

**FEDERAL ANNUAL MONITORING EVALUATION (FAME) REPORT
ON THE
KENTUCKY OCCUPATIONAL SAFETY AND HEALTH PROGRAM**

DESIGNATED STATE AGENCY:

**KENTUCKY LABOR CABINET
DIVISION OF OCCUPATIONAL SAFETY AND HEALTH**

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**U.S. DEPARTMENT OF LABOR
OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION
REGION IV, ATLANTA**

**Division of Occupational Safety and Health
FY 2011 FAME Report**

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FY 2011 FAME Report

1. Executive Summary

A. Summary of the Report

The fiscal year (FY) 2011 Kentucky FAME resulted in a comprehensive FAME report that focused on the State's overall performance in their enforcement and cooperative programs, compliance assistance activities, as well as the state's progress in achieving the recommendations resulting from the earlier Enhanced FAME (EFAME) reports. This report is also based on the results of quarterly onsite monitoring visits, the State Office Annual Report (SOAR) for FY 2011, the State Activity Mandated Measures (SAMM) Report, as well as the State Indicator Report (SIR) ending September 30, 2011.

Additionally, during this process stakeholder interviews were conducted with representatives from industry groups, labor unions and professional organizations. During the FY 2009 EFAME process stakeholder interviews were conducted with several members of the State's industry groups, labor unions and professional organizations. Overall the stakeholders voiced confidence in Kentucky's ability to perform its occupational safety and health mandated activities.

This report also contains a total of ten (10) findings and recommendations including two items identified in the FY 2009 report and one item carried over from the FY 2010 follow-up report. A detailed account of the findings and recommendations are discussed in the report.

B. Introduction

The Kentucky Safety and Health Program (KYOSH) was established by the Kentucky General Assembly in 1972. The Kentucky State Plan was approved by federal OSHA in 1973. The KYOSH 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 KYOSH 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. KYOSH'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 KYOSH's standards. The Division of Education and Training assists employers and employees by promoting voluntary compliance with the KYOSH 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 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 KYOSH Program and OSH Standards Board, promulgate KYOSH regulations, respond to OSHA inquiries, and provide interpretations of KYOSH standards and regulations. This office is responsible for maintaining the KYOSH 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, Occupational Safety and Health Administration (OSHA), Bureau of Labor Statistics (BLS), and other state OSHA programs.

Kentucky's primary objective is to improve occupational safety and health in workplaces throughout the state. The total population of private and public sector workers covered by the Kentucky Plan is approximately 1,769,500 and 107,198 establishments. This includes approximately 6,065 public sector employers. The program services are administered through a central office in Frankfort.

Employee protection from discrimination related to occupational safety and health [KRS 338.121] is administered by KYOSH through the central office in Frankfort. There is a total of one investigator who reports to the Director of OSH Compliance. 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 Voluntary Protection Programs (VPP), Construction Partnership

Program (CPP), Safety and Health Achievement Recognition Program (SHARP), OSHA Strategic Partnership (OSP), and Safety Partnership Program (SPP), focused on reducing injury and illness.

C. Data & Methodology

This report was prepared under the direction of Cindy A. Coe, Regional Administrator, Region IV, Atlanta, Georgia, and covers the period from October 1, 2010 through September 30, 2011. The Kentucky State Plan is administered by the Kentucky Labor Cabinet, Department of Workplace Standards, Occupational Safety and Health Program under the direction of Michael L. Dixon, Commissioner. This is OSHA's report on the operation and performance of the KYOSH Program. It was compiled using information gained from Kentucky's SOAR for FY 2011, interviews with the Kentucky staff, interviews of stakeholders, IMIS reports, and the SAMM and SIR reports for FY 2011. On site monitoring for this evaluation included case file reviews, formal interviews with KYOSH staff, and interviews with stakeholders. Information obtained during routine monitoring of the Kentucky program by Federal OSHA's Regional and Area Offices was also used as a basis for this evaluation.

For this evaluation, a total of 98 inspection case files were reviewed, which included 10 complaint investigation files (non-formal) and 15 fatality investigation files and the remainder were a random selection of files selected from the following categories: programmed general industry safety; programmed construction safety; referrals; and complaint inspections. It is noted that KYOSH did not conduct any programmed health inspections during this review period due to the high number (124 of 227) of health complaints that were received and inspected. The number of cases reviewed was a small percentage of the 1,054 inspections conducted in FY 2011, but is believed to provide an accurate picture of the enforcement program throughout the State, when coupled with interviews and a review of procedures and data. Data associated with the case files reviewed was representative of data for all inspections. A comparison of Integrated Management Information System (IMIS) data for fiscal years 2008 through 2011 did not indicate any notable variations.

D. Finding and Recommendations

The FY 2010 Enhanced FAME (EFAME) follow-up report contained eight findings and recommendations. Region IV and KYOSH reached agreement on corrective action for all but one of the recommendations from the FY 2009 EFAME. During this evaluation period six new recommendations were established, with two of those being reoccurrences from the FY 2009 EFAME. The specific recommendations are as follows:

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.

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.

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.

Recommendation 11-02A: 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.

Recommendation 11-02B: 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.

Finding 11-03 (10-03): KYOSH conducts inspections for all formalized complaints regardless of the nature of the hazard(s).

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.

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.

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.

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.

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.

Finding 11-06: KY OSH did not conduct any programmed planned health inspections during this evaluation period.

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.

Finding 11-07 (formerly 10-06): KY OSH has a significantly higher citation issuance lapse time for than federal OSHA.

Recommendation 11-07 (formerly 10-06): KY OSH should develop and implement effective strategies to reduce its safety and health citation issuance lapse time.

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.

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).

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.

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.

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.

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.

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.

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.

Finding 11-12: Safety and Health Achievement and Recognition (SHARP) certificates are being issued to large employers (>500 employees).

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.

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.

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.

II. Major New Issues

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

III. State Response to FY 2010 FAME Recommendations

The FY 2010 FAME follow-up report contained eight findings and recommendations and one of these recommendations remains unresolved.

The State evaluated, analyzed, and determined the cause of the high in-compliance rate for programmed construction inspections and implemented strategies to reduce the rate. According to the FY 2011 SIR, 85.7% of programmed safety inspections in construction had violations. This was a significant improvement from FY 2010 when only 15% had violations.

Adoption of the federal OSHA FOM or completion of a side-by-side comparison with the federal FOM was recommended to the State. The State is currently in the process of revising their FOM and fully addressing this recommendation. The State has only indicated that they are working on it and it will be completed in the future.

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.

OSHA recommended that settlement agreements include employer commitments and justification for penalty reductions and/or modifications to citations. KYOSH informed OSHA that the Division of OSH Compliance was working with the Labor Cabinet's Office of General Counsel to develop a procedure that will address this recommendation for formal settlement agreements. Additionally, Kentucky developed and implemented an informal settlement agreement form to document any employer's commitments.

It was recommended that the KYOSH evaluate and determine the cause of the high in-compliance rate for general industry programmed inspections. In response to this matter, they evaluated the data and determined several causes that may be contributing to the high in-compliance rate of programmed inspections. As a result, they have identified another source of data that they feel is more reliable to supplement the current targeting system. This should have an impact on the in-compliance rate for programmed general industry inspections. This recommendation has been implemented.

Federal OSHA recommended that the KYOSH Program evaluate and determine the cause of the high citation lapse time for safety and health inspections. KY OSH has implemented tracking tools including IMIS reports as well as internal reports have been implemented to closely monitor case file completion and citation lapse time. Managers and supervisors are closely monitoring workloads and case file completion in an effort to reduce lapse time. Little progress was made in reducing the lapse time for safety while the lapse time for health increased. The citation lapse time for safety and health inspections remains significantly higher than the federal program.

When a Whistleblower case is settled between the parties and a KYOSH settlement agreement is not used, it was recommended that investigators should obtain a copy of the agreement for the file. It was also recommended that the State develop guidelines to review and approve all settlement agreements to ensure that the complainant's rights are protected. During the current onsite evaluation, the follow-up to the Whistleblower discrimination findings and recommendations revealed that this recommendation has been fully implemented. Files reviewed contained copies of settlement agreements and interviews supported that the agreements are being reviewed by the Office of General Counsel to assure the complainant's rights are protected. Additionally, there were several agreements being reviewed by the Office of General Counsel at the time of this evaluation.

OSHA recommended that KYOSH develop and implement a formal program for conducting periodic internal evaluations. An Internal Quality Assurance Program was developed and implemented in 2010 by the Division of OSH Education and Training for the On-Site Consultation Program, as required. Additionally, the Division of OSH Compliance has completed the development of their Internal Quality Assurance Program which essentially mirrors the federal auditing program with minor changes that are State specific.

IV. Assessment of State Performance

A. Enforcement Program

As previously stated, a total of 98 inspection case files were reviewed, which included 10 complaint investigation files (non-formal), 15 fatality investigation files. This was a small percentage of the 1,054 inspections conducted in FY 2011, but is believed to provide an accurate picture of the enforcement program throughout the state, when coupled with interviews and a review of procedures and data.

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 facie 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.

As a follow-up to Recommendation 09-13 in the FY 2009 Enhanced FAME Report, IMIS reports were run using earliest date on system to current date, cases appear dating back to the early 1990's. The State is not updating the IMIS with data required for the tracking and closure of cases. Failure to enter and update data could result in inaccurate reports and possibly inhibit the State's ability to efficiently manage the enforcement program. To resolve this problem, the Regional Office in Atlanta coordinated IMIS training with the State and following the training, a significant data entry initiative was completed resulting in many files being closed; however, there are still a significant number of older open cases in the IMIS system. The number of cases with open abatement was reduced from 546 to 209. The IMIS data needs to be cleaned up and older cases closed to prevent problems when the data is migrated to the new OSHA Information System (OIS).

Findings and Recommendations

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.

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.

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.

Recommendation 11-02A: 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.

1. Complaints

KYOSH's procedures for handling complaints alleging unsafe or unhealthful working conditions are very similar to those of federal OSHA. These procedures are covered in KYOSH FOM, Chapter IX (10/01/2001) – Complaint and Referral Policies and Procedures. In accordance with state law [803 KAR 2:090 Section 1(2)], 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. Inspection data indicates that KYOSH handled 411 complaints and conducted 227 complaint inspections in 2011. According to the SAMM report, KYOSH responds timely to complaint inspections by initiating inspections within an average of 9.41 days from time of receipt. This is an improvement over the average of 18.29 days to initiate inspections in FY 2010. However, it is still longer than the federal goal of 5 days. The SAMM report shows that complaint investigations (non-formals) were initiated within an average of 12.10 days from the time of receipt, which is more than twice as long as KYOSH's goal of 5 days and significantly longer than the FY 2010 average of 6.85 days. However, this data regarding initiation of complaint investigations is inaccurate and is a result of the lack of data entry for actions related to processing complaints, specifically, the entry of dates for when correspondence, such as the OSHA-7, is sent for signature to formalize the complaint and when it is received

back from the employee. In response to this same finding and related Recommendation 09-05 in the FY 2009 EFAME report, KYOSH stated “*OSHA’s Region 4 office provided IMIS training in April 2010 to the KYOSH 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.*”

KYOSH has an established complaint intake procedure with complaints transferred to an available safety or health Compliance Program Manager or supervisor depending on the nature of the complaint. The State places emphasis on customer service and assuring that each complaint is given attention consistent with the complaint directive and the severity of the alleged hazards. Current employees are always provided the opportunity to formalize their complaint. As a result, KYOSH inspects a relatively high percentage of complaints that have been formalized with the signature of a current employee. The source of the complaint, with those from a current employee having priority, and the severity of the alleged hazards, are primary considerations for program managers when they decide whether to handle the complaint by letter or by inspection. In accordance with state law [803 KAR 2:090 Section 1(2)], inspections are always conducted for formalized complaints regardless of the nature of the alleged hazard. This has resulted in a significant number of in-compliance inspections and inspections with only non-serious violations. 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. Additionally, in those cases when the State responded to complaints late, it was due to a lack of available resources to conduct the inspections. The State has a tracking mechanism (Complaint Database) for tracking complaints to assure they are evaluated by a supervisor/manager and that they are responded to timely.

This evaluation included reviews of ten complaint investigation files (those complaints handled by letter, or KYOSH’s phone and fax procedure) and 23 complaint inspection files. Several standard IMIS reports of complaint activity were also reviewed; however the IMIS is not updated accurately and consistently with complaint related actions. A review of the IMIS reports showed that approximately 96 of 227 or 42.3 % of their complaint inspections were in-compliance. A review of complaint inspection files revealed that each allegation was thoroughly investigated; however generic response letters only informed the complainant that an inspection had been conducted and citations were or were not issued. A copy of the citation is provided with this letter. The complainants were not made aware of specific official findings. This was particularly an issue when

the inspection was in-compliance or when citations related to the complaint items were not issued. There is no avenue to inform the complainant about inspection findings related to their complaint items. In response to this same finding and related recommendation 09-05, KYOSH's response stated *"In response to this recommendation, 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."* Even though, the State indicated that a revised procedure is in place and a new letter had been drafted, the complainant is still not provided with a response to the complaint items. It was noted that the electronic complaints filed on OSHA's E-mail Complaint System are now being coded as an electronic complaint ensuring that all complaints in the system have been addressed.

Findings and Recommendations

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.

Recommendation 11-02B: 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.

Finding 11-03 (10-03): KYOSH conducts inspections for all formalized complaints regardless of the nature of the hazard(s).

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.

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.

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.

2. Fatalities

In FY 2011, KYOSH investigated 81 workplace accidents, of which 29 were workplace fatalities, four more than in FY 2010. In FY 2011, both construction and general industry deaths increased and public sector deaths decreased by one. KYOSH'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. During this evaluation 15 of the FY 2011 fatality investigation files were comprehensively reviewed. An additional three fatality investigation files were reviewed for NOK information.

	FY 2010	FY 2011
Total Fatalities	25	29
Construction	4	8
General Industry	18	19
Public Sector	3	2

KYOSH has implemented procedures to assure the quality of fatality investigations. A supervisor and a program manager work closely with the CSHO during case file preparation to assure that the case documentation is legally sufficient. The KY OSH Legal Department provides assistance, when requested. Fatality investigations are reviewed by at least three levels of management including the Supervisor, Compliance Program Manager, and the Director of OSH Compliance. Depending on the circumstances, an additional review may be conducted by a staff attorney. The determination must be signed by the Director of OSH Compliance before issuance. The KYOSH Director of OSH Compliance reviews and approves all citations involving fatalities. Informal settlement agreements related to fatality cases also receive a higher level of review and approval.

No major problems were noted in the fatality investigation files reviewed. The fatality investigations were the best files that were reviewed to include a couple that were exceptional. Files included sufficient documentation that supported the violations cited and the cause of the accident was clearly explained. All of the fatality files contained very detailed narratives providing a clear picture of the accident and the process involved in reaching a conclusion. Although the citations were well documented, the files did not include signed statements. Nine or 31% of the cases reviewed were in-compliance or did not have fatality related violations. These cases where there were no violations or no fatality related violations were well documented with the reasons for them being in-compliance. The review, of the in-compliance case files, did not identify any cases where there appeared to be a violation that may be related to the fatality. For citations that were resolved by means of an informal settlement agreement (ISA), the percent of penalty reduction was low and very few violations were deleted or reclassified. Settlement agreements contained employer commitments and justifications for changes or penalty reductions. Practically all of the fatality investigations involved partial inspections, rather than a comprehensive inspection.

KYOSH has a longstanding procedure for communication with family members of deceased workers. The CSHO is required to contact the NOK by phone and inform the family of the investigation, provide contact information for the CSHO and KYOSH office. A follow-up letter is sent after the CSHO makes contact via

phone. When the investigation is complete, the Director of OSH Compliance sends the NOK a letter with the investigation findings and a copy of the citations that were issued, if any. In addition, the Director of OSH Compliance sends the NOK a letter informing the family of any settlement as a result of an informal conference. If the citation(s) is contested, the attorney will notify the NOK of the contest and the results of the litigation.

During this evaluation, the communication with NOK was audited. Of the 18 fatality files reviewed, it was observed that approximately half of the files were missing one or more of the required communications with the next of kin. Some of the files did not contain evidence in the case file to determine if the NOK was called by the compliance officer, some did not indicate the initial letter was sent to the NOK, some did not indicate the final (findings) letter was sent to the NOK, and some did not indicate whether or not the NOK was informed of settlements, contests, or litigation results. Below are only the results from the case files reviewed:

NOK Communication	
Call from CSHO not conducted and/or documented in the file	4 out of 18 files reviewed
Initial letter not sent and/or documented in the file	6 out of 18 files reviewed
Final letter with findings not sent and/or documented in the file	10 out of 18 files reviewed
NOK not informed of settlements, contests, or litigation results or it was not documented.	13 out of 13 files reviewed*

**Only 13 of the reviewed fatality investigation files had an informal conference, contest, or litigation.*

In response to this same finding and related Recommendation 09-06, KYOSH’s response stated in part *“In response to this recommendation, KYOSH clearly sends written correspondence to the next of kin with information regarding the investigation. The follow-up letter to the NOK, signed by the compliance officer, explains the inspection process and provides the officer’s contact information.”* In their response to Recommendation 09-07, KYOSH’s response stated in part *“In response to this recommendation, the Division of OSH Compliance now sends a letter to the NOK who desire to be informed advising them of informal conferences and any changes in the citations as a result of an informal conference settlement.”* It is recommended that KYOSH develop and implement a tracking system to ensure that all communications with all NOK are completed including but not limited to written correspondence informing them and providing them information regarding the investigation at the onset of the investigation, a letter informing them of the results of the investigation at the conclusion of the investigation, and a letter informing them 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.

Findings and Recommendations

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 sent to the next-of-kin.

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.

3. Targeting Inspections

KYOSH conducted a total of 1,054 inspections in FY 2011, of which 151 were construction and general industry programmed. It was noted that no programmed health inspections were conducted during this period. Management officials attributed this to the high number (124 of 227) of formal health complaints and referrals (related to lead and asbestos) that were received and inspected. KY OSH should develop and implement an effective strategy to ensure that programmed health inspections are conducted in the high hazard health industries. According to the SIR, 20.8 % of programmed safety inspections had violations. Additional data indicates that an average of 3.2 violations was cited per inspection, and that 41.5 % (safety) of the violations were classified as serious, 1.5 % repeat, and 0.8 % willful.

KYOSH has a variety of special emphasis programs (SEP), some of which are associated with their strategic goals, and some of which are National Emphasis Programs. The state did not adopt the federal OSHA Site-Specific Targeting (SST) procedures. The Kentucky Occupational Safety and Health Program established a state site-specific targeting program known as the Targeted Outreach Program (TOP), which utilizes the OSHA Data Initiative survey results. In FY 2011 KYOSH were considering additional data resources to supplement the TOP targeting system in response to the high in-compliance rate for programmed general industry inspections. This resource will provide reliable information and should impact the in-compliance rate. Additionally, KYOSH has a state law [803 Kentucky Administrative Regulation (KAR) 2:180] requiring Kentucky employers to report any work-related incident resulting in the in-patient hospitalization of one or two employees. The reporting requirement is limited to hospitalizations that occur within 72 hours of the incident. Employers are also required to report all amputations suffered by an employee from any work-related

incident. Hospitalizations of one or two employees and all amputations must also be reported to the Division of OSH Compliance within 72 hours of the time the incident is reported to the employer, his agent, or another employee. The Division of OSH Compliance has implemented a scheduling system to prioritize inspections of reported accidents and amputations.

KYOSH conducts programmed inspections in the construction sector, particularly under their local emphasis program (LEP) for residential construction fall protection and the Dodge system. These are associated with their strategic goal to reduce injuries caused by falls. Many programmed construction inspections are partial in scope due to the local emphasis program for residential fall protection activities. According to the SIR, 85.7% of programmed safety inspections in construction had violations. This was a significant improvement from FY 2010 when only 15% has violations.

Kentucky State Law [KRS 338 “Occupational Safety and Health of Employees”] establishes definitions for employer and employee which do not exclude public employers and employees. The exclusions to KRS Chapter 338 cover only employees of the United States government and places of employment over which federal agencies other than OSHA have exercised statutory authority. Therefore, 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 2011, the Division of OSH Compliance conducted 151 programmed inspections including programmed inspections of public sector work sites.

Finding and Recommendation

Finding 11-06: KY OSH did not conduct any programmed planned health inspections during this evaluation period.

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.

4. Citations and Penalties

In fiscal year 2011, the 1,054 inspections conducted resulted in an average of 2.5 violations per inspection, with 65% of violations (68.5% safety violations and 56.9% of health) were classified as serious. The average initial penalty per serious violation for private sector inspections was \$2,960 compared to an average of \$1,680 for national data. In 2011, the average lapse time from opening conference to citation issuance was 58.2 days for safety and 80 days for health. This is above the national rate of 43.2 days for safety and significantly above the

54.8 days for health. The State has placed emphasis on citation lapse time however they still remain significantly higher than the federal program. They implemented tracking tools to monitor lapse time and supervisors and managers are closely monitoring inspection and case file completion in an effort to reduce the number of days from the opening of the inspection to citation issuance

In FY 2011, the average lapse time from opening conference to citation issuance is identified below:

Average Lapse Time	KYOSH	National
Safety	58.2 days	43.2 days
Health	80.0 days	54.8 days
Total Average	69.1 days	49.0 days

The case files reviewed included adequate documentation to support the violations with a few exceptions. Signed interview statements are lacking in the files however many contained interview notes. Photographs supporting the violations are placed in the files and all inspection photos are maintained in the files until they are scanned when the case file is closed. Photos are maintained in a separate database when the files are scanned due to the amount of space they occupy. Supervisors indicated that they do review each case file before citations are issued, or prior to closing for in-compliance cases, and they look at the photographs during their review. Inspection case files reviewed demonstrated very good employer knowledge and exposure, and were well documented overall.

KYOSH issued twenty-four willful violations in 2011. The average penalty issued/received for the willful violations is \$18,760 compared to an average penalty of \$39,886 for willful violations issued by federal OSHA. A review of procedures and discussions with state compliance personnel found that procedures for determining willfulness are the same as those for federal OSHA. Management indicated that they are more than willing to pursue willful violations when the CSHOs and supervisors identify them. The legal department is also willing to support them.

KYOSH has procedures for receipt of payments and handling past due penalties. Final contest dates have not been entered into the IMIS therefore IMIS reports cannot be used to track penalty payment and debt collection. Data entry and IMIS issues are addressed in the Enforcement Program section of this report. Compliance program managers manually go through open files every two to three weeks to identify cases where payments have not been received. IMIS generated reports should also be utilized to track cases with penalties due. An internal letter is sent, giving the employer ten days to submit payment. The letters that are sent are maintained in the file however, the IMIS is not updated to document this action. KYOSH processes payments and sends past due penalties to the Legal

Department. Once it is sent to legal, they have no further involvement. A review of the database maintained by the Office of General Counsel showed that there were cases that were referred to them for collection more than six months late. State law prohibits late fees and interest being applied to late payments.

Finding and Recommendation

Finding 11-07: KY OSH has a significantly higher citation issuance lapse time for than federal OSHA.

Recommendation 11-07: KY OSH should develop and implement effective strategies to reduce its safety and health citation issuance lapse time.

5. Abatement

Case files, written procedures, and inspection data reviewed indicate that KYOSH obtains adequate and timely abatement information and has processes in place to track employers who are late in providing abatement information. KYOSH does not have a written procedure for abatement verification nor is it addressed in the Field Operations Manual. Currently, one of the Program Managers uses IMIS abatement tracking reports as well as manually looking at files to identify if abatements are due. The other Program Manager manually looks at open files and identifies abatements that are due and have not been received. The program managers discuss the file with the supervisors and determine if they are going to send an abatement dunning letter or conduct a follow-up inspection. If a dunning letter is sent and the employer fails to respond, a follow-up is conducted. In response to the Recommendation 09-12 following the FY 2009 EFAME, KYOSH responded in part *“Program Managers in the Division of OSH Compliance review their respective abatements monthly or bi-weekly depending on the program.”* The pertinent portion of this recommendation was implemented after the IMIS training was provided by Region 4 and prior to the issuance of the EFAME report. Program Managers now review the IMIS Violation Abatement Report on a weekly basis to determine which case files can be closed, employer contact, a dunning letter, or a follow-up inspection. A review of IMIS Abatement Reports showed that there are 209 cases, which include 197 safety and 12 health case files, with open abatement from 1991 through 2011. This is significantly less than the 546 cases with open abatements during the FY 2009 EFAME evaluation. The reports showed that data is not being entered into IMIS so that reports can be used to track abatement.

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.

Finding and Recommendation

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.

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).

6. Employee and Union Involvement

Kentucky’s procedures for employee and union involvement are identical to those of federal OSHA. Case files reviewed identified that the union was not involved in some aspect of the inspection process in approximately 50% of the 19 inspections files involving union employers or at least it was not documented in the file. The chart below shows the areas where the lack of Union involvement was identified in the cases reviewed.

Evidence Union Participation	
Union <u>not</u> involved in the opening conference and/or walk-around portion	5
Union <u>not</u> involved in the closing conference	5
Union <u>not</u> provided with a copy of the citation	9
Union <u>not</u> involved in the informal conference	5

Finding and Recommendation

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.

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.

B. Review Procedures

1. Informal Conferences

Kentucky has procedures in place for conducting informal conferences and proposing informal settlement agreements (ISA). These procedures appear to be followed consistently by all managers and supervisors. According to the SIR, 3.8% of violations were vacated and 1.0% of violations were reclassified as a result of ISAs and the penalty retention rate was 62%. Case files reviewed had similar results, with very few violations noted as being vacated or reclassified. There were no issues with penalty reductions. Where there were vacated or reclassified violations, or a larger penalty reduction, the files normally contained an explanation for the change. Supervisors are required to prepare an Informal Conference memo documenting the meeting with the employer and their recommendations for settlement. Supervisors are required to discuss all changes and penalty reductions with the compliance program managers and get their approval for the settlement. The Program Managers sign the settlement memo that is provided to the employer. It was also noted the case files contain a copy of the settlement document and there was no indication that the affected parties were being informed of the changes resulting from the informal conference. Manager and supervisor interviews confirmed that employer commitments are being included in settlement documents and required for certain cases involving larger penalty reductions.

2. Formal Conferences

In FY 2011, 15.2% of inspections were contested. The Kentucky Occupational Safety and Health Review Commission conducts hearings and issues decisions on contested citations. The three members of the Review Commission are appointed by the Governor and administratively attached to the Labor Cabinet. First level contests are heard and ruled upon by hearing officers employed by the Kentucky Attorney General's office. The Kentucky Labor Cabinet Division of OSH Compliance has taken steps to reduce the lapse time between receipt of contest and first level decision, although that process is largely not within their control. The Office of General Counsel provides legal representation for KYOSH. The attorneys are housed within the same office as KYOSH in Frankfort. It is common for an attorney to work closely with the compliance staff during the preparation of fatalities and other high profile inspections. Compliance officers and supervisors stated that they have a good working relationship with the attorneys and they are knowledgeable of OSHA requirements and what is needed for a case to be legally

sufficient. No negative trends or problems with citation documentation have been noted.

C. Standards and Federal Program Change Adoption

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 this period, KYOSH adopted all of the required standards and federal program changes, with the exception of the revision to the FOM and the Compliance Guidance for Residential Construction. The Compliance Guidance for Residential Construction was not adopted due to the fact that KYOSH enforces its own specific residential fall protection standard and an emphasis program in place. Regarding the FOM, KYOSH has indicated that the side-by-side comparison between the federal and state FOM is still under development. The adoption and side-by-side comparison was due in FY 2010. The State is currently in the process of revising their FOM and is making progress towards completion. The process of revising the FOM was started following the FY 2009 EFAME evaluation. Currently, one Chapter (Chapter 6 – Penalty) has been revised with an additional 8 remaining. Three of the 8 remaining chapters are close to completion including Chapter 9 – Complaint Referral policies and procedures and Chapter 8 – Fatality and Catastrophe Investigations. A detailed listing of the federal standards and directives, which required action in FY 2011, is provided in the tables below:

1. Federal Standards Adoption

Standards Requiring Action	Federal Register Date	Adopted Identical	Date Promulgated
Standards Improvement Project, Phase III	06/08/2011	Yes	06/08/2011
Working Conditions in Shipyards - Final Rule	05/02/2011	Yes	05/10/2011

2. Federal Program / State Initiated Changes

Federal Program Changes Requiring Action and Federal Directive Number	Date of Directive	Adopted Identical	Date Adoption Date
Recordkeeping NEP - September 2010 Changes, CPL-02(10-06) 2011 401	09/28/2010	Yes	11/01/2010
PPE in Shipyard Employment, CPL-02-01-049 2011	11/04/2010	Yes	2/3/2012

Compliance Guidance for Residential Construction, STD -03-11-002 2011 403	12/16/2010	No	N/A
NEP Microwave Popcorn Processing Plants, CPL-03 (11-01) 2011 423	01/18/2011	Yes	05/01/2011
PPE in General Industry, CPL-02-01-050 2011 422	04/11/2011	Yes	05/01/2011
Revisions to Field Operations Manual - April 2011, CPL-02-00-150 2011 442	06/23/2011	No	N/A
NEP Primary Metals, CPL – 03-00-013 2011 444	07/25/2011	Yes	08/01/2011
Confined Spaces in Shipyards, CPL-02-01-051 2011	07/20/2011	Yes	08/01/2011
Commercial Diving Operations, CPL-02-00-051 2011	07/20/2011	Yes	09/01/2011

Finding and Recommendation

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.

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.

D. Variances

KYOSH currently has five permanent variances and there are no temporary variances. The five permanent variances were approved in: FY 1978, regarding electro-mechanical holding brakes on an overhead crane; FY 1979, regarding belts and pulleys on sewing machines; FY 1989, regarding a fixed ladder used for training by firefighters; FY 1982, regarding the use of a safety block for mechanical power presses; and FY 2007, regarding tackle utilized for boatswain's chains. The latter variance was a multi-state agreement, which was initially issued by federal OSHA and later adopted by Kentucky. This variance is addressed in detail in Federal Register, Volume 71, Number 40, pages 10557 through 10565. A detailed review of the variance case files revealed that adequate alternate protection was afforded to workers in each case. Kentucky shares variance

request with federal OSHA and a request its input prior to approving the variance. Additionally, all variances are properly documented and tracked by KYOSH. The KYOSH Program did not receive any variance requests during FY 2011 and no issues related to variances were identified.

E. Public Employee Program/ 23(g) Only Program

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.¹ According to the SAMM report, 4.23% of inspections were conducted in the public sector in FY 2011.

F. Discrimination Program (Follow-up Special Study)

The KYOSH Program is responsible for enforcing the 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.

A comprehensive review of Kentucky’s discrimination program was conducted during the FY 2009 EFAME study. Therefore, this evaluation was not a comprehensive review and only included a review of the recommendations from the FY 2009 EFAME report. There is no record of any audit of KY OSH’s discrimination program prior to the FY 2009 EFAME. The sole investigator is located in the central office in Frankfort. The program is supervised and managed by the Director of OSH Compliance.

According to the SAMM report, which uses cases closed during the fiscal year:

Meritorious Complaints		Merit Cases Settled	
FY 2011	13.64%	FY 2011	16.67 %
FY 2010	6.12%	FY 2010	33.3%
FY 2009	12.9 %	FY 2009	50.0%

¹ On September 5, 2012, the KY FAME Report was revised and the following sentence was deleted, “By state law, all public sector entities are required to be inspected at least every two years.” This revision was made in response to Kentucky’s Formal Response indicating that the statement was factually incorrect.

A total of five cases were selected for review. In addition several settlement agreements were reviewed. During FY 2011, KY OSH received 71 discrimination complaints and docketed 46 compared to 51 complaints in FY 2010. Thirty-eight of the allegations are closed, seven are currently being prosecuted by the Office of General Council, and one remains open. According to the SAMM report the average amount of time complete investigations was 108 days compared to 82.6 days in FY 2010 and 15(34.09%) of the investigations were timely completed compared to 31 (63.27%) in FY 2010. KY OSH has continued to work on improving their completion rate of discrimination investigations; however the State should continue to find ways to improve case management to ensure completion of all cases in a timely manner. For those cases over 90 days the State should require an explanation be documented in the case file and/or case file diary sheet. The status of these cases and the percentages of total cases they represent are presented below:

Status	Number of Cases	Percentage
Merit	7	15.2
Dismissed Non-Merit	26	56.5
Dismissed – Lack of Cooperation	9	19.6
Settlement	0	0
Withdrawal	1	2.2
Untimely Filed	4	8.7
Screened & Closed	26	56.5
Prosecution by Legal	7	15.2

KYOSH has a FOM that is basically the same as federal OSHA but includes some differences. The following are the three major differences between KYOSH and federal OSHA:

- KYOSH gives Complainants 120 days to file complaints vs. 30 days for Federal OSHA.
- KYOSH can issue civil penalties to Respondents up to \$10,000.00 when a merit finding is made.
- KYOSH provides protection for State and political subdivisions.

Case file reviews determined that all of the recommendations related to the discrimination program have been implemented however the deficiencies still remain. In regards to recommendation 09-15, Whistleblower Investigators should document all contacts related to the investigation in a telephone log, a 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. 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. Recommendation 09-16, stated that personal interviews be conducted when possible and that said interviews be memorialized in signed statement or in a memorandum to file. For the most part, it seemed that the Investigator was at least attempting communication with relevant witnesses. Several signed statements were identified however there were several unsigned statements as well. The Director of OSH Compliance indicated that this was probably a result of a phone interview. It was mentioned that in those cases, a memorandum to file may be a better option, as there would be no confusion as to why the witness did not sign the statement (i.e. they did not agree with the contents). It was also indicated that in some circumstances memorandums to file are a more efficient method. Recommendation 09-17 dealt with the contents of the Final Investigative Report (FIR). There was apparent improvement in how and to what extent the factual findings were addressed in the FIR. However, there could still be more time spent in the analysis portion, wherein the prima facie elements of a whistleblower complaint are considered (along with any proffered defenses). For example, whether each of the four prima facie elements (1) Protected Activity (2) Respondent Knowledge (3) Adverse Action (4) Causal Connection were met and if not the case can be closed at this point. If the elements are present then the burden shifting analysis should be applied and the respondent's proffered non-retaliatory reason for the adverse action must be considered. It is only at this point that the pretext question comes into play. By approaching the case with this methodology the process could be streamlined and cases dismissed at an earlier stage. This would not only ensure that the ultimate finding is supported by the available evidence, but it would help with the overall structure of the FIR. In addition to this consideration, it was suggested that the individual exhibits be numbered in order to allow the investigator to refer to specific exhibits in the findings. In regards to recommendation 09-18, that guidelines be developed to review and approve outside settlement agreements, was met. All settlement agreements are being reviewed by the Office of General Council to assure the complainant's rights are being protected and any chilling effect is being deterred. In fact there were several settlement agreements in the Office of General Council being reviewed at the time of this evaluation.

The investigator generally conducted personal interviews and onsite investigations and performed the necessary investigative steps. All complaints appeared to have been adequately investigated. Kentucky's program seems to parallel the federal OSHA program in that the investigator properly evaluated the elements of discrimination complaints and the appeal process functioned similarly. Complainants who disagree with the dismissal of their complaint may appeal the decision with the Commissioner of the the Department of Workforce Standards. Complainants who disagree with the response from the Commissioner have the opportunity to appeal that decision to the Secretary of the Labor Cabinet.

KY OSH's administration of the discrimination program is found to be overall effective. KY OSH conducts adequate investigations that are in accordance with statutory requirements and appropriate action taken by the Commissioner to evaluate the case upon appeal.

Findings and Recommendations

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.

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.

G. Complaint About State Plan Administration (CASPA)

During this period there were no CASPA's filed with the OSHA Area Office in Nashville, Tennessee regarding the Kentucky Occupational Safety and Health Program.

H. Voluntary Compliance Programs

KYOSH offers employers a wide range of cooperative programs, including Onsite Consultation, participation in the State's Voluntary Protection Programs (VPP), VPP for Construction (VPPC), Site-based Construction Partnerships, Associated-based Construction Partnerships, Training-based Partnerships, as well as the Safety and Health Achievement Recognition Program (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.

KYOSH developed written guidelines detailing the operation of its Partnership Program, which were formally submitted as a plan change. These agreements include Site-based, Associated-based, and Training-based Partnership Agreements. 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 0.85 or less; a requirement for the project owner to participate in the agreement; a comprehensive fall protection program triggered at 6 feet; and employers are limited to one partnership with the State at a time. During this evaluation period, Kentucky developed and implemented ten Site-based, two Associated-based, and one Training-based Partnerships. Additionally, during this period KYOSH was also engaged in two VPPC agreements. The VPPC Program in Kentucky is very similar to federal

OSHA's VPPC Program. The overall objective of both activities is the reduction of injuries, illnesses, and fatalities in the construction industry through increased employee involvement in workplace safety and health.

The Kentucky VPP was developed and implemented in 1997. In FY 2011, the program included ten participating worksites. 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. KYOSH 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. VPP in Kentucky has been enhanced since the last EFAME visit. The State has implemented procedures consistent with the federal OSHA memorandums for improvements to VPP. These changes include the development of a medical access request form and KYOSH does not permit sites to implement incentive programs that discourage accident reporting. Additionally, the federal OSHA monitors were assured by the State, a fatal accident at a VPP site would result in a follow-up visit. However, it should be noted that none of the State's VPP sites has experienced a fatal accident in numerous years. In addition to Site-based construction partnerships, the State also conducts Associated-based and Training-based agreement. KYOSH has been informed that a comprehensive internal monitoring system to audit all areas of the KYOSH Program, including VPP must be developed and fully implemented.

I. Public Sector On-site Consultation Program

During FY 2011 KYOSH conducted a total of 352 consultation visits in the private and public sectors. A total of 13 visits, just fewer than 4%, involved public sector employers. Additionally, five of these consultation visits were focused on safety and eight were focused on health. The State projected 17 public sector consultation visits (11 safety and 6 health), based on the FY 2011 23(g) Grant Application. Hazards identified during these visits were properly documented in the case files and all hazards were tracked to abatement.

J. Private Sector 23(g) On-site Consultation Program

This onsite review of the KYOSH 23(g) Consultation Program covered both the Private and Public On-site Consultation Programs. The Division of Education and Training assists employers and employees by promoting voluntary compliance with the KYOSH Program. KYOSH 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.

New consultants are accompanied by either their supervisor or senior consultants while in the field. Once supervisors have determined that the new hires have completed their

initial training period, they are allowed to conduct consultation services on their own. All personnel, including the Director, Assistant Director, Safety and Health Program Managers, Safety and Health Consultants, and Partnership Administrator have Individual Development Plans (IDP) prepared each year. All training is outlined for each person as part of the annual budget process. All consultants have attended at least two technical courses, either at the OSHA Training Institute if available, or locally. During the review, it was observed that the Program ensured that at least two or more consultants were provided with training on Safety and Health Management Systems; Hazard Analysis in the Chemical Processing Industry; and Advanced Process Safety Management.

Once a safety and health consultant has identified a good candidate for the Safety & Health Achievement Recognition Program (SHARP) this information is shared with the SHARP Administrator for KYOSH. The SHARP Administrator review BLS list of rates for the company explains the program and offers participation. During the FY 2011, the Program added four companies and renewed the participation of four companies in the program. The SHARP program was developed to assist small employers (< 250 at the site and < 500 for an entire corporation). Of the files reviewed, three large employers (>500 employees) were admitted into SHARP. KYOSH should limit admittance into SHARP to those worksites (employers) which are defined as small employers in the CSP 02-00-002: Consultation Policies and Procedures Manual (CPPM), which was adopted by the State in 2008.

Files were well-maintained, including IMIS forms, reports to the employer, abatement information, and field notes. Most of the safety and health files contained a copy of the employers' OSHA 300 logs, along with proper documentation in the files indicating a review/analysis of the injuries and/or illnesses.

Additionally, the Kentucky 23(g) Consultation Program's Internal Quality Assurance Program (IQAP) is designed to be at least as effective as the IQAP required for 21(d) funded Consultation Programs. The written IQAP was reviewed and found to contain all the required elements. IMIS reports and a review of case files revealed an average lapse time of 25.9 days from the time of the request to the opening conference. The KYOSH Program uses a Request Pending report to manage the lapse time within prescribed time frame. Additionally, the program director indicated that the lapse time (from request to opening conference) for safety consultants was 26.4 working days and the lapse time for health consultants was 25.4 working days. However, the average the lapse time obtained from the reviewed case files was 19.89 days. Additionally, based on the cases reviewed for this monitoring visit, the onsite reports were issued on average 84.3 (from closing conference to report issuance to the employer). 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.

On-Site Consultation Case Files Reviewed	
Comprehensive - Health and Safety	10

Partial - Health and Safety	5
Public Sector - Health and Safety	12
Health SHARP files	6
Safety SHARP files	6

Findings and Recommendations

Finding 11-12: Safety and Health Achievement and Recognition (SHARP) certificates are being issued to large employers (>500 employees).

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.

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.

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.

K. Program Administration

During the onsite monitoring visit interviews were conducted with several management representatives and staff members for the KYOSH Program, regarding its administration and management. Issues addressed during these interviews included the State funding, the compliance staffing benchmarks, employee training, as well as other fiscal concerns.

Training

As previously stated, the KYOSH Program adopted the federal directive TED 01-00-018, “Training Program for OSHA Compliance Personnel,” with minimal changes. In KYOSH, newly hired compliance and consultation personnel are registered in Learning Link for participation in the initial training courses conducted at the OSHA Training Institute (OTI). Additional courses are scheduled as dictated in the directive. Basic training is completed when the eight courses outlined in the directive are completed. After completing the OTI training courses compliance employees receive on-the-job training (OJT) and support from senior staff members. The whistleblower investigator has received the same training through OTI as the federal whistleblower investigators with the exception of the 1460 Course on the Federal Statutes which is not applicable to

the state's discrimination program. The investigator also attended and received training at the Whistleblower Conference in Orlando, Florida. Additionally, all of the State's consultation and compliance safety and health staff members, with the exception of newly hired employees, have been trained on the new cranes and derricks in construction final rule, as well as the enforcement guidelines for combustible dust. A total of 28 staff members in Kentucky have also been fully trained on the process safety management (PSM).

During their time as consultants-in-training, consultation staff members receive OJT, as well as classroom-style training. The training process concludes with the successful completion of five full service consultative surveys. These surveys are conducted under the direction and review of separate senior consultants. Once complete, the program manager will review the documentation detail below, as well as the consultant-in-training's related work output. If the work is satisfactory, then a recommendation for promotion to consultant will be made at the discretion of the program manager. Although, this process is self-paced normally trainees complete this process within a year.

Additionally, the KYOSH Program remains supportive of the career development and advancement of compliance and consultation personnel. The State pays for employees to take the certification preparation course and reimburses employees that successfully complete the certification exam. Employees that achieve professional certifications also receive a salary increase, range from 10 to 15 percent. In FY 2011, a total of 24 employees had certifications, compared with 11 employees in FY 2009. These certifications include the following: Associate Safety Professional (ASP); Certified Safety Professional (CSP); Certified Industrial Hygienist (CIH); Occupational Health Safety Technologist (OHST); and Construction Certified Health Safety Technician (CCHST). The State also rewards employees that obtain advance degrees. During this period, KYOSH employed a total of 15 employees with masters or advance degrees, compared with ten in FY 2009. Additionally, the State promotes the Certified Fundamentals Manager, as well as the Certified Public Manager (CPM) degree, which is offered by Kentucky State University in Frankfort, Kentucky. Employees that successfully complete the two-year CPM Program receive a five percent pay incentive.

Funding

All KYOSH executive branch merit and non-merit employees, including the Governor and all cabinet secretaries, were furloughed for five days in FY 2011. The five days included two state-wide furlough days, Friday, November 12, 2010, and Friday, May 27, 2011, as well as three other days selected by the cabinet (within a specific time frame). The KYOSH Program scheduled employee furloughs in a manner that ensured effective occupational safety and health coverage for Kentucky and minimized the adverse impact to the public. However, throughout this period, the KYOSH Program remained well-prepared to respond to fatalities, catastrophes, and imminent danger incidents.

Staffing

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.

Based on the SOAR, KYOSH is currently staffed with 23 safety officers and 14 industrial hygienist positions, which is the established benchmark level for the program. During this period, there were a total of 29 consultation staff members, including several dual-certified employees. Interviews with members of the programs management staff revealed that Kentucky is committed to maintaining its staffing at the established benchmark level.

Information Management

Following the FY 2009 EFAME, IMIS training was provided to the State by the OSHA Atlanta Regional Office. The training was beneficial and it resulted in significant improvements in the area of data entry. In fact, the number of cases with open abatement was reduced from 546 to 209. However, there are still a significant number of older open cases in the IMIS system and potential problems exist for the State during data migration to the new OSHA Information System (OIS). Specific IMIS concerns are addressed in detail in the enforcement section of this report in recommendations 11-02 and 11-03.

State Internal Evaluation Program

As previously mentioned, KYOSH has developed and implemented an Internal Quality Assurance Program, which currently conducts comprehensive audits of the Division of OSH Education and Training. The Internal Quality Assurance Program was modeled after Federal OSHA’s auditing program, with minor changes due to State specific issues. The State is currently working to expand coverage of the program to the Division of OSH Compliance and the first audit is projected for mid-FY 2012.

V. Assessment of State Progress in Achieving Annual Performance Goals

This section of the report represents the performance of the KYOSH Program during the first year of its Five-Year Strategic Plan, which covered the period from FY 2011 through FY 2015. The State also expanded the number of goals from 11 to 23. This report in conjunction with KYOSH’s SOAR provides detailed information on its progress toward the annual performance goal, as well as Kentucky’s performance in meeting its mandated activities. During this evaluation period, the State is on target to accomplish all of its goals, with the exception of those

identified as baselines by the State. 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: Reduce the rate for repeat, serious and willful violations in residential construction.

FY 2011 represented the baseline year for this goal in Kentucky. During this period, the Division of OSH Compliance issued four willful, ten repeat and 96 serious violations in residential construction.

Goal 1.2: Reduce amputations, hospitalizations and illnesses in general industry and construction.

The baseline established in FY 2011 included 151 hospitalizations, as well as 54 amputations.

Goal 1.3: Total number of employees removed from hazards through a multi-pronged strategy.

During FY 2011, represents a baseline year for this goal. This goal will enable Kentucky to measure and track its performance in responding to imminent danger situations, as well as reports of worker hospitalizations.

Goal 1.4: Ensure that employers are adhering to settlement provisions and have abated imminent danger and fatality violations.

In recent years, Kentucky received a CASPA regarding an employer's compliance with a settlement agreement reached with the State. This goal represents an attempt by the State to effectively address this area. During FY 2011, KYOSH conducted 29 follow-up inspections involving imminent danger citations, three follow-up inspections involving chemical releases, two follow-up inspections involving fatalities, and one follow-up inspection was conducted to ensure an employer's compliance with a settlement agreement.

Goal 1.5: Reduce the number of injuries caused by falls, struck-by and crushed-by in construction by ten percent through a six part strategy.

FY 2011 represented the baseline year for this goal in KYOSH. However, this goal is very similar to goal 1.1.3, which sought to reduce injuries by four percent in the same area. Historically, the KYOSH Program has experienced success in this area.

Goal 1.6: Initiate all fatality and catastrophe inspections by the Division of OSH Compliance within one working day of notification.

This goal was previously identified as goal 1.2.1. During FY 2011, the State was not able to successfully achieve this goal, due to five outliers. In each of these cases appropriate

documentation was provided, indicating that the State's response was delayed for extenuating circumstances outside their control.

Goal 1.7: Initiate Division of OSH Compliance inspections of imminent danger reports within one working day of notification for 100 percent of occurrences.

This goal was previously identified as goal 1.2.2 and it addresses response time by the Division of OSH Compliance in critical situations. During FY 2011, KYOSH responded to all imminent danger referrals within one working day, with only one exception.

Goal 1.8: Reduce Kentucky's total case rate for injuries and illnesses.

The baseline was established in FY 2011.

Goal 1.9: Reduce Kentucky's lost time case rate for injuries and illnesses.

The baseline was established in FY 2011.

Goal 1.10: Reduce the total case rate in five of the fifteen most hazardous industries in Kentucky.

During FY 2011, represents a baseline year for this goal. This goal is similar to goal 1.1.1, which sought to reduce injury and illness incident rates in at least five of ten industries with the highest incident rates.

Goal 2.1: Ensure settlement agreements that have a monetary penalty reduction of more than \$10,000 also includes OSHA's 1989 Safety and Health Management Guidelines; or engage outside safety and health consultation.

During FY 2011, the Division of OSH Compliance signed 42 settlement agreements. In four cases the penalties were reduced by more than \$10,000 and the employer was not required to follow the OSHA 1989 Safety and Health Guidelines. In these cases the policy was not enforced due to financial hardship, penalty miscalculations, or the reclassification of violations.

Goal 2.2: Incorporate evaluation of safety and health management systems in 100 percent of the full service comprehensive surveys.

During FY 2011, all full-service surveys included an evaluation of the safety and health management systems.

Goal 2.3: Utilize the Safety & Health Program Assessment Worksheet in all general industry full-service surveys, including a narrative safety and health program evaluation in all full-service surveys.

This goal was previously identified as goal 2.1.2. During FY 2011, all general industry full-

service surveys included a Safety & Health Program Assessment Worksheet, as well as a narrative safety and health program evaluation.

Goal 2.4: Effective promotes the new safety & health program management training course.

This goal was effectively accomplished during FY 2011.

Goal 2.5: Ensure that the evaluation of worksites are conducted in a timely manner, including certification of VPP sites, the development of construction partnerships agreements and the addition of new SHARP sites.

This goal was effectively accomplished during FY 2011. In fact, in FY 2011, KYOSH approved two new VPP sites, five additional construction partnership sites, as well as six new SHARP sites.

Goal 2.6: Implement a targeted outreach plan for all new Kentucky OSH standards.

In FY 2011, KYOSH conducted 16 training sessions in 11 cities across the state to educate employers and employees about the new OSHA Crane and Derrick rule, which was adopted by the State. Approximately 900 employers and employees were effectively trained through this process. This goal was previously identified as goal 2.1.3. 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 KYOSH standards. The Kentucky Labor Cabinet also maintains updated and accurate information on the KYOSH webpage as well as cost free publications for employers and employees.

Goal 3.1: Maintain a reliable data repository to support the KYOSH Program goals and strategies.

This goal was previously identified as performance goal 3.1.1. To once again fulfill this goal, KYOSH personnel have participated in monthly conference calls hosted by OSHA for Information Technology users. During FY 2011, 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 3.2: Ensure new supervisory staff completes formal leadership training or certification programs.

This goal was not applicable due to the fact that new supervisory staff members were not employed in FY 2011.

Goal 3.3: Encourage and aid in the staffs professional certification.

This goal was effectively accomplished during FY 2011. A few of the certification held by

KYOSH staff members include the Occupational Health and Safety Technologist (OHST), the Construction Health and Safety Technician (CHST), as well as the Certified Safety Professional (CSP). Kentucky commitment to this performance measure was verified during interviews with staff members, as well as the Kentucky SOAR.

Goal 3.4: Encourage and aid advanced degrees for OSH Program employees.

During this period, KYOSH funded three staff members pursuing master's degrees. This goal was effectively accomplished during FY 2011.

Goal 3.5: Implement adult learning theory principles into formal training provided to employers and employees.

This goal is currently in process, in FY 2011, KYOSH begun to implement the tenants of the andragogical model of adult learning theory in its Population Center Training seminars.

Goal 3.6: Develop tool box talks in the form of short videos courses.

During this period, KYOSH purchased the equipment and software to accomplish this goal.

Goal 3.7: Include photographs of actionable hazards in all consultation surveys.

During this period, photographs of actionable hazards were included in all appropriate consultation surveys. This goal was effectively accomplished during FY 2011.

Appendix A
 FY 2011 Kentucky State Plan FAME Report
 Findings and Recommendations

Rec #	Findings	Recommendations	FY 10 #
11-01	<i>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.</i>	<i>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.</i>	New
11-02 A	<i>The IMIS is not being updated as necessary. The State has approximately 1,200 open cases dating back to the early 1990's.</i>	<i>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.</i>	New
11-02 B	<i>The IMIS is not being updated as necessary. The State has approximately 1,200 open cases dating back to the early 1990's.</i>	<i>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.</i>	New
11-03	<i>KYOSH conducts inspections for all formalized complaints regardless of the nature of the hazard(s).</i>	<i>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.</i>	10-03
11-04	<i>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.</i>	<i>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.</i>	New
11-05	<i>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.</i>	<i>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.</i>	New
11-06	<i>KY OSH did not conduct any programmed planned health inspections during this evaluation period.</i>	<i>KY OSH should develop and implement an effective strategy to ensure that programmed health inspections are conducted in the high hazard health industries.</i>	New
11-07	<i>KY OSH has a significantly higher citation issuance lapse time for than federal</i>	<i>KY OSH should develop and implement effective strategies to reduce its</i>	10-06

	<i>OSHA.</i>	<i>safety and health citation issuance lapse time.</i>	
11-08	<i>KYOSH does not have a written procedure for the review and approval of Petition for Modification of Abatement (PMA) requests made by employers.</i>	<i>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).</i>	<i>New</i>
11-09	<i>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.</i>	<i>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.</i>	<i>New</i>
11-10	<i>KYOSH still has not completed a side-by-side comparison of the Kentucky Field Operations Manual (FOM) and the federal OSHA FOM.</i>	<i>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.</i>	<i>10-02</i>
11-11	<i>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.</i>	<i>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.</i>	<i>New</i>
11-12	<i>Safety and Health Achievement and Recognition (SHARP) certificates are being issued to large employers (>500 employees).</i>	<i>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.</i>	<i>New</i>
11-13	<i>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.</i>	<i>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.</i>	<i>New</i>

Appendix B
 FY 2011 Kentucky State Plan FAME Report
 Status of FY 2010 Findings and Recommendations

Rec #	Findings	Recommendations	Corrective Action Plan	State Action Taken	Status
10-01	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.		None. 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.	CLOSED Continue to be evaluated during monitoring activities in FY 2012.
10-02	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.		KYOSH has indicated that the side-by-side comparison between the federal and state FOM is still under development. The adoption and side-by-side comparison was due in FY 2010. The State is currently in the process of revising their FOM and is making progress towards completion. The process of revising the FOM was started following the FY 2009 EFAME evaluation. Currently, one Chapter (Chapter 6 – Penalty) has been revised with an additional 8 remaining. Three of the 8 remaining chapters are close to completion.	PENDING Continue to be evaluated during monitoring activities in FY 2012.
10-03	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	OSHA does not agree with the State's response on this item and related recommendations #9 (high in-compliance rate in programmed inspections).	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

		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.	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.		activities in FY 2012.
10-04	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.		It was also noted the case files contain a copy of the settlement document and there was no indication that the affected parties were being informed of the changes resulting from the informal conference. Manager and supervisor interviews confirmed that employer commitments are being included in settlement documents and required for certain cases involving larger penalty reductions.	COMPLETE D
10-05	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.		None. 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.	CLOSED Continue to be evaluated during monitoring activities in FY 2012.
10-06	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	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	PENDING This issue will continue to be evaluated during monitoring activities in FY 2012.

		during the 2009 enhanced fame study. However, this is still much higher than the national averages.		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 of experience.	
10-07	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.		Case file reviews determined that all of the recommendations related to the discrimination program have been implemented and KY OSH's administration of the discrimination program is found to be overall effective.	COMPLETE
10-08	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.		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.	CLOSED This issue will continue to be evaluated during monitoring activities in FY 2012.

Appendix C
Kentucky State Plan
FY 2011 Enforcement Activity

	KY	State Plan Total	Federal OSHA
Total Inspections	1,054	52,056	36,109
Safety	856	40,681	29,671
% Safety	81%	78%	82%
Health	198	11,375	6,438
% Health	19%	22%	18%
Construction	520	20,674	20,111
% Construction	49%	40%	56%
Public Sector	55	7,682	N/A
% Public Sector	5%	15%	N/A
Programmed	151	29,985	20,908
% Programmed	14%	58%	58%
Complaint	227	8,876	7,523
% Complaint	22%	17%	21%
Accident	29	2,932	762
Insp w/ Viols Cited	409	31,181	25,796
% Insp w/ Viols Cited (NIC)	39%	60%	71%
% NIC w/ Serious Violations	81.2%	63.7%	85.9%
Total Violations	1,251	113,579	82,098
Serious	814	50,036	59,856
% Serious	65%	44%	73%
Willful	24	295	585
Repeat	36	2,014	3,061
Serious/Willful/Repeat	874	52,345	63,502
% S/W/R	70%	46%	77%
Failure to Abate	3	333	268
Other than Serious	374	60,896	18,326
% Other	30%	54%	22%
Avg # Violations/ Initial Inspection	2.5	3.4	2.9
Total Penalties	\$ 2,774,100	\$ 75,271,600	\$ 181,829,999
Avg Current Penalty / Serious Violation	\$ 2,256.80	\$ 963.40	\$ 2,132.60
% Penalty Reduced	48.8%	46.6%	43.6%
% Insp w/ Contested Viols	15.2%	14.8%	10.7%
Avg Case Hrs/Insp- Safety	32	17.1	19.8
Avg Case Hrs/Insp- Health	73.6	26.8	33.1
Lapse Days Insp to Citation Issued- Safety	58.2	35.6	43.2
Lapse Days Insp to Citation Issued- Health	80	43.6	54.8
Open, Non-Contested Cases w/ Incomplete Abatement >60 days	52	1,387	2,436

Note: Federal OSHA does not include OIS data.

The total number of inspections for Federal OSHA is 40,684.

Source: DOL-OSHA. State Plan & Federal INSP & ENFC Reports, 11.8.2011.

Appendix D

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 08, 2011
PAGE 1 OF 2

State: KENTUCKY

RID: 0452100

MEASURE	From: 10/01/2010 To: 09/30/2011	CURRENT FY-TO-DATE	REFERENCE/STANDARD
1. Average number of days to initiate Complaint Inspections	2297 9.41 244	150 9.37 16	Negotiated fixed number for each State
2. Average number of days to initiate Complaint Investigations	2022 12.10 167	46 4.18 11	Negotiated fixed number for each State
3. Percent of Complaints where Complainants were notified on time	245 100.00 245	34 100.00 34	100%
4. Percent of Complaints and Referrals responded to within 1 day -ImmDanger	207 99.52 208	13 100.00 13	100%
5. Number of Denials where entry not obtained	0	0	0
6. Percent of S/W/R Violations verified			
Private	0 .00 527	0 .00 527	100%
Public	0 .00 45	0 .00 45	100%
7. Average number of calendar days from Opening Conference to Citation Issue	29560	3190	2631708

Safety	78.82	102.90	51.9	National Data (1 year)
	375	31	50662	
Health	10625	1018	767959	National Data (1 year)
	108.41	78.30	64.8	
	98	13	11844	

*KY FY11

**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)

NOV 08, 2011
 PAGE 2 OF 2

State: KENTUCKY

RID: 0452100

MEASURE	From: 10/01/2010 To: 09/30/2011	CURRENT FY-TO-DATE	REFERENCE/STANDARD
8. Percent of Programmed Inspections with S/W/R Violations			
	26	1	90405
Safety	16.88	33.33	58.5
	154	3	154606
Health	0	0	10916
	0	0	51.7
			21098
9. Average Violations per Inspection with Vioations			
	907	58	419386
S/W/R	1.91	1.31	2.1
	473	44	198933
Other	374	41	236745
	.79	.93	1.2
	473	44	198933
10. Average Initial Penalty per Serious Violation (Private Sector Only)	2332575	202400	611105829
	2960.12	3968.62	1679.6
	788	51	363838

11. Percent of Total Inspections in Public Sector	55 5.22 1054	3 4.23 71	162 4.8 3352	Data for this State (3 years)
12. Average lapse time from receipt of Contest to first level decision	6864 381.33 18	210 210.00 1	3533348 199.7 17693	National Data (3 years)
13. Percent of 11c Investigations Completed within 90 days	15 34.09 44	2 66.67 3	100%	
14. Percent of 11c Complaints that are Meritorious	6 13.64 44	1 33.33 3	1517 23.0 6591	National Data (3 years)
15. Percent of Meritorious 11c Complaints that are Settled	1 16.67 6	0 .00 1	1327 87.5 1517	National Data (3 years)

Appendix E

QQQ Q SIR Q4SIR21 SIR21 111011 111835 PROBLEMS - CALL Y Goodhall 202 693-1734

1111011

U. S. D E P A R T M E N T O F L A B O R

PAGE 1

OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION

CURRENT MONTH = SEPTEMBER 2011

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	3694 61.3 6026	14 7.0 200	8169 61.4 13312	71 16.1 442	18137 62.5 29042	151 18.3 823	40070 63.7 62876	438 26.3 1663
B. HEALTH	480 39.7 1208	0 .0 53	1020 36.4 2806	0 .0 89	2126 34.6 6150	0 .0 173	4357 34.7 12569	3 .9 345
2. PROGRAMMED INSPECTIONS WITH VIOLATIONS (%)								
A. SAFETY	3378 73.7 4583	7 29.2 24	7266 72.4 10036	16 18.6 86	14959 70.1 21330	40 20.8 192	32614 69.1 47196	163 29.4 555
B. HEALTH	456 57.0 800	0 .0 0	890 57.2 1555	0 .0 0	1723 56.2 3068	0 .0 0	3487 55.3 6309	7 70.0 10
3. SERIOUS VIOLATIONS (%)								
A. SAFETY	11703 79.6 14698	140 69.7 201	23768 77.4 30703	286 71.1 402	48704 76.7 63528	583 69.2 842	109064 78.4 139117	1278 66.8 1912
B. HEALTH	2634 66.6 3957	60 63.8 94	5290 64.7 8180	102 59.0 173	10266 64.4 15930	173 60.9 284	21598 66.7 32380	266 53.5 497
4. ABATEMENT PERIOD FOR VIOLS								
A. SAFETY PERCENT >30 DAYS	2394 16.6	11 6.3	4978 16.8	46 12.7	10776 17.9	96 13.4	23693 17.9	153 10.2

	14465	174	29573	361	60243	717	132414	1497
	259	1	711	1	1451	8	3159	21
B. HEALTH PERCENT >60 DAYS	6.5	1.0	8.6	.6	9.4	3.0	10.0	5.3
	4006	101	8234	167	15507	269	31619	393

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U. S. D E P A R T M E N T O F L A B O R

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OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION

CURRENT MONTH = SEPTEMBER 2011

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)								
5. AVERAGE PENALTY								
A. SAFETY								
	505479	19900	1258835	42950	2803637	64850	5086228	172000
OTHER-THAN-SERIOUS	1181.0	3316.7	1195.5	2386.1	1126.9	1852.9	1055.2	1977.0
	428	6	1053	18	2488	35	4820	87
B. HEALTH								
	219203	12450	441915	28350	853346	34450	1667151	51775
OTHER-THAN-SERIOUS	1184.9	2490.0	1077.8	2180.8	980.9	1913.9	958.7	1917.6
	185	5	410	13	870	18	1739	27
6. INSPECTIONS PER 100 HOURS								
A. SAFETY								
	6874	225	15417	484	33850	909	73070	1845
	6.0	2.9	5.6	2.9	5.5	2.7	5.4	2.6
	1138	78	2730	168	6145	334	13476	700
B. HEALTH								
	1458	67	3330	110	7311	207	14958	407
	2.4	1.2	2.2	1.0	2.2	1.0	2.0	1.0
	615	57	1501	109	3390	202	7404	394
7. VIOLATIONS VACATED %								
	1270	20	3026	35	6577	44	12352	67
	5.6	6.0	6.6	6.0	7.0	3.8	6.2	2.8
	22608	332	46128	579	93448	1146	200310	2390
8. VIOLATIONS RECLASSIFIED %								
	737	4	1997	9	4456	12	9147	18
	3.3	1.2	4.3	1.6	4.8	1.0	4.6	.8
	22608	332	46128	579	93448	1146	200310	2390
9. PENALTY RETENTION %								
	19478404	351250	40012395	510798	77322520	1088720	134938244	1825257
	61.0	60.8	61.6	57.3	62.8	62.0	62.8	62.3
	31918969	577700	65001782	890975	123124542	1756125	214845679	2927925

OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION

CURRENT MONTH = SEPTEMBER 2011

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	14	0	71	0	151	0	438	6
	7.0	.0	16.1	.0	18.3	.0	26.3	10.3
	200	13	442	18	823	30	1663	58
B. HEALTH	0	0	0	0	0	0	3	0
	.0	.0	.0	.0	.0	.0	.9	.0
	53	10	89	16	173	25	345	49

2. SERIOUS VIOLATIONS (%)

A. SAFETY	140	15	286	17	583	21	1278	44
	69.7	68.2	71.1	65.4	69.2	55.3	66.8	58.7
	201	22	402	26	842	38	1912	75
B. HEALTH	60	7	102	7	173	31	266	56
	63.8	43.8	59.0	43.8	60.9	55.4	53.5	60.2
	94	16	173	16	284	56	497	93

OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION

CURRENT MONTH = SEPTEMBER 2011

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

	579	0	1131	7	2220	64	4270	101
--	-----	---	------	---	------	----	------	-----

1. VIOLATIONS VACATED %	22.8	.0	23.4	20.6	23.5	29.2	23.0	19.8
	2542	5	4834	34	9442	219	18586	509
	328	0	620	0	1259	2	2360	7
2. VIOLATIONS RECLASSIFIED %	12.9	.0	12.8	.0	13.3	.9	12.7	1.4
	2542	5	4834	34	9442	219	18586	509
	3616720	3500	9500018	23775	16062961	181490	28079915	545919
3. PENALTY RETENTION %	56.1	70.0	62.4	74.5	62.3	47.7	60.6	45.2
	6443756	5000	15212620	31900	25766759	380215	46371522	1208265

APPENDIX F

FY 2011 State OSHA Annual Report (SOAR)

(Available Separately)

Appendix G
Kentucky State Plan
FY 2011 23(g) Consultation Activity

	KY Public Sector	Total State Plan Public Sector	KY Private Sector
Requests	2	1,328	357
<i>Safety</i>	-	576	200
<i>Health</i>	2	560	157
<i>Both</i>	-	192	-
Backlog	-	123	5
<i>Safety</i>	-	51	4
<i>Health</i>	-	58	1
<i>Both</i>	-	14	-
Visits	2	1,632	352
<i>Initial</i>	2	1,336	352
<i>Training and Assistance</i>	-	175	-
<i>Follow-up</i>	-	121	-
<i>Percent of Program Assistance</i>	0%	67%	4%
<i>Percent of Initial Visits with Employee Participation</i>	100%	96%	100%
Employees Trained	-	5,030	-
<i>Initial</i>	-	2,144	-
<i>Training and Assistance</i>	-	2,886	-
Hazards	7	6,063	4,027
<i>Imminent Danger</i>	-	3	-
<i>Serious</i>	3	4,804	2,963
<i>Other than Serious</i>	2	1,171	987
<i>Regulatory</i>	2	85	77
<i>Referrals to Enforcement</i>	-	6	-
Workers Removed from Risk	31	171,075	103,153
<i>Imminent Danger</i>	-	55	-
<i>Serious</i>	27	136,884	73,012
<i>Other than Serious</i>	2	26,046	29,114
<i>Regulatory</i>	2	8,090	1,027

Source: DOL-OSHA. 23(g) Public & Private Consultation Reports, 11.29.2011.