

Kentucky
FY 2009 Enhanced FAME Report – Corrective Action Plan
Prepared by Region IV
Finding 1 of 20

Finding #1: The state conducts inspections for all formalized complaints regardless of the nature of the hazard(s). 49% of the 245 complaint inspections were in-compliance.

Recommendation #1: Management should evaluate all complaints including formal complaints to determine when an investigation, rather than an inspection, would be more appropriate to allow a more effective use of their resources.

State Response: Kentucky takes issue with this recommendation. This recommendation has no basis, is misleading, and implies that Kentucky does not evaluate all complaints. However, nothing could be further from the truth. OSHA's narrative on page fourteen (14) of the Enhanced FAME report contradicts this recommendation and clearly indicates the Kentucky Division of OSH Compliance does indeed evaluate all complaints. OSHA states, "**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." **[Emphasis added.]**

The Division of OSH Compliance Program Managers have always evaluated **every** complaint, formal (written and signed) or non-formal, and categorized them according to severity.

Kentucky law requires complaints be written and signed by an employee or representative of the employee(s). Therefore, Kentucky does not inspect electronic complaints unless they allege imminent dangers, fatalities, catastrophes, hospitalizations, amputations, or the complainant submits a signed complaint. The Division of OSH Compliance attempts to contact the complainant when an electronic complaint is received and asks the individual to submit a written signed complaint pursuant to Kentucky law. Anonymous electronic complaints, or electronic complaints received by an individual who is not an employee or representative of the employee(s), are processed as a non-formal complaint and a letter is sent to the employer.

On page fifteen (15) of the Enhanced FAME report, OSHA states:

"It was determined that the state was conducting inspections of signed formal complaints where it was questionable of a serious hazard existed "

Kentucky law establishes that inspections will be conducted upon receipt of notification and when reasonable grounds exist for such violation or danger. Kentucky believes an employee, or representative of employees, who takes the time to memorialize a workplace concern(s) in the form of a written and signed complaint has a concern that

warrants an onsite evaluation by the Division of OSH Compliance. Kentucky believes on site observation is the surest method to determine if a "questionable" serious hazard exists. Kentucky believes employees are better protected and served when alleged hazard determination is made through direct on site observation rather than attempting a determination via indirect observation methods. Additionally, experience establishes that other serious hazards not alleged in a complaint may be discovered during inspection of the complaint items.

OSHA states on page fourteen (14), "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." The Division of OSH Compliance is proud of its attention to customer service. As OSHA states on page fourteen (14), complaint investigations were initiated within an average of 2.65 days from the time of receipt and complaint inspections were initiated within an average of 6.63 days from the time of receipt. OSHA states that only a "few complaints were responded to late because of a lack of available resources." To be more precise, as OSHA states on page fourteen (14), of the 522 complaints Kentucky handled and 245 complaint inspections Kentucky conducted, "Three (3) serious complaints inspections were opened later than 30 days after assignment in FY 2009." OSHA does not indicate if the three (3) "serious complaint inspections" that were opened later than thirty (30) days resulted in citations issued; and if so, OSHA does not indicate if the citations were related to the alleged compliant hazards or other hazards observed during the inspection.

As noted above, Kentucky clearly evaluates all complaints and assigns investigations or inspections based upon classification and gravity of alleged hazards and believes this is a very responsible, sound practice. The Division of OSH Compliance will continue its present method. The Division of OSH Compliance believes this is a very appropriate, very efficient, and very effective use of resources.

Additionally, on 12/1/2010 Federal OSHA conducted a conference call with the state. During the conference call the state indicated that this issue was evaluated and no additional action was warranted.

Corrective Action Plan: NA. The Division of OSH Compliance believes its practice is a very appropriate, very efficient, and very effective use of resources and will continue as is.

Documentation to be submitted w. due date: NA

Anticipated Completion Date:

Outcome Measure/Expectation: It is expected that by evaluating complaints and addressing hazards that are not serious in nature through investigations rather than inspections would reduce the percentage of complaint inspections that are in compliance. This would also make available additional resources to address hazards in high hazard

industries, through programmed inspection activity thereby protecting employees that are at greater risk.

Status: Pending further discussion and Federal monitoring. OSHA does not agree with the State's response on this item and related recommendations #9 (high in-compliance rate in programmed inspections) and #11 (untrained/inadequate staffing). OSHA expects State Plans to direct their resources to the highest hazard situations and to timely address the hazards identified. OSHA continues to believe that Kentucky needs to reconsider its program priorities.

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Finding #2: Several standard IMIS reports were reviewed, and IMIS is not updated accurately and consistently (complaints)

Recommendation #2: The state should accurately enter and update all complaints and complaint related actions in the IMIS in accordance with the IMIS manual. IMIS reports should be used on a weekly basis to track the status and complaint due dates.

State Response:

Complaints are indeed entered into the IMIS. Supervisors in the Division of OSH Compliance enter formal complaints into the IMIS and assign them to compliance officers. Other Division of OSH Compliance staff enter non-formal complaints into the IMIS and send letters.

The Division of OSH Compliance has utilized the IMIS "CASES WITH CITATIONS PENDING" report for several years and was unaware that other IMIS reports were available. Utilization of other IMIS reports was never brought to the Kentucky OSH Program's attention by OSHA during state program audits prior to the Enhanced FAME audit. In addition, training regarding other IMIS applicable reports was not offered to Kentucky OSH Program staff within the last decade, or perhaps even longer.

OSHA's Region 4 office provided IMIS training in April 2010 to the Kentucky OSH Program after OSHA's Enhanced FAME audit. As a result of the training, the Division of OSH Compliance now produces weekly IMIS reports which are provided to the division Director and both division Program Managers. The Program Managers disseminate the information to staff.

Corrective Action Plan: 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. IMIS complaint reports showing that the complaints are being entered and updated in a timely manner. The reports will be provided to the Nashville Area Office.

Documentation to be submitted w. due date: IMIS Complaint Tracking Reports will be provided to the Nashville Area Office by April 11, 2011.

Anticipated Completion Date: Recommendation was implemented and actions were completed in March 2010.

Outcome Measure/Expectation: IMIS Complaint reports will reflect current and accurate data and allow the state to track complaint related items more efficiently.

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Status: Pending.

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Finding #3: Complaints addressed through the phone and fax process were not coded as such, which will prevent them from being tracked. In addition, complaints filed through OSHA's Email Complaint System were not coded as electronic complaints.

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

State Response: This recommendation puzzles the Kentucky OSH Program. Kentucky's complaint coding practices utilized prior to, and during, OSHA's Enhanced FAME audit had been in place for several years and the issue was never brought to the attention of the Division of OSH Compliance by OSHA during state program audits prior to the Enhanced FAME audit. As stated in the reply to Recommendation 1, Kentucky does not inspect non-formal complaints unless they allege imminent dangers, fatalities, catastrophes, hospitalizations, amputations, or the complainant submits a signed complaint. Kentucky was unaware electronic complaints and complaints handled by telephone, fax, and letter, since they are non-formal complaints, were to be coded. In response to this recommendation, OSH-1 forms are now completed with every electronic complaint whether or not an inspection is conducted, and it is coded. The Kentucky OSH Program will use other IMIS codes for telephone, facsimile, and letter complaints.

Corrective Action Plan: This recommendation was implemented prior to the issuance of the EFAME. A list of federal and local codes was disseminated to staff with instructions to code all complaints where applicable.

Documentation to be submitted w. due date: The State notified Federal OSHA that copies of Federal and local codes were disseminated to staff with instructions to include the codes on OSH-1s, where applicable.

Anticipated Completion Date: Recommendation was implemented and actions were completed in March 2010.

Outcome Measure/Expectation: Ensure that electronic complaints are accounted for and IMIS reports are accurate. This will enable Kentucky OSH and Federal OSHA to accurately track strategic activity.

Status: Subject to further Federal monitoring.

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Finding #4: All complaints investigated by letter were addressed appropriately in accordance with the State's directive. Complainants were notified of the result of the investigation, but this only included that the employer response was adequate. Complainants were never provided with a copy of the employer's response and a checklist in each file indicated that the employee did not agree with the employer's response, but no further action was taken.

Recommendation #4: All complainants should be timely notified and provided a copy of the employer's response following a complaint investigation. The notification should provide the complainant with the opportunity to dispute the employer's response. In addition, employer responses that are disputed should be considered, appropriately responded to, and documented in the file.

State Response: Kentucky believes this recommendation is misleading since in fact Kentucky does notify the complainant. As OSHA states on page fifteen (15) of the Enhanced FAME report, the Division of OSH Compliance provides the complainant with a letter notifying the individual of the inspection results.

Kentucky has not traditionally notified the complainant of the employer's response. In response to this recommendation, the Division of OSH Compliance now provides complainants with a letter advising that the employer's response has been received and is available upon request. Complaint investigations are not closed out without a program manager's review and agreement the case is ripe for closure. A complainant's disputed response of an employer's reply is evaluated on a case-by-case basis.

Corrective Action Plan: Recommendation was implemented and actions were completed in September 2010.

Documentation to be submitted w. due date: A copy of the letter provided to the complainant was provided to the Nashville Area Office on December 2, 2010.

Anticipated Completion Date: Recommendation was implemented and actions were completed in September 2010.

Outcome Measure/Expectation: Ensure employees are informed and that employer responses are thorough, accurate and hazards identified are corrected. Ensure employees have a voice in the workplace by providing employees the ability to disagree or appeal the employer's response.

Status: Subject to further Federal monitoring.

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

Recommendation #5: All complainants should be timely notified of the inspection results addressing the state's findings of each complaint item. The notification should provide the complainant with the opportunity to appeal the inspection results.

State Response: Kentucky believes OSHA's use of the term "timely" is grossly incorrect, misleading, and has no basis. Following a complaint inspection, the Division of OSH Compliance has **always** provided the complainant with a letter notifying the individual of the inspection results,

The letter, provided when citations are issued, advised the complainant of the findings and provided the complainant with a copy of the citations. If citations are not issued, the complainant is advised of the inspection findings. Furthermore, OSHA acknowledges on page fifteen (15) of the Enhanced FAME report that Kentucky notifies the complainant and provides inspection results.

Kentucky has not traditionally provided notification to complaints that specifically addressed the findings of each complaint item. 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. Complaint inspections are not closed out without a program manager's review and agreement the case is ripe for closure.

Corrective Action Plan: Recommendation was implemented and actions were completed in September 2010.

Documentation to be submitted w. due date: Copies of the letters provided to the complainant were provided to the Nashville Area Office on December 2, 2010.

Anticipated Completion Date: Recommendation was implemented and actions were completed in September 2010.

Outcome Measure/Expectation: Employees are informed and complaint items are thoroughly and accurately addressed. Employees have the ability to disagree with inspection findings and/or appeal the inspection results.

Status: Subject to further Federal monitoring.

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Finding #6: In fatality cases, the compliance officer is required to contact the next of kin by phone and inform them of the investigation, provide contact information for the CSHO and OSHA office, solicit input or information regarding the investigation, and explain the inspection process.

Recommendation #6: KY OSH should send written correspondence to the next of kin providing them with information regarding the investigation. This letter should be signed by the Director of OSH Compliance or the Commissioner.

State Response: Kentucky believes this is another recommendation that is misleading. As OSHA states on page sixteen (16):

"Following an inquiry by the Regional Administrator in Region IV in mid-fiscal year 2009 regarding KY OSH's fatality correspondence, KY OSH revised it process to include a follow-up letter after the CSHO makes contact via phone. However, at the time of this review this process had not been fully implemented by the Kentucky."

Kentucky clearly sends written correspondence to the next of kin with information regarding the investigation. The follow-up letter to the next of kin, signed by the compliance officer, explains the inspection process and provides the officer's contact information.

Kentucky communicated to Region IV its new next of kin letter process in 2009 prior to the Enhanced FAME audit and no concerns or objections were communicated to Kentucky. In fact, Region IV was appreciative of Kentucky's accommodation and modification. The Division of OSH Compliance believes that it is more appropriate for the next of kin letter to be signed by the compliance officer considering the compliance officer made first contact with, and is in communication with, the next of kin.

Unfortunately, OSHA does not quantify the extent of the "had not been fully implemented" issue. OSHA provides no information stating whether or not the issue was limited to a small sample of reviewed case files or if the issue was representative of a majority of reviewed case files. Considering that Kentucky's process of sending written correspondence was initiated in mid-fiscal year of the period covered by the Enhanced FAME audit, Kentucky believes it is an isolated issue.

Corrective Action Plan: Following an inquiry by the Regional Administrator in mid-FY09 regarding KY OSH's fatality correspondence, KY OSH revised its process to include a follow-up letter after the compliance officer makes contact via phone.

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However, this process had not been fully implemented during the period covered by the Enhanced FAME review. This recommendation was implemented and actions were completed at the end of FY 10.

Documentation to be submitted w. due date: A copy of the letter provided to the next of kin was provided to the Nashville Area Office on December 2, 2010.

Anticipated Completion Date: Recommendation was implemented and actions were completed in late FY 10.

Outcome Measure/Expectation: Families are informed and have the ability to participate in the investigation. Families have the ability to contribute information regarding the investigation. Families know who to contact for information and are informed of the investigation process.

Status: Subject to further Federal monitoring.

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Finding #7: Mid-FY09, the Region IV Regional Administrator inquired about this process (next of kin) and KY OSH revised its procedures to include a follow-up letter. However, these procedures have yet to be fully implemented and the final letter sent to family members at the conclusion of the investigation was a generic letter indicating that citations were or were not issued with a copy of the citations attached.

Recommendation #7: At the conclusion of the fatality investigation, the letter sent to the next of kin should be signed by the Director of OSH Compliance or Commissioner and explain the state's findings or the results of the investigation with a copy of the citations if any are issued. The next of kin should be informed of informal conferences, as well as any changes in the citations as a result of a settlement.

State Response: Again, Kentucky believes this is another recommendation that is misleading. Kentucky does not understand OSHA's basis for the first sentence of the recommendation and takes issue with it. At the conclusion of a fatality investigation, Kentucky's practice for over twenty-three (23) years has been for the Director of Compliance to send the next of kin a letter with a copy of the citations if citations were issued; or, a letter advising no violations were found if citations were not issued. Furthermore, OSHA contradicts the first sentence of this recommendation on page seventeen (17) of the Enhanced FAME report. OSHA states:

"At the conclusion of the investigation, the final letter sent to family members was a generic letter indication that citations were or were not being issued with a copy of the citations attached."

The misleading first sentence of this recommendation clearly has no basis.

With regard to the second sentence of this recommendation, Kentucky interprets the term " ... result of a settlement" to mean the result of changes agreed to in an informal conference. The Division of OSH Compliance has traditionally not informed the next of kin regarding informal conferences or any changes in citations as a result of an informal conference unless the next of kin so requests. Kentucky notes that changes in fatality related citations as a result of an informal conference are very uncommon. Also, experience establishes that compliance officers often find that some next of kin understandably do not want the Division of OSH Compliance's continued presence in their lives for personal reasons. In those cases, the Division of OSH Compliance respects the wishes of the next of kin and does not intrude.

In response to this recommendation, the Division of OSH Compliance now sends a letter to the next of kin who desire to be informed advising them of informal conferences and any changes in the citations as a result of an informal conference settlement.

Corrective Action Plan: Recommendation was partially implemented in September 2010.

Documentation to be submitted w. due date: A copy of the letter provided to the next of kin was provided to the Nashville Area Office no later than December 2, 2010.

Anticipated Completion Date: Recommendation was implemented and actions were completed in late FY 10.

Outcome Measure/Expectation: Families are informed and have the ability to participate in the investigation. Families have the ability to contribute information regarding the investigation. Families know who to contact for information and are informed of the investigation process. OSHA believes that all next of kin should be provided full disclosure, including notification of the informal conferences and any changes in the citations as a result of an informal conference settlement.

Status: Pending further discussion.

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

Recommendation #8: Settlement agreements need to include employer commitments and justification for penalty reductions and/or modifications documented in the case file.

State Response: Kentucky does not understand if OSHA's use of the term "settlement agreements" in this recommendation refers to changes as a result of an informal conference or refers to formal settlement agreements.

If this recommendation is referring to changes as a result of informal conference, Kentucky takes issue with OSHA's "justification for penalty reductions and/or modifications documented in the case file" statement. Kentucky does not understand OSHA's basis for the statement and believes it is a gross error. Division of OSH Compliance supervisors have always been required to justify any and all penalty reductions, citation dismissals, or citation reclassifications in their informal conference recommendations. The information is documented in the case file.

In response to this recommendation, the Division of OSH Compliance will include "employer commitments" in informal conference documentation.

Although this recommendation does not expressly reference fatality case files, Kentucky believes that omission was an oversight on OSHA's part and is indeed specifically related to fatality case files. Kentucky believes that is the case since this recommendation is grouped with recommendations six (6) and seven (7), all of which are presented after the "Fatalities" narrative of the report. The remainder of this reply is founded on that basis.

When a fatality case is contested, it is sent to the Labor Cabinet's Office of General Counsel and assigned to an attorney. The attorney sends an introductory letter to the next of kin, provides contact information, and explains the contest process. Kentucky notes that some next of kin file for party status while others do not file but wish to be kept updated.

The Division of OSH Compliance neither drafts nor administers formal settlement agreements. Supreme Court of Kentucky rules may interpret this as an unauthorized practice of law. Nevertheless, the Division of OSH Compliance is working with the Cabinet's Office of General Counsel to develop a procedure that will address this recommendation.

Corrective Action Plan: The Division of OSH Compliance will include “employer commitments” in informal conference documentation. The development of a procedure that will address this recommendation for formal settlement agreements is being worked on with the General Counsel.

Documentation to be submitted w. due date: A copy of the Informal Conference Summary – Internal Memorandum and Draft Informal Settlement Agreement were provided to the Nashville Area Office on December 2, 2010. The procedure being developed for formal settlement agreements will be provided to the Nashville Area Office no later than January 31, 2011.

Anticipated Completion Date: This should be completed by April 11, 2011.

Outcome Measure/Expectation: Changes in citations including deletions, modification in the classification, and penalty reductions are justified and clearly documented in the case files. Assurance that employers are held accountable and hazards are and remain abated.

Status: Pending.

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

Recommendation #9: It is recommended that the state evaluate and determine the cause of the high in-compliance rate for programmed inspections.

State Response: Kentucky believes the term "in-compliance," though useful as a classification tool, is rather ambiguous when used as a simple reporting mechanism instead of viewing an inspection as a process which has fully assessed the conditions found in a Kentucky workplace. Kentucky views "in-compliance" inspections as those where "no hazards were observed at the time of the inspection and no citations were recommended." This is a subtle difference, but it does exist. OSHA makes a statement on page eighteen (18) of the Enhanced FAME report that supports Kentucky's point of view. OSHA states:

"The case file reviews did not reveal any instances of photos that showed hazards, a failure to sample where exposure might be expected or any other hazards or program deficiencies that were not addressed."

In other words, the "in-compliance" reports obviously reflected that at the time of the inspections, no hazards were observed.

OSHA's perception of "high in-compliance rate for programmed inspections" may lie in the type of industries selected through Kentucky's Targeting Outreach Program (TOP), a process in which the Division of OSH Compliance has no input. The Division of OSH Education and Training's Statistical Services Branch collects data through the OSHA Data Initiative. After analysis of the most current calendar year, the top ten (10) high hazard industries in Kentucky are identified using four (4) digit North American Industry Classification System codes. Following that identification, the Division of OSH Education and Training sends a TOP letter to each employer in each industry offering free consultation services in an effort to reduce employee injuries and illnesses. Each employer is asked to respond to the offer by completing and returning an enclosed form by a pre-determined date. Employers who fail to respond are compiled into a list and turned over to the Division of OSH Compliance. The Division of OSH Compliance schedules either a complete safety or a health inspection from the aforementioned list.

Employers who do not request Division of OSH Education and Training assistance in response to a TOP letter may have strong OSH programs and do not need Division of OSH Education and Training's assistance. However, those employers are still turned over to the Division of OSH Compliance since they failed to respond to the Division of OSH Education and Training. Subsequent Division of OSH Compliance inspection(s) may

verify the strength of the employer's OSH program thus resulting in no citations being recommended. This may be one (1) of the main reasons for the high "in-compliance" rate for programmed inspections.

Another probable reason for Kentucky's rate of programmed inspections that resulted in no citations being recommended is the frequency of programmed inspections that many of Kentucky's employers receive from the Division of OSH Compliance. Unlike OSHA, Kentucky's Division of OSH Compliance often inspects many of the same employers for programmed inspections. It is very logical that such employers would be "in-compliance." For instance, a compliance officer who inspects an employer who has experienced three (3) programmed inspections in the past six (6) or seven (7) years would be more likely to find an absence of hazards and thus no citations would be recommended or issued.

Closely related to this is the fact that the Division of OSH Compliance often conducts programmed inspections at workplaces that have taken advantage of Kentucky's strong consultation program. Although employers who experienced a comprehensive audit by Kentucky's Division of OSH Education and Training are still subject to subsequent programmed inspections, experience shows that those employers have worked diligently to create a workplace that is free from safety and health hazards. It is not uncommon that a compliance officer who inspects those worksites is likely to find an absence of hazards and thus no citations would be recommended or issued.

Regardless of the reason(s), OSHA clearly makes the most important point on page eighteen (18) of the Enhanced FAME report. To reiterate, OSHA states:

"During the review of the 50 programmed inspection case files in general industry (private sector), 48% were in-compliance overall, 56.3% of the programmed construction inspections files reviewed and 44.1 % of the programmed general industry (46.7%-safety and 42.1 %-health) files reviewed were in-compliance. The case file reviews **did not** reveal any instances of photos that showed hazards, a failure to sample where exposure might be expected or any other hazards or program deficiencies that were not addressed." **[Emphasis added.]**

Kentucky would be very concerned if OSHA found instances of photos that showed hazards; or if OSHA found that Kentucky failed to sample where exposure might be expected; or if OSHA found the presence of other hazards or program deficiencies that Kentucky failed to recognize and cite. However, that is clearly not the case as demonstrated in the aforementioned quote. OSHA validates that Kentucky's "in-compliance" programmed inspection results are accurate.

Kentucky believes "the high in-compliance rate" is more relative to its programmed inspection targeting. Kentucky is working on developing an additional method to identify workplaces that warrant Division of OSH Compliance programmed inspections.

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Corrective Action Plan: NA Kentucky has evaluated and determined the cause of the high "in compliance" rate for programmed inspections and provided the information in the reply above.

Documentation to be submitted w. due date: NA

Anticipated Completion Date: NA

Outcome Measure/Expectation: Reduction in the in-compliance rate for programmed inspections. Improved targeting assuring that time and resources are spent where employees are at the greatest risk.

Status: Subject to further discussion and Federal monitoring.

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

Recommendation #10: It is recommended that all inspections be coded with the applicable national, local, and strategic codes.

State Response: OSHA did not conclude that the inspection coding completed by the Division of OSH Compliance was incorrect. Kentucky also notes that OSHA does not identify how many of the small sample of case files reviewed needed additional coding and if so, what additional codes were necessary.

Corrective Action Plan: In response to the Enhanced Fame audit closing conference, the Division of OSH Compliance re-emphasized coding with staff. Copies of federal and local codes were disseminated to the staff with instructions to include the coding on OSHA-1s where applicable.

Documentation to be submitted w. due date: The State notified Federal OSHA that copies of Federal and local codes were disseminated to staff with instructions to include the codes on OSH-1s, where applicable.

Anticipated Completion Date: Recommendation was implemented and actions were completed in March 2010.

Outcome Measure/Expectation: Ensure that IMIS reports are accurate. This will enable Kentucky OSH and Federal OSHA to accurately track strategic activity.

Status: Subject to further Federal monitoring.

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Finding #11: The average lapse time from opening conference to citation issuance was 57.13 days for safety and 98 days for health, which is much higher than the national rate of 43.8 days for safety and 57.4 days for health

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

State Response: The Division of OSH Compliance experienced massive staff turnover in the last five (5) years. Approximately twenty-one (21) of the thirty-eight (38) current compliance officers have less than five (5) years experience.

While all Division of OSH Compliance staff are outstanding, hardworking, and extremely dedicated individuals, they are relatively young and still learning how to keep up with the ever increasing workload. Some compliance officers may carry fifteen (15) or more open inspections including general schedules, complaints, referrals, imminent dangers, amputations, accidents, and fatalities. Ideally, in such instances, staff would be provided ample office time to compile their reports which would reduce lapse time. However, that is not the case. Even though some compliance officers carry multiple open inspections and need office time to compile her or his report, she or he may be dispatched to an inspection when need arises.

The Labor Cabinet would like to be in a position to hire additional compliance staff which could eventually help with the high caseload. Unfortunately, that is not a possibility in the current economic climate.

Additionally, on 12/1/2010 Federal OSHA conducted a conference call with Kentucky regarding this recommendation. Kentucky indicated that increasing the enforcement staff was not economically feasible at this time.

Corrective Action Plan: NA

Documentation to be submitted w. due date: NA

Anticipated Completion Date: NA

Outcome Measure/Expectation: Lapse time reduced to at or below the national average. This will ensure that employers are put on official notice regarding the hazards that are documented during the inspection and ensure hazards are rapidly corrected to assure employees are protected.

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Status: Subject to further Federal monitoring. OSHA suggests that staff training and use of administrative tracking tools may be helpful in addressing this problem.

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Finding #12: Kentucky does not have a written procedure for abatement verification or a tracking mechanism. At the time of review, there were 80 cases with open abatements for FY 2009, many of which were greater than 60 days. There were a total of 546 cases without abatement. Many cases had abatement, but officials were not updating IMIS when abatement was received or verified.

Recommendation #12: A tracking system for abatements should be implemented to ensure abatements are tracked and followed up on in a timely manner.

State Response: Program Managers in the Division of OSH Compliance review their respective abatements monthly or bi-weekly depending on the program. In response to this recommendation, Division of OSH Compliance Program Managers now review their respective abatements weekly to determine which case files can be closed and which need contact.

As previously stated, OSHA's Region 4 office provided IMIS training to the Kentucky OSH Program after OSHA's Enhanced FAME audit. The training has resulted in Division of OSH Compliance staff utilizing the IMIS system to assist in abatement tracking.

Corrective Action Plan: 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 and to document employer contact, a dunning letter, or a follow-up inspection.

Documentation to be submitted w. due date: IMIS Violation Abatement Report and Open Inspection reports showing that the abatements are being tracked and obtained in a timely manner. The reports will be provided to the Nashville Area Office.

Anticipated Completion Date: Recommendation was implemented and actions were completed in March 2010.

Outcome Measure/Expectation: Abatement for all inspection files are current with minimal cases with past due abatement. This will ensure hazards are corrected promptly and employees are protected.

Status: Pending.

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Finding #13: Kentucky only uses a few of the available IMIS reports and has established internal logs, but these were found to be “minimally effective.” Audit reports were run using the earliest date on the system and found cases dating back to 1993, where IMIS shows no action taken due to information not being entered into the system.

Recommendation #13: Ensure data is entered and updated in the IMIS and timely corrections are made from opening to closing of inspection files. Utilize IMIS reports weekly to track and manage enforcement activity.

Region IV conducted IMIS training in Kentucky at the end of April.

State Response: Management staff in the Division of OSH Compliance has utilized the “Cases with Citations Pending” report for several years to monitor the length of time an inspection with citations is open. The IMIS training provided to the Kentucky OSH Program by Region IV was extremely helpful. As a result of this training, the Division of OSH Compliance is now using additional IMIS resources to ensure accurate data entry, as well as updating, tracking, and managing enforcement activity.

All of the open cases and open abatements have been updated and closed where appropriate.

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

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

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

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

Corrective Action Plan: This recommendation was implemented prior to the issuance of the EFAME.

Documentation to be submitted w. due date: Current IMIS reports that are being used. IMIS reports (Open Inspection Report, Open Abatement Report, Reject Report, Unsatisfied Activity Report, Cases with Citations Pending Report, Debt Collection Report, Complaint Tracking Reports, etc.) verifying that the corrections have been made and data in the IMIS is being maintained. IMIS Complaint Tracking Reports will be provided to the Nashville Area Office by April 11, 2011.

Anticipated Completion Date: Recommendation was implemented and actions were completed in March 2010.

Outcome Measure/Expectation: Data is entered and updated in the IMIS and timely corrections are made from opening to closing of inspection files resulting in a reliable data repository. Effective/enhanced management of the enforcement activity through the weekly and monthly utilization of IMIS reports.

Status: Pending.

Kentucky
FY 2009 Enhanced FAME Report – Corrective Action Plan
Prepared by Region IV
Finding 14 of 20

Finding #14: Kentucky has procedures for the receipt of payments and handling of past due penalties, but these are followed inconsistently. In addition, final contest dates have not been entered into IMIS and IMIS reports are not utilized to track debt collection.

Recommendation #14: Develop and implement a debt collection procedure to ensure debts are collected. In addition, IMIS generated reports should be utilized to track cases with penalties due.

State Response: As a result of the IMIS training provided to the Kentucky OSH Program, the Division of OSH Compliance is now able to utilize additional IMIS resources to track cases with penalties due.

Corrective Action Plan: The debt collection system in IMIS is being utilized to track penalty payments and collect debt. Debt collection reports are run weekly. After twenty days, a debt collection letter is sent to the employer. If the payment is not received in the specified time, the case is forwarded to the Legal Department for collection. A pre-lien letter is sent to the employer. If the payment is not received, a lien is placed on the employer's property and the debt is collected in accordance with state law. This recommendation was implemented prior to the issuance of the EFAME.

Documentation to be submitted w. due date: Current IMIS Debt Collection Tracking Reports will be provided to the Nashville Area Office by April 11, 2011.

Anticipated Completion Date: Recommendation was implemented and actions were completed in March 2010.

Outcome Measure/Expectation: A minimal number of cases with unpaid debt. The timely collection of penalties and holding employers accountable to ensure that there is a deterrent effect.

Status: Pending.

Kentucky
FY 2009 Enhanced FAME Report – Corrective Action Plan
Prepared by Region IV
Finding 15 of 20

Finding #15: Discrimination case files did not contain a telephone log or any other documentation to show what transpired during the course of the investigation even though the State’s Field Operations Manual requires the use of a telephone log to record contact with parties involved in the investigation.

Recommendation #15: Whistleblower investigators should document all contacts related to the investigation in a telephone log.

State Response: Kentucky’s whistleblower investigator(s) has always had a telephone log to document contacts. Its use has been re-emphasized and required in all investigative files in response to this recommendation. The Director of OSH Compliance reviews all investigative files to assure all pertinent and required documentation is contained in the files.

Corrective Action Plan: This recommendation was implemented prior to the issuance of the EFAME. The Whistleblower Investigator is required to document all contacts related to the investigation on a telephone log. Cases are reviewed by the Director of OSH Compliance to assure that this requirement is met and that cases are properly documented.

Documentation to be submitted w. due date: Copy of the telephone log being utilized in all whistleblower files was provided on December 2, 2010.

Anticipated Completion Date: Recommendation was implemented and actions were completed in March 2010.

Outcome Measure/Expectation: The thorough and detailed documentation of the whistleblower investigation including all contact with complainants, respondents, witnesses, and other parties. All cases contain documentation of contact with all parties and witnesses involved in investigations.

Status: Subject to further Federal monitoring.

Kentucky
FY 2009 Enhanced FAME Report – Corrective Action Plan
Prepared by Region IV
Finding 16 of 20

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

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

State Response: In response to this recommendation, the investigator is conducting interviews and including written and signed statements in all case files as much as possible. When statements are not obtained, the justification is documented in the file and/or final investigative report. The Director of OSH Compliance reviews all investigative files to assure all pertinent and required documentation is contained in the files.

Corrective Action Plan: This recommendation was implemented prior to the issuance of the EFAME.

Documentation to be submitted w. due date: NA

Anticipated Completion Date: Recommendation was implemented and actions were completed in March 2010.

Outcome Measure/Expectation: The thorough and detailed documentation of the whistleblower investigation. All cases contain documentation from all individuals with any knowledge of facts involving the allegations related to the discriminatory action.

Status: Subject to further Federal monitoring.

Kentucky
FY 2009 Enhanced FAME Report – Corrective Action Plan
Prepared by Region IV
Finding 17 of 20

Finding #17: The Final Investigative Reports (FIR) in discrimination case files were incomplete and only contained short scripted sentences confirming or refuting whether the element was met.

Recommendation #17: Clearly record Whistleblower investigation findings in the final investigative report to include at a minimum: tell the story about what happened that led to the adverse action, to include protected activity; include complainant’s allegations, respondent’s assertions and what was found to be factual; analyze the timing of the adverse action to the protected activity; analyze whether respondent was angry at complainant for participating in protected activity; and analyze whether complainant was treated different than other employees similarly situated.

State Response: Whistleblower investigations now include documentation in the final investigative report that addresses this recommendation. Whistleblower investigative files are being thoroughly documented with sufficient evidence to support the findings. The Director of OSH Compliance reviews all investigative files to ensure they are adequately and thoroughly documented.

Corrective Action Plan: This recommendation was implemented prior to the issuance of the EFAME.

Documentation to be submitted w. due date: NA

Anticipated Completion Date: Recommendation was implemented and actions were completed in March 2010.

Outcome Measure/Expectation: The thorough and detailed documentation of the whistleblower investigation. All cases contain documentation which tells the story that led to the alleged adverse action to include protected activity, complainant’s allegations, respondent’s assertions and what was found to be factual to support the findings.

Status: Subject to further Federal monitoring.

Kentucky
FY 2009 Enhanced FAME Report – Corrective Action Plan
Prepared by Region IV
Finding 18 of 20

Finding #18: Discrimination case files lacked copies of the Settlement Agreements, back pay amounts, and explanations of the settlements in the FIR. In addition, Kentucky is not reviewing the settlement provisions to ensure the complainant's rights are protected and it does not have any guidelines related to cases settled between the two parties.

Recommendation #18: When a Whistleblower case is settled between the parties and a Kentucky OSH settlement agreement is not used, the investigator should obtain a copy of the agreement for the file. In addition, the state should develop guidelines to review and approve all settlement agreements to ensure that the complainant's rights are protected.

State Response: When a Kentucky settlement agreement is not used, the whistleblower investigator(s) will request settlement documents and include them in the case files. The Division of OSH Compliance is working with the Cabinet's Office of General Counsel to develop guidelines to review all settlement agreements. All settlement agreements between the parties will be reviewed by the Office of General Counsel to ensure the overall purpose of the anti-retaliation provisions is served and any chilling effect of the alleged retaliation is addressed.

Corrective Action Plan: The first portion of the recommendation was implemented prior to the issuance of the EFAME. The Division of OSH Compliance is working with the General Counsel to develop guidelines to review all settlement agreements.

Documentation to be submitted w. due date: The Guidelines developed through the General Counsel will be provided to the Nashville Area Office by April 11, 2011

Anticipated Completion Date: April 11, 2011

Outcome Measure/Expectation: To assure that settlement agreements do not contain provisions that would adversely affect the employee and to assure that the employees' rights are protected.

Status: Pending.

Kentucky
FY 2009 Enhanced FAME Report – Corrective Action Plan
Prepared by Region IV
Finding 19 of 20

Finding #19: From a review of 20 consultation files, the Region found that the time from the closing conference to the date the employer received the report ranged from three to six months.

Recommendation #19: The Consultation Program should identify the factors affecting the issuance of the reports in order to reduce the time from the closing conference to the date the employer receives the report.

State Response: OSH Training & Education experienced great turmoil during the previous administration. The division experienced a complete change of management personnel and responsibilities, which brought the report review and issuance process to a virtual standstill. That created a backlog of reports which remained until the division's management structure was fully re-staffed and operational. The problem had been identified, addressed, and essentially resolved prior to the Enhanced FAME.

Corrective Action Plan: Staff was relieved of other duties and assigned to work on reports and reduce the number of overage reports until they were current. Reports are on track and are currently being issued in a timely manner. During the last audit, the Region IV Regional Office did not identify any problems.

Documentation to be submitted w. due date: Current tracking reports related to Consultation will be provided to the Nashville Area Office.

Anticipated Completion Date: Recommendation was implemented and actions were completed in March 2010.

Outcome Measure/Expectation: Improved customer service resulting in the identified hazards being corrected in a more timely manner. Recommendations are implemented in a more timely manner ensuring employees are protected.

Status: Pending.

Kentucky
FY 2009 Enhanced FAME Report – Corrective Action Plan
Prepared by Region IV
Finding 20 of 20

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

Recommendation #20: Kentucky should develop and implement a formal program for conducting periodic internal evaluations. The procedure should assure that internal evaluations possess integrity and independence. Reports resulting from internal evaluations will be made available to federal OSHA.

State Response: Kentucky believes it had internal evaluation procedures in place at the time of the Enhanced FAME audit. It appears that OSHA believes Kentucky’s procedures need to be written into a single document. Kentucky notes that a written, single document internal evaluation program is not required by the CPL.

The Division of OSH Compliance and the Division of OSH Education and Training have always approached and conducted internal evaluations on several fronts, such as internal fiscal checks and balances, employee on the job evaluations, and review of employee work product, to compliment the host of other internal policies and procedures.

Corrective Action Plan: Division of OSH Education and Training developed a written “Internal Quality Assurance Program” which was submitted to Region IV in April 2010. The Division of OSH Compliance is in the process of developing a written program. This will be completed by the end of January 2011.

Documentation to be submitted w. due date: The “Internal Quality Assurance Program” for the Division of OSH Education and Training was provided to Region IV in April 2010. The “Internal Quality Assurance Program” for the Division of OSH Compliance will be provided to the Nashville Area Office by April 11, 2011.

Anticipated Completion Date: April 11, 2011

Outcome Measure/Expectation: Kentucky identifies weaknesses in their program, such as the need for additional training and/or procedures, etc., through their internal program resulting in Federal OSHA finding few problems during evaluations and a more efficient and effective program.

Status: Pending.