



Steven L. Beshear  
Governor

**KENTUCKY LABOR CABINET**  
DEPARTMENT OF WORKPLACE STANDARDS

1047 US Hwy 127 S - Suite 4  
Frankfort, Kentucky 40601  
Phone: (502) 564-3070  
Fax (502) 564-1682  
www.labor.ky.gov

Mark S. Brown  
Secretary

Michael L. Dixon  
Commissioner

August 27, 2012

Ms. Cindy Coe  
Regional Administrator  
Occupational Safety and Health Administration  
61 Forsyth Street SW, Room 6T50  
Atlanta, Georgia 30303

Dear Ms. Coe:

Enclosed is Kentucky's response to the FY 2011 Federal Annual Monitoring Evaluation (FAME) Report. The Kentucky Labor Cabinet is pleased that OSHA did not find serious deficiencies that hindered the delivery of safety and health services, as well as the settlement of discrimination issues, to the Commonwealth's work force.

The Kentucky Occupational Safety and Health (OSH) Program strives to improve, and it appreciates OSHA's evaluation efforts. Although Kentucky may disagree with some of the findings and recommendations, the OSH Program is eager to implement the recommendations that will enhance its efforts and services provided to the citizens of the Commonwealth.

As Kentucky stated in its response to last year's Enhanced FAME Follow-Up, the evaluation process would be more effective and efficient if the timeframe of the process was changed. The present over-lap in the process is counterproductive on many levels. Kentucky was pleased to hear Deputy Assistant Secretary Barab report at the May 2012 Occupational Safety and Health State Plan Association meeting that OSHA will be implementing a biennial evaluation. Kentucky believes this is a step in the right direction and looks forward to OSHA's advising the OSH Program of the specific details. In last year's response to the Enhanced FAME Follow-Up, Kentucky also requested OSHA's assistance regarding the scheduling of construction industry general schedule inspections. We look forward to that assistance.

Please contact me at (502) 564-0977 if you have any questions or need additional information.

Sincerely,

A handwritten signature in black ink that reads "Michael L. Dixon".

Michael L. Dixon

Enclosure

ccopy: Mark S. Brown  
Evan Satterwhite  
Kimberlee C. Perry  
Mike Donta  
Christi Griffin  
Thomas T. Bosley  
William R. Cochran



# Kentucky Labor Cabinet Occupational Safety and Health Program

**RESPONSE**

to

**FEDERAL ANNUAL MONITORING EVALUATION**

for

**FEDERAL FISCAL YEAR 2011**

## I. GENERAL REPLY

The Kentucky Occupational Safety and Health (OSH) Program appreciates the Occupational Safety and Health Administration's (OSHA) annual review and is eager to implement recommendations that improve the state plan. Kentucky is pleased that OSHA's Federal Annual Monitoring Evaluation (FAME) for FY 2010 did not find serious deficiencies in Kentucky's OSH Program. None of OSHA's findings or recommendations directly affect employee safety, health, discrimination protections, or employer compliance in Kentucky. This is the outcome Kentucky anticipated and expected.

In its "RESPONSE to ENHANCED FEDERAL ANNUAL MONITORING EVALUATION (FAME) FOLLOW-UP REPORT for FEDERAL FISCAL YEAR 2010," hereinafter referred to as 2010 Follow-Up Report, Kentucky suggested that OSHA change the evaluation time-line. Kentucky was pleased to hear Deputy Assistant Secretary Barab report at the May 2012 Alaska Occupational Safety and Health State Plan Association meeting that OSHA will be implementing a biennial evaluation. Kentucky looks forward to OSHA's advising Kentucky of the specific details of the bi-annual evaluation process.

In response to OSHA's Finding and Recommendation 10-1 in the 2010 Follow-Up Report, Kentucky sought assistance from OSHA regarding construction inspection scheduling. Kentucky awaits OSHA's assistance.

## II. CORRECTION to OSHA information in FAME Report

On page twenty-four (24) of the FAME report, in "E. Public Employee Program/ 23(g) Only Program," OSHA states:

"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. KYOSH also has a public sector inspection procedure. **By state law, all public sector entities are required to be inspected at least every two years.** According to the SAMM report, 4.23% of inspections were conducted in the public sector in FY 2011." [Emphasis added.]

The emphasized statement perplexes Kentucky and Kentucky questions where OSHA got the information. Kentucky does not have a state law or administrative regulation that requires all public sector entities to be inspected at least every two (2) years.

## II. SPECIFIC FINDINGS, RECOMMENDATIONS and KENTUCKY RESPONSE

### OSHA Finding 11-01

“Case files do not contain a tracking mechanism to document pertinent case related actions, events, and significant activities that occur throughout the life of the case.”

### OSHA Recommendation 11-01

“KYOSH should develop and implement a tracking mechanism, such as a diary sheet or log, for case files to document: significant case-related actions (case development, dates that correspondence is sent and received, dates when updates are made in IMIS); communication between management and the CSHO; and communication between KYOSH and the employer and employee, as well as any other actions of significance.”

### State Response

Kentucky questions OSHA’s basis for this finding and recommendation. On page ten (10) of the FAME report, in “A. Enforcement Program,” OSHA states:

“Overall, case files that were reviewed were **very detailed** and contained **sufficient documentation**. The case files that were reviewed were **well documented with detailed narratives** explaining the inspection process, the employer’s business/processes, findings, and any other factors/issues. The violations **contained all of the required information and supporting documentation** for a prima fascia violation including all of the required forms, photos, interview notes, field notes, diagrams, and other technical documentation. Overall, inspections were coded with the appropriate emphasis and strategic codes. One deficiency that was noted was that files did not contain a case file diary sheet or log to document significant actions associated with that particular file such as calls or correspondence between KYOSH and the employer, NOK correspondence, updates in the case, informal conference and contest information, debt collection activity, and anything else of significance. When files are closed, they are scanned into the state’s imaging system. The complete file is scanned with the exception of the photos which are saved and maintained in an inspection photo database.” **[Emphasis added.]**

Kentucky does not believe the lack of a diary sheet or log is a “deficiency” as OSHA states in the paragraph above and takes issue with OSHA characterizing it as such. Although significant case-related actions and other actions of significance may not be neatly summarized in a diary sheet or log, OSHA does not assert the information was missing. To the contrary, OSHA points out that case files were “...very detailed...” and “...well documented...” The information was documented in different portions of the case files. It may be in the narrative or work notes. It may be a stand-alone document in the case file such as a letter to complainant, a notice of contest, a supervisor memo regarding informal conference, etc.

Kentucky believes this finding and recommendation is frivolous. It appears to be in search of a deficiency where none exists. Kentucky considers this a non-issue and closed matter.

### **OSHA Finding 11-02**

“The IMIS is not being updated as necessary. The State has approximately 1,200 open cases dating back to the early 1990’s.”

### **OSHA Recommendation 10-02A**

“KYOSH should continue their efforts to update the IMIS system by developing and implementing a procedure to ensure that information is entered and updated in IMIS in a timely manner, throughout the life-cycle of an inspection case file.”

### **OSHA Recommendation 10-02B**

“KYOSH should update all complaint related actions, such as the date the OSHA-7 is sent for signature and when correspondence was mailed and received, in the IMIS in accordance with the IMIS Manual.”

### **State Response**

Kentucky concurs there are many open cases in OSHA’s Integrated Management Information System (IMIS). Kentucky finds there are approximately 1,050 open cases. A review of the cases establishes the majority of the 1,050 open cases remain open in IMIS for a legitimate reason, such as cases open due to litigation or cases in debt collection.

Kentucky is surprised to learn that other cases remain open in IMIS. Kentucky spent considerable time and effort cleaning up case files in IMIS and closed many, if not all, of the open cases in IMIS that were ripe for closure. Kentucky’s review of the open cases not in litigation or debt collection finds cases that Kentucky has closed in IMIS yet continue to show up in IMIS as open. Kentucky notes this has been a problem for the OSH Program before. The OSH Program has made entries in IMIS and the data does not remain in IMIS.

Nevertheless, Kentucky will again expend resources and begin work in IMIS to close cases that are ripe for closure.

### **OSHA Finding 11-03 (10-03)**

“KYOSH conducts inspections for all formalized complaints regardless of the nature of the hazard(s).”

### **OSHA Recommendation 11-03 (10-03)**

“To allow a more effective use of their resources, KYOSH should evaluate all complaints, including formal complaints, to determine whether an investigation would be more appropriate than an inspection.”

## State Response

Kentucky questions why OSHA continues to make this finding and recommendation. On page nine (9) of the FAME report, OSHA states:

“KYOSH continues to evaluate all complaints, including formal complaints, to determine when an investigation, rather than an inspection; however in accordance with state law [803 KAR 2:090 Section 1(2)], inspections are always conducted for valid formalized complaints regardless of the nature of the alleged hazard. The State continues to disagree with this recommendation, The Division of OSH Compliance believes its practice is very appropriate, very efficient, and a very effective use of its resources. The State’s current practice has not resulted in a negative impact in their ability to identify hazards in workplaces throughout the state of Kentucky. **This recommendation should be considered closed.** However, this will remain a focus during future monitoring activities.” [Emphasis added.]

Although OSHA states the recommendation should be considered closed, it continues. As stated in Kentucky’s 2010 Follow-Up Report response, and repeated here, Kentucky evaluates all complaints and assigns an investigation or an inspection based upon the classification and gravity of alleged hazards. Kentucky clearly does what Recommendation 11-03 (10-03) suggests.

Kentucky generally believes that an employee, or representative of employees, who takes the time to memorialize a workplace concern(s) in the form of a written and signed complaint has a concern that warrants an onsite evaluation by the Division of OSH Compliance. Kentucky believes onsite observation is the surest method to determine if a hazard exists. Kentucky believes employees are better protected and served when a determination regarding an alleged hazard(s) is made through direct onsite observation rather than attempting a determination via indirect observation methods. Additionally, Kentucky OSH Program experience establishes that other hazards not alleged in a complaint may be discovered during inspection of the complaint items.

The Division of OSH Compliance believes its complaint inspection practice is appropriate, efficient, and a very effective use of resources.

On page twelve (12) of the FAME report, OSHA States:

“It should be noted that during this review, this process has detracted from KYOSH’s ability to conduct programmed health inspections, as the State did not conduct any programmed health inspections in FY 2011.”

Kentucky disagrees with OSHA’s conclusion and provides additional information in the response to Finding and Recommendation 11-06.

Kentucky has accomplished what the recommendation suggests and believes OSHA’s practice of continuing to make the finding and recommendation year after year is counterproductive. At

best, the continued rhetoric on this issue demonstrates OSHA's inability to resolve an issue with Kentucky where the two (2) parties disagree.

Kentucky's position and practice has not wavered or changed. This is a non-issue that Kentucky considers settled. Kentucky does not intend to expend any additional time, energy, or effort addressing this recommendation.

#### **OSHA Finding 11-04**

"Complainants are not provided the findings regarding each complaint item and they are not afforded a way of disputing or appealing the findings of a complaint investigation."

#### **OSHA Recommendation 11-04**

"KYOSH should develop and implement procedures to notify complainants of the inspection results to include the State's findings of each complaint item. Appropriate personnel should be trained in new procedures and supervisors should review case files more carefully to ensure this information is included in the file."

#### **State Response**

As OSHA states in the FAME report, the Division of OSH Compliance provides the complainant a letter advising the outcome of the inspection as well as a copy of the citations.

Kentucky indicated in the 2010 Follow-Up Report that it augmented its procedure by addressing each complaint item individually and advising the complainant's appeal rights in the letter to complainants. OSHA's finding asserts that complainants are not afforded "a way of disputing or appealing the findings of a complaint investigation." This is simply not true and Kentucky questions OSHA's assertion. The letter sent to complainants from the Division of OSH Compliance clearly advises a complainant of the procedure to request a review in accordance with 803 Kentucky Administrative Regulation 338.121.

With regard to addressing each complaint item, Kentucky regrets its augmented procedure has not progressed as anticipated. Kentucky pledges to address the shortcoming and fully implement the procedure.

The Kentucky OSH Program is developing a customized information system that will replace OSHA's IMIS. Kentucky expects the new system will be implemented by the end of 2012. The Division of OSH Compliance anticipates the new system will improve its procedure to notify complainants of the findings for each complaint item.

#### **OSHA Finding 11-05**

"One-third of the fatality case files reviewed did not provide evidence that one or more of the required calls were made and/or letters to the next-of-kin were sent."

### **OSHA Recommendation 11-05**

“KYOSH should develop and implement a tracking system to ensure that all communications with the NOK are completed. The information to be tracked includes but is not limited to: written correspondence at the beginning and end of an investigation; a letter informing the NOK of the fatality investigation results; and a letter informing NOK of any changes to the citation, as the result of an informal conference, Formal Settlement Agreement, or litigation as well as hearing dates and other pertinent information.”

#### **State Response**

Kentucky is confident that all next-of-kin communications are completed. Kentucky notes that OSHA’s finding and recommendation does not assert the Kentucky OSH Program is not providing the next-of-kin with the appropriate notification. As OSHA states in the FAME report, the concern is the case file documentation of the communication.

Discussion between OSHA and Kentucky establishes that OSHA’s claim that one-third (1/3) of Kentucky’s case files did not include the documentation is inaccurate and inflated due to OSHA’s accounting method. Nevertheless, Kentucky will emphasize improved documentation of the communication with next-of-kin to all staff.

Additionally, the Kentucky OSH Program is developing a customized information system that will replace OSHA’s IMIS. Kentucky expects the new system will be implemented by the end of 2012. The Division of OSH Compliance anticipates the new system will improve the procedure to notify complainants of the findings for each complaint item.

### **OSHA Finding 11-06**

“KY OSH did not conduct any programmed planned health inspections during this evaluation period.”

### **OSHA Recommendation 11-06**

“KY OSH should develop and implement an effective strategy to ensure that programmed health inspections are conducted in the high hazard health industries.”

#### **State Response**

As noted in the FAME report, Kentucky advised OSHA that programmed planned health inspections were not conducted in FY 2010 due to the high number of referrals and complaints. All complaint and referral inspections were assigned and conducted in accordance with the inspection priority order established in Chapter II of the Division of OSH Compliance’s Field Operations Manual.

Another significant factor directly affecting the absence of programmed planned health inspections in FY 2010 was staff turnover. Industrial hygienists in the Division of OSH Compliance left the program in FY 2010 while others were reclassified from trainee to active

status. Both factors directly affected the ability of the health branch to conduct programmed planned health inspections.

Kentucky regrets that programmed planned health inspections were not conducted during FY 2010. However, Kentucky believes that employee protection was not compromised. Health hazards in high hazard health industries were identified, cited, and abated during the targeted referral and complaint inspections that were conducted in FY 2010.

Progress in this area will be measured due to staff turnover and fiscal challenges. Nevertheless, Kentucky continues to work towards improvement.

**OSHA Finding 11-07 (formerly 10-6)**

“KY OSH has a significantly higher citation issuance lapse time for than federal OSHA.”

**OSHA Recommendation 11-07 (formerly 10-6)**

“KY OSH should develop and implement effective strategies to reduce its safety and health citation issuance lapse time.”

**State Response**

A review of the last three (3) year’s average lapse time numbers for the Division of OSH Compliance establishes that safety lapse times are consistent. Kentucky does not consider the lapse time for safety to be “significantly higher” as OSHA states in the finding. The health lapse time rose in FY 2010 but remains lower than FY 2009. The rise in the lapse time from 2009 to 2010 is attributable to staff turnover. Industrial hygienists in the Division of OSH Compliance left the program in FY 2010 while others were reclassified from trainee to active status. Both factors directly affected the lapse time.

As Kentucky stated in the 2010 Follow-Up Report, the Division of OSH Compliance implemented the IMIS administrative tracking tools OSHA suggested to address the issue and will continue to utilize those tools. Additionally, the Kentucky OSH Program is developing a customized information system that will replace OSHA’s IMIS. Kentucky expects the new system will be implemented by the end of 2012. The Division of OSH Compliance anticipates the new system will be a useful resource to monitor lapse times.

Kentucky believes the comparison to the national average is somewhat skewed in light of staff turnover, inexperienced staff, and current fiscal challenges. Kentucky also believes that because of these challenges, and several other factors, progress in this area will be measured. Nevertheless, Kentucky continues to work towards improvement.

**OSHA Finding 11-08**

“KYOSH does not have a written procedure for the review and approval of Petition for Modification of Abatement (PMA) requests made by employers.”

## **OSHA Recommendation 11-08**

“KYOSH should adopt the federal OSHA PMA procedure or implement a written procedure that is as effective as the federal OSHA policy, to include the requirements contained in §1903.14a(b)(1)-(5).”

### **State Response**

On page nineteen (19) of the FAME report, OSHA states:

“KYOSH does not have a written procedure for abatement verification nor is it addressed in the Field Operations Manual.”

OSHA fails to mention that Kentucky has an administrative regulation, 803 KAR 2:122, that specifically addresses the issue and is nearly identical to 29 Code of Federal Regulations (CFR) 1903.14.

Both 803 KAR 2:122 and 29 CFR 1903.14a(b)(1)-(5) establish requirements for the written extension of abatement application as well as other requirements. Neither 803 KAR 2:122 nor 29 CFR 1903.14 requires a written procedure.

Page nineteen (19) continues:

“KYOSH does not have a procedure for the review and approval of Petition for Modification of Abatement requests made by employers. A procedure that is equivalent to the federal procedure should be implemented to include the requirements contained in §1903.14a(b)(1)-(5). The KYOSH program was typically granting or approving the PMA on the same day or the day after the request was filed. They do not require the employer to provide interim protective measures in writing. They do not have a waiting period to review and approve the request nor did they utilize interim letters to inform the employer of the status and approval of their requests. For example, they did not use any letters notifying the requestor that their request was not adequate, nor did they utilize the letter indicating that the request was under review and when the request would be potentially approved.”

Kentucky is puzzled by the language in this statement. OSHA states Kentucky does not have a procedure for review in the first sentence above then states in the third sentence that Kentucky “was typically granting or approving the PMA on the same day or the day after the request was filed.” OSHA’s statement is contradictory. Kentucky has a procedure for review. The compliance supervisor, Program Managers or Director of OSH Compliance review all requests for extension of abatement. Supervisors are very familiar with the case and report the employer’s request and a recommendation to the Program Manager(s) and/or Director of OSH Compliance.

OSHA states that Kentucky does not have a waiting period to review and approve the PMA request. Kentucky does not understand if OSHA’s point is a concern or a positive observation. Division of OSH Compliance staff, either the Supervisor(s), or Program Manager(s), and/or the

Director of OSH Compliance, can act quickly because they are very familiar with the case. The Division of OSH Compliance is proud of its ability to immediately address an employer's request.

Subsequent to OSHA's evaluation, Kentucky undertook a review of its extension of abatement procedures. Kentucky is making modifications of its extension of abatement procedures to better align with 803 KAR 2:120.

#### **OSHA Finding 11-09**

"Fifty (50) percent of the 19 inspection case files reviewed, where the site employees were represented by a collective bargaining agent, did not include evidence that the Union was contacted and/or provided the opportunity to be involved in the inspection."

#### **OSHA Recommendation 11-09**

"KYOSH should ensure that training to appropriate personnel is reemphasized to include the documentation of union involvement. Supervisors should review case files more carefully to ensure this information is documented on the appropriate forms in the case file."

#### **State Response**

Kentucky is very confident that all inspections involved the union where the site employees were represented by a collective bargaining agent. Kentucky notes that OSHA's finding and recommendation does not assert the Kentucky OSH Program did not involve the union. As OSHA states in the finding, the concern is the case file documentation of union involvement.

Kentucky believes OSHA's claim that fifty (50) percent of Kentucky's case files did not include the documentation may be inaccurate and inflated due to OSHA's accounting method. Nevertheless, Kentucky will emphasize improved documentation to all staff.

Additionally, the Kentucky OSH Program is developing a customized information system that will replace OSHA's IMIS. Kentucky expects the new system will be implemented by the end of 2012. The Division of OSH Compliance anticipates the new system will improve the documentation of union involvement.

#### **OSHA Finding 11-010 (formerly 10-02)**

"KYOSH still has not completed a side-by-side comparison of the Kentucky Field Operations Manual (FOM) and the federal OSHA FOM."

#### **OSHA Recommendation 11-010 (formerly 10-02)**

"KYOSH must either adopt the Federal FOM or complete the revision/development and implementation of the KYOSH FOM. This comparison must be submitted to the federal OSHA Atlanta Regional Office."

**State Response**

Kentucky submitted a side-by-side comparison of its FOM and OSHA's FOM to the Atlanta Regional Office. Kentucky considers this issue closed.

**OSHA Finding 11-11**

"A telephone log was implemented and it does appear that the investigator made an effort to utilize the log however the logs were not found in each of the files and upon review, it seems as if not all pertinent communications were actually being recorded; the number of entries seemed minimal and did not reflect all contacts."

**OSHA Recommendation 11-11**

"The investigator should record all pertinent communications between him/herself and the complainant, respondent, or other witness. This is in addition to maintaining all e-mail communications between the aforementioned parties."

**State Response**

Kentucky's discrimination investigators will continue, and strive to improve, their use of the telephone log.

**OSHA Finding 11-12**

"Safety and Health Achievement and Recognition (SHARP) certificates are being issued to large employers (>500 employees)."

**OSHA Recommendation 11-12**

"KYOSH should limit admittance into SHARP to those worksites (employers) with less than 250 employees at the site and less than 500 employees company-wide as indicated in the CSP 02-00-002: Consultation Policies and Procedures Manual (CPPM), which was adopted by the State in 2008."

**State Response**

Kentucky reviewed the SHARP applicants in accordance with CSP 02-00-002, "Consultation Policies and Procedures Manual," and the February 2012 memorandum from Ms. Lee Anne Jillings to Regional Administrators. The memorandum was also provided to the state plans. The memorandum states:

".... A company that does not fall within the size requirements established under the prioritization structure may be considered for SHARP status, but the On-site Consultation Project must seek approval from its Regional Administrator (RA) or State Designee to proceed with evaluation the company for participation in SHARP. ..."

The memorandum continues:

“The RA or State Designee will use this information in making their decision regarding the On-site Consultation Project’s proceeding with the request for SHARP participation.”

Kentucky’s state designee, Secretary Mark S. Brown, approved all SHARP participants in the Kentucky OSH Program’s Division of Education and Training, regardless of size. Kentucky considers this issue closed.

### **OSHA Finding 11-13**

“Reports from KYOSH On-site Consultation visits are issued an average of 84.3 days after the closing conference, which exceeds the goal of 20 days established in the CPPM.”

### **OSHA Recommendation 11-13**

“The KYOSH On-site Consultation Program should continue to identify factors affecting the timely issuance of the reports and develop a tracking mechanism to ensure reports are issued not later than 20 days. The tracking mechanism should track the lapse times of the Consultants, and discussions should be held with them to determine the reason(s) for the report being late. This should be documented in a diary sheet or log in the case file.”

### **State Response**

Kentucky is puzzled by some portions of the FAME report related to this recommendation as well as language in this recommendation. Page twenty-nine (29) of the FAME report states:

“Although projected activities are being met and customers have not complained, the lapse time **should be tracked** to ensure that the KYOSH Consultation Program provides it service to employers in a timely manner.” [Emphasis added.]

The recommendation states:

“...should continue to identify factors affecting the timely issuance of the reports and **develop a tracking mechanism** to ensure...” [Emphasis added.]

The Division of Education and Training developed a tracking program approximately three (3) years ago that tracks lapse time. Utilization of the software allows the Division to continually monitor and subsequently identify, evaluate, and discuss with staff the factors affecting issuance of reports. Kentucky also notes that a tracking mechanism will not *ensure* reports are issued no later than twenty (20) days. Although a tracking mechanism is a useful tool, it is simply that -- an administrative tool that *monitors*. It does not expedite the process or issue reports.

Division of Education and Training staff can access Kentucky’s tracking mechanism anytime. Kentucky does not believe a diary sheet or log is necessary.

Kentucky is pleased to report that from October 2011 to date, the Division of Education and Training has decreased the average number of days from closing conference to issuance of the

report to 26.23 days. Kentucky considers this an outstanding accomplishment particularly in light of the vast array of cost-free services the Division of Education and Training provides to the employers and employees of the Commonwealth. All services, including traditional “brick and mortar” offerings as well as the newly launched and extremely popular on-line services provided at [www.laborcabinetetrain.ky.gov](http://www.laborcabinetetrain.ky.gov), are accomplished in-house. The Division performs all the work, including development, production, broadcast, etc., with no outside contracting being utilized.