

**FY 2012 Abridged Federal Annual Monitoring and Evaluation (FAME)
Report
&
Regional Annual Consultation Evaluation Report (RACER)**

**KENTUCKY LABOR CABINET
DEPARTMENT OF WORKFORCE STANDARDS
DIVISION OF OCCUPATIONAL SAFETY AND HEALTH**



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**Prepared by:
U. S. Department of Labor
Occupational Safety and Health Administration
Region IV
Atlanta, Georgia**



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**Kentucky Labor Cabinet - Department of Workplace Standards
Division of Occupational Safety and Health
FY 2012 FAME Report**

I. Executive Summary

The FY 2012 FAME report is an abridged FAME report. This report is focused on the State's progress in making corrections in response to the FY 2011 FAME Report recommendations. In addition, this report is also based on the results of quarterly onsite monitoring visits, the State Office Annual Report (SOAR) for FY 2012, the State Activity Mandated Measures (SAMM) Report, as well as the State Indicator Report (SIR) ending September 30, 2012.

The Kentucky Safety and Health Program (KYOSH) was established by the Kentucky General Assembly in 1972. The Kentucky State Plan was approved by federal OSHA in 1973. The KYOSH program received final 18(e) approval on June 13, 1985. Kentucky was the first state plan approved under the revised federal benchmarks. The responsibility for enforcing occupational safety and health law in the Commonwealth of Kentucky is vested in the Labor Cabinet and assigned to the Department of Workplace Standards, headed by a commissioner appointed by the secretary with the approval of the Governor. The Kentucky program covers all private and public-sector employees within the State with the exception of railroad employees, federal employees, maritime employees (longshoring, ship building/ship breaking, and marine terminals operations), private contractors working at Government-owned/contractor-operated (GOCO) facilities, Tennessee Valley Authority (TVA) employees and contractors operating on TVA sites, as well as U.S. Postal Service employees. The state and local government employers are covered under the State Plan and are treated the same as private sector employers.

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

and OSH Standards Board, promulgate KYOSH regulations, respond to OSHA inquiries, and provide interpretations of KYOSH standards and regulations. This office is responsible for maintaining the KYOSH State Plan, as well as handling day-to-day communications with other government agencies, both at the state and federal level, including the U.S. Department of Labor, Occupational Safety and Health Administration (OSHA), Bureau of Labor Statistics (BLS), and other state OSHA programs.

Kentucky's primary objective is to improve occupational safety and health in workplaces throughout the state. The total population of private and public sector workers covered by the Kentucky Plan is approximately 1,911,760 and 113,076 establishments. This includes approximately 4,152 public sector employers. Program services are administered through a singular office in Frankfort.

Employee protection from discrimination related to occupational safety and health [KRS 338.121] is administered by KYOSH through the Frankfort office. There is one investigator who reports to the Director of OSH Compliance. Discrimination cases found to be meritorious are prosecuted by the Legal Department in the Kentucky Labor Cabinet.

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

This report was prepared under the direction of Teresa A. Harrison, Acting Regional Administrator, Region IV, Atlanta, Georgia, and covers the period from October 1, 2011 through September 30, 2012. During the review period, the Kentucky State Plan was administered by the Kentucky Labor Cabinet, Department of Workplace Standards, Occupational Safety and Health Program under the direction of Michael L. Dixon, Commissioner. This is OSHA's report on the operation and performance of the KYOSH Program. It was compiled using information gained from Kentucky's SOAR for FY 2012, IMIS reports, as well as the SAMM and SIR reports for FY 2012.

A total of 13 findings and recommendations are documented in this evaluation report. However, the State has taken appropriate corrective action to effectively address eight of these items. Of the five remaining items, four are identified as completed awaiting verification and the remaining item has been converted into an observation. An Observation is an item that has not proven to impact the effectiveness of the State's program, but for which the Region wishes to continue monitoring. The Region will continue to work with the State to ensure that all items are effectively resolved. Each of the findings, recommendations, as well as the State's response is addressed in detail below.

II. Major New Issues

Recently the State experienced two significant losses in leadership with the retirement of Commissioner, Michael Dixon and the Director of OSH Compliance, Susan Draper. As a result, Deputy Commissioner Mike Donta was given responsibility for all duties of the Office of the Commissioner until a new Commissioner is appointed and Evan Satterwhite was appointed Director of OSH Compliance. Kentucky also recently concluded the VPP in Construction Program. Additional special accomplishments are addressed in Section III of the SOAR.

III. State Progress in Addressing FY 2011 FAME Report Recommendations

The FY 2011 FAME report contained thirteen (13) findings and recommendations. There are no repeat or new findings or recommendations as a result of monitoring activities conducted during FY 2012. Details regarding the State's progress in responding to each of the recommendations from the FY 2011 FAME report are provided below.

Finding 11-01: Case files do not contain a tracking mechanism to document pertinent case related actions, events, and significant activities that occur throughout the life of the case.

Recommendation 11-01: KYOSH should develop and implement a tracking mechanism, such as a diary sheet or log, for case files to document: significant case-related actions (case development, dates that correspondence is sent and received, dates when updates are made in IMIS); communication between management and the CSO; and communication between KYOSH and the employer and employee, as well as any other actions of significance.

Status - Closed: The Kentucky OSH Program deployed a customized information system that replaced OSHA's IMIS. The system has a tracking mechanism and Kentucky implemented internal tracking mechanisms during the interim. Kentucky's new customized information system was fully deployed Friday, December 14, 2012.

Finding 12-01 (formerly 09-13 and 11-02): The IMIS is not being updated as necessary. The State has approximately 1,200 open cases dating back to the early 1990's.

Recommendation 11-02A (formerly 09-13): KYOSH should continue their efforts to update the IMIS system by developing and implementing a procedure to ensure that information is entered and updated in IMIS in a timely manner, throughout the life-cycle of an inspection case file.

Status - Completed-awaiting verification: Kentucky is working with another state agency to assist with efforts that will enable the OSH Program to close cases appropriately. Meanwhile, Kentucky will close cases that have been open seven (7) years or longer (446 cases). Kentucky will reopen any closed case if future activity warrants. Kentucky's work with the other state agency is ongoing and a completion date has not been established.

Closure of cases that have been open seven (7) years or longer began after deployment of Kentucky's new customized information system. Kentucky anticipates that all cases that have been open seven (7) years or longer will be closed by February 1, 2013.

Recommendation 11-02B (formerly 10-02): KYOSH should update all complaint related actions, such as the date the OSHA-7 is sent for signature and when correspondence was mailed and received, in the IMIS in accordance with the IMIS Manual.

Status – Closed: The Kentucky OSH Program deployed a customized information system that replaced OSHA's IMIS. The system ensures completion of the OSHA-7. Kentucky's new customized information system was fully deployed Friday, December 14, 2012.

Finding 11-03 (formerly 09-01, 10-03): KYOSH conducts inspections for all formalized complaints regardless of the nature of the hazard(s).

Recommendation 11-03 (formerly 09-01, 10-03): To allow a more effective use of their resources, KYOSH should evaluate all complaints, including formal complaints, to determine whether an investigation would be more appropriate than an inspection.

Status - closed: This item was administratively closed during a conference call between the Regional Administrator and the Commissioner, due to the fact that Kentucky is following State law.

Finding 11-04 (formerly 09-05): Complainants are not provided the findings regarding each complaint item.

Recommendation 11-04 (formerly 9-05): KYOSH should develop and implement procedures to notify complainants of the inspection results to include the State's findings of each complaint item. Appropriate personnel should be trained in new procedures and supervisors should review case files more carefully to ensure this information is included in the file.

Status - Closed: Kentucky's augmented procedure was reemphasized to staff and fully implemented on or about August 15, 2012. This finding was amended during a conference call between the Regional Administrator and the Commissioner. See the CAP from FY 2011 for the amendment.

Finding 12-02 (formerly 11-05): One-third of the fatality case files reviewed did not provide evidence that one or more of the required calls were made and/or letters to the next-of-kin were sent.

Recommendation 12-02: KYOSH should develop and implement a tracking system to ensure that all communications with the NOK are completed. The information to be tracked includes but is not limited to: written correspondence at the beginning and end of an investigation; a letter informing the NOK of the fatality investigation results; and a letter informing NOK of any changes to the citation, as the result of an informal conference, Formal Settlement Agreement, or litigation as well as hearing dates and other pertinent information.

Status - Completed-awaiting verification: Kentucky developed and implemented a system to ensure that all communications with NOK are completed. Kentucky is also developing a

tracking mechanism in its customized information system that will ensure all communications with NOK are completed. Internal mechanisms were implemented during the period from the submission of Kentucky's FAME reply and December 14, 2012. Development of a tracking mechanism in Kentucky's customized tracking system is ongoing. This item has been corrected; however, it will remain subject to future monitoring to fully assess the state's action.

Finding 12-03 (formerly 11-06): KY OSH did not conduct any programmed planned health inspections during this evaluation period.

Recommendation 12-03: KY OSH should develop and implement an effective strategy to ensure that programmed health inspections are conducted in the high hazard health industries.

Status - Completed-awaiting verification: Although, Kentucky continues to respond to a high number of referrals and complaints, and "new" staff has not conducted many solo inspections, programmed planned health inspections have been conducted. Kentucky implemented an effective strategy to ensure programmed health inspections are conducted after submission of its FAME reply.

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

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

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

As Kentucky stated in the 2010 Follow-Up Report, the Division of OSH Compliance implemented the IMIS administrative tracking tools OSHA suggested to address the issue and will continue to utilize those tools. Additionally, the Kentucky OSH Program is developing a customized information system that will replace OSHA's IMIS. Kentucky expects the new system will be implemented by the end of 2012. The Division of OSH Compliance anticipates the new system will be a useful resource to monitor lapse times. Kentucky believes the comparison to the national average is somewhat skewed in light of staff turnover, inexperienced staff, and current fiscal challenges. Kentucky also believes that because of these challenges, and several other factors, progress in this area will be measured. Nevertheless, Kentucky continues to work towards improvement. This item has been administratively closed by the Regional Office however it will remain subject to future monitoring.

Finding 12-04 (formerly 11-08): KYOSH does not have a written procedure for the review and approval of Petition for Modification of Abatement (PMA) requests made by employers.

Recommendation 11-08: KYOSH should adopt the federal OSHA PMA procedure or implement a written procedure that is as effective as the federal OSHA policy, to include the requirements contained in §1903.14a(b) (1)-(5).

Status - Completed-awaiting verification: Kentucky has a state regulation that is as effective as OSHA.

Finding 11-09: Fifty (50) percent of the 19 inspection case files reviewed, where the site employees were represented by a collective bargaining agent, did not include evidence that the Union was contacted and/or provided the opportunity to be involved in the inspection.

Recommendation 11-09: KYOSH should ensure that training to appropriate personnel is reemphasized to include the documentation of union involvement. Supervisors should review case files more carefully to ensure this information is documented on the appropriate forms in the case file.

Status – Closed: Documentation of union involvement was reemphasized to staff. The Kentucky OSH Program deployed a customized information system that replaced OSHA’s IMIS. The system ensures documentation. Kentucky’s new customized information system was fully deployed Friday, December 14, 2012. The item was re-emphasized to staff during the period from the submission of Kentucky’s FAME reply and December 14, 2012.

Finding 11-10 (formerly 10-02): KYOSH still has not completed a side-by-side comparison of the Kentucky Field Operations Manual (FOM) and the federal OSHA FOM.

Recommendation 11-010 (formerly 10-02): KYOSH must either adopt the Federal FOM or complete the revision/development and implementation of the KYOSH FOM. This comparison must be submitted to the federal OSHA Atlanta Regional Office.

Status – Closed: Kentucky submitted a side-by-side comparison of its FOM and OSHA’s FOM to the Atlanta Regional Office.

Finding 11-11: A telephone log was implemented and it does appear that the investigator made an effort to utilize the log however the logs were not found in each of the files and upon review, it seems as if not all pertinent communications were actually being recorded; the number of entries seemed minimal and did not reflect all contacts.

Recommendation 11-11: The investigator should record all pertinent communications between him/herself and the complainant, respondent, or other witness. This is in addition to maintaining all e-mail communications between the aforementioned parties.

Status – Closed: Kentucky’s discrimination investigators will continue, and strive to improve, their use of the telephone log. Kentucky considers this issue closed.

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

Recommendation 11-12: KYOSH should limit admittance into SHARP to those worksites (employers) with less than 250 employees at the site and less than 500 employees company-

wide as indicated in the CSP 02-00-002: Consultation Policies and Procedures Manual (CPPM), which was adopted by the State in 2008.

Status – Closed: Kentucky’s state designee, Secretary Mark S. Brown, approved all SHARP participants in the Kentucky OSH Program’s Division of Education and Training, regardless of size. Kentucky considers this issue closed. After further evaluation, Kentucky is following required policies and procedures. This finding was deleted during a conference call between the Regional Administrator and the Commissioner.

Finding 11-13: Reports from KYOSH On-site Consultation visits are issued an average of 84.3 days after the closing conference, which exceeds the goal of 20 days established in the CPPM.

Recommendation 11-13: The KYOSH On-site Consultation Program should continue to identify factors affecting the timely issuance of the reports and develop a tracking mechanism to ensure reports are issued not later than 20 days. The tracking mechanism should track the lapse times of the Consultants, and discussions should be held with them to determine the reason(s) for the report being late. This should be documented in a diary sheet or log in the case file.

Status – Closed: The Division of Education and Training developed a tracking program approximately three (3) years ago that tracks lapse time. Utilization of the software allows the Division to continually monitor and subsequently identify, evaluate, and discuss with staff the factors affecting issuance of reports.

Division of Education and Training decreased the average number of days from closing conference to issuance of the report to 26.23 days. Kentucky considers this an outstanding accomplishment particularly in light of the vast array of cost-free services the Division of Education and Training provides to the employers and employees of the Commonwealth. Kentucky considers this issue closed.

IV. Assessment of State Performance

A. Enforcement Program

1. Complaints

KYOSH’s procedures for handling complaints alleging unsafe or unhealthful working conditions are very similar to those of federal OSHA. These procedures are covered in KYOSH FOM, Chapter IX (10/01/2001) – Complaint and Referral Policies and Procedures. In accordance with state law [803 KAR 2:090 Section 1(2)], all valid formal complaints are scheduled for workplace inspections. Complaints are evaluated by the Compliance Program Managers, prioritized, and inspected or investigated based upon classification and gravity of the alleged hazard.

Formal serious complaints, for example, are inspected within a goal of 30 days; however, it is stressed to compliance officers to respond within five (5) days after being assigned the complaint. Inspection data indicates that KYOSH handled 433

complaints and conducted 219 complaint inspections in 2012. According to the SAMM report, KYOSH responds timely to complaint inspections. Complaint investigations were initiated within an average of 19.92 days from the time of receipt with a goal of five days compared to 12.1 days in FY 2011, and complaint inspections were initiated within an average of 10.98 days from the time of receipt with a goal of 30 days compared to 9.41 days in FY 2011. A review of the IMIS reports showed that during 2012 approximately 46.4% of their complaint inspections were in-compliance.

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

2. Fatalities

In FY 2012, KYOSH investigated 66 workplace accidents, of which 24 were workplace fatalities. The number of general industry deaths decreased from 19 in 2011 to 14 in 2012, while the number of fatalities in construction, eight, was unchanged. Other fatalities experienced in the state were in the agriculture and

public sector. KYOSH's procedures for the investigation of occupational fatalities are essentially the same as those of federal OSHA. Investigations are initiated within one day of notification of the fatality.

	FY 2011	FY 2012
Total Fatalities	29	24
Construction	8	8
General Industry	19	14
Public Sector	2	2

KYOSH has taken a proactive approach to help prevent injuries, illnesses and fatalities in Kentucky workplaces by establishing multiple performance goals with focused activities aimed at reducing injuries, illnesses and fatalities in high hazard industries and the most prevalent hazards resulting in accidents.

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

KYOSH has a longstanding procedure for communication with family members of deceased workers. The CSHO is required to contact the NOK by phone and inform the family of the investigation, provide contact information for the CSHO and KYOSH office. A follow-up letter is sent after the CSHO makes contact via phone. When the investigation is complete, the Director of OSH Compliance sends the NOK a letter with the investigation findings and a copy of the citations that were issued, if any. In addition, the Director of OSH Compliance sends the NOK a letter informing the family of any settlement as a result of an informal conference. If the citation(s) is contested, the attorney will notify the NOK of the contest and the results of the litigation.

3. Targeting Inspections

According to inspection statistics run for this report, KYOSH conducted a total of 911 inspections in FY 2012, 64 of which were programmed including 61 safety and three health. This includes 45 of the inspections conducted in the construction sector. According to the SIR, 70.0% of the programmed safety and 54.6% of the

programmed health inspections had violations. Additional data indicates that an average of 1.02 violations was cited per inspection, and that 45.2% of the safety and 66.7% of the health violations were classified as serious. 1.67% of the safety was classified as repeat and .31% of the health violations were classified as willful.

The State did not adopt the federal OSHA Site-Specific Targeting (SST) procedures. The Kentucky Occupational Safety and Health Program established a State site-specific targeting program known as the Targeted Outreach Program (TOP), which utilizes the OSHA Data Initiative survey results. Additionally, KYOSH has a State law [803 Kentucky Administrative Regulation (KAR) 2:180] requiring Kentucky employers to report any work-related incident resulting in the in-patient hospitalization of one or two employees. The reporting requirement is limited to hospitalizations that occur within 72 hours of the incident. Employers are also required to report all amputations suffered by an employee from any work-related incident. Hospitalizations of one or two employees and all amputations must also be reported to the Division of OSH Compliance within 72 hours of the time the incident is reported to the employer, his agent, or another employee. The Division of OSH Compliance has implemented a scheduling system to prioritize inspections of reported accidents and amputations.

KYOSH has a variety of special emphasis programs (SEP), some of which are associated with their strategic goals, and some of which are National Emphasis Programs. KYOSH conducts programmed inspections in the construction sector, particularly under their local emphasis program (LEP) for residential construction fall protection and the Dodge system. These are associated with their strategic goal to reduce injuries caused by falls. Many programmed construction inspections are partial in scope due to the local emphasis program for residential fall protection activities. According to IMIS data, 14.3% of the programmed safety inspections in construction had violations.

Kentucky State Law [KRS 338 “Occupational Safety and Health of Employees”] establishes definitions for employer and employee which do not exclude public employers and employees. The exclusions to KRS Chapter 338 cover only employees of the United States government and places of employment over which federal agencies other than OSHA have exercised statutory authority. Therefore, Kentucky’s public employers and employees are subject to the same requirements, sanctions, and benefits Kentucky’s private sector employers and employees. Consequently Kentucky statutes, regulations, and policies make no distinction between public and private sector employers and employees. According to the SIR report, the Division of OSH Compliance did not conduct any programmed inspections of public sector work sites during FY 2012.

The State’s latest injury and illness rate for all industries was 4.4 which was an improvement from FY 2011. KY OSH uses injury and illness rates and fatality rates

in their strategic planning process to decide where their resources should be focused. Where possible, reductions in rates are used to measure outcome results.

Construction Programmed Inspections	KY OSH
Average number of violations	<1
In-Compliance Rate	95.5
% violations classified as Serious, Repeat, and Willful	50%

The following tables outline the total number of violations for programmed activity, as well as the in compliance rate and the percentage serious, willful and repeat violations for construction and general industry:

4. Citations and Penalties

In FY 2012, the 911 inspections conducted resulted in an average of 2.7 violations per inspection, with 64.6% of the violations (70.7% safety violations and 55.6% of health) classified as serious. The average initial penalty per serious violation for private sector inspections was \$4,231 compared to an average of \$1,991 for national data. In 2012, the average lapse time from opening conference to citation issuance was 70.9 days for safety and 91.7 days for health. This is above the national rate of 44.4 days for safety and significantly above the 57.2 days for health. The State has placed emphasis on citation lapse time however they still remain significantly higher than the federal program. They implemented tracking tools to monitor lapse time and supervisors and managers are closely monitoring inspection and case file completion in an effort to reduce the number of days from the opening of the inspection to citation issuance.

In FY 2012, the average lapse time from opening conference to citation issuance is identified below:

Average Lapse Time	KYOSH	National
Safety	70.9	44.4
Health	91.7	57.2
Total Average	74.8	46.6

Although the State’s procedures for determining the classification of violations are the same as those of federal OSHA, KY OSH classifies a lower percentage of violations as serious. Serious violations are categorized as high, medium or low

severity serious, for penalty calculation purposes.

Percent of Violations Cited Serious/Other Than Serious

	KY OSH	Federal OSHA
Serious	66.9%	73%
OTS	28.4%	23%

In FY 2012, the average current penalty per serious, repeat and willful violations for private sector inspections was as follows:

Classification	KY OSH	Federal OSHA
Willful	\$47,310	\$35,982
Repeat	\$10,846	\$14,326
Serious	\$3,308	\$2,153

KYOSH issued ten willful violations in 2012. The average penalty issued/received for the willful violations is \$47,310 compared to an average penalty of \$35,982 for willful violations issued by federal OSHA. A review of procedures and discussions with state compliance personnel found that procedures for determining willfulness are the same as those for federal OSHA. Management indicated that they are more than willing to pursue willful violations when the CSHOs and supervisors identify them. The legal department is also willing to support them.

5. Abatement

Kentucky obtains adequate and timely abatement information and has processes in place to track employers who are late in providing abatement information. KYOSH does not have a written procedure for abatement verification nor is it addressed in the Field Operations Manual. Currently, one of the Program Managers uses IMIS abatement tracking reports as well as manually looking at files to identify if abatements are due. The other Program Manager manually looks at open files and identifies abatements that are due and have not been received. The program managers discuss the file with the supervisors and determine if they are going to send an abatement dunning letter or conduct a follow-up inspection. If a dunning letter is sent and the employer fails to respond, a follow-up is conducted.

6. Employee and Union Involvement

Kentucky's procedures for employee and union involvement are identical to those of federal OSHA. Employees and employee representatives are included during all aspects of investigations and inspections. Participation and involvement is documented in the case files.

B. Review Procedures

1. Informal Conferences

Kentucky has procedures in place for conducting informal conferences and proposing informal settlement agreements (ISA). According to the SIR, 5.1% of violations were vacated and 1.4% of violations were reclassified as a result of ISAs and the penalty retention rate was 58.2%. Supervisors are required to prepare an Informal Conference memo documenting the meeting with the employer and their recommendations for settlement. Supervisors are required to discuss all changes and penalty reductions with the compliance program managers and get their approval for the settlement. The Program Managers sign the settlement memo that is provided to the employer.

2. Formal Conferences

In FY 2012, 25.9% of inspections were contested compared to 15.2% in FY 2011. The Kentucky Occupational Safety and Health Review Commission conducts hearings and issues decisions on contested citations. The three members of the Review Commission are appointed by the Governor and administratively attached to the Labor Cabinet. First level contests are heard and ruled upon by hearing officers employed by the Kentucky Attorney General's office. The Kentucky Labor Cabinet Division of OSH Compliance has taken steps to reduce the lapse time between receipt of contest and first level decision, although that process is largely not within their control. The Office of General Counsel provides legal representation for KYOSH. The attorneys are housed within the same office as KYOSH in Frankfort. It is common for an attorney to work closely with the compliance staff during the preparation of fatalities and other high profile inspections. SIR data indicates that, for violations that were contested, 61.4% of penalties were retained 20.8% were vacated, and 1.5% was reclassified. No negative trends or problems with citation documentation have been noted.

C. Standards and Federal Program Change Adoption

In accordance with 29 CFR 1902, States are required to adopt standards and federal program changes within a 6-month time frame. States that do not adopt identical standards and procedures must establish guidelines which are "at least as effective as" the federal rules. States also have the option to promulgate standards covering hazards not addressed by federal standards. During this period, Kentucky adopted all of the federal directives or "as effective as" procedures and OSHA initiated standards, which required action, in a timely manner. A detailed listing of the federal standards and directives, which required action in FY 2012, is provided in the tables below:

1. Standards Adoption

Standards Requiring Action	Federal Register Date	Adopted Identical	Date Promulgated
Hazard Communication - Globally Harmonized System of Classification	03/26/2012	Yes	05/08/2012
Revising Standards Referenced in the Acetylene Standard	03/08/2012	Yes	09/07/2012

2. Federal Program/State Initiated Changes

Federal Program Changes Requiring Action and Federal Directive Number	Date of Directive	Adopted Identical	Date Adoption Date
Compliance Policy for Manufacture, Storage, Sale, Handling, Use and Display of Pyrotechnics	10/27/2011	Yes	03/01/2012
National Emphasis Program - PSM Covered Chemical Facilities	11/29/2011	Yes	03/15/2012
Nursing Home NEP	04/05/2012	Yes	07/01/2012
Communicating OSHA Fatality Inspection Procedures to a Victim's Family	04/17/2012	Yes	07/01/2012
Longshoring and Marine Terminals Tool Shed Directive	09/12/2012	Yes	10/15/2012
Section 11(c) Appeals Program	09/12/2012	No	N/A

D. Variances

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

request its input prior to approving the variance. Additionally, all variances are properly documented and tracked by KYOSH. The KYOSH Program did not receive any variance requests during FY 2012 and no issues related to variances were identified.

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

Kentucky State Law [KRS 338 “Occupational Safety and Health of Employees”] establishes definitions for employer and employee which do not exclude public employers and public employees. Kentucky’s public employers and employees are subject to the same requirements, sanctions, and benefits Kentucky’s private sector employers and employees. Consequently Kentucky statutes, regulations, and policies make no distinction between public and private sector employers and employees. According to the SAMM report, 42 inspections or 4.62% of the total inspections were conducted in the public sector in FY 2012.

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

A comprehensive onsite review of the KYOSH 23(g) Consultation Program is scheduled for next year. The KYOSH 23(g) Consultation Program is responsible for providing private and public workplaces with free/confidential safety and health consultation services. The Division of Education and Training also assists employers and employees by promoting voluntary compliance with the KYOSH Program. All State personnel, including the Director, Assistant Director, Safety and Health Program Managers, Safety and Health Consultants, and Partnership Administrator have Individual Development Plans (IDP) prepared each year. All training is outlined for each person as part of the annual budget process. Additionally, the Kentucky 23(g) Consultation Program’s Internal Quality Assurance Program (IQAP) is designed to be at least as effective as the IQAP required for 21(d) funded Consultation Programs. Additionally, all new consultants are accompanied by either their supervisor or senior consultants while in the field. Once supervisors have determined that the new hires have completed their initial training period, they are allowed to conduct consultation services on their own.

The Division of Education and Training continues to reach small employers and encourage participation in the Safety and Health Achievement Recognition Program. In FY 2012, the Division recognized three (3) new SHARP-related worksites. There are currently seventeen (17) SHARP worksites.

The Division of OSH Education and Training continued to provide services to the employers and employees in both the private and public sectors during FY 2012. For public sector visits, the Division had a goal to reach thirteen (13) establishments and exceeded that goal by conducting fifteen (15). The number of hazards abated during on-site consultation public sector visits is identified below.

Serious Hazards Confirmed Abated		Other Hazards Confirmed Abated	
Public Safety	75	Public Safety	36
Public Health	60	Public Health	8
Total Public	135	Total Public	44

G. Discrimination Program

The KYOSH Program is responsible for enforcing the discrimination regulations under the Act. The act prohibits discrimination against employees who engage in protected activities as defined by the Kentucky Occupational Safety and Health Act of 1972 [KRS Chapter 338.121 (Relating to prohibition of discrimination against employees)]. This is comparable to federal OSHA protection from discrimination under Section 11(c) of the OSHA Act.

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

Meritorious Complaints		Merit Cases Settled	
FY 2012	10.77%	FY2012	42.86%
FY 2011	13.64%	FY 2011	16.67 %
FY 2010	6.12%	FY 2010	33.3%
FY 2009	12.9 %	FY 2009	50.0%

During FY 2012, KY OSH received 142 discrimination complaints and docketed 77 compared to 46 complaints in FY 2011. According to the SAMM report, 49 (75.38%) of the investigations were timely completed compared to 15 (34.09%) in FY 2011. The average lapse time for discrimination cases was 79 days. KY OSH has continued to successfully work on improving their completion rate of discrimination investigations.

Complainants who disagree with the dismissal of their complaint may appeal the decision with the Commissioner of the Department of Workforce Standards. Complainants who disagree with the response from the Commissioner have the opportunity to appeal that decision to the Secretary of the Labor Cabinet.

H. Complaint About State Plan Administration (CASPA)

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

I. Voluntary Compliance Programs

KYOSH offers employers a wide range of cooperative programs, including Onsite Consultation, participation in the State's Voluntary Protection Programs (VPP), site-based Construction Partnerships, associated-based Construction Partnerships, training-based Partnerships, as well as the Safety and Health Achievement Recognition Program (SHARP). All of these activities are offered through the State's Education and Training Division, with a program manager assigned the responsibility of overseeing each. However, the State does not have a formal Alliance Program.

KYOSH developed written guidelines detailing the operation of its Partnership Program, which were formally submitted as a plan change. These agreements include site-based, associated-based, and training-based Partnership Agreements. Construction Partnerships are established through formal written agreement and it is closely monitored by a program manager. Major requirements for participation in the Kentucky Construction Partnerships include the following: an experience modification (EMR) rate of 0.85 or less; a requirement for the project owner to participate in the agreement; a comprehensive fall protection program triggered at 6 feet; and employers are limited to one partnership with the State at a time. During this evaluation period, Kentucky developed and implemented ten site-based, two associated-based, and one training-based Partnerships.

The Kentucky VPP was developed and implemented in 1997. In FY 2012, the program included ten participating worksites. The State's VPP process is a multi-week assessment which includes a pre-assessment, an evaluation of the employer's safety culture, a comprehensive recordkeeping review, and a week-long onsite review. An additional one week assessment is conducted at sites covered by the process safety management (PSM) standard. KYOSH requires all VPP worksites that experience serious accidents to conduct a detailed root-cause analysis and sites that no longer exemplify the qualities of VPP are asked to withdraw from the program. The State has implemented procedures consistent with the federal OSHA memorandums for improvements to VPP. These changes include the development of a medical access request form and KYOSH does not permit sites to implement incentive programs that discourage accident reporting. Additionally, the federal OSHA monitors were assured by the State, a fatal accident at a VPP site would result in a follow-up visit. However, it should be noted that none of the State's VPP sites has experienced a fatal accident in numerous years. In addition to Site-based construction partnerships, the State also conducts Associated-based and Training-based agreement. KYOSH has been informed that a comprehensive internal monitoring system to audit all areas of the KYOSH Program, including VPP must be developed and fully implemented.

J. Program Administration

Training

As previously stated, the KYOSH Program adopted the federal directive TED 01-00-018, "Training Program for OSHA Compliance Personnel," with minimal changes. In KYOSH, newly hired compliance and consultation personnel are registered in Learning Link for participation in the initial training courses conducted at the OSHA Training Institute (OTI). Additional courses are scheduled as dictated in the directive. Basic training is completed when the eight courses outlined in the directive are completed. After completing the OTI training courses compliance employees receive on-the-job training (OJT) and support from senior staff members

Additionally, the KYOSH Program remains supportive of the career development and advancement of compliance and consultation personnel. The State pays for employees to take the certification preparation course and reimburses employees that successfully complete the certification exam. Employees that achieve professional certifications also receive a salary increase, range from 10 to 15 percent.

Staffing

Under the terms of the 1978 Court Order in *AFL-CIO v. Marshall*, compliance staffing levels (benchmarks) necessary for "fully effective" enforcement program were required to be established for each State operating an approved State plan. In September 1984 Kentucky, in conjunction with OSHA, completed a reassessment of the levels initially established in 1980 and proposed revised compliance staffing benchmarks of 23 safety and 14 health compliance officers. After opportunity for public comments and service on the AFL-CIO, the Assistant Secretary approved these revised staffing requirements on June 13, 1985.

Based on the SOAR, KYOSH is currently staffed with 26 safety officers and 16 industrial hygienist positions, which is above the established benchmark level for the program. During this period, there were a total of 26 consultation staff members, including 9 safety, 9 health, 8 partnership consultants. Interviews with members of the programs management staff revealed that Kentucky is committed to maintaining its staffing at the established benchmark level.

Information Management

The State used various IMIS reports to manage the program and track OSH activity. This includes both mandated activity and activity goals and outcome goals included in the Performance Plan. The reports are utilized by all levels of management from senior management to program managers, and supervisors. The reports are used not only to track program activity but to also assess activity by individual CSHOs. The frequency of report runs can vary from weekly to quarterly as conditions dictate. By tracking activity, a potential outlier can be detected before it becomes a real issue.

State Internal Evaluation Program

As previously mentioned, KYOSH has developed and implemented an Internal Quality Assurance Program, which currently conducts comprehensive audits of the Division of OSH Education and Training. The Internal Quality Assurance Program was modeled after Federal OSHA's auditing program, with minor changes due to State specific issues. The State is currently working to expand coverage of the program to the Division of OSH Compliance and developing formal written procedures for the program.

V. Assessment of State Progress in Achieving Annual Performance Goals

This section of the report represents the performance of the KYOSH Program during the second year of its Five-Year Strategic Plan, which covered the period from FY 2011 through FY 2015. The State also expanded the number of goals from 11 to 23.

This report in conjunction with KYOSH's SOAR provides detailed information on its progress toward the annual performance goal, as well as Kentucky's performance in meeting its mandated activities. During this evaluation period, the State is on target to accomplish all of its goals, with the exception of those identified as baselines by the State. Overall, Kentucky's performance in this area was effective. Therefore, this section of the report does not contain any formal recommendations for improvement.

Goal 1.1: Reduce the rate for repeat, serious and willful violations in residential construction.

FY 2012 goal is to reduce the rate for repeat, serious, and willful violations in residential construction. The base line set in FY 2011 was four (4) willful, eleven (11) repeat and ninety-six (96) serious violations in residential construction. During this period, the Division of OSH Compliance conducted 108 residential construction inspections resulting in four (4) willful, eleven (11) repeat and (105) serious violations. The Division of OSH Education and Training continues to offer residential construction training upon request.

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

This goal aims to reduce amputations, hospitalizations, and illnesses in general industry and construction. The baseline established in FY 2011 included 151 hospitalizations, as well as fifty-four (54) amputations. Fifty-nine (59) inspections were conducted with forty-one (41) serious violations, twenty-five (25) other than serious violations, and four (4) repeat serious violations and a total of \$209,850 in

penalties.

The baseline for reported amputations set in 2011 was fifty-four (54). In FY 2012, the Division of OSH Compliance received fifty-four (54) reported amputations. Forty-four (44) inspections were conducted with fifty-two (52) serious violations, twenty-three (23) other than serious violations, one (1) willful, and one (1) repeat serious violation and a total penalty of \$324,050.

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

This goal addresses the total number of employees removed from hazards through a multi-pronged strategy. It incorporates efforts for both the Division of OSH Compliance and the Division of OSH Education and Training. The Division of OSH Compliance's portion of this goal consists of response to imminent dangers, staff training, and conducting inspections for reports of hospitalization of fewer than three (3) employees. The Division of OSH Compliance responded to 217 imminent dangers in FY 2012 within one (1) working day. The Division of OSH Compliance continued staff training in FY 2012 by sending employees to training programs sponsored by the OSHA Training Institute and Kentucky's Division of OSH Education and Training. The Division of OSH Compliance inspected fifty-nine (59) reported hospitalizations in FY 2012.

During FY 2012, the Division of OSH Education and Training conducted 145 health surveys of which 117 were considered high hazard. The Division Safety Branch conducted 157 surveys, of which all were considered high hazard.

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

In recent years, Kentucky received a CASPA regarding an employer's compliance with a settlement agreement reached with the State. This goal represents an attempt by the State to effectively address this area. During FY 2012, KYOSH conducted thirty-four (34) follow-up inspections including one that was conducted to ensure an employer's compliance with a settlement agreement.

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

This goal aims to reduce the number of injuries caused by falls, struck-by, and crushed-by incidents in construction by ten (10) percent through a six (6) part strategy. It incorporates efforts for both the Division of OSH Compliance and the Division of OSH Education and Training. The Division of OSH Compliance's portion of this goal consists of response to imminent dangers, staff training, and

conducting inspections for reports of hospitalization of fewer than three (3) employees. The following Kentucky and national incident rates for 2011 represent nonfatal occupational injuries and illnesses involving days away from work per 10,000 full-time workers in the construction industry.

2011	Falls	Struck -by	Crushed
Kentucky	10.6	26.0	*
National	20.1	23.8	8.3

***Too few incidents for rate calculation (Two [2] incidents reported)**

Kentucky’s rates were well below the national average for falls and crushed-by incidents in 2011.

The Division of OSH Education and Training continues its Construction Partnership Program (CPP) and monitors the number of enrolled employers, training courses, contact hours, surveys, and technical assistance efforts.

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

This goal addresses the initiation of all fatality and catastrophe inspections by the Division of OSH Compliance within one (1) working day of notification. During FY 2012, the State successfully achieved this goal.

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

This goal addresses response time by the Division of OSH Compliance in critical situations. During FY 2012, KYOSH successfully achieved this goal by responding to all imminent danger referrals within one working day.

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

This goal strives to reduce Kentucky’s total case rate for injuries and illnesses. This performance goal combines efforts for both the Division of OSH Compliance and the Division of OSH Education and Training. The baseline incident rate for all industries was 4.5. The total recordable incident rate in 2011 for all industries in Kentucky was 4.4 which is an improvement from 2010. Both divisions of the KY OSH Program strive for continuing improvement in the total case rate for Kentucky. Efforts such as the Targeted Outreach Program (TOP) and the Safety Tops Our Priority (STOP) are producing positive results.

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

This goal addresses the reduction of Kentucky's lost time case rate for injuries and illnesses. It combines efforts for both the Division of OSH Compliance and the Division of OSH Education and Training. The total 2010 lost time case rate for Kentucky was 2.2. For 2011, the incident rate for lost time events dropped to 2.1. While this indicator tends to ebb and flow over a period of time, the overall downward trend is a reasonable indication that resources are being directed towards efforts that are having a positive impact on the injury and illness rates in Kentucky. The targeting efforts of the Division of OSH Compliance along with the long-term outreach of the Division of OSH Education and Training continues to enhance the safety and health of Kentucky's workforce. The Kentucky OSH Programs focus on the highest hazard industries and specific facilities is a direct and effective approach to lowering incident rates.

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

This goal aims to reduce injury and illness incident rates in at least five (5) of fifteen (15) most hazardous industries in Kentucky and incorporates efforts for both the Division of OSH Compliance and the Division of OSH Education and Training. During FY 2012, the Division of OSH Education and Training conducted 128 safety and health surveys in the selected top ten (10) Kentucky high hazard NAICS and specific high hazard industries. Additionally, thirty-seven (37) training sessions were presented at four (4) Population (POP) Center Training seminars throughout the Commonwealth. Over 1,106 participants attended the training courses.

In an effort to supplement resources in addressing high hazard industry issues, the Division of OSH Education and Training continued to coordinate outreach with professional and industry associations. The Division of OSH Education and Training targeted employers in specific NAICS classifications using 2010 data. The Division mailed an offer to specific industries encouraging utilization of OSH Education and Training services under the STOP Program. The outreach mailings were also sent under the Division's TOP Program. The STOP and TOP outreach efforts resulted in 134 requests for consultative services.

The Division of OSH Compliance conducted inspections at facilities identified in the STOP and TOP outreach effort that chose not to utilize the services of the Division of OSH Education and Training.

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

During FY 2012, the Division of OSH Compliance signed eighty-four (84) settlement agreements. In fourteen (14) cases the penalties were reduced by more than \$10,000. Seven of those fourteen agreements did not include the OSHA 1989 Safety and Health Guidelines or the engagement of outside safety and health consultation. In these cases the policy was not enforced due to financial hardship, penalty miscalculations, or the reclassification of violations.

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

During FY 2012, all full-service surveys included an evaluation of the safety and health management systems.

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

During FY 2012, all general industry full-service surveys included a Safety & Health Program Assessment Worksheet, as well as a narrative safety and health program evaluation.

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

Five (5) safety and health program management training courses were provided reaching 149 attendees. This goal was effectively accomplished during FY 2012.

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

This goal was effectively accomplished during FY 2012. In fact, KYOSH expects to add two (2) new VPP sites over the course of the next two (2) calendar years. Two new SHARPS sites were added in FY 2012 and the program expects to add two (2) new sites over the course of the next two (2) calendar years. The Partnership Program expects to add five (5) new Construction Partnership Program (CPP) sites over the next two (2) calendar years.

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

The Division of OSH Education and Training developed an electronic online workplace safety and health training website. Content is created by division staff to

cover a wide variety of topics. Pertinent to this performance goal was the creation and successful publication of the “Globally Harmonized System of Classification and Labeling of Chemicals” module and webinar.

The Division of OSH Education and Training continues to offer free outreach training at 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. The Division of OSH Education and Training distributes a free compact disc that contains all state OSH regulations, federal OSH standards, Kentucky safety and health manuals, posters, conference information, and other resource links.

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

The Division of OSH Compliance employed one (1) individual dedicated to the IMIS system. IMIS rejects are completed daily and SIR/SAMM reports are reviewed quarterly. The Division of OSH Compliance uses various IMIS reports to maintain a reliable data repository.

The Division of OSH Education and Training continues to maintain data repository by monitoring IMIS rejects, running MARC reports, updating internal tracking, and running backups on a daily and monthly basis.

Goal 3.2: Ensure new supervisory staff completes formal leadership training or certification programs.

This goal aims for new supervisory staff to complete formal leadership training or complete certification. The Division of OSH Compliance and the Division of OSH Education and Training did not hire new supervisory staff.

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

This goal was effectively accomplished during FY 2012. A few of the certifications held by KYOSH staff members include the following: Occupational Health and Safety Technologist (OHST); the Construction Health and Safety Technician (CHST); as well as the Certified Safety Professional (CSP). Kentucky commitment to this performance measure was verified during a review of the Kentucky SOAR.

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

During this period, KYOSH funded three staff members pursuing master’s degrees. Since 2009, the Division of OSH Compliance has supported five (5) other compliance officers in attaining Masters of Science degrees. This goal was

effectively accomplished during FY 2012.

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

This goal is currently in process, in FY 2012, KYOSH begun to implement the tenants of the andragogical model of adult learning theory in its Population Center Training seminars.

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

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

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

During this period, photographs of actionable hazards were included in all appropriate consultation surveys. This goal was effectively accomplished during FY 2012.

Appendix A – New and Continued Findings and Recommendations
 FY 2012 Kentucky State Plan FAME

Rec #	Findings	Recommendations	Related FY 11
12-01	The IMIS is not being updated as necessary. The State has approximately 1,200 open cases dating back to the early 1990's.	KYOSH should continue their efforts to update the IMIS system by developing and implementing a procedure to ensure that information is entered and updated in IMIS in a timely manner, throughout the life-cycle of an inspection case file <i>Completed-awaiting verification</i>	11-02A
12-02	One-third of the fatality case files reviewed did not provide evidence that one or more of the required calls were made and/or letters to the next-of-kin were sent.	KYOSH should develop and implement a tracking system to ensure that all communications with the NOK are completed. The information to be tracked includes but is not limited to: written correspondence at the beginning and end of an investigation; a letter informing the NOK of the fatality investigation results; and a letter informing NOK of any changes to the citation, as the result of an informal conference, Formal Settlement Agreement, or litigation as well as hearing dates and other pertinent information. <i>Completed-awaiting verification</i>	11-05
12-03	KY OSH did not conduct any programmed planned health inspections during this evaluation period.	KY OSH should develop and implement an effective strategy to ensure that programmed health inspections are conducted in the high hazard health industries. <i>Completed-awaiting verification</i>	11-06
12-04	KYOSH does not have a written procedure for the review and approval of Petition for Modification of Abatement (PMA) requests made by employers.	KYOSH should adopt the federal OSHA PMA procedure or implement a written procedure that is as effective as the federal OSHA policy, to include the requirements contained in §1903.14a(b) (1)-(5). <i>Completed-awaiting verification</i>	11-08

Appendix B – Observations Subject to Continued Monitoring
FY 2012 Kentucky State Plan Abridged FAME Report

Rec # [OB-1]	Observations	Federal Monitoring Plan	FY 11#
OB-1	KY OSH has a significantly higher citation issuance lapse time than federal OSHA.	KY OSH should develop and implement effective strategies to reduce its safety and health citation issuance lapse time.	11-07

Appendix C - Status of FY 2011 Findings and Recommendations
 FY 2012 Kentucky State Plan Abridged FAME Report

Rec #	Findings	Recommendations	Corrective Action Plan	State Action Taken	Status
11-01	Case files do not contain a tracking mechanism to document pertinent case related actions, events, and significant activities that occur throughout the life of the case.	KYOSH should develop and implement a tracking mechanism, such as a diary sheet or log, for case files to document: significant case-related actions (case development, dates that correspondence is sent and received, dates when updates are made in IMIS); communication between management and the CSHO; and communication between KYOSH and the employer and employee, as well as any other actions of significance	Kentucky questions OSHA’s basis for this finding and recommendation. Kentucky does not believe the lack of a diary sheet or log is a “deficiency” as OSHA states in the paragraph above and takes issue with OSHA characterizing it as such. Although significant case-related actions and other actions of significance may not be neatly summarized in a diary sheet or log, OSHA does not assert the information was missing. To the contrary, OSHA points out that case files were “...very detailed...” and “...well documented...” The information was documented in different portions of the case files. It may be in the narrative or work notes. It may be a stand-alone document in the case file such as a letter to complainant, a notice of contest, a supervisor memo regarding informal conference, etc. Kentucky believes this finding and recommendation is frivolous. It appears to be in search of a deficiency where none exists. Kentucky considers this a non-issue and closed matter.	Kentucky’s new customized information system was fully deployed Friday, December 14, 2012. Internal mechanisms were implemented during the period from the submission of Kentucky’s FAME reply and December 14.	Closed
11-02A	The IMIS is not being updated as necessary. The State has approximately 1,200 open cases dating back to the early 1990’s.	KYOSH should continue their efforts to update the IMIS system by developing and implementing a procedure to ensure that information is	Kentucky concurs there are many open cases in OSHA’s Integrated Management Information System (IMIS). Kentucky finds there are approximately 1,050 open cases.	Kentucky’s work with another state is ongoing and a completion date has not been established. Closure of cases that have been open	Completed – awaiting verification

Appendix C - Status of FY 2011 Findings and Recommendations
 FY 2012 Kentucky State Plan Abridged FAME Report

Rec #	Findings	Recommendations	Corrective Action Plan	State Action Taken	Status
		entered and updated in IMIS in a timely manner, throughout the life-cycle of an inspection case file	A review of the cases establishes the majority of the 1, 050 open cases remain open in IMIS for a legitimate reason, such as cases open due to litigation or cases in debt collection. Kentucky is surprised to learn that other cases remain open in IMIS. Kentucky spent considerable time and effort cleaning up case files in IMIS and closed many, if not all, of the open cases in IMIS that were ripe for closure. Kentucky's review of the open cases not in litigation or debt collection finds cases that Kentucky has closed in IMIS yet continue to show up in IMIS as open. Kentucky notes this has been a problem for the OSH Program before. The OSH Program has made entries in IMIS and the data does not remain in IMIS. Nevertheless, Kentucky will again expend resources and begin work in IMIS to close cases that are ripe for closure.	seven (7) years or longer began after deployment of Kentucky's new customized information system. Kentucky anticipates that all cases that have been open seven (7) years or longer will be closed by February 1, 2013.	
12-01 (11-02B)	The IMIS is not being updated as necessary. The State has approximately 1,200 open cases dating back to the early 1990's.	KYOSH should update all complaint related actions, such as the date the OSHA-7 is sent for signature and when correspondence was mailed and received, in the IMIS in accordance with the IMIS Manual.	See above.	Kentucky's new customized information system was fully deployed Friday, December 14, 2012.	Closed
11-03 (10-	KYOSH conducts inspections for all formalized complaints regardless of	To allow a more effective use of their resources, KYOSH should	Kentucky questions why OSHA continues to make this finding	State law requires this.	Closed

Appendix C - Status of FY 2011 Findings and Recommendations
 FY 2012 Kentucky State Plan Abridged FAME Report

Rec #	Findings	Recommendations	Corrective Action Plan	State Action Taken	Status
03)	the nature of the hazard(s).	evaluate all complaints, including formal complaints, to determine whether an investigation would be more appropriate than an inspection.	<p>and recommendation. Although OSHA states the recommendation should be considered closed, it continues. As stated in Kentucky's 2010 Follow-Up Report response, and repeated here, Kentucky evaluates all complaints and assigns an investigation or an inspection based upon the classification and gravity of alleged hazards. Kentucky clearly does what Recommendation 11-03 (10-03) suggests.</p> <p>Kentucky generally believes that an employee, or representative of employees, who takes the time to memorialize a workplace concern(s) in the form of a written and signed complaint has a concern that warrants an onsite evaluation by the Division of OSH Compliance. Kentucky believes onsite observation is the surest method to determine if a hazard exists. Kentucky believes employees are better protected and served when a determination regarding an alleged hazard(s) is made through direct onsite observation rather than attempting a determination via indirect observation methods.</p> <p>Additionally, Kentucky OSH Program experience establishes that other hazards not alleged in a complaint may be discovered during inspection of the complaint</p>		

Appendix C - Status of FY 2011 Findings and Recommendations
 FY 2012 Kentucky State Plan Abridged FAME Report

Rec #	Findings	Recommendations	Corrective Action Plan	State Action Taken	Status
			<p>items. The Division of OSH Compliance believes its complaint inspection practice is appropriate, efficient, and a very effective use of resources. Kentucky has accomplished what the recommendation suggests and believes OSHA's practice of continuing to make the finding and recommendation year after year is counterproductive. At best, the continued rhetoric on this issue demonstrates OSHA's inability to resolve an issue with Kentucky where the two (2) parties disagree. Kentucky's position and practice has not wavered or changed. This is a non-issue that Kentucky considers settled. Kentucky does not intend to expend any additional time, energy, or effort addressing this recommendation.</p>		
11-04	Complainants are not provided the findings regarding each complaint item.	KYOSH should develop and implement procedures to notify complainants of the inspection results to include the State's findings of each complaint item. Appropriate personnel should be trained in new procedures and supervisors should review case files more carefully to ensure this information is included in the file	As OSHA states in the FAME report, the Division of OSH Compliance provides the complainant a letter advising the outcome of the inspection as well as a copy of the citations. Kentucky indicated in the 2010 Follow-Up Report that it augmented its procedure by addressing each complaint item individually and advising the complainant's appeal rights in the	Kentucky's augmented procedure was reemphasized to staff and fully implemented on or about August 15, 2012.	Closed

Appendix C - Status of FY 2011 Findings and Recommendations
 FY 2012 Kentucky State Plan Abridged FAME Report

Rec #	Findings	Recommendations	Corrective Action Plan	State Action Taken	Status
			<p>letter to complainants. OSHA’s finding asserts that complainants are not afforded “a way of disputing or appealing the findings of a complaint investigation.” This is simply not true and Kentucky questions OSHA’s assertion. The letter sent to complainants from the Division of OSH Compliance clearly advises a complainant of the procedure to request a review in accordance with 803 Kentucky Administrative Regulation 338.121.</p> <p>With regard to addressing each complaint item, Kentucky regrets its augmented procedure has not progressed as anticipated. Kentucky pledges to address the shortcoming and fully implement the procedure.</p> <p>The Kentucky OSH Program is developing a customized information system that will replace OSHA’s IMIS. Kentucky expects the new system will be implemented by the end of 2012. The Division of OSH Compliance anticipates the new system will improve its procedure to notify complainants of the findings for each complaint item.</p>		
12-02 (11-05)	One-third of the fatality case files reviewed did not provide evidence that one or more of the required calls were made and/or letters to the next-	KYOSH should develop and implement a tracking system to ensure that all communications with the NOK are completed.	Kentucky is confident that all next-of-kin communications are completed. Kentucky notes that OSHA’s finding and	Internal mechanisms were implemented during the period from the submission of Kentucky’s FAME reply	Completed – awaiting verification

Appendix C - Status of FY 2011 Findings and Recommendations
 FY 2012 Kentucky State Plan Abridged FAME Report

Rec #	Findings	Recommendations	Corrective Action Plan	State Action Taken	Status
	of-kin were sent.	The information to be tracked includes but is not limited to: written correspondence at the beginning and end of an investigation; a letter informing the NOK of the fatality investigation results; and a letter informing NOK of any changes to the citation, as the result of an informal conference, Formal Settlement Agreement, or litigation as well as hearing dates and other pertinent information.	recommendation does not assert the Kentucky OSH Program is not providing the next-of -kin with the appropriate notification. As OSHA states in the FAME report, the concern is the case file documentation of the communication. Discussion between OSHA and Kentucky establishes that OSHA’s claim that one-third (1/3) of Kentucky’s case files did not include the documentation is inaccurate and inflated due to OSHA’s accounting method. Nevertheless, Kentucky will emphasize improved documentation of the communication with next-of-kin to all staff. Additionally, the Kentucky OSH Program is developing a customized information system that will replace OSHA’s IMIS. Kentucky expects the new system will be implemented by the end of 2012. The Division of OSH Compliance anticipates the new system will improve the procedure to notify complainants of the findings for each complaint item.	and December 14, 2012. Development of a tracking mechanism in Kentucky’s customized tracking system is ongoing.	
12-03 (11-06)	KY OSH did not conduct any programmed planned health inspections during this evaluation period.	KY OSH should develop and implement an effective strategy to ensure that programmed health inspections are conducted in the high hazard health	As noted in the FAME report, Kentucky advised OSHA that programmed planned health inspections were not conducted in FY 2010 due to the high number	Kentucky implemented an effective strategy to ensure programmed health inspections are conducted after submission its FAME	Completed – awaiting verification

Appendix C - Status of FY 2011 Findings and Recommendations
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		industries.	<p>of referrals and complaints. All complaint and referral inspections were assigned and conducted in accordance with the inspection priority order established in Chapter II of the Division of OSH Compliance's Field Operations Manual.</p> <p>Another significant factor directly affecting the absence of programmed planned health inspections in FY 2010 was staff turnover. Industrial hygienists in the Division of OSH Compliance left the program in FY 2010 while others were reclassified from trainee to active status. Both factors directly affected the ability of the health branch to conduct programmed planned health inspections.</p> <p>Kentucky regrets that programmed planned health inspections were not conducted during FY 2010. However, Kentucky believes that employee protection was not compromised.</p> <p>Health hazards in high hazard health industries were identified, cited, and abated during the targeted referral and complaint inspections that were conducted in FY 2010.</p> <p>Progress in this area will be measured due to staff turnover and fiscal challenges. Nevertheless, Kentucky continues to work towards improvement.</p>	reply.	

Appendix C - Status of FY 2011 Findings and Recommendations
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11-07	KY OSH has a significantly higher citation issuance lapse time for than federal OSHA.	KY OSH should develop and implement effective strategies to reduce its safety and health citation issuance lapse time.	<p>A review of the last three (3) year’s average lapse time numbers for the Division of OSH Compliance establishes that safety lapse times are consistent. Kentucky does not consider the lapse time for safety to be “significantly higher” as OSHA states in the finding. The health lapse time rose in FY 2010 but remains lower than FY 2009. The rise in the lapse time from 2009 to 2010 is attributable to staff turnover. Industrial hygienists in the Division of OSH Compliance left the program in FY 2010 while others were reclassified from trainee to active status. Both factors directly affected the lapse time.</p> <p>As Kentucky stated in the 2010 Follow-Up Report, the Division of OSH Compliance implemented the IMIS administrative tracking tools OSHA suggested to address the issue and will continue to utilize those tools. Additionally, the Kentucky OSH Program is developing a customized information system that will replace OSHA’s IMIS. Kentucky expects the new system will be implemented by the end of 2012. The Division of OSH Compliance anticipates the new system will be a useful resource to monitor lapse</p>	Kentucky OSH Program is developing a customized information system that will replace OSHA’s IMIS. Kentucky expects the new system will be implemented by the end of 2012.	Observation

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			<p>times. Kentucky believes the comparison to the national average is somewhat skewed in light of staff turnover, inexperienced staff, and current fiscal challenges. Kentucky also believes that because of these challenges, and several other factors, progress in this area will be measured. Nevertheless, Kentucky continues to work towards improvement.</p>		
12-04 (11-08)	<p>KYOSH does not have a written procedure for the review and approval of Petition for Modification of Abatement (PMA) requests made by employers.</p>	<p>KYOSH should adopt the federal OSHA PMA procedure or implement a written procedure that is as effective as the federal OSHA policy, to include the requirements contained in §1903.14a(b)(1)-(5).</p>	<p>OSHA fails to mention that Kentucky has an administrative regulation, 803 KAR 2:122, that specifically addresses the issue and is nearly identical to 29 Code of Federal Regulations (CFR) 1903.14. Both 803 KAR 2:122 and 29 CFR 1903.14a(b)(1)-(5) establish requirements for the written extension of abatement application as well as other requirements. Neither 803 KAR 2:122 nor 29 CFR 1903.14 requires a written procedure. Kentucky is puzzled by the language in this statement. OSHA states Kentucky does not have a procedure for review in the first sentence above then states in the third sentence that Kentucky “was typically granting or approving the PMA on the same day or the day after the request</p>	<p>Kentucky has a state regulation that is as effective as OSHA.</p>	<p>Completed Awaiting Verification</p>

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Rec #	Findings	Recommendations	Corrective Action Plan	State Action Taken	Status
			<p>was filed.” OSHA’s statement is contradictory. Kentucky has a procedure for review. The compliance supervisor, Program Managers or Director of OSH Compliance review all requests for extension of abatement. Supervisors are very familiar with the case and report the employer’s request and a recommendation to the Program Manager(s) and/or Director of OSH Compliance. OSHA states that Kentucky does not have a waiting period to review and approve the PMA request. Kentucky does not understand if OSHA’s point is a concern or a positive observation. Division of OSH Compliance staff, either the Supervisor(s), or Program Manager(s), and/or the Director of OSH Compliance, can act quickly because they are very familiar with the case. The Division of OSH Compliance is proud of its ability to immediately address an employer’s request. Subsequent to OSHA’s evaluation, Kentucky undertook a review of its extension of abatement procedures. Kentucky is making modifications of its extension of abatement procedures to better align with 803 KAR 2:120.</p>		
11-09	Fifty (50) percent of the 19 inspection case files reviewed, where	KYOSH should ensure that training to appropriate personnel	Kentucky is very confident that all inspections involved the union	Kentucky’s new customized information system was	Closed

Appendix C - Status of FY 2011 Findings and Recommendations
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	<p>the site employees were represented by a collective bargaining agent, did not include evidence that the Union was contacted and/or provided the opportunity to be involved in the inspection.</p>	<p>is reemphasized to include the documentation of union involvement. Supervisors should review case files more carefully to ensure this information is documented on the appropriate forms in the case file.</p>	<p>where the site employees were represented by a collective bargaining agent. Kentucky notes that OSHA's finding and recommendation does not assert the Kentucky OSH Program did not involve the union. As OSHA states in the finding, the concern is the case file documentation of union involvement. Kentucky believes OSHA's claim that fifty (50) percent of Kentucky's case files did not include the documentation may be inaccurate and inflated due to OSHA's accounting method. Nevertheless, Kentucky will emphasize improved documentation to all staff. Additionally, the Kentucky OSH Program is developing a customized information system that will replace OSHA's IMIS. Kentucky expects the new system will be implemented by the end of 2012. The Division of OSH Compliance anticipates the new system will improve the documentation of union involvement.</p>	<p>fully deployed Friday, December 14, 2012. The item was re-emphasized to staff during the period from the submission of Kentucky's FAME reply and December 14, 2012.</p>	
11-10 (10-02)	<p>KYOSH still has not completed a side-by-side comparison of the Kentucky Field Operations Manual (FOM) and the federal OSHA FOM.</p>	<p>KYOSH must either adopt the Federal FOM or complete the revision/development and implementation of the KYOSH FOM. This comparison must be submitted to the federal OSHA Atlanta Regional Office.</p>	<p>Kentucky submitted a side-by-side comparison of its FOM and OSHA's FOM to the Atlanta Regional Office. Kentucky considers this issue closed.</p>	<p>Kentucky submitted a side-by-side comparison of its FOM.</p>	<p>Closed</p>

Appendix C - Status of FY 2011 Findings and Recommendations
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11-11	A telephone log was implemented and it does appear that the investigator made an effort to utilize the log however the logs were not found in each of the files and upon review, it seems as if not all pertinent communications were actually being recorded; the number of entries seemed minimal and did not reflect all contacts.	The investigator should record all pertinent communications between him/herself and the complainant, respondent, or other witness. This is in addition to maintaining all e-mail communications between the aforementioned parties.	Kentucky's discrimination investigators will continue, and strive to improve, their use of the telephone log.	Kentucky's working to improve the use of the telephone log.	Closed
11-12	Safety and Health Achievement and Recognition (SHARP) certificates are being issued to large employers (>500 employees).	KYOSH should limit admittance into SHARP to those worksites (employers) with less than 250 employees at the site and less than 500 employees company-wide as indicated in the CSP 02-00-002: Consultation Policies and Procedures Manual (CPPM), which was adopted by the State in 2008.	Kentucky's state designee, Secretary Mark S. Brown, approved all SHARP participants in the Kentucky OSH Program's Division of Education and Training, regardless of size. Kentucky considers this issue closed.	After further evaluation, KY is following required policies and procedures.	Closed
11-13	Reports from KYOSH On-site Consultation visits are issued an average of 84.3 days after the closing conference, which exceeds the goal of 20 days established in the CPPM.	The KYOSH On-site Consultation Program should continue to identify factors affecting the timely issuance of the reports and develop a tracking mechanism to ensure reports are issued not later than 20 days. The tracking mechanism should track the lapse times of the Consultants, and discussions should be held with them to determine the reason(s) for the report being late. This should be documented in a diary sheet or log in the case file.	The Division of Education and Training developed a tracking program approximately three (3) years ago that tracks lapse time. Utilization of the software allows the Division to continually monitor and subsequently identify, evaluate, and discuss with staff the factors affecting issuance of reports. Kentucky also notes that a tracking mechanism will not ensure reports are issued no later than twenty (20) days. Although a tracking mechanism is a useful tool, it is simply that -- an administrative tool that monitors. It does not	The Division of Education and Training developed a tracking program approximately three (3) years ago that tracks lapse time. Utilization of the software allows the Division to continually monitor and subsequently identify, evaluate, and discuss with staff the factors affecting issuance of reports.	Closed

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			<p>expedite the process or issue reports.</p> <p>Division of Education and Training staff can access Kentucky's tracking mechanism anytime. Kentucky does not believe a diary sheet or log is necessary.</p> <p>Kentucky is pleased to report that from October 2011 to date, the Division of Education and Training has decreased the average number of days from closing conference to issuance of the report to 26.23 days.</p> <p>Kentucky considers this an outstanding accomplishment particularly in light of the vast array of cost-free services the Division of Education and Training provides to the employers and employees of the Commonwealth. All services, including traditional "brick and mortar" offerings as well as the newly launched and extremely popular on-line services provided at www.laborcabinetetrain.ky.gov, are accomplished in-house. The Division performs all the work, including development, production, broadcast, etc., with no outside contracting being utilized.</p>		

Appendix D – FY 2012 State Activity Mandated Measures (SAMM) Report
FY 2012 Kentucky State Plan Abridged FAME Report

NOV 09, 2012
 RID: 0452100

MEASURE	From: 10/01/2011 To: 09/30/2012	CURRENT FY-TO-DATE	REFERENCE/STANDARD
1. Average number of days to initiate Complaint Inspections	2406 10.98 219	425 21.25 20	Negotiated fixed number for each state
2. Average number of days to initiate Complaint Investigations	3427 19.92 172	390 16.25 24	Negotiated fixed number for each state
3. Percent of Complaints where Complainants were notified on time	241 100.00 241	36 100.00 36	100%
4. Percent of Complaints and Referrals responded to within 1 day -ImmDanger	234 97.91 239	23 100.00 23	100%
5. Number of Denials where entry not obtained	0	0	0
6. Percent of S/W/R Violations verified			
Private	0 .00 430	0 .00 430	100%
Public	0 .00 20	0 .00 20	100%
7. Average number of calendar days from Opening Conference to Citation Issue			
Safety	35646 98.19 363	5683 105.24 54	2032800 55.9 36336 National Data (1 year)
Health	9726 124.69 78	1766 126.14 14	647235 67.9 9527 National Data (1 year)

0*KY FY12

**PRELIMINARY DATA SUBJECT TO ANALYSIS AND REVISION

Appendix D – FY 2012 State Activity Mandated Measures (SAMM) Report
FY 2012 Kentucky State Plan Abridged FAME Report

NOV 09, 2012
 RID: 0452100

MEASURE	From: 10/01/2011 To: 09/30/2012	CURRENT FY-TO-DATE	REFERENCE/STANDARD
8. Percent of Programmed Inspections with S/W/R Violations			
	10	0	76860
Safety	15.15	.00	58.5
	66	23	131301
			National Data (3 years)
Health	1	0	9901
	100.00		53.0
	1	0	18679
			National Data (3 years)
9. Average Violations per Inspection with Violations			
S/W/R	817	114	367338
	1.85	1.67	2.1
	441	68	175950
			National Data (3 years)
Other	355	44	216389
	.80	.64	1.2
	441	68	175950
			National Data (3 years)
10. Average Initial Penalty per Serious Violation (Private Sector Only)	3046325	495550	624678547
	4231.00	4546.33	1990.5
	720	109	313826
			National Data (3 years)
11. Percent of Total Inspections in Public Sector	42	4	149
	4.62	3.57	4.9
	909	112	3026
			Data for this State (3 years)
12. Average lapse time from receipt of Contest to first level decision	7307	373	3197720
	235.70	186.50	187.0
	31	2	17104
			National Data (3 years)
13. Percent of 11c Investigations Completed within 90 days*	49	23	
	75.38	100.00	100%
	65	23	
14. Percent of 11c Complaints that are Meritorious*	7	4	1619
	10.77	17.39	23.4
	65	23	6921
			National Data (3 years)
15. Percent of Meritorious 11c Complaints that are Settled*	3	4	1444
	42.86	100.00	89.2
	7	4	1619

*Note: Discrimination measures have been updated with data from SAMM reports run on 1/3/2013
 **PRELIMINARY DATA SUBJECT TO ANALYSIS AND REVISION

Appendix E - State OSHA Annual Report (SOAR)
FY 2012 Kentucky State Plan Abridged FAME Report

[Available Upon Request]