

**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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REPORT PREPARED BY:

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

TABLE OF CONTENTS

I. Executive Summary

II. Major New Issues

III. Assessment of State Performance

A. Progress in Achieving Annual Performance Goals

B. Performance on Mandated and Other Related Activities

- **Enforcement**
- **Standards and Plan Changes**
- **Variances**
- **Discrimination Program**
- **Complaint About State Program Administration (CASPA)**
- **Voluntary Compliance Programs**
- **Program Administration**

Appendices:

Appendix A: Findings and Recommendations Table

Appendix B: Enforcement Comparison

Appendix C: KY OSHA FY2009 State OSHA Annual Report (SOAR)

Appendix D: FY2009 State Activity Mandated Measures (SAMM) Report (End of Year Run)

Appendix E: FY 2009 State Indicator Report (SIR)

I. EXECUTIVE SUMMARY

A. Introduction

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

The General Assembly enacted legislation giving KY OSH the mission to prevent any detriment to the safety and health of all public and private sector employees arising out of exposure to harmful conditions or practices at their places of work. Kentucky's revised OSHA Program consists of the OSH Federal-State Coordinator, standards specialists, and support staff, all of who are attached to the commissioner's office; the Division of Occupational Safety and Health Compliance; and the Division of Occupational Safety and Health Education and Training. The Division of OSH Compliance is responsible for the enforcement of Kentucky's OSHA standards. The Division of Education and Training assists employers and employees by promoting voluntary compliance with the KY OSH standards. The Division of Education and Training is also responsible for overseeing the Partnership Programs as well as conducting the Annual Survey of Occupational Injuries and Illnesses, the Census of Fatal Occupational Injuries, and the OSHA Data Collection. The Office of the Federal-State Coordinator oversees the Office of Standards Interpretation and Development. Safety and Health Standards Specialists from this office serve as support staff to the Kentucky OSH Program and OSH Standards Board, promulgate KY OSH regulations, respond to OSHA inquiries, and provide interpretations of KY OSH standards and regulations. This office is responsible for maintaining the Kentucky OSH State Plan, as well as handling day-to-day communications with other government agencies, both at the state and federal level, including the U.S. Department of Labor, OSHA, BLS, and other state OSHA programs. Based on FY2009 data, there were a total of 115.4 positions funded under the 23(g) grant. During the course of FY 2009 the State experienced three vacancies, which it is working aggressively to fill. These vacancies include

two safety compliance officer positions and an industrial hygiene position. Kentucky currently has 23 safety officers and 13 industrial hygienist positions, which is just one health position below the established benchmark for Kentucky. During this period the KY OSH program did not have any 100% state funded positions.

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

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

The Division of Occupational Safety and Health Education and Training provides 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 VPP, Construction Partnership Program (CPP), SHARP, OSHA Strategic Partnership (OSP), and Safety Partnership Program (SPP), focused on reducing injury and illness.

B. Summary of the Report

This report represents an evaluation of the state's performance during the first year of its current Two-Year Strategic Plan, as well as its overall performance. This report indicates that KY OSH has made significant progress towards achieving their established goals. In fact, the state is on target to accomplish all but one of its performance goals. Therefore, that section of the report does not contain any formal recommendations for improvement. However, during the comprehensive monitoring review, 20 recommendations were made to Kentucky to enhance the performance of the State Program. These recommendations addressed: the accurate entry and consistent maintenance of data in the IMIS; the effective use of reports to enhance enforcement program management; the enhanced screening of complaints; procedures to improve communications with complainants and next-of-kin; the implementation of an effective tracking system for abatement; implementation of a debt collection procedure; procedures to improve case file documentation for whistleblower investigations; and the development of an effective internal self-evaluation system, among other issues. Additionally, stakeholder interviews were conducted with several representatives from industry groups, labor unions, and professional organizations. Overall, these stakeholders were confident in KY OSH's ability to perform its occupational safety and health mandated activities.

C. Special Study Methodology and Other Monitoring

This report was prepared under the direction of Cindy A. Coe, Regional Administrator, in the Atlanta Regional Office. This report covers the period from October 1, 2008 through September 30,

2009. The Kentucky State Plan is administered by the Kentucky Labor Cabinet, Department of Workplace Standards, Occupational Safety and Health Program. This report was compiled using information gained from Kentucky's State Office Annual Report (SOAR) for FY 2009, interviews with the Kentucky staff, interviews of stakeholders and the SAMM and SIR reports for FY 2009. On-site monitoring for this evaluation included case file reviews, formal interviews with KY OSH staff, and interviews with stakeholders. Information obtained during routine monitoring of the Kentucky program by Federal OSHA's Regional and Frankfort Area Offices was also used as a basis for this evaluation.

D. Recommendations

The following recommendations are being made to KY OSH as a result of this evaluation:

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.

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.

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.

Recommendations 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.

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.

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.

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.

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

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

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

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

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

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.

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.

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

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.

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.

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.

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.

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.

II. NEW MAJOR ISSUES

In Fiscal Year 2011, all Kentucky state government executive branch merit and non-merit employees will be furloughed a total of six (6) days. The six (6) days include three (3) common days, adjacent to existing state holiday weekends, during which state offices will be closed. These days include September 3, 2010 (Labor Day weekend), November 12, 2010 (Veteran's Day weekend), and May 27, 2011 (Memorial Day weekend). In addition, employees will be furloughed for one (1) day during each of the months of October, March, and June. KY OSH will schedule employees to be off work in a manner that minimizes impact to the public and enable them to respond to fatalities, catastrophes, and imminent danger incidents during the furlough days.

The Kentucky Labor Cabinet's Occupational Safety and Health Program purchased a state of the art multi-purpose vehicle with one-time federal funding in 2009. The vehicle was designed and equipped to support compliance and outreach efforts. The Incident Mobile Post and Consultation Training vehicle, dubbed the KYOSH IMPACT, is a Class A motor coach specifically constructed to support the Division of OSH Compliance and the Division of OSH Education and Training. IMPACT is equipped with satellite service, surveillance equipment, internal and external monitors, workstations, and a host of other devices that will serve the Kentucky OSH Program, serve employers, and employees throughout the Commonwealth.

The Division of OSH Compliance will deploy IMPACT to respond to occupational safety and health incidents and support specialized strategic enforcement efforts throughout the state. IMPACT will also be utilized by the Division of OSH Education and Training for outreach to traditional and non-traditional Labor Cabinet partners. Since IMPACT provides a means for outreach to populations the Cabinet might not otherwise reach at a wide variety of venues through the Commonwealth.

III. Assessment of State Performance

A. Assessment of State Progress in Achieving Annual Performance Goals

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

the annual performance goal, as well as Kentucky's performance in meeting its mandated activities.

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

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

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

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

The Kentucky OSH Program now receives NAICS data and has established baselines for the ten (10) highest incident rate industries. The combined efforts of the Division of OSH Compliance and the Division of OSH Education and Training continue to have an impact upon reducing incidence rates through 2009. In FY 2009, Kentucky set a new baseline for Performance Goal 1.1.1 with the ten (10) most hazardous industries in Kentucky identified by the NAICS classifications. As part of Kentucky's two (2) year strategic effort to meet Performance Goal 1.1.1, the Division of OSH Compliance planned to increase compliance inspection activities for several industries that had very large increases in the total case incident rates. During FY 2009, the Division of Compliance conducted sixty-five (65) inspections within the top ten (10) identified NAICS sub-sector classifications in 2003. The Division of Compliance continued its commitment to identify and inspect establishments within the selected ten (10) high hazard NAICS by performing approximately five (5) percent of its inspections within the ten (10) high hazard NAICS.

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

There were two (2) FY 2009 Annual Performance Goals for Performance Goal 1.1.2. The first was to establish a new target list based upon the 2007 OSHA Data Initiative (ODI) currently identified in the 2007 Establishment Data System as having Total Case Rates three (3) times the Kentucky Total Case Rate for Private Industry to levels less than twice the Total Case Rate. The second was to establish a new baseline from the 2007 ODI survey for specific facilities targeted. Kentucky will continue the mission of reducing the number of worker injuries, illnesses, and fatalities by focusing on Kentucky OSH resources on the most prevalent types of workplace injuries and illnesses, the most hazardous industries, and the most hazardous workplaces.

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 high hazard industries are identified using four-digit North American Industry Classification System Codes. Following identification of Kentucky's top ten high hazard industries, the Division of OSH Education and Training sends letters to each employer in these industries with an offer to provide free consultative services, in an effort to reduce the employer's injury and illness rates. Each employer is asked to respond to this offer by an established date. A list of the employers that do not respond is compiled and provided to the Division of Compliance. In FY 2009, the Division of OSH Compliance conducted seventy-seven (77) inspections from the 2008 Targeted Outreach Program (TOP) list with 697 left to complete. This represents six (6) percent of all inspections. FY 2009 is a baseline year for the new 2009-2010 two (2) year strategic plan.

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

Kentucky indicated that this goal was written in error, since the data to effectively evaluate the State's performance in this area will not be available until October 2010. FY2009 Bureau of Labor Statistics (BLS) data, which reflects 2008 industry data, is the baseline the State will now use to measure its performance in this area. The plan for this goal is to decrease the injuries related to falls, struck-by, and crushed-by accidents in construction by two percent in FY2009 and by 2% in FY2010 for a total of 4%. This goal will be accomplished through inspection and outreach activities related to the emphasis programs and programmed construction inspections. The progress towards meeting this goal will be measured later this year.

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

The FY 2009 Annual Performance Goal was to accomplish inspection of 100 percent of fatalities and catastrophes within one (1) working day of notification. Kentucky's Performance Goal of FY 2009 aims for 100 percent of fatality and catastrophe inspections to begin within one (1) working day after the Kentucky OSH Program is notified. Kentucky has met its goal for FY 2009 by responding within one (1) working day of all fatalities. Two (2) fatalities appeared as outliers on the FAT/CAT and Complaint Response Data for FY 2009. They were:

- A fatal accident in Calvert City occurred after lunch on Friday, February 20, 2009. The plant closed and sent everyone home. The inspection was opened on Monday, February 23, 2009, the next business day.
- A fatal accident occurred on March 9, 2009. It was not reported until Friday, March 20, 2009. The inspection was opened on Monday, March 23, 2009, the next business day.

These two (2) fatality investigations were initiated within one working (1) day of notification as specified in Kentucky's two (2) year strategic plan.

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

Performance Goal 1.2.2 addresses response time by the Division of OSH Compliance in critical situations. This goal seeks to initiate inspection of imminent danger reports within one (1) working day of notification for 100 percent of occurrences. The FY 2009 Annual Performance Goal requires the Division of OSH Compliance to initiate inspection of 100 percent of imminent danger reports within one (1) working day of determination. The referral audit log indicates Kentucky failed to respond to the following six (6) imminent danger referrals within one (1) working day:

- A referral was received on November 5, 2008, and was opened on November 7, 2008. This referral was originally assigned as a complaint and then changed to a referral that same day.
- A referral was received on February 9, 2009, and was opened on February 20, 2009. The compliance officer went to the site on February 11, 2009, because the caller stated that no one was on the roof on February 9, 2009. It snowed on February 10, 2009. When the compliance officer arrived on February 11, 2009, no one was working on the roof. When the compliance officer returned on February 20, 2009, the property owner said the roofers had left. The compliance officer was travelling a considerable distance from central Kentucky (Frankfort) to western Kentucky (Paducah). The Division of OSH Compliance responded within two (2) days but it was not noted in the IMIS.
- A referral was received on February 10, 2009, and was opened on February 12, 2009. Kentucky was experiencing snow during that time and the compliance officer was travelling from central Kentucky (Frankfort) to western Kentucky (Paducah).
- A referral was received on March 2, 2009, and was opened on March 4, 2009. The inspection was opened on the same date the imminent danger referral call was received. This outlier resulted from a data entry error that was corrected.
- A referral was received on Friday, September 11, 2009, and was opened on Monday, September 14, 2009. This response was within one working day.
- A referral was received on September 30, 2009, and was opened on September 30, 2009. The inspection was opened on the same date the imminent danger referral call was received. This outlier resulted from a data entry error and was corrected.

It has been reiterated and emphasized to Division of OSH Compliance staff that imminent danger referrals must be opened within one (1) working day after notice is received. If not, a detailed explanation is required in the case file. Kentucky did not meet this goal 100% of the time due to inclement weather conditions.

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

Performance Goal 2.1.1 aims to continue incorporating safety and health management systems evaluation in 100 percent of the full service comprehensive surveys conducted. There are two (2) FY 2009 Annual Performance Goals for 2.1.1. They are:

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

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

Performance Goal 2.1.2 has been fully met in FY 2009 as 100 percent of the consultation reports on comprehensive consultative surveys contain a completed Form 33. The Form 33 attempts to measure the safety culture of an organization, which is a key ingredient in whether the performance is sustainable or just random luck. Each comprehensive survey case file also includes a safety and health program evaluation report.

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

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

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

Performance Goal 2.1.4 relates to Kentucky's effort to continue to develop and deliver outreach training services to employers and employees that meet 100 percent of targeted strategic goals. The two (2) FY 2009 Annual Performance Goals seek to:

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

The training conducted at the eight (8) POP Center training sessions in FY 2009 addressed a myriad of hazards associated with high hazard industries. Courses addressing fall protection, back care, lockout/tagout, excavations, explosive dust, scaffolding, electrical safety, residential and commercial construction exceeded 2000 participants. The POP Center training schedule and courses were posted on the OSHA Program website in 2009 and this practice will continue in 2010. Additionally, all changes to Kentucky OSH regulations as well as the full text of Kentucky OSH regulations and reference materials appear at the Kentucky OSH website.

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

Performance Goal 3.1.1 is to maintain a technology infrastructure that provides a reliable data repository to support Kentucky OSH Program goals and strategies. Kentucky OSH is not meeting this goal. The FY 2009 Annual performance Goal for 3.1.1 was to maintain 100 percent of all OSHA Integrated Management Information System (IMIS) equipment and software to ensure that all data on the information system is accurate, accessible, and current for both the Kentucky OSH Program and OSHA.

In fulfillment of this goal, Kentucky personnel have participated in monthly conference calls hosted by OSHA for Information Technology users. However, this evaluation found that the data in the IMIS is not accurate. IMIS reports indicated that in some cases data is not being entered and updated and in other cases it is not being updated in a timely manner. The Division of OSH Compliance and the Division of OSH Education and Training maintain full-time positions to coordinate IMIS computer equipment and IMIS data entry activity however these individuals have minimal knowledge and ability to perform this function. During fiscal year 2009, the individual responsible for the entry of IMIS data changed three times. In addition, these individuals did not have written guidance and had only minimal training on the IMIS system. As a result, IMIS training by the Atlanta Regional Office was conducted in April at the state office in Frankfort. Additional information is contained in the Enforcement Program Management section of this report.

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

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

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

In FY 2009, the annual performance goals toward fulfillment of this goal included ensuring the development of a workforce career development plan for entry level employees, ensuring the KY OSH Program has two (2) personnel who have received either the OSHA Construction or OSHA General Industry 10-Hour or 30-Hour instructor training, and ensuring Kentucky OSH staff acquire professional certification. In fiscal year 2009, five Division of Compliance employees completed the OSHA 30-Hour General Industry course, three completed the 10-hour General Industry course, and six completed the OSHA 10-Hour Construction course. In addition, two compliance officers achieved the CSP certification. Kentucky is pleased this goal has been met. All managers in the Division of OSHA Education and Training received formal leadership training. Additionally, a training career development plan has been prepared for the Division of Education, as well as training for entry level employees.

B. Assessment of State Performance on Mandated and Other Related Activities:

Enforcement Program

For this evaluation, a total of 175 inspection case files, plus 18 complaint investigation files were reviewed. All fatality investigation files for fiscal year 2009 were reviewed and, in addition, a random selection of files were selected from the following categories: programmed general industry safety, programmed general industry health, programmed construction safety, programmed construction health, referrals, complaint inspections, and complaint investigations. This was a small percentage of the 1,233 inspections conducted in 2009, 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 IMIS data for fiscal years 2006 through 2009 did not indicate any notable variations.

Overall, case files that were reviewed were very detailed and contained sufficient documentation. The case files that were reviewed were well documented with very 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. However, inspections were not coded with the appropriate emphasis and strategic codes. 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.

Complaints

Kentucky's procedures for handling complaints alleging unsafe or unhealthful working conditions are very similar to those of Federal OSHA. These procedures are covered in KY OSH Field Operations Manual Chapter IX (10/01/2001) – Complaint and Referral Policies and Procedures. All valid, formal complaints are scheduled for workplace inspections. Complaints are evaluated by the Compliance Program Managers, prioritized, and inspected or investigated based upon classification and gravity of the alleged hazard. Formal serious complaints, for example, are inspected within a negotiated goal of thirty (30) days. Three (3) serious complaint inspections were opened later than 30 days after assignment in FY 2009. Seven (7) imminent danger complaints were opened the day they were received. Inspection data indicates that Kentucky handled 522 complaints and conducted 245 complaint inspections in 2009. According to the State Activity Mandated Measures (SAMM) report, Kentucky responds timely to complaints. Complaint investigations were initiated within an average of 2.65 days from the time of receipt with a goal of 5 days, and complaint inspections were initiated within an average of 6.63 days from the time of receipt with a goal of 30 days.

Kentucky 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, Kentucky 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. 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. A few complaints were responded to late because of a lack of available resources to conduct the inspections. Management interviews indicated that they are reluctant to deviate from the directive which provides that a signed complaint from an employee is justification for an inspection. However the directive also allows for management review and discretion for determining if a complaint will be handled by inspection or investigation. It is recommended that management evaluate complaints including formal complaints to determine when an investigation would be more appropriate to allow a more effective use of their resources. 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 in a timely manner. However, they do not have an effective process to assure they are entered into the IMIS.

This evaluation included reviews of 15 complaint investigation files (those complaints handled by letter, or Kentucky's phone and fax procedure) and 25 complaint inspection files. Several standard IMIS reports of complaint activity were also reviewed however the IMIS is not updated accurately

and consistently. In addition, the complaints addressed through the phone and fax process were not coded as such which prevented them from being tracked. A review of the IMIS reports showed that approximately 121 of 245 or 49.4% of their complaint inspections were in-compliance. It was determined that the state was conducting inspections of signed formal complaints where it was questionable if a serious hazard existed or in many instances there was no standard to enforce leading to the high in-compliance rate of complaints. 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. It was noted that the electronic complaints filed on OSHA's E-mail Complaint System were not coded as an electronic complaint. This is required to ensure all complaints that have been forwarded from the system have been addressed.

During fiscal year 2009, all complaints investigated by letter were addressed appropriately in accordance with the state's directive. Complainants were notified of the result of the investigations which only included that the employer response was adequate. Complainants were never provided with a copy of the employer's response. In all cases, a checklist in the file indicated that the employee did not agree with the employer's response (complainant disputing employer response) but no further action was taken. It was determined that this was a data entry error caused by a misunderstanding by the person entering the data in the IMIS. In addition, there were several instances where the state closed the complaint without an adequate response from the employer. For example, in a few instances the employer was providing sampling or correcting the hazard and the complaint was closed before final abatement or sampling results were received.

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.

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.

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.

Recommendations 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.

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.

Fatalities

In fiscal year 2009, Kentucky investigated 35 workplace fatalities. The number of construction deaths decreased from 8 in 2008 to 5 in 2009, while the number of fatalities in general industry increased from 22 in 2008 to 30 in 2009. In addition, there were 3 public sector fatalities in fiscal year 2009 compared to 0 in fiscal year 2008. Kentucky's procedures for the investigation of occupational fatalities are essentially the same as those of Federal OSHA. Investigations are initiated within one day of notification of the fatality. During this evaluation all FY 2009 fatality investigation files were reviewed. Kentucky has implemented procedures to assure the quality of fatality investigations. A supervisor and program manager works closely with the compliance officer when the case file is being prepared to assure that the case documentation is legally sufficient. The Legal Department provides assistance when it is 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 off on by the Director of OSH Compliance. The KY OSH Director reviews and signs off on 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. 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. A total of 12 cases or 38.7% were in-compliance or did not have fatality related violations. Of the cases that were not in-compliance, seven cases or 22.6% did not have a violation that was related to the fatality. The comparable Federal OSHA rate was 21.3%. These cases were well documented with the reasons for them being in-compliance. This review did not identify any cases where there appeared to be a violation that may be related to the fatality. The fatalities resulted in a total of 70 Serious, 1 Willful, 1 Repeat, and 27 Non-serious violations. For citations that were resolved by means of an informal settlement agreement, the percent of penalty reduction was low and very few violations were deleted or reclassified. Settlement agreements did not contain employer commitments or justifications for changes or penalty reductions other than "for settlement purposes only." Practically all of the fatality investigations involved partial inspections, rather than a comprehensive inspection.

Kentucky has a longstanding procedure for communication with family members of deceased workers. 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. Following an inquiry by the Regional Administrator in Region IV in mid-fiscal year 2009 regarding KY OSH's fatality correspondence, KY OSH revised its 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. It is recommended that KY OSH send written correspondence to the next of kin

informing them and providing them information regarding the investigation. This letter should be signed by the Director of OSH Compliance or the Commissioner. At the conclusion of the investigation, the final letter sent to family members was a generic letter indicating that citations were or were not being issued with a copy of the citations attached. The letter did not explain the state's findings or results of the investigation. It is recommended that at the conclusion of the investigation the state should send the next of kin a letter signed by the Director of OSH Compliance or Commissioner explaining the state's findings or results of the investigation and a copy of any citations if any are issued. In addition, the next of kin should be informed of informal conferences, as well as any changes in the citations as a result of a settlement. The next of kin are notified of contests and hearings by the attorney assigned to prosecute the case however, a copy of the correspondence was not included in the files. A copy of the letters should be maintained in the file.

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.

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.

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

Targeting Inspections

According to inspection statistics run for this report, Kentucky conducted 1,233 inspections in fiscal year 2009, 450 of which were programmed including construction and general industry. According to the State Indicator Report, 31.8% of programmed safety inspections and 51.1% of programmed health inspections had violations. Additional data indicates that an average of 3.33 violations were cited per inspection, and that 70.9% (safety) and 43.0% (health) of the violations were classified as Serious, 0.4% Repeat, and 0.4% Willful (one Willful violation was a result of a programmed planned safety inspection.)

Kentucky has a variety of special emphasis programs, some of which are associated with its strategic goals, and some of which are National Emphasis Programs. The state also has safety and health general industry targeting procedures, and has not adopted the Federal Site-Specific Targeting (SST) procedures. The Kentucky Occupational Safety and Health Program established its own site-specific targeting program known as the Targeted Outreach Program (TOP), which utilizes the OSHA Data Initiative. Additionally, Kentucky 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 (1) or two (2) employees. The reporting requirement is limited to hospitalizations that occur within seventy-two (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 (1) or two (2) employees and all amputations must be reported to the Division of OSH Compliance within seventy-two (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.

Kentucky conducts programmed inspections in the construction sector, particularly under its local emphasis program for residential construction fall protection and the Dodge system. These are associated with the state's strategic goal to reduce injuries caused by falls, struck-bys, and crushed-bys in the construction industry by 4 (four) percent. Many programmed construction inspections are partial in scope due to the local emphasis program for residential fall protection activities. In fiscal year 2009, Kentucky identified more than 613 construction hazards.

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. 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 as 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 2009, the Division of OSH Compliance conducted fifty-five (55) inspections including programmed inspections of public sector work sites.

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. It is recommended that the state evaluate and determine the cause of the high in-compliance rate for programmed inspections. Programmed inspections were not coded with emphasis program or strategic codes. The inspection files were only coded with N-01 codes for multi-employer worksites and N-20 codes for construction inspection files noting whether the inspection was commercial or residential. This made it very difficult to identify the program that targeted inspections were conducted under. In addition, it was not possible to use IMIS reports for this part of the review. IMIS reports indicated that no local emphasis program inspections were conducted during fiscal year 2009. It is recommended that all inspections be coded with the applicable national, local, and strategic codes. Several standard IMIS reports of programmed inspection activity were reviewed however the IMIS is not updated accurately or consistently. It was noted that a number of case files did not include injury or illness data from the OSHA 300 logs or an explanation for the lack of data. Kentucky's Field Operations Manual requires that injury and illness records be examined and verified on all inspections where the employer is required to keep records. It is important to document the number and type of any recordable injuries or illnesses, particularly in cases where the company was targeted for inspection due to high industry rates. When this matter was brought to the state's attention during the evaluation, each case where the 300 data was missing

was reviewed. It was determined that, where the employer was required to keep records, the compliance officers had actually reviewed the records, data was entered into IMIS, and documented it in the case file. Chapter VI.A.1.a. - Review of Records of the state's Field Operations Manual states at the start of each inspection, the CSHO shall review the employer's injury and illness records for three prior calendar years and record the information. During the documentation preparation phase of the inspection the CSHO will enter the employer's data using the IMIS Application on the NCR (micro). This shall be done for all general industry, construction, and agriculture inspections and investigations. It was noted that the Field Operations Manual references the 200 logs and has not been updated to include the current 300 recordkeeping forms.

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

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

Employee and Union Involvement

Kentucky's procedures for employee and union involvement are identical to those of Federal OSHA. Case files reviewed disclosed that unions are included during inspections as well as post inspection activities such as informal conferences. Reviews also revealed that employees were included during fatality investigations and other inspections.

Citations and Penalties

In fiscal year 2009, the 1,233 inspections conducted resulted in an average of 2.6 violations per inspection, with 80.1% of violations (70.9% safety violations and 43.0% of health) were classified as Serious. The average initial penalty per Serious violation for private sector inspections was \$1,769 compared to an average of \$1,335 for national data. In 2009, the average lapse time from opening conference to citation issuance was 57.13 days for safety and 98.0 days for health. This is above the national rate of 43.8 days for safety and significantly above the national rate of 57.4 days for health. The issuance of citations is critical to ensure the hazard is promptly abated and the employee is protected. It is recommended that the state evaluate and determine the cause of the high citation lapse time for safety and health.

The case files reviewed included adequate documentation to support the violations with minor exceptions. Signed interview statements were lacking in the files; however, many contained interview notes. Photographs supporting the violations are placed in the files. All inspection photos are maintained in the file until they are scanned when the 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.

The state's procedures for determining the classification of violations and penalties are the same as those of Federal OSHA. Serious violations are categorized as high, medium, or low severity for penalty calculation purposes. Case file reviews found that with few exceptions, violations were consistently classified according to the state's procedures. Both Federal OSHA and Kentucky consider severity first, then probability for determining the gravity based penalty. The penalties do not differ significantly from those of Federal OSHA. Interviews with all of the staff indicated that the directive is being strictly and consistently followed. They all referenced Field Operations Manual procedures and appeared to be very familiar with the state's policies and procedures in this area. The state reduced penalties by 51.8% compared to a national average of 51.9%.

An additional factor that was a focus of the review regarding citations and penalties was the grouping of violations. Kentucky's policy for grouping is very similar to that of Federal OSHA. Items that are related hazards, items in which a single abatement would correct both violations/hazards, and items that when grouped together would create a Serious hazard, can be grouped. Case file reviews identified that the state is properly grouping violations in accordance with its Field Operations Manual. There were no issues identified with the grouping of violations.

Kentucky issued 20 willful violations for a total of 22 willful items in the groupings, in 2009. The average penalty for the willful violations is \$28,600 compared to an average penalty of \$32,000 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 compliance officers and supervisors identify them. The legal department is also willing to support them. There was only one file that appeared to have circumstances that would have met the qualifications for a willful violation, but was not supported.

It was also noted that 2.84 percent of inspections were follow-ups, with a ratio of failure-to-abate violations to follow-ups of 8.6%. Compliance officers may recommend a follow-up when they are unable to obtain adequate abatement information. In addition, follow-ups are conducted for all over-exposures. It was also suggested that follow-up inspections be conducted for all fatalities where a fatality related item is cited. Kentucky management stated that they are currently conducting a higher percentage of follow-up inspections for cases where the employer has not complied with abatement requirements and they liked the idea of conducting follow-ups on the fatalities.

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

Abatement

Case file reviews, available procedures, and inspection data indicate that Kentucky obtains adequate and timely abatement information and has processes in place to track employers who are late in providing abatement information. However there were several issues identified during this review. Kentucky does not have a written procedure for abatement verification nor is it addressed in the

Field Operations Manual. Currently, the Program Managers manually look at open files and identify 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. One of the program managers is looking at abatements every two weeks and the other is doing it once a month. At the time of this review, there were 80 cases (many greater than 60 days) with open abatements for fiscal year 2009 a total of 546 total open cases without abatement. It was determined that many of these cases had abatement, but officials were not updating the IMIS when abatement was received and/or verified. There is no consistency on how and when abatements are reviewed and followed-up on. Case file review indicated that the state is obtaining abatement and conducting follow-ups. In addition, no tracking mechanism is being utilized to track cases with open abatements. It is recommended that a tracking system for abatements be implemented to ensure abatements are tracked and followed-up on in a timely manner. IMIS reports that are available are not being used. The IMIS issues are being addressed in the Enforcement Program Management section of this report.

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

Enforcement Program Management

Kentucky only uses a few of the available IMIS reports and other data to assist with program management. They have established internal logs to track fatalities and complaints, but these are minimally effective. The analysis of standard IMIS tracking reports and interviews revealed that Kentucky is not using the reports effectively. It is essential for the Kentucky OSH office to utilize developed standard, local and micro-to-host reports in order to make an impact on keeping the IMIS system current. These helpful tools can be utilized to achieve strategic goals by focusing on areas of emphasis such as abatements due, payment plans, follow-ups due, etc.

The Kentucky OSH office needs to establish guidelines for running reports and updating the IMIS system. The audit noted that although they were running some of the reports the users may not necessarily know the proper format and/or reports available for use. It was found that because Kentucky OSH office was running IMIS reports improperly, the reports were providing them with misleading information. Reports were being run for a current month rather than from the earliest date, which resulted in the absence of a lot of data. Users were in most cases unaware of reports available for their use and therefore doing a lot of unnecessary work manually. For example they would go through their file cabinets looking at open cases with abatement due, penalties dues, etc. Because of this manual procedure the IMIS system was not properly updated with dates due, final contest dates, payment plans, extensions on abatement, reductions due to ISA's and letters sent.

As a result, when the audit reports were run using earliest date on system to current date, cases appear dating back to 1993 with no apparent action taken. Failure to properly correct and verify that hazards are corrected can result in longer worker exposure to the hazards and possibly an injury,

illness, or fatality. It was noted, however, that case files for the most part were documented, contained abatement documentation and were up to date. The IMIS system just did not reflect actions taken.

The IMIS problem stems from a turnover of some key staff, due to retirement, who had the working knowledge of the NCR/IMIS. No one existed with the knowledge to step into these roles. In addition, there are no reference materials to refer to when entering forms or reports. To resolve this problem, the Regional Office in Atlanta has coordinated IMIS training with the state that will be delivered April 26th through April 30th. IMIS reports will be reviewed during monitoring activities during fiscal year 2010 to determine the effectiveness of the training. It is recommended that state officials use the IMIS reports to track and manage enforcement activity and consistently update the IMIS with information from opening to closing of inspection files.

Also during this audit, IMIS reports for the Consultation Program were reviewed, and were found to be up-to-date. Guidance on how to correct rejects and run some micro-to-host reports was requested and will be addressed in the training.

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.

Debt Collection

Kentucky has procedures for receipt of payments and handling past due penalties; however, there are no guidelines to assure consistency as to when and how debt collection is performed. Final contest dates have not been entered into the IMIS. Interviews indicated that officials did not know how to enter the data/information. There are no internal or IMIS reports being used to track debt collection. Compliance program managers manually go through open files every 2 to 3 weeks to identify cases where payments have not been received. Management interviews indicated that the current process is inconsistent and debt collection is something they do when they get time. It is recommended that a debt collection procedure be developed and implemented to ensure consistency and that debts are collected. In addition, IMIS generated reports should be utilized to track cases with penalties due. An internal letter is sent, giving the employer 10 days to submit payment. The letters that are sent are maintained in the file; however, the IMIS is not updated to document this action. KY OSH processes payments and sends past due penalties to the Legal Department. Once it is sent to legal, they have no further involvement. State law prohibits late fees and interest being applied to late payments.

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.

BLS Rates

Bureau of Labor Statistics (BLS) injury and illness rates for Kentucky have shown a steady decline. The 2008 total case rate for the private sector was 4.7, a 9.6% reduction over the 2006 rate. The national total case rate in 2008 was 3.9. The 2008 Days Away Restricted and Transferred (DART) rate was 2.5, a 10.7% reduction over the 2006 rate. The national DART rate for 2008 was 2. Kentucky uses injury and illness rates, fatality rates, and workers compensation data in its strategic planning process to decide where its resources should be focused. Where possible, reductions in rates are used to measure outcome results.

Standard Adoption and Federal Program Changes

In accordance with 29 CFR 1902, States are required to adopt standards and federal program changes within 6-months. States must set job safety and health standards that are "at least as effective as" federal standards. (Most States adopt standards identical to federal ones.) States have the option to promulgate standards covering hazards not addressed by federal standards. During the evaluation period OSHA initiated the following standards and federal directives, which required action by the State:

Federal Standards

Standard requiring Action	Federal Register Date	Adopted Identical	Date Promulgated
Clarification of Employer Duty To Provide Personal Protective Equipment and Train Each Employee	December 12, 2008	Yes	05/05/2009
Longshoring and Marine Terminals; Vertical Tandem Lifts; Final Rule	December 10, 2008	Yes	01/12/2009

Federal Program Changes (excluding Standards)

Federal Program Changes Requiring Action	Federal Directive Number	Date of Directive	Adopted Identical	Date Adopted
Voluntary Protection Programs (VPP) Policies and Procedures Manual	CSP 03-01-003 2008 314	April 18, 2008	Yes	06/12/2008
Site-Specific Targeting 2008 (SST-08)	CPL 02 (08-07) Update	May 19, 2008	No	N/A
Training Program for OSHA Compliance Personnel	TED 01-00-018	August 8, 2008	Yes	11/02/2008
National Emphasis Program – Lead	CPL 03-00-0009	August 14, 2008	No	N/A
Tree Care and Tree Removal	CPL 02-01-045	August 21, 2008	Yes	11/02/2008

The Kentucky OSH Standards Board is a thirteen (13) member body empowered to adopt, modify, or repeal KY OSH standards in the Commonwealth of Kentucky. The Board is chaired by

the Commissioner of the Department of Labor. The remaining twelve (12) members are appointed by the Governor to equally represent agriculture, labor, industry, and the safety and health profession. The Kentucky OSH Standards Board adopted all of the standards listed above within the 6-month time frame. Additionally, the State adopted three of the five Federal Program Changes initiated during this period. The Federal Program Changes that were not adopted included Site-Specific Targeting 2008 (SST-08) and the National Emphasis Program – Lead. The Kentucky Occupational Safety and Health Program established its own site-specific targeting program known as the Targeted Outreach Program (TOP), which utilizes the OSHA Data Initiative. The State has also elected to implement a local emphasis program for lead. In the future, efforts should be undertaken to ensure policies and procedures implemented by the State, which are not identical to Federal guidelines are equivalent. This could be accomplished by KY OSH submitting the required comparison document, when they do not adopt the identical directive, which illustrates policy-by-policy, how its policies differ, and why those differences are at least as effective. The KY OSH Field Operations Manual (FOM) is similar to Federal OSHA’s Field Inspection Reference Manual. This guidance document was very outdated and generic. Interviews with managers, supervisors, and compliance staff indicated that the state’s Field Operations Manual was outdated and needed to be revised. Even though the state’s intent regarding the FOM was outside this review period, the adoption of Federal OSHA’s Field Operations Manual was discussed.

Variations

Kentucky currently has 5 permanent variations. One is a multi-state variance approved by Federal OSHA. There are currently no temporary variations. The state shares variance requests with federal monitors and requests input prior to approval. The OSH Federal State Coordinator maintains a log of variations to track the status of each. KY OSH did not receive any variance requests during fiscal year 2009. No issues related to variations were identified.

Review Procedures

Kentucky has procedures in place for conducting informal conferences and proposing informal settlement agreements, and these procedures appear to be followed consistently by all managers and supervisors. According to the State Indicator Report, 1.9% of violations were vacated and 0.9% of violations were reclassified as a result of informal settlement agreements. The penalty retention rate was 57.2%. 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 stated it was “for settlement purposes only”. Justification was not documented for the changes. Supervisors are required to discuss all changes and penalty reductions with the compliance program managers. It was also noted that the case files do not 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 were not included in settlement documents. Employer agreements for program improvements or training should be considered and written into the settlement documents.

In fiscal year 2009, 11.7% of inspections were contested. The Kentucky Occupational Safety and Health Review Commission holds hearings and issues decisions on contested citations. The three members of the Review Commission are appointed by the governor and are 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 Department of Labor and Workforce Development has taken steps to reduce the lapse time between receipt of contest and first level decision. The Office of General Counsel provides legal representation for KY OSH. The attorneys are housed within the same office as KY OSH 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. SIR data indicates that, for violations that were contested 19.7% were vacated, 3.5% were reclassified, and 39.6% of penalties were retained. No negative trends or problems with citation documentation have been noted.

Discrimination Program

Overview

The Kentucky Department of Labor and Workforce Development – Kentucky Occupational Safety and Health Administration (KY OSH) is responsible for enforcing the 11(c) discrimination regulations under the Act. The act prohibits discrimination against employees who engage in protected activities as defined by the Kentucky Occupational Safety and Health Act of 1972 [KRS Chapter 338.121] (relating to prohibition of discrimination against employees). This is comparable to Federal OSHA protection from discrimination under Section 11(c) of the OSHA Act. This evaluation included a thorough review of Kentucky’s discrimination program to determine whether KY OSH is following its own policy and procedures, and whether KY OSH is operating at least as effectively as Federal OSHA. The review of Kentucky’s discrimination protection program included an analysis of data, review of case files from interviews, and a review of Kentucky’s laws and procedures related to safety and health discrimination protection. There is no record of any previous audit of KY OSH’s 11(c) program. The supervisor and the only investigator were interviewed on-site. The supervisor and investigator are located in the central office in Frankfort. The program is supervised by the Director of OSH Compliance.

Findings

During fiscal year 2009 KY OSH docketed 38 discrimination complaints. The status of these cases and the percentages of total cases they represent are presented below.

Dismissed Non-Merit	Dismissed – Lack of Cooperation	Withdrawal	Settled-Other	Referred for Litigation	Pending
34	0	0	3	2	0
89.5%	0%	0%	8.8%	5.9%	0%

According to the State Activity Mandated Measures (SAMM) report, which uses cases closed during the fiscal year, 12.9 % of complaints were meritorious and 50% of the merit cases were settled. A total of 34 cases from the above 38 cases were selected for review. All of the settled cases and cases dismissed for lack of merit were reviewed. The two cases that were referred for litigation were not reviewed because they are currently at the attorney general's office going through litigation.

The average amount of time to complete investigations was 78.9 days and 24 (77.42%) investigations were timely completed. The 14 over aged cases were 10 to 294 days beyond the 90 day period. In addition, KY OSH collected back pay for two complainants; however, the settlement agreements were not in the file and the amount of back pay could not be determined.

Kentucky OSH has a Whistleblower Manual that is basically the same as Federal OSHA but includes some differences. The investigator provided a copy of the Kentucky Whistleblower Manual and it is included in the file for this audit. The following are the three major differences between Kentucky OSH and Federal OSHA:

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

Only one case was identified in which civil penalties were issued and that amount was \$2,500.

The investigator screens and docketed all 11(c) related phone calls. If the investigator opens a complaint, he/she prepares opening letters to the Complainant and Respondent and the letters are sent via certified mail. Complainants also receive a questionnaire to complete and return. Respondents are requested to submit a position statement.

Based on the investigator's case list from IMIS, the number of investigations completed between January 1, 2009 and December 31, 2009 was 38 (not including the 2 that were sent for litigation). A total of 34 closed case files were reviewed. Some of the cases were identified through IMIS and some case files were made available by the investigator. The longest amount of time to complete a case was 384 days and that case was settled after Respondent was notified about a pending merit finding. That settlement agreement did not include all the provisions required by Federal OSHA. Three (8.8%) cases were settled between the parties. One settled case did not include back pay but the other two did. However, no copies of the Settlement Agreements were in the case files, no back pay amounts were identified and no explanations of the settlements were included in the final investigative report (FIR). However when the cases are settled, the state is not reviewing the settlement provisions to ensure that the complainant's rights are protected. The state does not have any guidelines related to cases settled between the two parties. It is recommended that the state develop guidelines to review and approve all settlement agreements to assure that the complainant's rights are protected. Two (5.9%) cases that had been referred to the Attorney General's office for

litigation prior to 2009 were still in the Attorney General's office during the audit.

On-site investigations were conducted in most cases, but personal interviews of Complainants and/or Respondents were not documented in a majority of the cases. There were few signed interview statements in the case files; signed statements appeared to be the exception, not the rule. FIRs properly evaluated the elements of discrimination complaints, but for the most part, contained only short scripted sentences confirming or refuting whether the element was met, without any other detail or explanation. In addition, none of the FIRs included a nexus determination that evaluated timeliness, disparate treatment or animus. Also, FIRs did not evaluate whether the Respondent's given reason for the termination was a pretext to discrimination. Another area of concern was that the files did not contain a telephone log or any other documentation to show what transpired during the course of the investigation. The state's Field Operations Manual requires the use of a telephone log to record any contact by telephone with the parties involved in the investigation. There is nothing documenting contacts between the investigator and the complainant or respondent. There was no way to determine if there were settlement discussions or, in cases where there was an agreement, if, when, and how an agreement was reached. Based on the above, it was impossible to ascertain if the determination reached in several of the cases was appropriate or that the cases were investigated thoroughly. It is recommended that all case related actions, communications, and correspondence be documented in the file.

The appeal process for Complainants who disagree with the dismissal of their complaint is for a Complainant to appeal the decision with the Commissioner of the Department of Workplace Standards. Four Complainants appealed the dismissal of their complaints. The Commissioner reviewed the appealed case files and talked to the investigator about the rationale for their decisions. In all four cases, the Commissioner agreed with the finding and denied the appeals. Complainants who disagree with the response from the Commissioner have the opportunity to appeal that decision to the Secretary of the Labor Cabinet. There were no appeals sent to the Secretary in fiscal year 2009.

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

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.

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.

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.

Complaint About State Plan Administration (CASPA)

During this period there was one CASPA filed in Kentucky. The CASPA involved an appeal of the employee’s discrimination complaints, which was initially investigated by Kentucky. During this process the Department of Workplace Standards, Kentucky OSH Program was cooperative and very responsive to the Federal OSHA area office. OSHA concurred with the decision reached by Kentucky in this case and did not result in recommendations to the Commonwealth, regarding the overall 11(c) investigative process and procedures.

Kentucky CASPAs in FY 2009

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

Voluntary Compliance Programs

Kentucky offers employers a wide range of cooperative programs, including On-site Consultation, participation in the State’s Voluntary Protection Program (VPP), VPP for Construction (VPPC), Site-based Construction Partnerships, Associated-based Construction 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. The Division of Education and Training assists employers and employees by promoting voluntary compliance with the KY OSH standards. Kentucky provides free safety and health training to employers and employees as well as free confidential safety and health consultation services to facilities and organizations or groups requesting those services through the 23(g) grant. An on-site review of the Kentucky Consultation Program was completed in September 2009. As part of this monitoring evaluation an overall review of the program management and operations was conducted. This included a review of 20 randomly selected safety and health case files and a review of fiscal operations. The Kentucky 23(g) Consultation Program has one Safety Consultant and one Health Consultant position vacant. The Consultation Program is expected to fill both positions during Fiscal year 2010. The MARC report revealed that 14 days after the latest correction due date, 176 Serious hazards (8.22%) were not verified as corrected in a timely manner,. This was one of the recommendations indicated in the previous review report. However, during this recent review, it was found that this is no longer an issue. The Consultation Program is properly tracking abatement by

running weekly “open abatement” reports. Overall, the case files are well documented; however there were two deficiencies noted. The time it took to complete and issue the reports to employers (from the date of the closing conference, to the date the employer received the report) were between three to six months. It is recommended that the Consultation Program 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.

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.

Kentucky OSH developed written guidelines detailing the operation of its Partnership Program, which were formally submitted as a plan change. Construction Partnerships are established through a formal written agreement and are closely monitored along with VPPC by a program manager. Major requirements for participation in the Kentucky Construction Partnerships include the following: an experience modification (EMR) rate of .85 or less; a requirement for the project owner to participate in the agreement; a comprehensive fall protection program triggered at 6 feet; and employers are limited to one partnership with the State at a time. In addition to Site-based construction partnerships, the State also conducts Associated-based and Training-based agreement. During the time of this evaluation, the state had three Site-based and three Associated-based Partnerships. Kentucky is also engaged in two VPP in Construction 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 Safety and Health Achievement Recognition Program (SHARP) was adopted at the direction of federal OSHA. Originally, the program was established as a consultation tool for small employers. During the time of this evaluation, there were 10 SHARP sites in Kentucky and approximately 6 sites at various stages in the process. The State’s safety and health consultants promote the program. However, potential SHARP sites are also identified by compliance officers during workplace inspections. Annually, Kentucky’s SHARP sites participate in a one-day safety and health conference, on the day prior to the Governor’s Safety and Health Conference in Louisville, Kentucky. During this event, the program manager shares program-related safety and health information with the representatives in attendance.

The Kentucky VPP was developed and implemented in 1997. Since it was initiated, membership in the program has steadily increased by approximately one worksite a year. The only exception to this statement occurred in 1998 and 2005, when three worksites joined the program, each of these two years. In 2009 participation in the program increased to 17 worksites; however, membership now stands at 10 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 on-site review. An additional one week assessment is conducted at sites covered by the process safety management (PSM) standard. Kentucky requires all VPP worksites that experience serious accidents to conduct a detailed root-cause analysis and sites that no longer

exemplify the qualities of VPP are asked to withdraw from the program. The State does not have a formal system to measure its VPP sites. However, based on its comprehensive worksite assessment, Kentucky is confident in the rates reported for its VPP participants. Kentucky has been encouraged to develop a comprehensive internal monitoring system to audit all areas of the Kentucky OSH Program, including VPP.

During the federal monitoring evaluation, each of these programs were evaluated and a determination was made that they were effectively managed. These programs enable Kentucky to effectively leverage its limited resources and they compliment the State's enforcement activities.

Program Administration

During the on-site monitoring visit, interviews were conducted with several management representatives and staff members for the Kentucky OSH 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.

Financial Review of Program

In accordance with U.S. Department of Labor (USDOL) Occupational Safety and Health Administration (OSHA) Directive FIN 02-00-003 – Financial and Administrative Monitoring of OSHA Grants and Cooperative Agreements, USDOL/OSHA has conducted an on-site monitoring visit regarding the financial and administrative aspects of the Fiscal Year (FY) 2007 Kentucky Department of Labor 23(g) Grant. Following are the results of the conducted on-site monitoring visit

During Fiscal Year 2007, authorized funds equaled \$8,883,050 (Federal - \$3,308,600 and non-Federal \$5,574,450). For the quarter ending September 30, 2007, actual federal expenditures reported on the final certified Standard Form (SF) SF-269, Financial Status Report and recorded in the Health and Human Services Payment Management System (HHSPMS) was \$3,308,600. Our review of the 23(g) State Plan grant revealed the grantee expended 100% of authorized federal funds.

We reviewed the final Financial Status Report, Standard Form (SF) 269 for the 23(g) grant 60F7-0043 for the period ending September 30, 2007. We verified that the submitted SF-269 was marked final and the recorded total outlays on the SF-269 matched the final draw downs from the HHSPMS.

Authorized award was properly recorded in the Computerized Accounting System (CAS) in accordance with OMB Circular A-102, *Grants and Cooperative Agreements with State and Local Governments*.

Federal funds were properly safeguarded and used solely for authorized purposes in accordance with OMB Circular A-102, *Grants and Cooperative Agreements with State and Local Governments*.

Expenses were properly cataloged, recorded and approved in accordance with OMB Circular A-87, *Cost Principles for State, Local and Indian Tribal Governments*.

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

Ability to Meet Compliance Staffing Benchmarks

Under the terms of the 1978 Court Order in *AFL-CIO v. Marshall*, compliance staffing levels (benchmarks) necessary for “fully effective” enforcement program were required to be established for each State operating an approved State plan. In September 1984, Kentucky, in conjunction with OSHA, completed a reassessment of the levels initially established in 1980 and proposed revised compliance staffing benchmarks of 23 safety and 14 health compliance officers. After opportunity for public comments and service on the AFL-CIO, the Assistant Secretary approved these revised staffing requirements on June 13, 1985. At the time of this report, Kentucky’s compliance staffing included 21 safety compliance officers and 13 health compliance officers. The State is working to fill 3 vacant compliance positions. These vacancies include one industrial hygiene position and two safety compliance officer positions. Interviews with members of the program management staff revealed that Kentucky is committed to maintaining its staffing at the established benchmark level.

Impact of State funding and other fiscal issues

Kentucky, like other States across the country, is currently experiencing financial difficulties. However, the Kentucky OSH Program is funded by a special Workers Compensation assessment and this funding mechanism is sound. Additionally, the Secretary J.R. Gray, Kentucky Labor Cabinet, supports the State’s Occupational Safety and Health Program. The projected base award for FY 2010 is \$3,505,100, which the State is able to match. Kentucky also provides \$2,623,200 over-match funds to support its workplace safety and health program.

State Internal Evaluation Program

KY OSH does not have an internal evaluation program that meets the criteria outlined in the State Plan Policies and Procedures Manual. Although the Director has procedures for routine management of the compliance program, the program could benefit from periodic in-depth audits that focus on key issues, program areas, or areas of concern to the State. Federal OSHA is available to assist Kentucky with the development of an internal evaluation procedure. Therefore, the following recommendation is being made:

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.

Furloughs, Office Closures or Other Changes in Services

Kentucky does not anticipate any changes in the level of services provided by the state or its current operations. During the review period, Kentucky did not furlough employees or close/consolidate offices due to the state's fiscal hardship. However, in Fiscal Year 2011, all Kentucky state government executive branch merit and non-merit employees will be furloughed a total of six (6) days. The six (6) days include three (3) common days, adjacent to existing state holiday weekends, during which state offices will be closed. These days include September 3, 2010 (Labor Day weekend), November 12, 2010 (Veteran's Day weekend), and May 27, 2011 (Memorial Day weekend). In addition, employees will be furloughed for one (1) day during each of the months of October, March, and June. KY OSH will schedule employees to be off work in a manner that minimizes impact to the public and enables them to respond to fatalities, catastrophes, and imminent danger incidents during the furlough days.

Assessment of Compliance Officers Training Program and Career Development

The Kentucky OSH Program adopted the federal directive TED 01-00-018, "Training Program for OSHA Compliance Personnel," with minimal changes. In Kentucky, 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.

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, 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.

The Kentucky OSH Program is 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, ranging from 10 to 15 percent. Currently, employees have achieved a total of 11 certifications including the Associate Safety Professional; Certified Safety Professional; Occupational Health Safety Technologist; and Construction Certified Health Safety Technician. The State also rewards employees that obtain advance degrees. In fact, 10 members of its staff have master or advance degrees. Additionally, the State promotes the Certified Public Manager (CPM) degree, which is offered by Kentucky State University in Frankfort, Kentucky. Employees that successfully complete the two-year program receive a 5 percent pay incentive.

Summary of Stakeholder Interviews

During this monitoring effort, an attempt was made to contact a wide range of stakeholders within the State to obtain their feedback regarding the program. Stakeholders contacted in connection with this effort included representatives from the Eastern Kentucky - Associated General Contractors (AGC); Western Kentucky - Associated General Contractors (AGC); the Kentucky - American Federation of Labor and Congress of Industrial Organizations (AFL-CIO); the Kentucky Building Trades; the International Brotherhood of Electrical Workers (IBEW) local #2100; the United Auto Workers (UAW); and the International Brotherhood of Teamsters. Interviews were also conducted with a current and former executive board member of the Kentucky Safety and Health Network (KSHN), Inc.; however, an unsuccessful attempt was also made to contact three other officers with the group. The KSHN is a non-profit organization, which consists of members of government, education, business and labor. The organization's mission is to increase the awareness of safety and health in the workplace. The Network is governed by a President, President-Elect, Secretary, and Treasurer. A volunteer Board of Directors, elected from the membership, directs the activities of the Network.

The stakeholder interviews were all conducted by telephone, with one exception. Following an introduction, the stakeholders were provided a brief explanation for the call and asked one simple question at the outset, "How would you assess the Kentucky Occupational Safety and Health Program?" The majority of the stakeholders were satisfied with the State Program. In fact, several were very impressed with the State Program's responsiveness to safety and health concerns. Several members of the State's staff were identified by name and praised for their effectiveness. However, two of the interviewees indicated that the State Program had room for improvement. One interviewee expressed concerns regarding the program's effectiveness, based on its recent enforcement action with a major employer. A second interviewee indicated that the program needed to hire additional compliance officers. However, he indicated that the program was good overall. Nevertheless, the most common word used to describe the State Program was responsive. Overall, stakeholders are confident in the Kentucky Occupational Safety and Health Program.

Appendix A: Findings and Recommendations Table
 FY 2009 Kentucky State Plan (KY-OSH) Enhanced FAME Report
 prepared by Region IV

Italics = paraphrase

	Findings	Recommendations
1	<i>The State conducts inspections for all formalized complaints regardless of the nature of the hazard. 49% of the 245 complaint inspections were in-compliance. (p. 15)</i>	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.
2	<i>Several standard IMIS reports were reviewed, but IMIS is not updated accurately and consistently. (p. 15)</i>	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.
3	<i>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 E-mail Complaint System were not coded as an electronic complaint. (p. 14-16)</i>	All electronic complaints (e-complaints) and complaints handled by phone, fax, and letter should be coded with the applicable national, local, and strategic codes.
4	<i>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.(p. 15)</i>	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.
5	<i>The complainants were not made aware of specific official findings. (p. 15)</i>	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.
6	<i>In fatality cases, compliance officers are 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. (p. 17)</i>	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.
7	<i>Mid-FY 2009, The Region IV Regional Administrator inquired about this process 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. (p. 17)</i>	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.
8	<i>Settlement agreements did not contain employer commitments or justifications for changes or penalty reductions other than "for settlement purposes only." (p. 17)</i>	Settlement agreements need to include employer commitments and justification for penalty reductions and/or modifications documented in the case file.
9	<i>Of the 50 programmed inspection case files in general industry, 48% were in compliance. (p. 18-19)</i>	It is recommended that the state evaluate and determine the cause of the high in-compliance rate for programmed inspections.
10	<i>Inspection files were only coded for multi-employer and</i>	It is recommended that all inspections be coded with the

	Findings	Recommendations
	<i>construction. Inspections were not coded with the appropriate emphasis and strategic codes. (p. 19)</i>	applicable national, local, and strategic codes.
11	<i>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. (p. 20)</i>	Evaluate and determine the cause of the high citation lapse time for safety and health.
12	<i>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. (p. 21)</i>	A tracking system for abatements should be implemented to ensure abatements are tracked and followed up on in a timely manner.
13	<i>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. (p. 22)</i>	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. <ul style="list-style-type: none"> ▪ Action: Region IV conducted IMIS training in Kentucky at the end of April.
14	<i>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. (p. 23)</i>	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.
15	<i>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. (p. 27-28)</i>	Whistleblower investigators should document all contacts related to the investigation in a telephone log.
16	<i>A majority of the discrimination cases did not document personal interviews of Complainants and/or Respondents. (p. 27)</i>	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.
17	<i>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. (p. 27-28)</i>	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.
18	<i>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 does not have any guidelines related to cases settled between the two parties.</i>	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.

	Findings	Recommendations
	(p. 27)	
19	<i>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. (p. 29)</i>	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.
20	<i>Kentucky does not have an internal evaluation program as required by the State Plan Policies and Procedures Manual. (p. 32)</i>	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.

Appendix B: Kentucky State Plan (KY-OSH) FY 2009 Enforcement Comparison

	Kentucky	State Plan Total	Federal OSHA
Total Inspections	1,233	61,016	39,004
Safety	1,007	48,002	33,221
% Safety	82%	79%	85%
Health	226	13,014	5,783
% Health	18%	21%	15%
Construction	605	26,103	23,935
% Construction	49%	43%	61%
Public Sector	55	7,749	N/A
% Public Sector	4%	13%	N/A
Programmed	450	39,538	24,316
% Programmed	36%	65%	62%
Complaint	245	8,573	6,661
% Complaint	20%	14%	17%
Accident	33	3,098	836
Insp w/ Viols Cited	554	37,978	27,165
% Insp w/ Viols Cited (NIC)	45%	62%	70%
% NIC w/ Serious Violations	80%	62%	87%
Total Violations	1,494	129,363	87,663
Serious	943	55,309	67,668
% Serious	63%	43%	77%
Willful	10	171	401
Repeat	35	2,040	2,762
Serious/Willful/Repeat	988	57,520	70,831
% S/W/R	69%	44%	81%
Failure to Abate	2	494	207
Other than Serious	503	71,336	16,615
% Other	34%	55%	19%
Avg # Violations/ Initial Inspection	2.6	3.3	3.1
Total Penalties	\$ 1,788,144	\$ 60,556,670	\$ 96,254,766
Avg Current Penalty / Serious Violation	\$ 1,314.90	\$ 800.40	\$ 970.20
Avg Current Penalty / Serious Viol- Private Sector Only	\$ 1,317.00	\$ 934.70	\$ 977.50
% Penalty Reduced	51.8%	51.9%	43.7%
% Insp w/ Contested Viols	11.7%	13.0%	7.0%
Avg Case Hrs/Insp- Safety	26.1	15.7	17.7
Avg Case Hrs/Insp- Health	67.9	26.6	33.1
Lapse Days Insp to Citation Issued- Safety	43.1	31.6	34.3
Lapse Days Insp to Citation Issued- Health	72.9	40.3	46.7
Open, Non-Contested Cases w/ Incomplete Abatement >60 days	268	2,010	2,234

Source: DOL-OSHA. State Plan INSP & ENFC Reports, 11-19-2009. Federal INSP & ENFC Reports, 11-9-2009. Private Sector ENFC- State Plans 12.4.09 & Federal 12.14.09

Appendix C: KY OSHA FY2009 State OSHA Annual Report (SOAR)

(Available Separately)

Appendix D: FY2009 State Activity Mandated Measures (SAMM) Report (End of Year Run)

RID: 0452100

MEASURE	From: 10/01/2008 To: 09/30/2009	CURRENT FY-TO-DATE	REFERENCE/STANDARD
1. Average number of days to initiate Complaint Inspections	1666 6.63 251	38 3.80 10	Negotiated fixed number for each State
2. Average number of days to initiate Complaint Investigations	263 2.65 99	2368 296.00 8	Negotiated fixed number for each State
3. Percent of Complaints where Complainants were notified on time	254 100.00 254	9 100.00 9	100%
4. Percent of Complaints and Referrals responded to within 1 day -ImmDanger	237 97.93 242	5 100.00 5	100%
5. Number of Denials where entry not obtained	0	0	0
6. Percent of S/W/R Violations verified			
Private	0 .00 513	0 .00 513	100%
Public	0 .00 17	0 .00 17	100%
7. Average number of calendar days from Opening Conference to Citation Issue			
Safety	27140 57.13 475	1402 53.92 26	2489573 43.8 56880
Health	9898 98.00 101	535 76.42 7	692926 57.4 12071

MEASURE	From: 10/01/2008		CURRENT	REFERENCE/STANDARD
	To: 09/30/2009		FY-TO-DATE	
8. Percent of Programmed Inspections with S/W/R Violations				
	123		10	92328
Safety	30.45	71.43	58.6	National Data (3 years)
	404	14	157566	
	16	1	11007	
Health	42.11	25.00	51.2	National Data (3 years)
	38	4	21510	
9. Average Violations per Inspection with Vioations				
	1014	56	420601	
S/W/R	1.76	1.69	2.1	National Data (3 years)
	576	33	201241	
	501	19	243346	
Other	.86	.57	1.2	National Data (3 years)
	576	33	201241	
10. Average Initial Penalty per Serious Violation (Private Sector Only)	1677195	79600	492362261	
	1769.19	1768.88	1335.2	National Data (3 years)
	948	45	368756	
11. Percent of Total Inspections in Public Sector	56	0	160	
	4.55	.00	4.1	Data for this State (3 years)
	1232	47	3905	
12. Average lapse time from receipt of Contest to first level decision	17621	0	4382038	
	429.78		246.1	National Data (3 years)
	41	0	17807	
13. Percent of 11c Investigations Completed within 90 days	24	4	100%	
	77.42	100.00		
	31	4		
14. Percent of 11c Complaints that are Meritorious	4	0	1466	
	12.90	.00	20.8	National Data (3 years)
	31	4	7052	
15. Percent of Meritorious 11c Complaints that are Settled	2	0	1263	
	50.00		86.2	National Data (3 years)
	4	0	1466	

Appendix E: FY 2009 State Indicator Report (SIR)

CURRENT MONTH = SEPTEMBER 2009

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	6212	102	11892	194	21855	405	42572	938
	67.3	38.8	67.5	37.1	66.8	41.4	65.2	46.5
	9230	263	17617	523	32713	978	65304	2017
B. HEALTH	508	11	1004	20	1963	39	3678	93
	34.5	23.9	34.1	21.1	35.3	19.7	34.0	22.2
	1471	46	2946	95	5559	198	10829	419
2. PROGRAMMED INSPECTIONS WITH VIOLATIONS (%)								
A. SAFETY	4645	38	8997	61	16745	146	32019	315
	67.7	35.2	65.9	30.0	65.8	31.8	65.9	29.6
	6860	108	13654	203	25453	459	48603	1064
B. HEALTH	368	8	746	10	1486	24	2884	72
	52.2	53.3	50.8	55.6	51.7	51.1	55.6	63.7
	705	15	1468	18	2873	47	5187	113
3. SERIOUS VIOLATIONS (%)								
A. SAFETY	15510	240	29490	418	56535	763	111717	1660
	81.8	75.5	81.1	74.1	80.0	70.9	79.4	68.6
	18952	318	36371	564	70692	1076	140747	2421
B. HEALTH	2802	79	5343	103	10035	160	19393	333
	70.1	59.8	69.9	51.0	69.7	43.0	67.7	43.1
	4000	132	7645	202	14395	372	28659	772
4. ABATEMENT PERIOD FOR VIOLS								
A. SAFETY PERCENT >30 DAYS	2938	9	5782	13	12109	46	25516	96
	15.9	3.6	16.2	2.9	17.6	5.5	18.7	5.3
	18492	250	35597	453	68607	843	136812	1801
B. HEALTH PERCENT >60 DAYS	256	1	577	2	1452	2	3111	4
	6.3	1.0	7.5	1.5	10.0	.9	10.9	.8
	4078	102	7720	135	14561	220	28488	479

CURRENT MONTH = SEPTEMBER 2009

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								
	280876	14000	628826	25250	1303857	55525	2663433	133660
OTHER-THAN-SERIOUS	923.9	1555.6	998.1	1942.3	1030.7	1850.8	1049.4	1782.1
	304	9	630	13	1265	30	2538	75
B. HEALTH								
	83100	2550	142950	8800	294225	13450	654830	34425
OTHER-THAN-SERIOUS	799.0	637.5	803.1	1466.7	855.3	1222.7	867.3	748.4
	104	4	178	6	344	11	755	46
6. INSPECTIONS PER 100 HOURS								
A. SAFETY								
	10459	290	19991	582	37160	1079	73338	2245
	6.1	4.1	5.7	3.8	5.5	3.5	5.3	3.7
	1722	71	3533	152	6727	306	13759	605
B. HEALTH								
	1764	59	3581	115	6701	235	12705	503
	1.8	1.0	1.7	1.1	1.6	1.1	1.5	1.2
	994	57	2112	109	4125	214	8503	434
7. VIOLATIONS VACATED %								
	1278	9	2561	19	5139	27	10097	48
	4.9	2.0	5.0	2.5	5.1	1.9	5.0	1.6
	26336	448	51387	764	100187	1445	201495	3073
8. VIOLATIONS RECLASSIFIED %								
	1130	7	2440	7	4798	13	9539	27
	4.3	1.6	4.7	.9	4.8	.9	4.7	.9
	26336	448	51387	764	100187	1445	201495	3073
9. PENALTY RETENTION %								
	13523966	223572	27149245	457270	54889469	1059493	111585445	2246036
	63.4	54.6	62.9	56.3	63.2	57.2	62.9	56.3
	21315664	409570	43130384	812190	86796382	1853115	177346966	3986010

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	102 38.8 263	2 20.0 10	194 37.1 523	4 21.1 19	405 41.4 978	6 21.4 28	938 46.5 2017	9 20.5 44
B. HEALTH	11 23.9 46	0 .0 12	20 21.1 95	0 .0 17	39 19.7 198	0 .0 28	93 22.2 419	1 1.6 64
2. SERIOUS VIOLATIONS (%)								
A. SAFETY	240 75.5 318	4 66.7 6	418 74.1 564	8 66.7 12	763 70.9 1076	8 50.0 16	1660 68.6 2421	29 65.9 44
B. HEALTH	79 59.8 132	2 50.0 4	103 51.0 202	2 33.3 6	160 43.0 372	10 43.5 23	333 43.1 772	19 38.0 50

CURRENT MONTH = SEPTEMBER 2009

COMPUTERIZED STATE PLAN ACTIVITY MEASURES

STATE = KENTUCKY

PERFORMANCE MEASURE	----- 3 MONTHS-----		----- 6 MONTHS-----		----- 12 MONTHS-----		----- 24 MONTHS-----	
	FED	STATE	FED	STATE	FED	STATE	FED	STATE
E. REVIEW PROCEDURES								
1. VIOLATIONS VACATED %	446 22.8 1956	17 32.7 52	875 24.2 3609	26 16.9 154	1756 23.4 7506	74 19.7 376	3749 24.1 15528	120 19.4 617
2. VIOLATIONS RECLASSIFIED %	282 14.4 1956	0 .0 52	563 15.6 3609	4 2.6 154	1133 15.1 7506	13 3.5 376	2274 14.6 15528	15 2.4 617
3. PENALTY RETENTION %	2319074 54.1 4286744	13625 34.6 39350	4080249 51.5 7922126	115747 42.2 274325	10792902 58.5 18457526	318068 39.6 803235	20045599 55.9 35865959	501440 41.6 1205735