

**FY 2013 Comprehensive
Federal Annual Monitoring and Evaluation (FAME) Report**

**KENTUCKY LABOR CABINET
DEPARTMENT OF WORKPLACE STANDARDS
OCCUPATIONAL SAFETY AND HEALTH PROGRAM**



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I. Executive Summary

A. Summary of the Report

The purpose of this report is to assess the Kentucky Occupational Safety and Health (KYOSH) activities for Fiscal Year (FY) 2013 and its progress towards achieving their performance goals established in their Fiscal Year (FY) 2013 Strategic Management Plan and to review the effectiveness of programmatic areas related to enforcement activities, including a summary of an onsite evaluation. This report assesses the current performance of the KYOSH) 23(g) program.

A six-person Federal OSHA team was assembled to conduct the onsite evaluation in Frankfort, Kentucky, during the time frame of January 27th through February 5th, 2014. The OSHA team's evaluation consisted of enforcement and consultation case file reviews, a review of KYOSH's performance statistics, and staff interviews. A comparison of the FY 2011 case file reviews and the FY 2013 review showed the State is maintaining a high level of quality in the documentation of fatality investigation files; however, the complaint and programmed files showed a decline in the quality of the documentation, specifically with knowledge and exposure. It does not appear that this has had a negative impact on the effectiveness of the program. This is addressed in other areas of this report.

KYOSH has taken action towards addressing the 13 recommendations found in the FY 2011 FAME report. Nine were resolved during the FY 2012 follow-up report and four were completed awaiting OSHA's verification. There were no new recommendations contained in the FY 2012 report. It was determined that seven of the nine recommendations that were closed during the FY 2012 follow-up report were completed; however, two of the recommendations were not implemented. KYOSH's response to recommendation 11-04 (formerly 9-05) stating that Kentucky's augmented procedure to notify complainants of the inspection results to include the State's findings of each complaint item was reemphasized to staff and fully implemented on or about August 15, 2012, was not implemented. KYOSH's response to recommendation 11-07 the states response partially states the Division of OSH Compliance implemented the IMIS administrative tracking tools OSHA suggested to address the issue of a high lapse time and will continue to utilize those tools and the Division of OSH Compliance anticipates the new OSHA EXPRESS system will be a useful resource to monitor lapse times. Kentucky's lapse times remain significantly high. Three of the four recommendations that were completed awaiting verification by OSHA have not been corrected. In response to recommendation 11-02A, 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 and will reopen any closed case if future activity warrants. Kentucky has closed all of the cases that have been open 7 years or longer. In addition, they have enhanced their debt collection process which will assist with the closing of cases. However, there are still a significant number

of open cases due to the IMIS not being updated. KYOSH's response to Recommendation 11-05 was that Kentucky developed and implemented a system to ensure that all communications with next-of-kin (NOK) are completed. Kentucky is also developing a tracking mechanism in its customized information system that will ensure all communications with NOK are completed. Communication with victim's family remains an issue. In response to Recommendation 11-06, Kentucky provided that programmed planned health inspections have been conducted. Additionally, Kentucky has implemented an effective strategy to ensure programmed health inspections are conducted; however, only fifteen programmed health inspections were conducted during FY 2013. These issues are discussed in detail throughout this report.

A detailed explanation of current findings and recommendations of KYOSH's performance evaluation is found throughout this report but primarily in the Assessment of State Performance, Section III. The summary of current Findings and recommendations noted as a result of OSHA's study are found in Appendix A, FY 2013 Summary of Findings and Recommendations. One finding indicates that there are a significant number (603) of open cases in IMIS, that are not in contest or currently active, including 172 cases with open abatements. A second finding identifies that complainants are not provided the findings regarding each complaint item and they are not afforded a way of disputing or appealing the findings of a complaint inspections. The third issue involves trainees being assigned to conduct fatality investigations without the appropriate training. A fourth finding indicates that more there are failures in the communication with the NOK during and following fatality investigations. The fifth issue involves the Division of OSH Compliance conducting a low number of programmed health inspections. The sixth finding involves the State's significantly high citation lapse times. The seventh item identified that the Special Emphasis Programs (SEP) do not target specific hazards or industries to prevent injuries and/or illnesses. The eighth item indicates that new compliance officers are only receiving the Initial Compliance OTI course and are not receiving the other required courses contained in the TED. The ninth finding identified that KOSH's Division of OSH Compliance does not have an internal self-evaluation program as required by the State Plan-Policies and Procedures Manual. Appendix B details the nine Observations identified during the onsite review. 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.

B. State Plan Introduction

Historical Background:

The Kentucky State Plan was established by the Kentucky General Assembly in 1972 and 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.

Current Background:

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.

C. Data and Methodology

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.

During this evaluation, a total of 85 inspection case files, comprised of safety and health, were randomly selected for review. 15 fatality inspection files were reviewed and, 30 complaint investigation (non-formal) and inspection files were reviewed. The others were a random selection of files from the following categories: programmed general industry safety; programmed general industry health; programmed construction safety; and referrals. It is noted that KYOSH only conducted fifteen programmed health inspections during this review period therefore all of these files were reviewed. In addition, no programmed health construction inspections were conducted during this review period. This was a small percentage of the 899 inspections conducted in FY 2013, 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. Data referenced in this report was obtained from the State Activity Mandated Measures (SAMMs), FY 2013 23(g) Grant, Integrated Management Information System (IMIS) reports, OSHA Express reports, discussions with State staff, and onsite review conducted in January and February 2014. During the onsite evaluation, ten State Plan staff employees were interviewed, which included one safety and one Supervisor, two Program Managers, and six compliance officers.

A comparison of Integrated Management Information System (IMIS) data for fiscal years 2009 through 2013 indicated that there is a significant decline in the number of inspections that were conducted. In FY 2013, a total of 899 inspections were conducted

compared to 1,233 in 2009. This is a difference of 322 inspections from FY 2009 to FY 2013. This is addressed in another section of this report.

D. Findings and Recommendations

The FY 2012 abridged FAME Report contained four new findings and recommendations. Findings and recommendations 12-01, 12-02, 12-03, and 12-04 were all closed awaiting verification following a review of the CAP. As a result of a follow-up during this review, Findings 12-01, 12-02, and 12-03 are being carried over to new Findings. Finding 12-04 was verified as being corrected.

Status of FY 2012 Findings and Recommendations

Finding 12-01: The IMIS is not being updated as necessary. The State has approximately 1,200 open cases dating back to the early 1990s.

Recommendation: 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: This item is now finding 13-01.

Finding 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.

Recommendation: 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: This item is now finding 13-04.

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

Recommendation: 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: This item is now finding 13-05.

Finding 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.

Recommendation: 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: Closed - KYOSH has an administrative regulation 803 KAR 2:122 establishing requirements for the written extension of abatement application which is equivalent to the federal requirement §1903.14a (b)(1)-(5). File reviews supported that this regulation is being followed.

During the FY 2013 evaluation period, nine new Findings and nine Observations were identified. The summary of all Findings and Recommendations noted as a result of OSHA's study are found in Appendix A, FY 2013 Summary of Findings and Recommendations. Appendix B details the nine Observations identified during the FY 2013 evaluation. The specific new Recommendations and Observations are as follows:

New Findings

Finding 13-01 (formerly 12-01, 11-02, and 9-13): A significant number of the 603 open cases in IMIS, that are not in contest or currently active, including 149 cases with open abatements can be closed.

Recommendation: KYOSH should implement a process to determine which cases in the IMIS have completed litigation and/or have the abatement and penalty satisfied.

Finding 13-02 (formerly 11-04 and 9-05): Complainants are not provided the findings regarding each complaint item and they are not afforded a way of disputing or appealing the findings of a complaint inspection.

Recommendation: KYOSH should fully implement the augmented procedure addressed in former Commissioner Dixon's response following the FY 2011 FAME which states "Kentucky indicated in the 2010 follow-up report that it augmented its procedure by addressing each complaint item individually and advising the complainant's appeal rights in the letter to complainants". Appropriate personnel should be trained in the augmented procedure and supervisors should review case files more carefully to ensure this procedure is fully implemented and this information is included all case files.

Finding 13-03: In three instances, KYOSH assigned personnel to conduct fatality investigations without the proper training.

Recommendation 13-03: KYOSH should ensure that all compliance officers assigned to conduct accident and fatality investigations have the appropriate training.

Finding 13-04 (formerly 11-05 and 9-07): More than half of the fatality files reviewed did not provide evidence that one or more of the required calls were made and/or letters sent to the next-of-kin.

Recommendation: Implement a process to ensure full implementation of CPL 02-00-153 - Communicating OSHA Fatality Inspection Procedures to a Victim's Family to ensure that all communications with the NOK are completed.

Finding 13-05 (formerly 11-06): KYOSH conducted a total of 15 programmed planned health inspections during this evaluation period.

Recommendation: KYOSH should develop and implement a strategy to ensure a more representative number of programmed planned health inspections are conducted to adequately address the scope and seriousness of the hazards found in high hazard health industries.

Finding 13-06: (formerly 11-07 and 9-11): KYOSH has significantly high average citation issuance lapse times for safety and health.

Recommendation: KYOSH should develop and implement a process to reduce the average lapse time for non-incompliance safety and health inspections to the national average.

Finding 13-07: Several of KYOSH's Special Emphasis Programs (SEP) do not target specific hazards or industries to prevent injuries and/or illnesses.

Recommendation: KYOSH should implement a process for the development SEPs for the proactive targeting of hazards, industries, etc. to prevent injuries and illnesses.

Finding 13-08: Compliance officers are not provided progressive training opportunities as outlined by the KYOSH training guidelines.

Recommendation: KYOSH should implement a process to ensure compliance officer training is compliant with TED 01-00-018 "Training Program for OSHA Compliance Personnel," as adopted by KYOSH.

Finding 13-09 (formerly 10-8 and 9-20): KYOSH's Division of OSH Compliance does not have an internal self-evaluation program as required by the State Plan-Policies and Procedures Manual.

Recommendation: KYOSH should implement a process to ensure that an internal self-evaluation program possessing integrity and independence is developed and implemented. Kentucky should ensure that periodic evaluations of all areas of the program are evaluated and documentation of the evaluations is made available to federal OSHA.

Observations:

FY 13-OB-1: A State Senator has introduced a Bill (SB63) with several co-sponsors into the State Legislature which will eliminate all funding provided to the Labor Cabinet from special fund assessments. This would defund the KYOSH program.

FY 13-OB-2: Data indicated that there has been a significant decline in the number of inspections conducted by KYOSH, a difference of 322 from FY 2009 to FY 2013.

FY 13-OB-3: There was no evidence in three of the five of the non-formal complaint reviewed that a letter was sent notifying complainants of the results of the investigations.

FY 13-OB-4: In five of the complaint inspection files reviewed, there was no documentation supporting that the safety and health programs were reviewed and there was nothing to support providing or not providing good faith.

FY 13-OB-5: Two of the five non-formal investigations alleging health related exposures did not have sampling provided by the employer to support their response that employees were not overexposed.

FY 13-OB-6: For inspections involving chemical and/or health exposures, sampling results were not provided to the appropriate employees, employer representatives, and employee representatives when sampling was performed.

FY 13-OB-7: KYOSH does not effectively utilize the OSHA Express abatement report to track abatement.

FY 13-OB-8: Sufficient consideration is not given to the analysis portion of the FIR, wherein the required (prima facie) elements of a whistleblower complaint are considered (along with any defenses raised by the employer in order to support final determinations.

FY 13-OB-9: KYOSH's guidelines regarding telephone logs are not followed uniformly by the investigators.

II. Major New Issues

Recently the State experienced a significant change in leadership with the retirement of the Secretary of the Labor Cabinet, Mark Brown. As a result, Larry Roberts was appointed Secretary of the Labor Cabinet by Kentucky Governor Steve Beshear. In addition, Anthony Russell was appointed to the vacant position of Commissioner of the Labor Cabinet's Division of Workplace Standards.

Additionally, a State Senator has introduced a Bill (SB63) with several co-sponsors into the State Legislature which will eliminate all funding provided to the Labor Cabinet from special fund assessments. This would defund the KYOSH program. Additional special accomplishments are addressed in Section III of the SOAR.

FY 13-OB-1: A State Senator has introduced a Bill (SB63) with several co-sponsors into the State Legislature which will eliminate all funding provided to the Labor Cabinet from special fund assessments. This would defund the KYOSH program.

III. Assessment of State Plan Performance

As previously stated, a total of 85 inspection case files were reviewed, which included

thirty complaint investigations (non-formal) and inspection files (formal), 15 fatality investigation files. The others were a random selection of files from the following categories: programmed general industry safety; programmed general industry health; programmed construction safety; and referrals.

As stated previously, a comparison of Integrated Management Information System (IMIS) data for fiscal years 2009 through 2013 indicated that there is a significant decline in the number of inspections that were conducted. In FY 2013, a total of 899 inspections were conducted compared to 911 in FY 2012, 1,054 in FY 2011, 1,064 in FY 2010, and 1,233 in 2009. This is a difference of 322 in sections from FY 2009 to FY 2013. OSHA Express reports indicated that during FY 2013, CSHOs conducted an average of 24.97 inspections with 51.95% of the inspections without violations. There were 19 out of 36 CSHOs with less than 20 inspections and all but two CSHOs had less than 20 inspections with violation(s). It is noted that six of these CSHOs terminated their employment with KYOSH during FY 2013. Safety Compliance Officers conducted an average of 32.6 inspections with an average of 1.37 violations per inspection and 53.8% of the inspections without violations. Health Compliance Officers conducted an average 11.54 inspections with an average of 1.8 violations per inspection and 42.67% of the inspections without violations. All thirteen Health Compliance Officers conducted 20 or fewer inspections including as few as six. Three of the 23 Safety Compliance Officers accounted for 479 of the 1025 or 46.7% of the safety violations. The Compliance Officer with the second highest number of inspections and most violations that were cited also had the second lowest lapse time of 63 days.

Overall, case files that were reviewed contained sufficient documentation. With few exceptions, the case files that were reviewed were documented with detailed narratives explaining the inspection process, the employer's business/processes, findings, and any other factors/issues. The violations contained all of the required information and supporting documentation for a prima facie violation including all of the required forms, photos, interview notes, field notes, diagrams, and other technical documentation. Overall, inspections were coded with the appropriate emphasis and strategic codes. The file contained case file diary sheets to document significant actions associated with that particular file such as calls or correspondence between KYOSH and the employer, NOK correspondence, updates in the case, and informal conference; however, they were used very minimally by most compliance officers, supervisors, and program managers. When files are closed, they are scanned into the state's imaging system. The complete file is scanned with the exception of the photos which are saved and maintained in an inspection photo database.

As a follow-up to Recommendation 12-01 (formerly 11-02 and 09-13), IMIS reports were run using earliest date on system to current date, cases appear dating back to the early 1990's. KYOSH has made progress towards updating data and closing aged files, all files that were older than seven years have been closed. However, there are still a significant number of older open cases in the IMIS system including cases where the

abatement has been received but IMIS was not been updated. There are 603 open cases that are not in contest or currently active cases including 172 cases with open abatement.

The Division of Education and Training continues to work on delivering training courses and developing new training to address new and emerging hazards. The Division of OSH Education and Training maintains a workplace safety and health training website. Content is created by division staff and covers a wide variety of topics. One example was the creation and successful publication of the “Globally Harmonized System of Classification and Labeling of Chemicals” module and webinar as well as the update of four (4) hazard communication modules. The Division of OSH Education and Training also developed a cost free online eLearning safety and health program management training module during FY 2013. Toolbox talks in the form of video courses are incorporated into the Labor Cabinet’s eLearning modules. Free outreach training is offered at Population (POP) Centers for employers and employees across the state addressing Kentucky OSH standards.

Finding 13-01 (formerly 09-13, 11-02, and 12-01): A significant number of the 603 open cases in IMIS, that are not in contest or currently active, including 172 cases with open abatements can be closed.

Recommendation: KYOSH should implement a process to determine which cases in the IMIS have completed litigation and/or have the abatement and penalty satisfied.

FY 13-OB-2: Data indicated that there has been a significant decline in the number of inspections conducted by KYOSH, a difference of 322 from FY 2009 to FY 2013.

1. ENFORCEMENT

a) 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. Inspection data indicates that KYOSH received 601 complaints, handled 367 complaint investigations in FY 2013 and conducted 190 complaint inspections. According to the SAMM report, KYOSH responds timely to complaint inspections. Complaint inspections were initiated within an average of 8.69 days (6.49) and complaint investigations were initiated within an average of 8.32 days (3.78). The increase in time for an investigation to be initiated is due to the lack of data entry for actions related to processing complaints specifically, the entry of dates for when correspondence, such as the OSHA-7 is sent for signature to formalize the complaint and when it is received back from the employee or not received at all. This may be remedied with

the deployment of OSHA Express as long as the data is accurately entered and updated. A review of the IMIS reports showed that during FY 2013 approximately 48.7% of their complaint inspections were in-compliance.

KYOSH handles the intake of complaints with an established 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 tracking mechanisms in the Complaint Audit Log and OSHA Express System for tracking complaints to assure they are responded to timely. Formal serious complaints are inspected within a goal of 30 days.

Thirty complaint investigations and inspections were reviewed to determine if they were processed in accordance with FOM Chapter IX, Complaint Policy and Procedures. Complaints were handled timely and in most cases following the requirements of the KYOSH FOM, Chapter IX. Abatement documentation was adequate and complaint allegations were tracked to ensure corrective action was completed and workers were protected from unsafe/unhealthful working conditions. Letters were sent to the complainants notifying them of the results of the inspection or investigation however there was no evidence in five of the complaints that a letter was sent. The letter to the complainant following an investigation does not provide the employer's response; however, they are informed that they can request a copy of the response in writing. The letter to the complainant following a complaint inspection does not provide the findings of each complaint item only that the complaint items were thoroughly checked and citations were or were not issued. Manager's stated that they send a copy of the narrative with the letter as an attachment however there is nothing in the file or the letter indicating that the narrative is sent. Following the 2011 FAME, Commissioner Dixon's response to this recommendation stated "Kentucky indicated in the 2010 follow-up report that it augmented its procedure by addressing each complaint item individually and advising the complainant's appeal rights in the letter to complainants." He further states "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." To date, there is no evidence that the augmented

procedure has been implemented. With exception to this, it was determined that policies and procedures were followed during these inspections and final results letters to complainants, although deficient, were sent within required time frames.

Overall, documentation contained in the complaint investigation and inspection files was satisfactory however there were a few issues regarding documentation that was identified during the case file reviews however they do not appear to impact the effectiveness of the State's program. Employee exposure did not identify the specific employee that was exposed only that X number of employees work in the area X number of hours per day for X number of days a week. It was explained that it may have been entered in OSHA Express and was not included in the scanned file. In seven cases, CHSOs are not documenting thorough interviews. In five of the complaints inspections, there was no documentation supporting that the safety and health programs were reviewed and there was nothing to support providing or not providing good faith. Several phone and fax investigations regarding health related exposures did not have sampling provided by the employer to support their response that employees were not overexposed. Following complaint inspections involving chemical and/or health exposures, the sampling results were not sent to the employer or employees when sampling was performed. Employers and employees should be informed of their potential exposures and results of sampling. These issues are addressed further in the Citation and Penalties section of this report.

Finding 13-02 (formerly 09-05 and 11-04): Complainants are not provided the findings regarding each complaint item and they are not afforded a way of disputing or appealing the findings of complaint inspections.

Recommendation: KYOSH should fully implement the augmented procedure addressed in former Commissioner Dixon's response following the FY 2011 FAME which states "Kentucky indicated in the 2010 follow-up report that it augmented its procedure by addressing each complaint item individually and advising the complainant's appeal rights in the letter to complainants". Appropriate personnel should be trained in the augmented procedure and supervisors should review case files more carefully to ensure this procedure is fully implemented and this information is included all case files.

FY 13-OB-3: There was no evidence in three of the five of the non-formal complaint reviewed that a letter was sent notifying complainants of the results of the investigations.

FY 13-OB-4: In five complaint inspection files, there was no documentation supporting that the safety and health programs were reviewed and there was nothing to support providing or not providing good faith.

FY 13-OB-5: Two of the five non-formal investigations alleging health related exposures did not have sampling provided by the employer to support their response that employees were not overexposed.

b) Fatalities

Fatalities dropped from 24 in FY 2012 to 19 in FY 2013, which is a 20.8% percent reduction. The number of workplace fatalities in FY 2011 was 29. 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.

The leading cause of the work-related fatalities in FY 2013 was struck-by events with eight. Four workers died in falls from elevations, and four workers died after being caught in/between objects. Three were electrocuted. There were no health related deaths. In FY 2013 General Industry and Construction were the two leading industries for fatal accidents with seven in Construction and twelve in General Industry. The number of fatalities in Construction decreased from eight in 2012 and the number in General Industry decreased from 14 in FY 2012.

	FY 2011	FY 2012	FY 2013
Total Fatalities	29	24	19
Construction	8	8	7
General Industry	19	14	12
Public Sector	2	2	0

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.

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 assigned to the case from the Office of General Counsel also sends a letter to the next-of-kin with contact information and a request that the next-of-kin contact him or her if he or she wishes to be kept apprised of developments in the litigation.

A review of the fatality inspection files showed that the correct fatality inspection procedures were followed. However, the reviews identified that trainees who did not have the legal aspects and accident investigation OTI courses conducted three fatality investigations. Only compliance officers who have had the appropriate training should conduct accident investigations to ensure thorough and complete investigations are conducted, the root causes are identified and corrected, and the cases can be legally supported in litigation. KYOSH brought the OTI accident investigation course to Frankfort Kentucky in February 2014. All of the KYOSH staff received the training. Fatality inspections were opened in a timely manner and the Regional and National Office was sent the OSHA 36 in a timely manner. Case files contained very detailed narratives as well as proper supporting documentation including police and corner's reports. In 100% of the files reviewed, OSHA-36 and OSHA-170 forms were in all the files as well as all other required documentation. The Compliance Officers obtained statements and interviewed witnesses in the fatality case files. A focus was placed on the communication with NOK. In 8 of 13 (62%) files, one or more of the required communications were not sent or there is no documentation to show the call was made or the letter was sent. A comparison of the FY 2011 case file reviews and the FY 2013 reviews shows a continued deficiency with NOK communication. Below are only the results from the case files reviewed:

NOK Communication	
Call from CSHO not conducted and/or documented in the file	2 out of 13 files reviewed
Initial letter not sent and/or documented in the file	3 out of 13 files reviewed
Final letter with findings not sent and/or documented in the file	5 out of 13 files reviewed
NOK not informed of result of informal conference, changes/settlement, contest, etc. or it was not documented in the file	5 out of 13 reviewed*
NOK not informed of litigation results or it was not documented.	4 out of 13 files reviewed*

**Only 6 of the reviewed fatality investigation files had an informal conference, contest, or litigation.*

Finding 13-03: In three instances, KYOSH assigned personnel to conduct fatality investigations without the proper training.

Recommendation 13-03: KYOSH should ensure that all compliance officers assigned to conduct accident and fatality investigations have the appropriate training.

Finding 13-04 (formerly 11-05 and 9-07): More than half of the fatality files reviewed did not provide evidence that one or more of the required calls were made and/or letters sent to the next-of-kin.

Recommendation: Implement a process to ensure full implementation of CPL 02-00-153 - Communicating OSHA Fatality Inspection Procedures to a Victim’s Family to ensure that all communications with the NOK are completed.

c) Targeting and Programmed Inspections

According to inspection statistics run for this report, KYOSH conducted 899 inspections in FY 2013, 182 of which were programmed. This includes many of the 491 inspections conducted in the construction sector. It was noted that 15 programmed health inspections were conducted during this period all of which were in General Industry. KYOSH should develop and implement an effective strategy to increase the number of programmed health inspections that are conducted in the high hazard health industries. According to IMIS, 78.8% of programmed safety inspections and 90% of programmed health inspections had violations. Additional data indicates that an average of 2.7 violations (safety) and 2.8 violations (health) was cited per inspection, and that 71.9% and 43% (health) of the violations were classified as serious, 3.4% (safety) and .7% (health) repeat, and 1.3 (safety) and 0% (health) willful.

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:

General Industry Programmed Inspections	KYOSH
Average number of violations	3.1
In-Compliance Rate	44.1%
% violations classified as Serious, Repeat, and Willful	53%

Construction Programmed Inspections	KYOSH
Average number of violations	2.2
In-Compliance Rate	57%
% violations classified as Serious, Repeat, and Willful	91.9%

as implemented safety and health general industry targeting procedures however they have not adopted the Federal Site-Specific Targeting (SST) procedures. KYOSH

established a state site-specific targeting program known as the Targeted Outreach Program (TOP), which utilizes the OSHA Data Initiative survey results. The State's programmed general industry safety targeting procedure is based upon employers in the top ten (10) Kentucky high hazard NAICS and specific high hazard industries. The Division of Education and Training targeted employers at specific facilities using 2011 OSHA Data Initiative information. Letters were sent to 190 employers, encouraging them to request consultation services. A total of 101 employers responded to the outreach letters with survey requests. The Division of Education and Training is working with these employers to improve their safety and health program and eliminate hazards in their workplace. Employers who did not respond or chose not to use the voluntary consultation services are referred to the Division of OSH Compliance for inspection.

KYOSH developed the Safety and Health Outreach for Target Shooting initiative (SHOT) due to serious concerns regarding employee exposure to lead during clean-up operations at indoor shooting ranges. Specifically, concerns were raised by evidence of extremely high lead exposure during removal and recycling of catch materials. To address the concern, the Division of OSH Education and Training initiated the Safety and Health Outreach for Target Shooting (SHOTS) initiative. The initiative was an opportunity for employers to take advantage of the consultative services to address employee lead exposure without the risk of monetary penalties. Although SHOTS was primarily concerned with lead clean-up operations at shooting ranges, employers were notified of all hazards encountered during consultative visits to the facilities. The Division of OSH Education and Training sent written correspondence to indoor shooting ranges in Kentucky explaining the nature of SHOTS and offered employers an opportunity to participate. Facilities that declined were referred to the Division of OSH Compliance. Eight (8) facilities received full service industrial hygiene surveys focusing on employee and contractor exposure to lead. These surveys resulted in fifty-two (52) serious Notice of Violations identifying hazards that were subsequently fully abated.

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 (NEP). However, it was discovered that the special emphasis programs are actually state standards for which they place emphasis and are not programs. There is no written emphasis program or guidance to establish the purpose of the program, scope of the program, expiration of the program, background for the necessity of the program, program procedures, actions, recording of inspections, outreach if necessary, and the evaluation of the program. This is discussed in the Special Study for State Plan Targeting section of this report.

KYOSH conducts programmed inspections in the construction sector, particularly under their local emphasis program (LEP) for residential construction fall protection and the Construction Targeting Program formerly the Dodge system. These are

associated with their strategic goal to reduce injuries caused by falls, struck-by, and crush accidents. Kentucky has a performance goal which 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 that combines efforts by the Division of OSH Compliance and the Division of OSH Education and Training. Data from the Bureau of Labor Statistics Survey of Occupational Injuries and Illness in cooperation with the Division of OSH Education and Training's Statistical Services Branch indicate that the Kentucky incident rates for falls is 14.5 compared to the national rate of 17.7; struck-by is 16.1 compared to the national rate of 28.6; and crushed were too few incidents for rate calculation compared to the national average of 5.9.

Many programmed construction inspections are partial in scope due to the emphasis program for residential fall protection activities. According to the IMIS data, 92.1% of programmed safety inspections in construction had violations. This was a significant improvement from FY 2011 when only 70% in FY 2012 had violations.

Finding and Recommendation

Finding 13-05 (formerly 11-06): KYOSH conducted a total of 15 programmed planned health inspections during this evaluation period.

Recommendation: KYOSH should develop and implement a strategy to ensure a more representative number of programmed planned health inspections are conducted to adequately address the scope and seriousness of the hazards found in high hazard health industries.

d) Citations and Penalties

In FY 2013, the 899 inspections conducted resulted in an average of 2.7 violations per non-incompliance safety inspection and 2.8 violations per non-incompliance health inspection, with 72% of safety violations and 43% of health violations classified as serious. The average initial penalty per serious violation for private sector inspections was \$3214 compared to an average of \$2,024 for national data. The average lapse times for safety and health have increased significantly from FY 2009 to FY 2013. KYOSH's FY 2013 average lapse time for safety and health are two times higher than the federal program. According to the SAMM, in FY 2013, the average lapse time (in days) from opening conference to citation issuance is identified below:

Average Lapse Time	KYOSH	Federal OSHA
Safety	72.97	43.4
Health	89.5	57.05

Discussions revealed that lapse time is monitored and tracked however they do not discuss case disposition with compliance officers until it reaches 90 days. There were seven Safety Compliance Officers with an average lapse time less than 100 days with the lowest at 63 days; three between 100 and 110 days; five between 110 and 120 days; three between 120 and 130 days; and one that was at 166 days. There was only one Health Compliance Officer with an average lapse time under 100 days at 63 days; four were between 100 and 120 days; three between 120 and 130; 2 between 130 and 140; one between 140 and 150; and two were greater than 170 days at 170 and 196 days. Fatality investigations were distributed evenly with two being the most conducted by any one Compliance Officer. Therefore, it was determined that lapse times should not be this high. It is recommended that the State develop and implement a strategy to reduce lapse time to include the supervisor setting deadlines less than 30 days (for most case files) and holding CSHOs accountable for the timely completion of inspection files and the managers holding supervisors accountable for their teams timely completion of inspection files.

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%	75%
OTS	29.6%	20.4%

In FY 2013, the average current penalty per serious, repeat and willful violations for private sector inspections was as follows:

Classification	KY OSH	Federal OSHA
Willful	\$34,230	\$39,455
Repeat	\$12,064	\$6,473
Serious	\$3,214	\$2,024

Eighty-five case files reviewed included adequate documentation overall to support the violations with minor exceptions. In a number of files, there was no documentation supporting that the safety and health programs were reviewed and there was nothing to support providing or not providing good faith. Following inspections involving chemical and/or noise exposures, sampling results were not sent to the employer or employees when sampling was performed. Employers and employees should be informed of their potential exposures and results of sampling. These issues do not appear to impact the effectiveness of the State’s program. Photographs supporting the violations are placed in the files and all inspection photos

are maintained in the files until they are scanned when the case file is closed. Photos are maintained in a separate database when the files are scanned due to the amount of space they occupy. Supervisors indicated that they do review each case file before citations are issued, or prior to closing for in-compliance cases, and they look at the photographs during their review.

In FY 2013, KYOSH issued 13 Willful violations and 35 Repeat violations. All Willful violations were reviewed by the Director of OSH Compliance and the Office of General Council prior to issuance. According to the State IMIS data, KYOSH's percent Serious/Willful/Repeat/Unclassified is 70.4% in FY2013, compared to Federal OSHA Serious/Willful/Repeat/Unclassified at 79%. A review of procedures and discussions with state compliance personnel found that procedures for determining willfulness are the same as those for federal OSHA. Management indicated that they are more than willing to pursue willful violations when the CSHOs and supervisors identify them. The legal department is also willing to support them.

KYOSH has procedures for receipt of payments and handling past due penalties. Final contest dates have not been entered into the IMIS therefore IMIS reports cannot be used to track penalty payment and debt collection. Data entry and IMIS issues are addressed in the Enforcement Program section of this report. Compliance program managers manually go through open files every two to three weeks to identify cases where payments have not been received. OSHA Express reports and/or IMIS generated reports should be utilized to track cases with penalties due. An internal letter is sent, giving the employer ten days to submit payment. Prior to FY 2013, KYOSH processed payments and sent past due penalties to the Legal Department. Once it was sent to legal, they had no further involvement. In late FY 2013, pursuant to KRS 45.239(4) and 45.241, the Kentucky OSH Program entered into an agreement with the Kentucky Revenue Cabinet to collect delinquent debts. Employers who have outstanding OSH debts are reported to the Revenue Cabinet for collection and further action. The Revenue Cabinet adds a 25% collection fee to the total debt to defray the cost of collection; may file a notice of State Lien. The filing of a lien will be reflected in credit reports maintained by various credit bureaus; may seize all property rights, both real and personal. This includes, but is not limited to, the attachments of any funds held by a bank, any wages paid to the employer, the seizure and sale of any real estate; and any tax refund or other monies that may become due to the employer from the Commonwealth of Kentucky to offset the outstanding debt.

Finding 13-06: (formerly 11-07 and 9-11): KYOSH has significantly high average citation issuance lapse times for safety and health.

Recommendation: KYOSH should develop and implement a process to reduce the average lapse time for non-incompliance safety and health inspections to the national average.

FY 13-OB-6: For inspections involving chemical and/or health exposures, sampling

results were not provided to the appropriate employees, employer representatives, and employee representatives when sampling was performed.

e) **Abatement**

Case files, written procedures, and inspection data reviewed indicate that KYOSH obtains adequate and timely abatement information and has processes in place to track employers who are late in providing abatement information. KYOSH does not have a written procedure for abatement verification nor is it addressed in the Field Operations Manual. Currently, Program Managers manually looks at open files and identify files with 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. The new OSH Express system will track abatement. Even though it does not have a negative impact on the effectiveness of the State's program, KYOSH should utilize the OSHA Express abatement report to track abatement.

A review of IMIS Abatement Reports showed that there are 149 cases with open abatement from 1991 through 2011. This is significantly less than the 209 cases with open abatements identified during the FY 2011 FAME evaluation. A majority of these cases contain the abatement documents in the files; however, IMIS was not updated so the cases could be closed.

The majority of case files reviewed contained written documentation, photos, work orders, and/or the employer's written certification of abatement. KYOSH has an administrative regulation 803 KAR 2:122 establishing requirements for the written extension of abatement application which is equivalent to the federal requirement §1903.14a(b)(1)-(5). Petitions for Modification (PMA) of abatement were appropriately provided when the employer requested an extension for their corrective action timeframe with interim protection required. When requesting an abatement extension, the Program Managers informed the employer of the requirements. Cases having PMA requests that were reviewed verified that the procedures are being followed. Abatement was documented and the documentation provided sufficient evidence that corrective action was taken for violations that were corrected during the inspection.

KYOSH conducted follow-up inspections according to their policy and procedures. Supervisors assign follow-up inspections to CSHO's based when abatement is not received, to verify that potentially harmful conditions have been abated, or when they feel a follow-up inspection is warranted. In FY 2013, 3.4% of inspections conducted were follow-ups compared to Federal OSHA at 3%.

FY 13-OB-7: KYOSH does not effectively utilize the OSHA Express abatement

report to track abatement.

f) Worker 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. Case files reviewed disclosed that employees were included during fatality investigations and other inspections. In FY 2013, employee representatives were involved in all aspects of 100% of KYOSH's initial inspections including the opening conference, around employee interviews, closing conference, and post citation conferences.

2. REVIEW PROCEDURES

a) Informal Conferences

Kentucky has procedures in place for conducting informal conferences and proposing informal settlement agreements (ISA). According to the SIR, 1.4% of violations were vacated and 0.5% of violations were reclassified as a result of ISAs and the penalty retention rate was 64.2%. 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. It was also noted the case files contain a copy of the settlement document and the affected parties were being informed of the changes resulting from the informal conference. Manager and supervisor interviews confirmed that employer commitments are being included in settlement documents and required for certain cases involving larger penalty reductions. KYOSH require that agreements with a monetary penalty reduction of more than \$10,000 will include OSHA's 1989 Safety and Health Management Guidelines; or, engage outside safety and health consultation. During FY 2013, the Division of OSH Compliance signed ninety-nine (99) settlement agreements. Penalties were reduced \$10,000 or more in eleven (11) contested cases that did not include the 1989 Safety and Health Management Guidelines or require the engagement of outside safety and health consultation. The 1989 Safety and Health Management Guidelines were not required due to, or a combination of the following: The documented financial condition of the employer; the employer was a construction company and construction activities are not addressed in the 1989 guidelines because they are covered by Subpart C of the construction standards found at 29 CFR Part 1926; the citation(s) were reclassified resulting in a penalty reclassification of \$10,000 or more.

b) Formal Review of Citations

In FY 2013, 12.2% of inspections were contested compared to 25.9% in FY 2012. The Kentucky Occupational Safety and Health Review Commission conduct 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, 64.2% of penalties were retained 1.4% was vacated, and 0.5% was reclassified. No negative trends or problems with citation documentation have been noted. 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.

3. STANDARDS AND FEDERAL PROGRAM CHANGES (FPC) ADOPTION

a) Standards 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 2013, is provided in the tables below:

Standards Requiring Action	Federal Register Date	Adopted Identical	Date Promulgated
Updated OSHA Standards Based on National Consensus Standards; Head Protection	11/16/2012	Yes	07/16/2013
Direct Final Rule - Cranes and Derricks in Construction; Underground Construction and Demolition	4/25/2013	Yes	5/7/2013

b) OSHA/State Plan-Initiated Changes

During this period, Kentucky adopted identical the National Emphasis Program (NEP) for Occupational Exposure to Isocyanates, as well as the Inspection and Citation Guidance for Roadway and Highway Construction Work Zones. However, the State did not adopt federal OSHA’s Site-Specific Targeting 2012 (SST-12), since the KYOSH Program has developed and implemented the Targeted Outreach Program (TOP). Additionally, all State-initiated plan changes were also submitted to the OSHA Regional Office in a timely manner. A detailed listing of the OSHA Initiated Changes, which required action in FY 2012, is provided in the tables below:

Federal Program Changes Requiring Action and Federal Directive Number	Date of Directive	Adopted Identical	Date Adoption Date
Maritime Cargo Gear Standards and 29 CFR Part 1919 Certification	09/30/2013	*No	01/02/2014
[CPL 02-00-155] Federal Program Change Memo	09/6/2013	Yes	11/06/2013
[CPL 03-00-017] - National Emphasis Program Occupational Exposure to Isocyanates	6/20/2013	Yes	11/1/2013
Site-Specific Targeting 2012 (SST-12)	1/04/2013	No	N/A
Inspection and Citation Guidance for Roadway and Highway Construction Work Zones	10/16/2012	Yes	4/01/2013

*The Kentucky OSH Program adopts CPL 02-01-055 - ONLY AS APPLICABLE

4. 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 2013 and no issues related to variances were identified.

5. PUBLIC EMPLOYEE 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, 40 inspections or 4.49% of the total inspections were conducted in the public sector in FY 2012.

6. 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.

A comprehensive review of Kentucky’s discrimination program was conducted during the FY 2013 FAME evaluation. The two investigators for Kentucky are located in the central office in Frankfort. The program is supervised by an OSH Compliance Safety Supervisor and managed by the Director of OSH Compliance.

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

Meritorious Complaints		Merit Cases Settled	
FY 2013	12.96%	FY 2013	0%
FY 2012	10.77%	FY 2012	42.86%
FY 2011	13.64%	FY 2011	16.67%

A total of 20 cases were selected for review. During FY 2013, KY OSH received 64 discrimination complaints and docketed 53 compared to 77 complaints in FY 2012. Forty-eight of the allegations are closed, two are currently being prosecuted by the Office of General Council (Merit), and three remain open. According to the SAMM report the average amount of time complete investigations was 67 days compared to 79 days in FY 2012 and 87% of the investigations were timely completed compared to 75.4% in FY 2012. KY OSH has continued to work on improving their completion rate of discrimination investigations; all cases that were reviewed in this audit were

completed within 90 days. The status of these cases and the percentages of total cases they represent are presented below:

Status	Number of Cases	Percentage
Merit	2	3.12%
Dismissed Non-Merit	34	53.12%
Dismissed Lack of Cooperation	0	0%
Settlement	4	6.25%
Withdrawal	10	15.62%
Untimely Filed	0	0%
Screened & Closed	11	17.18%
Pending	3	4.68%

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

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

Case file reviews determined that all of the recommendations related to the discrimination program have been implemented however the deficiencies still remain. In regards to recommendation 11-11, Whistleblower Investigators should document all contacts related to the investigation in a telephone log, a log was implemented and it does appear that the investigator made an effort to utilize the log. However, the logs were not found in each of the files and upon review, it seems as if not all pertinent communications were actually being recorded; the number of entries seemed minimal and did not reflect all contacts. The investigator should record all pertinent communications between him/herself and the complainant, respondent, or other witness. This is in addition to maintaining all e-mail communications between the aforementioned parties.

More consideration should be given to the analysis portion of the FIR, wherein the required (prima facie) elements of a whistleblower complaint are considered (along with any defenses raised by the employer. For example, special attention should be paid to determining whether the complainant engaged in conduct that falls within the protections of the whistleblower law, whether the employer was aware of the employees conduct, and whether the discriminatory action was motivated by the employees conduct. Additionally, investigators should consider the legitimacy of the

employer's explanation (defense) for the discriminatory action. If the elements are present then the burden shifting analysis should be applied and the respondent's proffered non-retaliatory reason for the adverse action must be considered. It is only at this point that the pretext question comes into play. By approaching the case with this methodology the process could be streamlined and cases dismissed at an earlier stage for factual deficiencies. This would not only ensure that the ultimate finding is supported by the available evidence, but it would help with the overall structure of the FIR.

Investigators generally conducted personal interviews and onsite investigations and performed the necessary investigative steps. All complaints appeared to have been adequately investigated with proper determinations however the reports did not contain the necessary analysis to allow for a complete and accurate understanding of the final determination. Kentucky's program seems to parallel the federal OSHA program in that the investigator properly evaluated the elements of discrimination complaints and the appeal process functioned similarly. Complainants who disagree with the dismissal of their complaint may appeal the decision with the Commissioner of the Department of Workforce Standards.

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

FY 13-OB-8: KYOSH's guidelines regarding telephone logs are not followed uniformly by the investigators.

FY 13-OB-9: Sufficient consideration is not given to the analysis portion of the FIR, wherein the required (prima facie) elements of a whistleblower complaint are considered (along with any defenses raised by the employer in order to support final determinations).

7. SPECIAL STUDY – STATE PLAN TARGETING PROGRAMS

Kentucky has developed a Strategic Management Plan with outcome goals that are consistent with Federal OSHA activity as well as state specific. The plan contains specific outcome measures for each goal. The plan's various areas of emphasis are managed by the specific Director of the Division responsible for that specific outcome measure. Strategies to achieve outcome goals are continuously reviewed and can be altered to enhance program performance. Any changes to the Plan are documented annually, and the revised Plan is submitted to Federal OSHA as part of the 23(g) grant application process.

Kentucky did not adopt CPL 04-00-001 nor did they develop a state specific directive or guidance for the development of Special Emphasis Programs (SEPs). The State has several emphasis programs for general industry and construction. The Targeted Outreach Program (TOP) and the Safety Tops Our Priority (STOP) program utilize data from several sources to target high hazard industries or NAICS codes and specific employers or sites. It is noted that there was n activity with the STOP program during this period. These programs utilize a combination of outreach and enforcement to reduce injuries and illnesses. The Safety and Health Outreach for Target Shooting (SHOTS) Initiative was implemented as a result of the Kentucky OSH Program's serious concerns regarding employee exposure to lead during clean-up operations at indoor shooting ranges. Specifically, concerns were raised by evidence of extremely high lead exposure during removal and recycling of catch materials. This initiative, like the TOP and STOP programs utilized a combination of outreach and enforcement to address not only lead exposures but other safety and health concerns as well. Kentucky utilizes the Construction Targeting Program, formerly the DODGE reports, used by federal OSHA to target construction activities.

KYOSH also has several state specific regulations that they use to target residential construction, hospitalizations, and amputations. 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 a scheduling system to prioritize inspections of reported accidents and amputations. In FY 2013, the Division of OSH Compliance received 140 hospitalization reports. Even though KYOSH places emphasis on hospitalizations, they are response activities similar to fatality reports. In FY 2013, the Division of OSH Compliance received fifty-two (52) reported amputations. Forty-one (41) inspections were conducted in response to the amputations that were reported. Inspections are conducted in response to amputations that are reported to the State. As with the hospitalizations, these inspections are conducted in response to an accident resulting in an amputation similar to fatalities. There is no written emphasis program or guidance for the targeting of amputations. The state should identify trends with amputations such as the NAICS codes where amputations are predominant and develop and implement an emphasis program to target specific industries sectors to prevent amputations.

In addition, KYOSH has adopted numerous National Emphasis Programs (NEP) including but not limited to trenching and excavations, lead, hexavalent chromium, and isocyanates. Hazards addressed by NEPs are identified during other inspection activities and are coded accordingly. The State has not developed any State specific

emphasis programs related to NEPs. Thirty (30) inspections were conducted under national emphasis programs. Fourteen (14) of these were safety and sixteen (16) were health related.

KYOSH is also working with several organizations to address combustible dust and health hazards associated with asbestos and poisonings from chemical exposures. First, the Kentucky Labor Cabinet has an agreement with the Office of Housing, Building and Construction, Division of Fire Prevention (State Fire Marshal). Under the agreement, during the inspection of industrial facilities by the State Fire Marshal in which the potential for combustible dust hazards may exist, the State Fire Marshal informs employer representatives of the availability of education and technical assistance services that are available from the Kentucky OSH Program's Division of OSH Education and Training. If there are safety and health issues, the State Fire Marshal will make a referral to the Division of OSH Compliance. If the Kentucky OSH program becomes aware of the existence of fire and safety issues, it will notify the State Fire Marshal. Both the State Fire Marshal and the Division of OSH Compliance will cooperate in the investigation of all fires and explosions involving combustible dust. The Kentucky Labor Cabinet and State Fire Marshal are cooperating to identify facilities and conduct joint investigations, when possible, where combustible dust hazards exist. The Division of OSH Compliance conducted ten (10) combustible dust inspections in FY 2013 resulting in six (6) serious violations, seven (7) other than serious violations, and one (1) repeat violation. Second, the Division of OSH Compliance has an agreement with the Division of Air Quality in the Department for Environmental Protection of the Energy and Environment Cabinet in which the Division of OSH Compliance is alerted of any or all asbestos removals conducted in the Commonwealth. Employers are required to notify the Division of Air Quality ten (10) days in advance of any job involving asbestos removal. The Division of OSH Compliance conducted sixteen (16) inspections relating to asbestos in FY 2013 resulting in eight (8) serious violations and seven (7) other than serious violations. Finally, the Division of OSH Compliance receives notices of incidents involving occupational exposure to toxins and poisons from The Kentucky Regional Poison Center of Kosair Children's Hospital. These notices made the Division of OSH Compliance aware of events that may have otherwise been overlooked. Many have resulted in citations and penalties. This informal arrangement and notice provides a mechanism to protect employees from future exposures.

The targeting program special study conducted by Federal OSHA focused on two specific programs: Targeted Outreach Program (TOP) for safety and health and Residential Construction. During the onsite evaluation, 48 TOPs case files including 33 safety and 15 health and 20 residential construction files were reviewed.

The State has implemented safety and health general industry targeting procedures however they have not adopted the Federal Site-Specific Targeting (SST) procedures.

KYOSH established a state site-specific targeting program known as the Targeted Outreach Program (TOP), which utilizes the OSHA Data Initiative survey results to generate lists of employers from the top high hazard industries that are identified. During FY 2013, the Division of Education and Training targeted employers at specific facilities using 2011 OSHA Data Initiative information. Letters were sent to 190 employers, encouraging them to request consultation services. A total of 101 employers responded to the outreach letters with survey requests. The Division of Education and Training is working with these employers to improve their safety and health program and eliminate hazards in their workplace. Employers who did not respond or chose not to use the voluntary consultation services are referred to the Division of OSH Compliance for inspection.

The Kentucky OSH Program's focus on the highest hazard industries and specific facilities is a direct and effective approach to lowering incident rates. Kentucky has performance goals for the five (5) year strategic plan that strives to reduce Kentucky's total case rate for injuries and illnesses, address the reduction of Kentucky's lost time case rate for injuries and illnesses, and reduce the total case rate in five (5) of the fifteen (15) most hazardous industries in Kentucky. This performance goal combines efforts for both the Division of OSH Compliance and the Division of OSH Education and Training. FY 2011 was the first year of the new five (5) year strategic plan and is considered a baseline year. The 2011 baseline incident rate for all industries was 4.5. The total recordable incidence rate in 2012 for all industries in Kentucky was 4.2, which is an improvement from the baseline rate. Both divisions of the KY OSH Program strive for continuing improvement in the total case rate for Kentucky. The 2011 baseline lost time rate for Kentucky was 2.1. For 2012, the incident rate for lost time events was 2.0, which is a small improvement from the baseline rate. Efforts of the Targeted Outreach Program (TOP) among other programs are producing positive results.

Kentucky also has a performance goal to address the recidivism rate for repeat, serious, and willful violations in residential construction. The FY 2013 Annual Performance Goal is to reduce the rate for repeat, serious, and willful violations in residential construction. The baseline set in FY 2011 was four (4) willful serious, ten (10) repeat serious and ninety-six (96) serious violations in residential construction. In FY 2013, the Division of OSH Compliance conducted fifty-seven (57) residential construction inspections resulting in four (4) repeat serious violations, seventy-three (73) serious violations, and three (3) other than serious violations. Inspections are conducted in response to complaints, referrals from outside sources, and self-referrals made by compliance officers. There is no written emphasis program or guidance to establish the purpose of the program, scope of the program, expiration of the program, background for the necessity of the program, program procedures, actions, recording of inspections, outreach if necessary, and the evaluation of the program. Most of the inspections are coded as referrals when many of them could be coded as programmed planned inspections if they are being conducted under an emphasis

program. It was recommended that the State develop and implement a written emphasis program document to establish the criteria mentioned above. The Division of OSH Education and Training offers training, upon request, to employers engaged in residential and non-residential, construction.

Each targeting program relating to a SEP has a recording and tracking component. This includes a specific code in IMIS or OSHA Express. KYOSH tracks program activity on a periodic basis and provides an assessment in the annual SOAR.

Finding 13-07: Finding 13-07: Several of KYOSH's Special Emphasis Programs (SEP) do not target specific hazards or industries to prevent injuries and/or illnesses. **Recommendation:** KYOSH should implement a process for the development of SEPs for the proactive targeting of hazards, industries, etc. to prevent injuries and illnesses.

8. Complaints About State Program Administration (CASPA's)

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.

9. VOLUNTARY COMPLIANCE PROGRAM

Kentucky offers employers opportunities to work cooperatively through Onsite Consultation, the Voluntary Protection Programs (VPP), as well as the Safety and Health Achievement Recognition Program (SHARP). Additionally, in Kentucky, numerous employers also work cooperatively with the State through its Construction Partnership Program (CPP), which include site-based Construction Partnerships, associated-based Construction Partnerships and training-based Partnerships. All of these activities are offered through the State's Education and Training Division and each activity is overseen by a program manager. However, the Kentucky does not have an Alliance Program.

The Kentucky VPP was developed and implemented in 1997. In FY 2013, 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. The table below provides a listing of the State's current VPP participants:

Employer	Location	Certification Period
Dow Corning Corporation	Carrollton, KY	August 1997
GE Aircraft Engines	Madisonville, KY	March 1998
Hunter Douglas	Owensboro, KY	February 2005
Performance Pipe	Williamstown, KY	May 2005
International Paper	Bowling Green, KY	July 2006
L'Oreal (USA)	Florence, KY	August 2006
GE Infrastructure Aviation	Erlanger, KY	June 2008
Raytheon Missile Systems	Louisville, KY	June 2008
GE Energy Services and Repair	Louisville, KY	January 2010
Veolia Water North America	Fort Knox, KY	May 2012
Kimberly Clark	Owensboro, KY	August 2013

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 Partnerships. During this evaluation period, Kentucky was engaged in seven (7) site-based, one (1) associated-based, and four (4) training-based Partnerships. Construction Partnerships are established through formal written agreements and they are closely monitored by a program manager. Major requirements for participation in the Kentucky Construction Partnerships include the following: a requirement for the project owner to participate in the agreement; and a comprehensive fall protection program triggered at 6 feet. Additionally, employers engaged in Kentucky's CPP receive a deferral from programmed inspections. However, with only a few exceptions, the State conducts quarterly onsite monitoring visits, special visits and training sessions at each of the participating CPP worksites throughout each year.

In addition to the cooperative agreements cited above, Kentucky also offers small employers an opportunity to work with the state through the Safety Partnership Program (SPP). The SPP was designed to assist small companies with the development of a basic safety and health management system structure. The SPP is very resource intensive; therefore, participation in the program is limited to three-years. Currently, one employer is engaged in the SPP process with the KYOSH Program. The table below provides a listing of the State's current CPP and SPP participants:

Employer	Location/Project	Partnership Effort
Abel	University of Louisville	Site-Based
Alliance	Elementary School Expansion	Site-Based

Congleton and Hacker	Central Baptist Expansion	Site-Based
Messer Construction	Champion Court I	Site-Based
Messer Construction	Champion Court II	Site-Based
Messer Construction	Woodlawn Green	Site-Based
Messer Construction	Haggin Hall I	Site-Based
Miller Valentine	L'Oreal (USA) Expansion	Site-Based
SMD	Riken expansion	Site-Based
Walsh	Downtown Bridge Project	Site-Based
Walsh Vinci	East End Bridge Project	Site-Based
AGC	Blue Level: W. Rogers; Fayetteer Erector; and GEM Engineering	Associated- Based
Builders Exchange	Louisville, KY	Training-Based
Eastern Kentucky University	Richmond, KY	Training-Based
KY Association of Plumbing, Heating and Coding	Frankfort, KY	Training-Based
KRCA	Louisville, KY	Training-Based
Logan's Healthcare Linen	Shelbyville, KY	Safety Partnership Program (SPP)

10. PRIVATE AND PUBLIC SECTOR 23(G) ON-SITE CONSULTATION PROGRAMS (KENTUCKY, PUERTO RICO, AND WASHINGTON)

This onsite review of the Kentucky 23(g) Consultation Program covered the period October 1, 2012, through December 31, 2013. The Division of Education and Training assists employers and employees by promoting voluntary compliance with the KY OSHA 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. The Program operates from the main office located at 1047 Hwy 127 South, Suite 4, in Frankfort, Kentucky.

Some program accomplishments for fiscal year 2012-13 included the improvement of their abatement tracking system, the creation of a SHARP coordinator, and the creation of the Online Safety and Health Training Resource via www.laborcabinettrain.ky.gov. The review consisted of evaluating the following Operational Elements:

- Training
- Accompanied Visits
- Lapse Time

- Management Reports
- Hiring and Vacancies
- Safety and Health Achievement Program (SHARP)
- Marketing Initiatives
- Internal Quality Assurance Program (IQAP)
- Form 33
- Case File Review
- Overall Effectiveness of the Program

Operational Elements

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

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 initial training period consist of:

- Introduction to Onsite Consultation program
- OSHA General Industry Safety and health Standards
- OSHA Construction Safety and health Standards
- IMIS

The Program Director and the supervisors were able to attend the National OSHCON Training Conference and the Region IV Consultation Program Manager’s Meeting, taking advantage of other relevant courses, increasing their knowledge in order to improve the operation of the Program.

Accompanied Visits and Monitoring of Consultant Performance: The Supervisors are responsible for conducting all accompanied visits once or twice a year. A checklist is used to ensure all performance elements are covered, such as but not limited to: Preparation, Opening Conference, Interviews, Document Review, Walkthrough, and Closing Conference. Additionally, the supervisor prepares a “Comment Sheet” as documentation of his/her observations. Findings of the accompanied visits are relayed to the Consultants following the visits. Annual

Consultant performance evaluations are conducted by the Supervisors and properly documented. During the review, none of the Consultants were found to have unsatisfactory performances. Three safety consultants and two health consultants were randomly interviewed and expressed respect for management and the evaluation process; and satisfaction working for the Program.

Lapse Time (Closing conference to the date reports are issued to the employer):

From the files that were reviewed, onsite reports were issued an average of 23.5 working days after the closing conference. This is an enormous improvement from the last program review when the average was 84.3 working days after the closing conference. This improvement has demonstrated that the program is working very hard toward achieving the goal of 20 days to issue the report.

Management Reports: The Program produces several reports from the National Cash Register (NCR) system to ensure proper tracking of the program's overall performance. This task was tremendously improved after the Program received IMIS training approximately three years ago from Region IV IT personnel. These reports allow the Program to track assignments; lapse time (time of request to opening conference); to perform quarterly and annually monitoring of Consultants; and to gauge progress with regard to the projected activities; but most important to improve their abatement tracking system.

At the beginning of FY 2014, the program deployed the OSHA Express system to replace the NCR. One feature of OSHA Express is the enhanced capability to produce reports which will enable the program to track the performance of the program.

Hiring and Vacancies: The FY2013/2014 Cooperative Agreement provides for the following Program positions: one Program Director; one Assistant Director; one Partnership Manager; one Safety Manager; one Health Manager; 11 Safety Consultants; and 13 Health Consultants. The Program currently has two Health Consultant vacancies. These two positions have been vacant due to a shortage in funding. These vacancies are not expected to have an impact with the numbers of visits the project conducts.

Safety and Health Achievement Program (SHARP): The Program identifies potential candidates through various means. Primarily, the Safety and Health consultant's report back to the SHARP Administrator when they find a company that appears to be a good candidate. Additionally, the SHARP Administrator reviews the Bureau of Labor Statistics (BLS) list of rates for companies. The SHARP Administrator recruits companies for the SHARP program by contacting these identified companies, explaining the program and promoting it, and encouraging their participation.

During the FY 2013, the Program added six companies to their SHARP program and renewed twelve companies for a total of eighteen companies. The Program is working on adding three additional companies.

Marketing Initiatives: The Program uses the following marketing tools to promote their consultation service:

- Bulk emails to all past training participants
- Bulk emails to all Governor's Safety and Health Conference participants
- Bulk emails to all Standards recipients
- Face to face Heat Stress campaign
- Partnership brochure
- Quarterly Labor Cabinet newsletter
- Annual Governor's Safety and Health Conference
- Labor Cabinet Web site
- IMPACT – Training vehicle

Additionally, the Program relies on referrals from Enforcement Informal Settlement Agreements, and the Federal OSHA Web site.

Internal Quality Assurance Program (IQAP): The Kentucky 23(g) Consultation Program's Internal Quality Assurance Program is designed to be at least as effective as the IQAP required for 21(d) funded Consultation Programs. The written IQAP was reviewed and found to contain all the required elements.

Form 33: The Safety and Health Program Assessment Worksheet (Form 33) is an evaluation tool to assess the employer's safety and health management system. Further, it is used to provide information to an employer on the safety and health management system at one establishment and how it compares to other establishments in the same industry.

The Form 33 is used consistently among Consultants, and included in the files.

Case File Review: Files were evaluated to determine quality of service(s) provided as it relates to safety and health program assistance, identification and classification of hazards, recommendations for hazard correction and control, relationship of hazards found to deficiencies in the employer's safety and health management system, training and education, recognition program evaluations, and written reports to employers. Files were well maintained, including IMIS forms, reports to the employer, and abatement information. Most of the safety and health files contained a copy of the employer's OSHA 300 logs, along with proper documentation in the files indicating a review/analysis of the injuries and/or illnesses. However, field notes could be improved to show clear descriptions of the hazards found, number of employees exposed, interim protection, and measurements. This information would

not only document exposure, but also support the information entered in the OSHA Form 33 “Safety and Health Program Assessment”.

Overall Effectiveness of the Program: The Kentucky 23(g) Consultation Program projected 312 initial visits for FY 2013. At the end of the fiscal year, the Program conducted 361 initial visits. This showed an improvement from last performance review; where the program was short 19 visits.

Mandated Activities Report for Consultation (MARC) - FY 2013 Summary

1.	Percent of Initial Visits in High-Hazard Establishments	97.23%
2.	Percent of Initial Visits to Smaller Businesses	97.23%
3.	Visits Where Consultants Conferred with Employees	100%
4(a).	Percent of Serious Hazards Verified Corrected in a Timely Manner	99.97%
4(b).	Percent of Serious Hazards Not Verified in a Timely Manner	.03%
4(c).	Percent of Serious Hazards Referred to Enforcement	0%
4(d).	Percent of Serious Hazards Verified Corrected (In Original Time or Onsite)	65%
5.	Number of Uncorrected Serious Hazards with Correction Date More Over 90 Days Past Due	0

During the first quarter of FY 2014, the Program conducted 85 initial visits, no training and assistance visits, and no follow-up visits. The goal for the first quarter was 88 initial visits. This is not a significant difference, considering the holidays during the first quarter.

Mandated Activities Report for Consultation (MARC) - FY 2014 First Quarter Summary

1.	Percent of Initial Visits in High-Hazard Establishments	100%
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2.	Percent of Initial Visits to Smaller Businesses	100%
3.	Visits Where Consultants Conferred with Employees	100%
4(a).	Percent of Serious Hazards Verified Corrected in a Timely Manner	100%
4(b).	Percent of Serious Hazards Not Verified in a Timely Manner	0%
4(c).	Percent of Serious Hazards Referred to Enforcement	0%
4(d).	Percent of Serious Hazards Verified Corrected (In Original Time or Onsite)	80.74%
5.	Number of Uncorrected Serious Hazards with Correction Date More Over 90 Days Past Due	0

The Director submitted quarterly progress reports as required and discussed accomplishments in each of the Annual Performance Goals with the Regional Consultation Program Manager. The Consultation Program is properly tracking abatement by running weekly “open abatement” reports. The State also supported the OSHA Initiative related to Targeted Outreach Programs (TOP), responding to requests from employers who received the OSHA letter regarding TOP.

11. STATE PLAN ADMINISTRATION

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

Training

As previously stated, the KYOSH Program adopted the federal directive TED 01-00-018, “Training Program for OSHA Compliance Personnel,” with minimal changes. In KYOSH, newly hired compliance and consultation personnel are registered in

Learning Link for participation in the initial training courses conducted at the OSHA Training Institute (OTI). Additional courses are scheduled as dictated in the directive. Basic training is completed when the eight courses outlined in the directive are completed. However interviews with managers, supervisors, and compliance officers indicated that the only OTI course that new compliance officers are receiving is the initial compliance course. Consultation and Health are getting training however safety is not. They have been told that there will be no training beside the initial compliance course due to the lack of funding. After completing the OTI training courses compliance employees receive on-the-job training (OJT) and support from senior staff members. The whistleblower investigators receive the same training through OTI as the federal whistleblower investigators with the exception of the 1460 Course on the Federal Statutes which is not applicable to the state's discrimination program.

Additionally, the KYOSH Program remains supportive of the career development and advancement of compliance and consultation personnel. The State pays for employees to take the certification preparation course and reimburses employees that successfully complete the certification exam. Employees that achieve professional certifications also receive a salary increase, range from 10 to 15 percent. In FY 2013, a total of 33 employees had certifications. These certifications include the following: Associate Safety Professional (ASP); Certified Safety Professional (CSP); Certified Industrial Hygienist (CIH); Occupational Health Safety Technologist (OHST); and Construction Certified Health Safety Technician (CCHST). The State also rewards employees that obtain advance degrees. During this period, KYOSH employed a total of two employees with masters or advance degrees however one is no longer with KYOSH. Additionally, the State promotes the Certified Fundamentals Manager, as well as the Certified Public Manager (CPM) degree, which is offered by Kentucky State University in Frankfort, Kentucky. During this period, there were five employees with the CPM certification. Employees that successfully complete the two-year CPM Program receive a five percent pay incentive.

Finding 13-08: Compliance officers are not provided progressive training opportunities as outlined by the KYOSH training guidelines.

Recommendation: KYOSH should implement a process to ensure compliance officer training is compliant with TED 01-00-018 "Training Program for OSHA Compliance Personnel," as adopted by KYOSH.

Funding

The last financial audit of the KYOSH Program was conducted in FY 2011, the total authorized award equaled \$7,109,800 (Federal funds equaled \$3,554,900 and Total Recipient Share required equaled \$3,554,900. The Federal Financial Report (Closeout) for the quarter ending September 30, 2011 and Health and Human

Services Payment Management System (HHSPMS) recorded total federal outlays of \$3,554,900.

During the initial off-site review of the SF-425 Federal Financial Report (Closeout) the grantee understated the Recipient Share of Expenditures on the report. The preliminary findings of the understatement suggested Kentucky Labor Cabinet may be responsible to payback nearly \$500,000 to OSHA. An additional request for documentation and follow-up discussions with Kentucky Labor Cabinet revealed the SF-425 Federal Financial Report (Closeout) Recipient Share of Expenditures were incorrectly coded by the grantee. OSHA reopened the report in the e-grants system and coordinated corrections in the system for the grantee. As a result of the corrections and additional documentation our review of the 23(g) State Grant revealed the grantee expended 100% of authorized federal funds and met and exceeded the minimum requirement threshold for the recipient share. No issues to report.

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 interviews, the onboard January 1, 2014, staffing for the KYOSH Program was 23 safety officers and 13 industrial hygienists, with three vacancies in each department. During this period, there were a total of 26 consultation staff members, including nine (9) safety, nine (9) health, eight (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 has consistently used various IMIS reports to manage the program and track OSH Division activity. This includes both mandated activity and activity goals and outcome goals included in the Strategic Management Plan. The reports are utilized by all levels of management from senior management to Bureau Chiefs, and district 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. In FY 13 KYOSH contracted

with Assured Consulting Services, Inc. to develop a NCR replacement system. KYOSH began utilizing OSHA Express for Consultation and Compliance during FY 2013. Additionally, the State continues to maintain the NCR/IMIS system, as required by the OSHA National Office. According to the SOAR, the State's new system offers several advanced capabilities including report writing, time management and program performance reports. Specific IMIS concerns are addressed in detail in the enforcement section of this report in recommendations 13-01.

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. During the FY 2011 evaluation, the State stated that they were working to expand coverage of the program to the Division of OSH Compliance and developing formal written procedures for the program. In addition, the first audit was projected for mid FY 2012. At the time of this review, the Division of OSH Compliance has not developed and implemented an Internal Self-Evaluation Program. KYOSH should develop and implement an Internal Self-Evaluation program during FY 2014.

Finding 13-09 (formerly 10-8 and 9-20): KOSH's Division of OSH Compliance does not have an internal self-evaluation program as required by the State Plan-Policies and Procedures Manual.

Recommendation: KYOSH should implement a process to ensure that an internal self-evaluation program possessing integrity and independence is developed and implemented. Kentucky should ensure that periodic evaluations of all areas of the program are evaluated and documentation of the evaluations is made available to federal OSHA.

IV. Assessment of State Plan 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. 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. 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.

This goal is focused on reducing the rates for repeat, serious, and willful violations in residential construction. The base line set in FY 2011 was four (4) willful, ten (10) repeat and ninety-six (96) serious violations in residential construction. During the evaluation period, the Division of OSH Compliance conducted 57 residential construction inspections resulting in zero (0) willful, four (4) repeat and seventy-three (73) serious violations. Although, this represents a downtrend, it should be noted that the State conducted significantly fewer residential construction inspections in FY 2013, compared to the previous year.

Year	Inspection	Willful	Repeat	Serious
FY 2011	64	4	10	96
FY 2012	108	4	11	105
FY 2013	57	0	4	73

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 54 amputations. Fifty-nine (59) inspections were conducted with forty-one (41) serious violations, twenty-five (25) other-than-serious (OTS) violations, and four (4) repeat serious violations and a total of \$209,850 in penalty.

Year	Inspection	Amputations	Repeat	Serious	Total Penalty
FY 2011	59	54	4	41	\$209,850
FY 2012	44	54	1	52	\$324,050
FY 2013	41	52	2	39	\$269,075

In FY 2013, the Division of OSH Compliance received fifty-four (52) reported amputations. Forty-one (41) inspections were conducted with thirty-nine (39) serious violations, fifteen (15) other than serious violations, and two (2) willful, with total penalty of \$269,075.

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 205 imminent dangers in FY 2013 within one (1) working day, compared with 217 imminent dangers in FY 2012. The Division of OSH Compliance inspected fifty-six (56) reported hospitalizations in FY 2013, compared with fifty-nine (59) reported hospitalizations in FY 2012. Additionally, the Division of OSH Compliance continued to support staff training and development in FY 2013.

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

This goal represents an attempt by the State to effectively ensure that employer's adhere to settlement agreements. During FY 2013, KYOSH conducted thirty-one (31) follow-up inspections, compared with thirty-four (34) follow-up inspections in FY 2012.

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.

	Falls	Struck-by	Crushed
Kentucky (2011)	10.6	26.0	*
Kentucky (2012)	14.5	16.1	*
National	17.7	28.6	5.9

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

Kentucky’s rates were below the national average; however, the data for falls is not trending downward for FY 2012.

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 2013, the State was unable to achieve this goal. According to the SOAR, the State did not respond timely in three (3) cases; however, appropriate explanations were provided regarding the delayed responses in two cases.

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 2013, KYOSH was unable to achieve this goal. Once again, according to the SOAR, the State did not respond timely in three (3) cases; however, appropriate explanations were provided regarding the delayed responses in two cases.

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 2012 for all industries in Kentucky was 4.2, which is an improvement compared to the rate of 4.4 for the previous period. Both divisions of the KY OSH Program strive for continuing improvement in the total case rate for Kentucky.

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 2011 baseline incident rate for lost time is 2.1. The goal of the Kentucky OSH Program is to focus on the highest hazard industries in an effort to lower the lost time incident rate. The 2012 incident rate for lost time was 2.0.

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 the fifteen (15) most hazardous industries in Kentucky and incorporates efforts from both the Division of OSH Compliance and the Division of OSH Education and Training. In its effort to achieve this goal, the Division of OSH Education and Training conducts the following: safety and health surveys in the selected top ten (10) Kentucky high hazard NAICS and specific high hazard industries; and formal training sessions in one (1) of the four (4) Population (POP) Centers.

Fiscal Year	Safety and Health surveys conducted in the top ten high hazard NAICS	Training Sessions Conducted	Employers/employees Trained
FY2012	128	37	1,106
FY2013	100	39	1,088

The Division of OSH Education and Training targeted employers in specific NAICS classifications using 2011 data. The Division mailed 190 letters encouraging utilization of the 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 101 employer request for consultative services, compared with 134 conducted in FY2012.

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.

This goal is focused on expanding the number of employers with safety and health management systems. In settlement cases with penalties reduced by more than \$10,000, the Division of OSH Compliance requires employers to adhere to the OSHA 1989 Safety and Health Guidelines or engage the services Division of OSH Compliance of an outside safety and health consultant. However, exceptions to this requirement are granted in the following cases: financial hardship; penalty miscalculations and/or the reclassification of violations.

Fiscal Year	Settlement Agreements	Penalties reduced by more than \$10,000	1989 Safety and Health Guidelines	Not Applicable
FY2012	84	14	7	7
FY2013	99	11		11

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

During FY 2013, 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 2013, 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 2013. Additional details regarding the State's cooperative programs are provided in section III, (9) Voluntary Compliance Programs, of this report.

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. Additionally, 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.

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

The Kentucky OSH Program continues to employ one (1) individual dedicated to the IMIS system and ensuring the maintenance of a reliable data repository.

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. In FY2013, 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 2013. A few of the certification held by KYOSH staff members include the Occupational Health and Safety

Technologist (OHST), the Construction Health and Safety Technician (CHST), Certified Industrial Hygienist (CIH), as well as the Certified Safety Professional (CSP). Kentucky commitment to this performance measure was verified during employee interviews.

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

During this period, two (2) staff members obtained master's degrees and two (2) other staffs members enrolled in the program. Since 2009, the Division of OSH Compliance has supported seven (7) compliance officers in attaining Masters of Science degrees. This goal was effectively accomplished during FY 2013.

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

This goal was accomplished in FY 2013, as Kentucky developed and implemented the tenants of the andragogical model of adult learning theory in its Population Center Training seminars, rather than lecture-based training.

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

In FY 2013, the Kentucky OSH Program continued to pursue the full implementation of 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.

V. Other Special Measures of Effectiveness and Areas of Note

None observed.

Appendix A – New and Continued Findings and Recommendations
FY 2013 Kentucky State Plan Comprehensive FAME Report

FY- Rec #	Finding	Recommendation	FY 2012
13-01	A significant number of the 603 open cases in IMIS, that are not in contest or currently active, including 172 cases with open abatements can be closed.	KYOSH should implement a process to determine which cases in the IMIS have completed litigation and/or have the abatement and penalty satisfied.	12-01
13-02	Complainants are not provided the findings regarding each complaint item and they are not afforded a way of disputing or appealing the findings of a complaint investigation.	KYOSH should fully implement the augmented procedure addressed in former Commissioner Dixon’s response following the FY 2011 FAME which states “Kentucky indicated in the 2010 follow-up report that it augmented its procedure by addressing each complaint item individually and advising the complainant’s appeal rights in the letter to complainants”. Appropriate personnel should be trained in the augmented procedure and supervisors should review case files more carefully to ensure this procedure is fully implemented and this information is included all case files.	
13-03	In three instances, KYOSH assigned personnel to conduct fatality investigations without the proper training.	KYOSH should ensure that all compliance officers assigned to conduct accident and fatality investigations have the appropriate training.	
13-04	More than half of the fatality files reviewed did not provide evidence that one or more of the required calls were made and/or letters sent to the next-of-kin.	Implement a process to ensure full implementation of CPL 02-00-153 - Communicating OSHA Fatality Inspection Procedures to a Victim’s Family to ensure that all communications with the NOK are completed.	
13-05	KYOSH conducted a total of 15 programmed planned health inspections during this evaluation period.	KYOSH should develop and implement a strategy to ensure a more representative number of programmed planned health inspections are conducted to adequately address the scope and seriousness of the hazards found in high hazard health industries.	
13-06	KYOSH has a significantly high citation issuance lapse time for safety and health.	KYOSH should develop and implement a process to reduce the average lapse time for non-incompliance safety and health inspections to the national average.	
13-07	Several of KYOSH’s Special Emphasis Programs (SEP) do not target specific hazards or industries to prevent injuries and/or illnesses.	KYOSH should implement a process for the development SEPs for the proactive targeting of hazards, industries, etc. to prevent injuries and illnesses.	
13-08	Compliance officers are not provided progressive training opportunities as outlined by the KYOSH training guidelines	KYOSH should implement a process to ensure compliance officer training is compliant with TED 01-00-018 “Training	

Appendix A – New and Continued Findings and Recommendations
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		Program for OSHA Compliance Personnel,” as adopted by KYOSH.	
13-09	KOSH’s Division of OSH Compliance does not have an internal self-evaluation program as required by the State Plan-Policies and Procedures Manual.	KYOSH should implement a process to ensure that an internal self-evaluation program possessing integrity and independence is developed and implemented. Kentucky should ensure that periodic evaluations of all areas of the program are evaluated and documentation of the evaluations is made available to federal OSHA.	

Appendix B – Observations Subject to New and Continued Monitoring
FY 2013 Kentucky State Plan Comprehensive FAME Report

FY13-OB-1	FY12-OB-1	Observation	Federal Monitoring Plan	Current Status
FY13-OB-1		A State Senator has introduced a Bill (SB63) with several co-sponsors into the State Legislature which will eliminate all funding provided to the Labor Cabinet from special fund assessments. This would defund the KYOSH program.	The OSHA Area Office will continue to effectively monitor the State’s performance in this area during quarterly meetings throughout FY 2014.	New
FY13-OB-2		Data indicated that there has been a significant decline in the number of inspections conducted by KYOSH, a difference of 322 from FY 2009 to FY 2013.	The OSHA Area Office will continue to effectively monitor the State’s performance in this area during quarterly meetings throughout FY 2014.	New
FY13-OB-3		There was no evidence in three of the five of the non-formal complaint reviewed that a letter was sent notifying complainants of the results of the investigations.	The OSHA Area Office will continue to effectively monitor the State’s performance in this area during quarterly meetings throughout FY 2014.	New
FY13-OB-4		In five of the complaint inspection files reviewed, there was no documentation supporting that the safety and health programs were reviewed and there was nothing to support providing or not providing good faith.	The OSHA Area Office will continue to effectively monitor the State’s performance in this area during quarterly meetings throughout FY 2014.	New
FY13-OB-5		Two of the five non-formal investigations alleging health related exposures did not have sampling provided by the employer to support their response that employees were not overexposed.	The OSHA Area Office will continue to effectively monitor the State’s performance in this area during quarterly meetings throughout FY 2014.	New
FY13-OB-6		For inspections involving chemical and/or health exposures, sampling results were not provided to the appropriate employees, employer representatives, and employee representatives when sampling was performed.	The OSHA Area Office will continue to effectively monitor the State’s performance in this area during quarterly meetings throughout FY 2014.	New
FY13-OB-7		KYOSH does not effectively utilize the OSHA Express abatement report to track abatement.	The OSHA Area Office will continue to effectively monitor the State’s performance in this area during quarterly meetings throughout FY 2014.	New
FY13-OB-8		KYOSH’s guidelines regarding telephone logs are not followed uniformly by the investigators.	The OSHA Area Office will continue to effectively monitor the State’s performance in this area during quarterly meetings throughout FY 2014.	New
FY13-OB-9		More consideration should be given to the analysis portion of the FIR, wherein the prima facie elements of a whistleblower complaint are considered (along with any proffered defenses).	The OSHA Area Office will continue to effectively monitor the State’s performance in this area during quarterly meetings throughout FY 2014.	New

**Appendix C- Status of FY 2012 Findings and Recommendations
FY 2013 Kentucky State Plan Comprehensive FAME Report**

FY 12- Rec #	Finding	Recommendation	State Plan Response/Correctiv e Action	Completion Date	Current Status
12-01	A significant number of the 603 open cases in IMIS, that are not in contest or currently active, including 172 cases with open abatements can be closed.	KYOSH should implement a process to determine which cases in the IMIS have completed litigation and/or have the abatement and penalty satisfied. The State should ensure that IMIS is updated and the cases are closed during FY 2014.			Open
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.			Open
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.			Open
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).		02/05/2014	Closed

Appendix D- FY 23013 State Activity Mandated Measures (SAMM) Report
FY 2013 Kentucky State Plan Comprehensive FAME Report

OSHA is in the process of moving operations from a legacy data system (IMIS) to a modern data system (OIS). During FY 2013, OSHA case files were captured on OIS, while State Plan case files continue to be processed through IMIS. The SAMM, which is native to IMIS, is not able to access data in OIS, which impacts OSHA's ability to process SAMM standards pinned to national averages (the collective experience of State Plans and OSHA). As a result, OSHA has not been able to provide an accurate reference standard for SAMM 18, which has experienced fluctuation in recent years due to changes in OSHA's penalty calculation formula. Additionally, OSHA is including FY 2011 national averages (collective experiences of State Plan and OSHA from FY 2009-2011) as reference data for SAMM 20, 23 and 24. OSHA believes these metrics are relatively stable year-over-year, and while not exact calculations of FY 2013 national averages, they should provide an approximate reference standard acceptable for the FY 2013 evaluation. Finally, while SAMM 22 was an agreed upon metric for FY 2013, OSHA was unable to implement the metric in the IMIS system. OSHA expects to be able to implement SAMM 22 upon the State Plan's migration into OIS.

U.S. Department of Labor				
Occupational Safety and Health Administration State Activity Mandated Measures (SAMMs)				
State: Kentucky			FY 2013	
SAMM Number	SAMM Name	State Plan Data	Reference/Standard	Notes
1	Average number of work days to initiate complaint inspections	8.69	Negotiated fixed number for state not submitted.	State data taken directly from SAMM report generated through IMIS.
2	Average number of work days to initiate complaint investigations	8.32	Negotiated fixed number for state not submitted.	State data taken directly from SAMM report generated through IMIS.
4	Percent of complaints and referrals responded to within 1 work day (imminent danger)	99%	100%	State data taken directly from SAMM report generated through IMIS.
5	Number of denials where entry not obtained	0	0	State data taken directly from SAMM report generated through IMIS.

Appendix D- FY 23013 State Activity Mandated Measures (SAMM) Report
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9a	Average number of violations per inspection with violations by violation type	1.85	SWR: 2.04	State data taken directly from SAMM report generated through IMIS; national data was manually calculated from data pulled from both IMIS and OIS for Fiscal Years (FY) 2011-2013.
9b	Average number of violations per inspection with violations by violation type	0.73	Other: .88	
11	Percent of total inspections in the public sector	4.49	Negotiated fixed number for state not submitted.	State data taken directly from SAMM report generated through IMIS.
13	Percent of 11c Investigations completed within 90 calendar days	87.04	100%	State data taken directly from SAMM report generated through IMIS.
14	Percent of 11c complaints that are meritorious	12.96	24.8% meritorious	State data taken directly from SAMM report generated through IMIS; National data was pulled from webIMIS for FY 2011-2013.
16	Average number of calendar days to complete an 11c investigation	67.03	90 Days	State data taken directly from SAMM report generated through IMIS.
17	Planned vs. actual inspections - safety/health	741/150	(Negotiated fixed number for each state) - 757/110	State data taken directly from SAMM report generated through IMIS; the reference standard number is taken from the FY 2013 grant application.
18a	Average current serious penalty - 1 -25 Employees	a. 2658.09		State data taken directly from SAMM report generated through IMIS; national data is not available.
18b	Average current serious penalty - 26-100 Employees	b. 3487.24		
18c	Average current serious penalty - 101-250 Employees	c. 5035.13		
18d	Average current serious penalty - 251+ Employees	d. 4183.29		
18e	Average current serious penalty - Total 1 - 250+	e. 3370.30		

Appendix D- FY 23013 State Activity Mandated Measures (SAMM) Report
FY 2013 Kentucky State Plan Comprehensive FAME Report

	Employees			
19	Percent of enforcement presence	1.32%	National Average 1.5%	Data is pulled and manually calculated based on FY 2013 data currently available in IMIS and County Business Pattern data pulled from the US Census Bureau.
20a	20a) Percent In Compliance – Safety	Safety - 54.13	Safety - 29.1	State data taken directly from SAMM report generated through IMIS; current national data is not available. Reference data is based on the FY 2011 national average, which draws from the collective experience of State Plans and federal OSHA for FY 2009-2011.
20b	20b) Percent In Compliance – Health	Health - 47.20	Health - 34.1	
21	Percent of fatalities responded to in 1 work day	84%	100%	State data is manually pulled directly from IMIS for FY 2013
22	Open, Non-Contested Cases with Abatement Incomplete > 60 Days			Data not available
23a	Average Lapse Time - Safety	72.97	43.4	State data taken directly from SAMM report generated through IMIS; current national data is not available. Reference data is based on the FY 2011 national average, which draws from the collective experience of State Plans and federal OSHA for FY 2009-2011.
23b	Average Lapse Time - Health	89.5	57.05	
24	Percent penalty retained	69.03	66	State data taken directly from SAMM report generated through IMIS; current national data is not available. Reference data is based on the FY 2011 national average, which draws from the collective experience of State Plans and federal OSHA for FY 2009-2011.

Appendix D- FY 23013 State Activity Mandated Measures (SAMM) Report
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25	Percent of initial inspections with employee walk around representation or employee interview	100%	100%	State data taken directly from SAMM report generated through IMIS.
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