opening conference to citation issuance was 58.8 days for safety and 69.5 days for health compared to 57.13 (safety) and 98.0 (health) in 2009. This is above the national rates of 37.9 days for safety and 50.9 days for health. The issuance of citations is critical to ensure the hazard is promptly abated and the employee is protected.

The high citation lapse times were addressed in the 2009 EFAME study and resulted in a recommendation that the state evaluate and determine the cause of the high citation lapse time for safety and health. Federal OSHA was unable to come to an agreement with the state on this issue and this recommendation remains unresolved. 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 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. The recommendation will carry-over and will be examined in greater detail in the FY 2011 EFAME report.

Kentucky issued 23 willful violations in 2010 compared to 20 in 2009. The average penalty for the willful violations is \$26,869 (\$28,600 in FY 2009) compared to an average penalty of \$52,538 for willful violations issued by Federal OSHA (Region IV). Kentucky's procedures for determining willfulness are the same as those for Federal OSHA.

e. Abatement

Kentucky obtains adequate and timely abatement information and has processes in place to track employers who are late in providing abatement information. However there were

several issues identified during the 2009 EFAME. Kentucky did not have a written procedure for abatement verification nor is it addressed in the FOM. A recommendation that a tracking system for abatements should be implemented to ensure abatements are tracked and followed up on in a timely manner was included in the report. This recommendation was resolved.

In response to the recommendation, the state did implement a procedure using IMIS reports to track abatement on a weekly basis. However, the state has never provided a written procedure for abatement verification nor has the FOM been updated to address abatement. The state is currently in the process of revising their FOM.

f. Enforcement Program Management

The FY 2009 EFAME study identified that Kentucky was using only a few of the available IMIS reports and 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. This resulted in a recommendation that state officials use the IMIS reports to track and manage enforcement activity and consistently update the IMIS with information from opening to closing of inspection files.

As a result of the recommendation, the Regional Office in Atlanta coordinated IMIS training with the State that was delivered April 26-30, 2010. IMIS reports were reviewed during monitoring activities during fiscal year 2011 to determine the effectiveness of the training.

Kentucky is now using the available IMIS reports and other data to assist with program management. They are using the reports and established internal logs to track fatalities and complaints. The analysis of standard IMIS tracking reports and interviews in FY 2011 will determine how effectively Kentucky is using the reports.

g. Review Procedures

Kentucky has procedures in place for conducting informal conferences and proposing informal settlement agreements. According to the SIR, 1.4% (1.9% in 2009) of violations was vacated and 0.5% (0.9% in 2009) of violations was reclassified as a result of informal settlement agreements. The penalty retention rate was 63.0% (57.2% in 2009). In fiscal year 2010, 6.7% of inspections was contested compared to 1.7% in FY 2009. SIR data indicates that, for violations that were contested, 13.9% (19.7% in 2009) were vacated, and 2.3 % (3.5% in 2009) were reclassified. 42.5 (39.6% in 2009) of penalties were retained.

h. BLS Rates

Bureau of Labor Statistics (BLS) injury and illness rates for Kentucky have shown a steady decline. The 2009 total case rate for the private sector was 4.0, a reduction of 14.9% over the 2008 rate. The national total case rate in 2009 was 3.6. The 2009 Days Away Restricted and Transferred (DART) rate was 2.2, a 12.0% reduction over the 2008 rate. The national DART rate for 2009 was 1.8. Kentucky uses injury and illness rates, fatality rates, and workers compensation data in their strategic planning process to decide where their resources should be focused. Where possible, reductions in rates are used to measure outcome results.

5. Other

a. Discrimination Program

KY OSH is responsible for enforcing the 11(c) discrimination regulations under the Act. The act prohibits discrimination against employees who engage in protected activities as defined by the Kentucky Occupational Safety and Health Act of 1972 [KRS Chapter 338.121 (Relating to prohibition of discrimination against employees)]. This is comparable to Federal OSHA protection from discrimination under Section 11(c) of the OSHA Act. The supervisor and only investigator are located in the central office in Frankfort. The program is supervised by the Director of OSH Compliance.

During fiscal year 2010, KY OSH received 129 whistleblower complaints and docketed 51 discrimination complaints compared to 38 complaints in FY2009. According to the SAMM report, which uses cases closed during the fiscal year, 6.12% (3) of complaints were meritorious compared to 12.9 % in FY 2009 and 33.3% (1) of the merit cases were settled compared to 50% in FY 2009. The average amount of time to complete investigations was 82.6 days compared to 78.9 days in FY 2009 and 31 (63.27 %) investigations were timely completed % compared to (77.42%) in FY 2009.

b. Standard Adoption and Federal Program Changes

In accordance with 29 CFR 1902, States are required to adopt standards and federal program changes within a 6-month time frame. States that do not adopt identical standards and

procedures must establish guidelines which are "at least as effective as" the federal rules. States also have the option to promulgate standards covering hazards not addressed by federal standards. During the period addressed by this evaluation report OSHA initiated the following standards and federal directives, which required action by the State:

Federal Standards

Standards Requiring Action	Federal Register Date	Adopted Identical	Date Promulgated
Updated OSHA Standards Based on National Consensus Standard, Personal Protection Equipment	September 21, 2009	Yes	05/25/2010
Acetylene – Direct Final Rule	November 9, 2009	Yes	04/02/2010
Hexavalent Chromium - Direct Final Rule	May 14, 2010	Yes	11/14/2010
Safety Standards for Steel Erection – Technical Amendment	May 17, 2010	Yes	07/20/2010
Cranes and Derricks in Construction – Direct Final Rule	August 9, 2010	Yes	01/03/2011

Federal Program Changes (excluding Standards)

Federal Program Changes Requiring Action	Federal Directive Number	Date of Directive	Adopted Identical	Date Adopted
Field Operations Manual	CPL 02-00-148 2009 332	03/26/2009	No	N/A
Site-Specific Targeting 2009 (SST-09)	CPL 02 (08-07) Update	07/20/2009	No	N/A
NEP -- PSM Covered Chemical Facilities	CPL-02 (09-06) 2009 334	07/27/2009	Yes	09/28/2009

State action regarding the new FOM was required during this period. The State elected not to adopt the directive. Therefore, a detailed side-by-side comparison between the federal and state operations manuals was required. The current FOM is outdated and does not contain the same or similar guidance as the FOM. Kentucky has indicated that this document is still under development by the program. It has been more than a year since the Directive was implemented. Currently, the state has only completed one chapter regarding penalties. States that do not adopt the identical directive are required to submit a comparison document, which illustrates policy-by-policy, how their policies differ, and why those differences are at least as effective. It is recommended that the state adopt the FOM or complete the revision and or development of the Kentucky FOM and submit the side-by-side comparison to the Regional Office as soon as possible.

Recommendation FY 2010-2: It is recommended that the state adopt the Federal Field Operations Manual or complete the revision/development and implementation of their Field Operations Manual and submit the side-by-side comparison to the Regional Office.

c. Variances

Kentucky currently has five permanent variances. One is a multi-state variance approved by Federal OSHA. There are currently no temporary variances. The state shares variance requests with federal monitors and requests input prior to approval. The OSH Federal State Coordinator maintains a log of variances to track the status of each. KY OSH did not receive any variance requests during fiscal year 2010. No issues related to variances were identified.

d. Complaint About State Plan Administration (CASPA)

During this period there was one CASPA filed in Kentucky and another CASPA remains open, which was filed in FY2009. CASPA 107-FY10 was filed on behalf of a family that experienced the loss of a loved-one to a fatal workplace accident. CASPA 106-FY09 involves the State’s handling of a workplace inspection during the settlement process. Both cases have been deemed significant and they are currently under investigation by the OSHA Area Office. During this process the Department of Workplace Standards, Kentucky OSH Program has been cooperative and very responsive to the Federal OSHA area office.

Complaint About State Plan Administration (CASPA) Number	Final Notification to Complainant	Recommendation(s)	State Response Letter
CASPA 106- FY09	Ongoing	N/A	N/A
CASPA 107-FY10	Ongoing	N/A	N/A

e. Cooperative Programs

Kentucky offers employers a wide range of cooperative programs, including Onsite Consultation, participation in the State’s VPP, VPPC, Site-based Construction Partnerships, Associated-based Construction Partnerships, as well as the SHARP. All of these activities are offered through the State’s Education and Training Division, with a program manager assigned the responsibility of overseeing each. However, the State does not have a formal Alliance Program.

The Division of Education and Training assists employers and employees by promoting voluntary compliance with the KY OSH standards. Kentucky provides free safety and health training to employers and employees as well as free confidential safety and health consultation services to facilities and organizations or groups requesting those services through the 23(g) grant.

As indicated in the 2009 report, the Kentucky Labor Cabinet’s Occupational Safety and Health Program purchased a state of the art multi-purpose vehicle with one-time federal funding. The Incident Mobile Post and Consultation Training (IMPACT) vehicle is a Class A motor coach specifically constructed to support the Division of OSH Compliance and the Division of OSH Education and Training. During this period, KYOSH IMPACT was

deployed to 22 outreach events across the state in FY2010, which reached nearly 13,000 employers and employees.

During this period, Kentucky also developed and produced two professional quality videos. These videos address workers rights and employer's responsibilities under the State's occupational safety and health laws. These video have been disseminated throughout the State and they enable the Kentucky OSH Program to reach a wide and larger audience.

Kentucky OSH developed written guidelines detailing the operation of its Partnership Program, which were formally submitted as a plan change. Construction Partnerships are established through formal written agreement and it is closely monitored along with VPPC by a program manager. Major requirements for participation in the Kentucky Construction Partnerships include the following: an experience modification (EMR) rate of .85 or less; a requirement for the project owner to participate in the agreement; a comprehensive fall protection program triggered at six (6) feet; and employers are limited to one partnership with the State at a time. In addition to Site-based construction partnerships, the State also conducts Associated-based and Training-based agreement.

The Kentucky SHARP was adopted at the direction of federal OSHA. Originally the program was established as a consultation tool for small employers. The State's safety and health consultants promote the program. However, potential SHARP sites are also identified by compliance officers during workplace inspections. Annually, Kentucky's SHARP sites participate in a one-day safety and health conference, the day prior to the Governor's Safety and Health Conference in Louisville, Kentucky. During this event the program manager shares program-related safety and health information with the representatives in attendance.

The Kentucky VPP was developed and implemented in 1997. Since it was initiated, membership in the program has steadily increased by approximately one worksite a year. The only exception to this statement occurred in 1998 and 2005, when three worksites joined the program, each of these two years. The State's VPP process is a multi-week assessment which includes a pre-assessment, an evaluation of the employer's safety culture, a comprehensive recordkeeping review, and a week-long onsite review. An additional one week assessment is conducted at sites covered by the process safety management (PSM) standard. Kentucky requires all VPP worksites that experience serious accidents to conduct a detailed root-cause analysis and sites that no longer exemplify the qualities of VPP are asked to withdraw from the program.

f. Program Administration

Ability to Meet Compliance Staffing Benchmarks

Under the terms of the 1978 Court Order in *AFL-CIO v. Marshall* compliance staffing levels (benchmarks) necessary for "fully effective" enforcement program were required to be established for each State operating an approved State plan. In September 1984 Kentucky, in conjunction with OSHA, completed a reassessment of the levels initially established in 1980 and proposed revised compliance staffing benchmarks of 23 safety and 14 health

compliance officers. After opportunity for public comments and service on the AFL-CIO, the Assistant Secretary approved these revised staffing requirements on June 13, 1985. At the time of this report, Kentucky's compliance staffing included 23 safety compliance officers and 14 health compliance officers. Therefore, the Kentucky OSH Program is currently fully staffed and the program remains committed to maintaining its staffing at the established benchmark level.

Impact of State funding and other fiscal Issues

In accordance with U.S. Department of Labor (USDOL), Occupational Safety and Health Administration (OSHA) Directive FIN 02-00-003 – Financial and Administrative Monitoring of OSHA Grants and Cooperative Agreements, USDOL/OSHA has conducted an on-site monitoring visit to review the financial and administrative aspects of the Fiscal Year (FY) 2008 Kentucky Department of Labor 23(g) Grant. Contained herein are the results of the on-site monitoring visit.

During Fiscal Year 2008, authorized funds equaled \$8,738,425.12 (Federal - \$3,250,800 and non-Federal \$5,487,625.12). For the quarter ending September 30, 2008, actual federal expenditures reported on the final certified Standard Form (SF) SF-269, Financial Status Report and recorded in the Health and Human Services Payment Management System (HHSPMS) was \$3,250,800. Our review of the 23(g) State Plan grant revealed the grantee expended 100% of authorized federal funds.

Per the U.S. Department of Labor, Occupational Safety and Health Administration Directive FIN 02-00-003 – Financial and Administrative Monitoring of OSHA Grants and Cooperative Agreements Appendix B “Financial Monitoring Guidelines – Grants and Cooperative Agreements,” we have reviewed the above award and have no issues to report at this time.

Furloughs, Office Closures or Other Changes in Services

During this period, all executive branch merit and non-merit employees of the Commonwealth of Kentucky, including the Governor and the cabinet secretaries were furloughed for three-days. The 3-days included a state-wide furlough day, which was Friday, September 3, 2010, and two other days selected by the employee. The Kentucky OSH Program scheduled employee furloughs in a manner that ensured coverage and minimized the advice impact on the public. The program remained capable and prepared to respond to fatalities, catastrophes, and imminent danger incidents during the furlough periods.

6. Assessment of State Progress in Achieving Annual Performance Goals

This section of the report represents the performance of the KY-OSHA Program during the second year of its Two-Year Strategic Plan, which covered the period from FY 2009 through FY 2011. This report in conjunction with Kentucky's SOAR provides detailed information on its progress toward the annual performance goal, as well as Kentucky's performance in meeting its mandated activities.

The Two-Year Strategic Plan (FY-2009 – 2011) focuses on three strategic goals:

1. Improve workplace safety and health for all workers, as evidenced by fewer hazards, reduced exposures and fewer injuries, illnesses and fatalities
2. Change workplace culture to increase employer and worker awareness of, commitment to, and involvement in safety and health, and
3. Maximize efficient and effective use of human and technological resources

During this evaluation period the State is on target to accomplish all but one of its performance goals, Goal 3.1.1: Maintain a technology infrastructure that provides a reliable data repository to support the Kentucky OSH Program goals and strategies. Overall, Kentucky's performance in this area was effective. Therefore, this section of the report does not contain any formal recommendations for improvement.

Goal 1.1.1: Reduce injury and illness incident rates in at least five of ten industries with the highest incident rates.

The Kentucky OSH Program now receives NAICS data and has established baselines for the ten (10) highest incident rate industries. The combined efforts of the Division of OSH Compliance and the Division of OSH Education and Training continue to have an impact upon reducing incidence rates through 2010. In FY 2009, Kentucky set a new baseline for Performance Goal 1.1.1 with the ten (10) most hazardous industries in Kentucky identified by the NAICS classifications. As part of Kentucky's two (2) year strategic effort to meet Performance Goal 1.1.1, the Division of OSH Compliance planned to increase compliance inspection activities for several industries that had very large increases in their total case incident rates. During this period, the Division of Compliance continued its commitment to identifying and inspecting establishments within the selected ten (10) high hazard NAICS by performing approximately five (5) percent of its inspections within the ten (10) high hazard NAICS. It is evident that significant reductions in injury and illness rates will be difficult for some industry sectors due to ergonomic issues. Progress has been made, however the State will continue its work in this area.

Goal 1.1.2: Reduce by five percent the employers currently identified in 2007 Establishment Data System as having Total Case Rates three times (19.2) the Kentucky Total Case Rate of 6.4 for private-sector industry, to less than twice the Total Case Rate (12.8).

In FY 2010, a new target list was established based upon the 2007 OSHA Data Initiative (ODI) for establishments with recorded Total Case Incident Rates (TCIR) three (3) times the Kentucky TCIR for Private Industry to levels less than twice the TCIR. During this period, Kentucky continued its mission of working to reduce the number of worker injuries, illnesses, and fatalities by focusing the State's resources on the most prevalent types of workplace injuries and illnesses, the most hazardous industries, and the most hazardous workplaces. The State conducted seven inspections from the 2008 Targeted Outreach Program (TOP) as a result of companies that were reported as non-responders to the data

initiative. Progress has been made on this goal however; the State will continue to make contact with employers in high-hazard NAICS codes.

Goal 1.1.3: Decrease injures caused by falls, struck-by and crushed-by in the construction industry by four percent.

The FY 2010 Bureau of Labor Statistics (BLS) data, which reflects the 2008 construction industry data, is the new baseline for this performance goal. The plan for this goal is to decrease the injuries related to falls, struck-by, and crushed-by accidents in construction by two percent in both FY 2009 and FY 2010, for a total of 4%. This goal will be accomplished through inspection and outreach activities related to the emphasis programs and programmed construction inspections. In FY 2010, the State made significant toward the achievement of this goal.

Goal 1.2.1: Initiate inspections of fatalities and multiple hospitalization accidents within one working day of notification for 100 percent of occurrences.

The FY 2010 Annual Performance Goal was to accomplish inspection of 100 percent of fatalities and catastrophes within one (1) working day of notification. Kentucky's Performance Goal of FY 2009 aims for 100 percent of fatality and catastrophe inspections to begin within one (1) working day after the Kentucky OSH Program is notified. Kentucky did not meet this goal in FY 2010. During this period, seven fatality cases appeared as outliers; however, the State remains committed to this goal.

Goal 1.2.2: Initiate inspections of imminent danger reports within one working day of notification for 100 percent of occurrences.

Performance Goal 1.2.2 addresses response time by the Division of OSH Compliance in critical situations. This goal seeks to initiate inspection of imminent danger reports within one (1) working day of notification for 100 percent of occurrences. During FY 2010, Kentucky failed to respond to nine (9) imminent danger referrals out of 230, within one (1) working day. However, the outliers in this matter were the result of data entry errors.

Goal 2.1.1: Conduct Safety and Health Management System evaluations in 100 percent of full service comprehensive surveys.

Performance Goal 2.1.1 aims to continue incorporating safety and health management systems evaluation in 100 percent of the full service comprehensive surveys conducted. There are two (2) FY 2010 Annual Performance Goals for 2.1.1. They are:

- Utilize the Safety and Health Program Assessment Worksheet (Form 33) in 100 percent of the full service comprehensive surveys conducted.
- Include a narrative safety and health program evaluation in 100 percent of reports completed for comprehensive surveys.

Goal 2.1.2: 100 percent of the consultation reports on comprehensive consultative surveys will contain a completed Form 33.

Performance Goal 2.1.2 has been fully met in FY 2010 as 100 percent of the consultation reports on comprehensive consultative surveys contain a completed Form 33. The Form 33 attempts to measure the safety culture of an organization, which is a key ingredient in whether the performance is sustainable or just random luck. Each comprehensive survey case file also includes a safety and health program evaluation report.

Goal 2.1.3: Implement a targeting outreach training plan for 100 percent of its new Kentucky OSH standards.

Performance Goal 2.1.3 addresses the implementation of a targeted outreach training plan for 100 percent of new Kentucky OSH standards. The Annual Performance Goal is identical. The Division of OSH Education and Training continues to offer free outreach training at Population (POP) Centers for employers and employees across the Commonwealth addressing Kentucky OSH standards. The Kentucky Labor Cabinet also maintains updated and accurate information on the Kentucky OSH webpage as well as cost free publications for employers and employees. The Division of OSH Education and Training developed a compact disc that contains all the state OSHA regulations, federal OSHA standards, Kentucky safety and health manuals, posters, conference information, and resource links. The compact disc offers employers a mechanism to register and receive a notice regarding new or amended regulations. The Kentucky OSH Program provides the compact disc free of charge. The Kentucky OSH Program no longer prints the Federal regulation book. Additionally, the State now prints a document entitled “Kentucky Occupational Safety and Health Standards for Construction and General Industry, which contains State specific standards.

Goal 2.1.4: Deliver outreach training services to employers and employees that meet 100 percent of the targeted strategic goals.

Performance Goal 2.1.4 relates to Kentucky’s effort to continue to develop and deliver outreach training services to employers and employees that meet 100 percent of targeted strategic goals. The two (2) FY 2010 Annual Performance Goals seek to:

- Develop training programs that correspond to the targeted needs identified in previous performance goals; and
- Make available all standards, regulations, and reference materials in a user friendly manner from the Kentucky OSH webpage and continue to upgrade and provide the most current information.

The POP Center training schedule and courses were posted on the Kentucky OSH Program website in 2010 and this practice will continue in 2011. Courses conducted during this period, addressed fall protection, back care, lockout/tagout, excavations, explosive dust,

scaffolding, electrical hazards, as well as residential and commercial construction hazards. In FY 2010, over 2400 participants attended these training sessions.

Goal 3.1.1: Maintain a technology infrastructure that provides a reliable data repository to support the Kentucky OSH Program goals and strategies.

Performance Goal 3.1.1 is to maintain a technology infrastructure that provides a reliable data repository to support Kentucky OSH Program goals and strategies. In fulfillment of this goal, Kentucky personnel have participated in monthly conference calls hosted by OSHA for Information Technology users. During FY 2010, the Division of OSH Compliance and the Division of OSH Education and Training also made the necessary corrections to data entered into IMIS, to ensure the accuracy and reliability of information provided by the NCR system.

Goal 3.1.2: Develop and maintain a system to maximize the use of human resources.

Performance Goal 3.1.2 aims to develop and maintain a system to maximize the use of human resources. Three (3) Annual Performance Goals support 3.1.2. They are:

- Ensure that the Kentucky OSH Program has the capabilities to meet the demand for safety and health training by having two (2) personnel receive either the Construction or General Industry OSHA 10-hour or 30-hour instructor training.
- Enhance employee development, reduce employee turnover and increase work productivity in support of Kentucky OSH Program goals and strategies.
- Encourage Kentucky OSH staff to acquire certification in the field of occupational safety and health.

In FY 2010, the annual performance goals toward fulfillment of this goal included ensuring the development of a workforce career development plan for entry level employees, ensuring the KY OSH Program has two (2) personnel who have received either the OSHA Construction or OSHA General Industry 10-Hour or 30-Hour instructor training, and ensuring Kentucky OSH staff acquire professional certification. This goal was successfully met by Kentucky in FY 2010.

Appendix A
Kentucky State Plan
FY 2010 Enhanced FAME Follow-up Report Prepared by Region IV
Summary of New and Continuing Findings and Recommendations

Rec #	Findings	Recommendations	Related FY 09 Rec #
10-1	Of the 496 programmed construction inspections conducted, 85% were issued as in-compliance.	It is recommended that the state evaluate and determine the cause of the high in-compliance rate for programmed construction inspections and implement strategies to reduce the rate.	New
10-2	The State has not adopted or completed the revision/implementation of the Federal OSHA Field Operations Manual (FOM), to include a side by side comparison.	It is recommended that the state adopt the Federal Field Operations Manual or complete the revision/development and implementation of their Field Operations Manual and submit the side-by-side comparison to the Regional Office.	New
10-3	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. *NOTE: None. The Division of OSH compliance believes its practice is a very appropriate, very efficient, and very effective use of resources.	09-01
10-4	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. *NOTE: 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.	09-8
10-5	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. It is unclear from the State's response how the identified problem with the targeting program has been addressed.	09-9
10-6	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 lapse time in FY 2010 was 58.8 for safety and 68.7 for health, lower than the lapse time during the 2009 enhanced fame study. However, this is still much higher than the national averages.	09-11
10-7	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 protected. This recommendation has been partially implemented.	09-18
10-8	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.	09-20

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		Related FY 09 Rec #
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.

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		Related FY 09 Rec #
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.
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	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		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	COMPLETED Case file reviews of fatality investigation files will be conducted

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		Related FY 09 Rec #
	the inspection process.	Commissioner.		contact via phone.	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. 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	PENDING Case file reviews will be conducted during FY 2011

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	Related FY 09 Rec #
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.	agreements will be provided when it is completed. 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.
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 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. PENDING This issue will continue to be evaluated during monitoring activities in FY 2011.

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		Related FY 09 Rec #
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
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.

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		Related FY 09 Rec #
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 statements are not possible, at a minimum make a memo to the file regarding the interview.		The investigator is conducting interviews and including written and signed statements in all case files as much as possible and the file is documented 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.	COMPLETED Case file reviews of whistleblower investigations will be 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		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	COMPLETED Case file reviews of whistleblower investigations will be conducted during FY 2011

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		Related FY 09 Rec #
		complainant for participating in protected activity; and analyze whether complainant was treated different than other employees similarly situated.		files contain statements and/or justification for not obtaining statements.	
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 protected.		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 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.	PENDING Case file reviews of whistleblower investigations will be conducted during FY 2011
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.		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	COMPLETED

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		Related FY 09 Rec #
				<p>other duties and assigned to work on reports and reduce the number of overage reports until they were current.</p> <p>Reports are on track and are currently being issued in a timely manner. Current tracking reports related to Consultation were provided.</p>	
09-20	<p>Kentucky does not have an internal evaluation program as required by the State Plan Policies and Procedures Manual.</p>	<p>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>		<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>	<p>PENDING This issue will continue to be evaluated during monitoring activities in FY 2011.</p>

Appendix C
Kentucky State Plan
FY 2010 Enforcement Activity

	KY	State Plan Total	Federal OSHA
Total Inspections	1,064	57,124	40,993
Safety	868	45,023	34,337
% Safety	82%	79%	84%
Health	196	12,101	6,656
% Health	18%	21%	16%
Construction	496	22,993	24,430
% Construction	47%	40%	60%
Public Sector	52	8,031	N/A
% Public Sector	5%	14%	N/A
Programmed	296	35,085	24,759
% Programmed	28%	61%	60%
Complaint	252	8,986	8,027
% Complaint	24%	16%	20%
Accident	25	2,967	830
Insp w/ Viols Cited	454	34,109	29,136
% Insp w/ Viols Cited (NIC)	43%	60%	71%
% NIC w/ Serious Violations	78.6%	62.3%	88.2%
Total Violations	1,422	120,417	96,742
Serious	879	52,593	74,885
% Serious	62%	44%	77%
Willful	23	278	1,519
Repeat	26	2,054	2,758
Serious/Willful/Repeat	928	54,925	79,162
% S/W/R	67%	46%	82%
Failure to Abate	12	460	334
Other than Serious	482	65,031	17,244
% Other	34%	54%	18%
Avg # Violations/ Initial Inspection	2.7	3.4	3.2
Total Penalties	\$ 2,286,645	\$72,233,480	\$183,594,060
Avg Current Penalty / Serious Violation	\$ 1,449.30	\$ 870.90	\$ 1,052.80
Avg Current Penalty / Serious Viol- Private Sector Only	\$ 1,467.70	\$ 1,018.80	\$ 1,068.70
% Penalty Reduced	46.1%	47.7%	40.9%
% Insp w/ Contested Viols	13.5%	14.4%	8.0%
Avg Case Hrs/Insp- Safety	32.4	16.2	18.6
Avg Case Hrs/Insp- Health	69.5	26.1	33
Lapse Days Insp to Citation Issued- Safety	58.8	33.6	37.9
Lapse Days Insp to Citation Issued- Health	68.7	42.6	50.9
Open, Non-Contested Cases w/ Incomplete Abatement >60 days	218	1,715	2,510

Source: DOL-OSHA. State Plan & Federal INSP & ENFC Reports, 11.9.2010.

Appendix D
Kentucky State Plan
FY 2010 State Activity Mandated Measures (SAMM)

U. S. D E P A R T M E N T O F L A B O R
O C C U P A T I O N A L S A F E T Y A N D H E A L T H A D M I N I S T R A T I O N
S T A T E A C T I V I T Y M A N D A T E D M E A S U R E S (S A M M s)

NOV 12, 2010
PAGE 1 OF 2

State: KENTUCKY

RID: 0452100

MEASURE	From: 10/01/2009 To: 09/30/2010	CURRENT FY-TO-DATE	REFERENCE/STANDARD	
1. Average number of days to initiate Complaint Inspections	1790 6.85 261	131 8.18 16	Negotiated fixed number for each State	
2. Average number of days to initiate Complaint Investigations	3330 18.29 182	51 5.66 9	Negotiated fixed number for each State	
3. Percent of Complaints where Complainants were notified on time	241 100.00 241	25 100.00 25	100%	
4. Percent of Complaints and Referrals responded to within 1 day -ImmDanger	198 97.54 203	21 100.00 21	100%	
5. Number of Denials where entry not obtained	0	0	0	
6. Percent of S/W/R Violations verified				
Private	0 .00 403	0 .00 403	100%	
Public	0 .00 30	0 .00 30	100%	
7. Average number of calendar days from Opening Conference to Citation Issue				
Safety	33697 77.64 434	3183 70.73 45	2624646 47.3 55472	National Data (1 year)
Health	8785 93.45 94	844 120.57 7	750805 61.9 12129	National Data (1 year)

**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: KENTUCKY

RID: 0452100

MEASURE	From: 10/01/2009		CURRENT		REFERENCE/STANDARD
	To: 09/30/2010		FY-TO-DATE		
8. Percent of Programmed Inspections with S/W/R Violations					
	104		4		93201
Safety	32.70		14.81		58.4 National Data (3 years)
	318		27		159705
	4		0		10916
Health	40.00				50.9 National Data (3 years)
	10		0		21459
9. Average Violations per Inspection with Vioations					
	948		110		428293
S/W/R	1.79		2.11		2.1 National Data (3 years)
	528		52		201768
	480		41		240266
Other	.90		.78		1.2 National Data (3 years)
	528		52		201768
10. Average Initial Penalty per Serious Violation (Private Sector Only)	1557000		226350		509912690
	1831.76		2333.50		1360.4 National Data (3 years)
	850		97		374823
11. Percent of Total Inspections in Public Sector	52		3		159
	4.89		2.83		4.4 Data for this State (3 years)
	1064		106		3610
12. Average lapse time from receipt of Contest to first level decision	4003		0		3826802
	400.30				217.8 National Data (3 years)
	10		0		17571
13. Percent of 11c Investigations Completed within 90 days	31		1		100%
	63.27		25.00		
	49		4		
14. Percent of 11c Complaints that are Meritorious	3		2		1461
	6.12		50.00		21.2 National Data (3 years)
	49		4		6902
15. Percent of Meritorious 11c Complaints that are Settled	1		0		1256
	33.33		.00		86.0 National Data (3 years)
	3		2		1461

Appendix E
Kentucky State Plan
FY 2010 State Indicator Report (SIR)

Q4 SIR 21 101007 093252 PROBLEMS - CALL Yvonne Goodhall 202 693-1734

1101007

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

PAGE 1

CURRENT MONTH = SEPTEMBER 2010

INTERIM STATE INDICATOR REPORT (SIR)

STATE = KENTUCKY

PERFORMANCE MEASURE	----- 3 MONTHS-----		----- 6 MONTHS-----		-----12 MONTHS-----		-----24 MONTHS-----	
	FED	STATE	FED	STATE	FED	STATE	FED	STATE
C. ENFORCEMENT (PRIVATE SECTOR)								
1. PROGRAMMED INSPECTIONS (%)								
A. SAFETY	5298 62.4 8493	33 17.2 192	11403 63.8 17860	135 31.0 436	21912 65.1 33647	287 34.3 836	43788 65.9 66434	692 38.1 1817
B. HEALTH	488 30.6 1597	0 .0 48	1094 33.7 3249	0 .0 85	2232 35.0 6378	3 1.8 170	4202 35.1 11960	42 11.4 368
2. PROGRAMMED INSPECTIONS WITH VIOLATIONS (%)								
A. SAFETY	4663 72.7 6413	19 35.8 53	9421 71.2 13232	44 24.6 179	17649 69.1 25525	123 34.0 362	34350 67.1 51214	269 32.6 826
B. HEALTH	451 57.8 780	0 .0 0	880 53.9 1632	0 .0 0	1756 55.4 3168	7 70.0 10	3238 53.4 6066	31 54.4 57
3. SERIOUS VIOLATIONS (%)								
A. SAFETY	17341 81.6 21261	226 66.7 339	33678 81.5 41304	353 65.6 538	62211 81.0 76839	729 65.9 1106	117447 80.1 146593	1488 68.3 2179
B. HEALTH	3233 69.6 4645	28 42.4 66	6183 70.5 8776	48 44.0 109	11743 70.2 16725	99 45.2 219	21554 69.6 30947	258 43.7 591
4. ABATEMENT PERIOD FOR VIOLS								
A. SAFETY PERCENT >30 DAYS	3054 15.0 20398	24 9.0 268	6515 16.3 39855	37 9.2 401	12732 17.2 74010	58 7.2 804	25040 17.7 141219	104 6.3 1643
B. HEALTH PERCENT >60 DAYS	255 5.6 4548	12 30.0 40	633 7.3 8681	12 18.8 64	1406 8.5 16580	13 10.0 130	2977 9.6 30862	15 4.3 349

PERFORMANCE MEASURE	----- 3 MONTHS-----		----- 6 MONTHS-----		-----12 MONTHS-----		-----24 MONTHS-----	
	FED	STATE	FED	STATE	FED	STATE	FED	STATE
C. ENFORCEMENT (PRIVATE SECTOR)								
5. AVERAGE PENALTY								
A. SAFETY								
OTHER-THAN-SERIOUS	587112	25700	1106734	41550	2038916	108400	3500911	163925
	837.5	1976.9	803.1	1888.6	894.3	2045.3	967.6	1975.0
	701	13	1378	22	2280	53	3618	83
B. HEALTH								
OTHER-THAN-SERIOUS	249175	2900	434447	6550	732953	17325	1039303	30775
	817.0	1450.0	801.6	1310.0	835.8	1925.0	842.2	1538.8
	305	2	542	5	877	9	1234	20
6. INSPECTIONS PER 100 HOURS								
A. SAFETY								
	9778	215	20529	486	38849	929	76136	2010
	5.8	2.8	5.7	2.8	5.5	2.7	5.5	3.0
	1679	76	3593	171	7112	343	13925	667
B. HEALTH								
	1864	55	3844	99	7547	197	14276	432
	2.1	1.2	2.0	1.0	1.9	1.0	1.8	1.1
	908	46	1940	95	3898	191	8070	405
7. VIOLATIONS VACATED %								
	1123	10	2474	12	5103	18	10425	46
	3.7	2.2	4.3	1.7	4.7	1.4	5.0	1.7
	29962	451	57441	688	108213	1246	207527	2687
8. VIOLATIONS RECLASSIFIED %								
	844	1	1978	3	4276	6	9196	18
	2.8	.2	3.4	.4	4.0	.5	4.4	.7
	29962	451	57441	688	108213	1246	207527	2687
9. PENALTY RETENTION %								
	15767907	185097	30073309	309393	57457651	746287	111052615	1766880
	64.5	63.4	63.9	65.6	63.0	63.0	62.8	59.5
	24439885	292100	47032897	471800	91194322	1184550	176868726	2969340

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

PAGE 3

CURRENT MONTH = SEPTEMBER 2010

INTERIM STATE INDICATOR REPORT

STATE = KENTUCKY

PERFORMANCE MEASURE	----- 3 MONTHS-----		----- 6 MONTHS-----		----- 12 MONTHS-----		----- 24 MONTHS-----	
	PRIVATE	PUBLIC	PRIVATE	PUBLIC	PRIVATE	PUBLIC	PRIVATE	PUBLIC
D. ENFORCEMENT (PUBLIC SECTOR)								
1. PROGRAMMED INSPECTIONS %								
A. SAFETY	33 17.2 192	0 .0 9	135 31.0 436	3 15.0 20	287 34.3 836	6 22.2 27	692 38.1 1817	12 22.2 54
B. HEALTH	0 .0 48	0 .0 6	0 .0 85	0 .0 13	3 1.8 170	0 .0 23	42 11.4 368	0 .0 51
2. SERIOUS VIOLATIONS (%)								
A. SAFETY	226 66.7 339	16 61.5 26	353 65.6 538	16 61.5 26	729 65.9 1106	23 62.2 37	1488 68.3 2179	31 58.5 53
B. HEALTH	28 42.4 66	11 100.0 11	48 44.0 109	14 100.0 14	99 45.2 219	25 67.6 37	258 43.7 591	35 58.3 60

CURRENT MONTH = SEPTEMBER 2010

COMPUTERIZED STATE PLAN ACTIVITY MEASURES

STATE = KENTUCKY

PERFORMANCE MEASURE	----- 3 MONTHS-----		----- 6 MONTHS-----		----- 12 MONTHS-----		----- 24 MONTHS-----	
	FED	STATE	FED	STATE	FED	STATE	FED	STATE
E. REVIEW PROCEDURES								
1. VIOLATIONS VACATED %	610 22.5 2709	3 50.0 6	1134 23.2 4888	6 16.2 37	2052 21.9 9366	43 13.9 310	3827 23.0 16668	109 18.4 594
2. VIOLATIONS RECLASSIFIED %	306 11.3 2709	0 .0 6	585 12.0 4888	2 5.4 37	1100 11.7 9366	7 2.3 310	2217 13.3 16668	19 3.2 594
3. PENALTY RETENTION %	4940512 65.3 7563023	4875 49.4 9875	7526155 62.3 12074308	38725 58.3 66425	12856359 58.1 22143463	359554 42.5 846000	23378285 58.4 40052611	624702 40.5 154346

Appendix F
Kentucky State Plan
FY 2010 State OSHA Annual Report (SOAR)

SOAR Available Separately