# FY 2022 Follow-up Federal Annual Monitoring Evaluation (FAME) Report

**KENTUCKY EDUCATION AND LABOR CABINET**

**DEPARTMENT OF WORKPLACE STANDARDS**

**OCCUPATIONAL SAFETY AND HEALTH PROGRAM**



**Evaluation Period: October 1, 2021 – September 30, 2022**

**Initial Approval Date: July 23, 1973**

**Program Certification Date: February 8, 1980**

**Final Approval Date: June 13, 1985**

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**U. S. Department of Labor**

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## I. Executive Summary

The primary purpose of this report is to assess the Kentucky State Plan’s (KY OSH) progress in Fiscal Year (FY) 2022 in resolving outstanding findings and observations from the FY 2021 Comprehensive FAME Report. In addition, this report assesses KY OSH’s performance and is based on the results of quarterly onsite monitoring visits, the FY 2022 State Office Annual Report (SOAR), and the FY 2022 State Activity Mandated Measures (SAMM) Report.

KY OSH made progress addressing the findings and observations previously noted in the FY 2021 Comprehensive FAME Report, and no new findings were identified in the FY 2022 follow-up FAME. The five findings from the FY 2021 comprehensive FAME, include the number of programmed safety and health inspections, citation issuance lapse times, penalty adoption, and retaliation case file documentation. All five findings remain open. This report also includes two observations continued from the FY 2021 comprehensive FAME. These observations address the State’s Internal Evaluation Program and its in-compliance rates.

## II. State Plan Background

The Kentucky State Plan was established by the Kentucky General Assembly in 1972 and approved by OSHA in 1973. The KY OSH program received final 18(e) approval on June 13, 1985. KY OSH was the first State Plan approved, under the revised federal benchmarks. The responsibility for enforcing occupational safety and health laws in the Commonwealth of Kentucky is vested in the Education and Labor Cabinet and assigned to the Department of Workplace Standards, headed by a commissioner, who is appointed by the Secretary with the approval of the governor. The KY OSH program covers all private sector and state and local government workers in the State, except for federal workers, railroad workers, maritime workers (long shoring, shipbuilding, shipbreaking, and marine terminals operations), private contractors working at government-owned/contractor-operated facilities, Tennessee Valley Authority (TVA) workers and contractors operating on TVA sites, as well as U.S. Postal Service workers. In Kentucky, state and local government agencies and workers are afforded the same rights, responsibilities, and coverage as those in the private sector.

The General Assembly enacted legislation giving KY OSH the mission to prevent any detriment to the safety and health of all private sector and state and local government workers arising out of exposure to harmful conditions or practices at their workplaces. The KY OSH program consists of the OSH federal-state coordinator, standards specialists, and support staff, all of whom are attached to the Commissioner’s Office; the Division of Occupational Safety and Health (OSH) Compliance; and the Division of OSH Education and Training. The Division of OSH Compliance is responsible for the enforcement of KY OSH standards. The Division of OSH Education and Training administer the Kentucky 23(g) Consultation Program. The Division of OSH Education and Training assists employers and workers by promoting voluntary compliance with KY OSH standards. The Division of OSH Education and Training is also responsible for overseeing the Partnership Programs. 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 technical support staff to the KY OSH program and OSH Standards Board, promulgate KY OSH regulations, respond to OSHA inquiries, and provide interpretations of KY OSH standards and regulations. This office is responsible for maintaining the Kentucky State Plan, as well as handling day-to-day communications with governmental agencies on the state and federal level. These agencies include the U.S. Department of Labor, Occupational Safety and Health Administration (OSHA), the Bureau of Labor Statistics (BLS) and others. The Office of the Federal-State Coordinator also conducts the annual survey of occupational injuries and illnesses, the census of fatal occupational injuries, and the OSHA data collection.

Through the Frankfort office, KY OSH administers worker protection from workplace retaliation related to occupational safety and health claims [KRS 338.121]. There are two investigators, and they report to the Director of OSH Compliance. Retaliation cases that are determined to be meritorious are prosecuted by the Department of Workplace Standards Legal Division.

Jamie Link served as Education and Labor Cabinet Secretary and Kimberlee Perry served as Commissioner of the Department of Workplace Standards during FY 2022.

The initial federal base award was $3,767,000. The State Plan matched the funding and supplemented it with $10,350,448, which brings the total program funding to $14,117,448. An amendment raised the federal funding by $84,400 and increased the federal final base award to $3,851,400. The State Plan matched the increase, which increased the final FY 2022 total to $14,664,235. The grant funded 119 full-time staff, 115.23 full-time equivalent (FTE). The 115.23 FTE consisted of seven (7) managers, ten (10) supervisors, twenty-six (26) safety compliance officers and fifteen (15) health compliance officers, aka CSHOs, twenty-three (23) safety and health consultants, two (2) discrimination investigators, 13.9 administrative clerical staff members, and 16.33 other positions.

The Partnership Branch conducted 230 significant contacts in FY 2022, including 187 site visits affecting 27,051. The program also identified 1,288 hazards, which included 430 serious and 858 other-than-serious (OTS) violations. There were 18 active Construction Partnership Program (CCP) sites in FY 2022. In FY 2022, CPP conducted ninety-seven (97) significant contacts, of which sixty-one (61) site visits affecting 9,800 employees. The Partnership Branch maintained 18 sites that included four new sites in FY 2022, including the new $5.8 billion Blue Oval Battery Park in Glendale, KY. Additionally, twenty VPP sites were maintained in FY 2022. The Safety Health Achievement Recognition Program (SHARP) started FY 2022 with 14 active sites and concluded the fiscal year with 14 sites. The Partnership Branch also conducted twenty-eight (28) excavation activities in FY 2022, as part of the national emphasis program.

KYSAFE added seventeen (17) interactive training products, including four modules and thirteen webinars to the KYSAFE online library. The newly developed modules were Personal Protective Equipment (PPE) Module 1; Wages and Hour Overview; Scaffolding Hazards; and Scaffolding: Erecting; Dismantling and Access. The thirteen webinars were Fire Prevention Plans; 803 Kentucky Administrative Regulation (KAR) 2:181E updates; Teen Worker Safety; Cold Stress Webinar; Injury and Illness Recordkeeping Overview; Trenching and Excavation; Eyewash Update; Injury and Illness Recordkeeping Overview; Mowing Safety and Noise Protection; Heat Stress National Emphasis Program (NEP) in English; Heat Stress NEP in Spanish; Reclassing Permit Required Confined Spaces; and Skid Steer Hazard Alert. KYSAFE conducted 266 consultative surveys in FY 2022, which resulted in the identification and abatement of 2,262 serious hazards. The division also conducted fifty-three training courses and reached 1,598 attendees in response to employer training requests. Division staff members provided five (5) on-site technical assistance visits. Twenty-eight (28) training sessions were conducted at the Population (POP) Center Training seminars, in which 606 participants attended the training. The training addressed subjects relevant to the targeted NAICS, such as the following: Basic Electrical Safety, Excavation and Trenching, Silica, Walking / Working Surfaces, Hazard Communication, Personal Protective Equipment, Fall Protection, and Confined Spaces. In FY 2022, KY OSH continued its outreach for the Heat Illness Prevention Campaign through in person outreach and online training reaching 8,942 employees.

**New Issues**

On November 17, 2021, Governor Beshear and Secretary Link announced the merger of the Education and Workforce Development Cabinet within the Labor Cabinet to create the Education and Labor Cabinet, pending legislative approval. Senate Bill 180 of the 2022 Regular Session was introduced February 16, 2022, passed April 14, 2022, and signed April 20, 2022, by Governor Beshear. The merger was effective July 1, 2022. There were no significant changes to the Department of Workplace Standards or the structure and/or duties of the KY OSH Program.

## III. Assessment of State Plan Progress and Performance

### Data and Methodology

OSHA established a two-year cycle for the FAME process. This was a follow-up year, and as such, OSHA did not perform onsite case file review, which is typically associated with a comprehensive FAME. This strategy allowed the State Plan to focus on correcting deficiencies identified in the most recent comprehensive FAME. The analyses and conclusions described in this report were based on information obtained from a variety of monitoring sources, including:

* State Activity Mandated Measures Report (SAMM, Appendix D, dated 11/14/2022)
* State Information Report (SIR, dated 11/14/2022)
* Web Integrated Management Information System (WebIMIS)
* State OSHA Annual Report (SOAR, Appendix E)
* KY OSH Annual Performance Plan
* State Plan Grant Application
* Quarterly monitoring meetings between OSHA and the State Plan

### Findings and Observations

#### Findings (Status of Previous and New Items)

The State Plan made progress in addressing the five findings and two observations reflected in the FY 2021 Comprehensive FAME Report. This follow-up FAME report contains five continued findings and two continued observations. All the findings were continued; however, one finding has been addressed and is awaiting verification, through an onsite case file review, during the next comprehensive FAME. Both observations are continued from the FY 2021 FAME. No observations from the previous FAME were converted to findings. Appendix A describes the continued findings and recommendations. Appendix B describes observations subject to continued monitoring and the related federal monitoring plan. Appendix C describes the status of each FY 2021 recommendation in detail.

**Continued Findings**

**Finding FY 2021-1 (FY 2020-01, FY 2019-01, FY 2018-03, FY 2017-06, FY 2016-03, FY 2015-06, FY 2014-05, FY 2013-05, and FY 2011-06):** In FY 2021, KY OSH conducted a total of six (1.9%) programmed health inspections out of 315 health inspections conducted, during that period.

**Status:** During FY 2022, KY OSH conducted a total of six (1.83%) programmed health inspections out of 327 health inspections conducted, during this period. This finding remains open.

**Finding FY 2021-2 (FY 2020-02 and FY 2019-02):** In FY 2021, KY OSH conducted a total of 30 (5.5%) programmed safety inspections out of 549 safety inspections conducted, during that period.

**Status:** In FY 2022, KY OSH conducted 21 (3.14%) programmed safety inspections out of 669 planned safety inspections, during this period. This finding remains open.

Kentucky provided that the SARS-CoV-2 pandemic continued to have a significant impact on the Kentucky OSH Program and adversely impacted their ability to conduct programmed inspections. Additionally, inspections are conducted in the order of priority established in Kentucky’s Field Operations Manual. Other inspection types, such as imminent dangers, fatalities, hospitalizations, amputations, and complaints, are prioritized over programmed inspections. OSHA is currently working with KY OSH to establish a new goal for programmed inspections.

**Finding FY 2021-3 (FY 2020-03 and FY 2019-03):** In FY 2021, KY OSH had significantly high average citation issuance lapse times for safety and health inspections (SAMM 11a and 11b), which were outside the FRLs.

**Status:** In FY 2022, KY OSH’s lapse time for safety inspections was 80.54 days and 100.61 for health inspections. Even though the average citation issuance lapse times showed improvement, the lapse times remain significantly higher than the three-year national averages (54.68 days for safety and 67.14 days for health) and the averages for all State Plans (49.37 days for safety and 63.77 days for health). [Reference: SAMM 11a and 11b] Kentucky provided that the SARS-CoV-2 pandemic continued to have a profound effect on the Kentucky OSH Program and adversely impacted citation issuance lapse time for safety and health inspections during this period. Improved lapse time is one of KY OSH’s top goals, and the State Plan is placing much attention and emphasis on decreasing lapse times.

**Finding FY 2021-4:** The Kentucky State Plan failed to adopt OSHA’s initial FY 2016 maximum and minimum penalty increase and subsequent annual penalty amount increases.

**Status:** The Kentucky State Plan does not have the independent authority to increase maximum penalties or implement an annual penalty adjustment based on the Consumer Price Index. Kentucky penalties are established by statute, specifically Kentucky Revised Statute 338.991. Adjustment to Kentucky penalties requires legislative action. House Bill (HB) 749 of the 2022 Regular Session was introduced March 1, 2022. HB 749 sought to increase OSH civil penalties and require the Secretary to annually adjust the penalties based on the BLS Consumer Price Index for All Urban Customers. HB 749 did not advance. Kentucky will continue work to seek legislative action to amend Kentucky’s OSH penalties.

**Finding FY 2021-5 (FY 2020-04 and FY 2019-04):** In FY 2021, the case file review identified eight (8) out of 14 (57%) cases, where KY OSH failed to acquire and/or maintain correct retaliation case file documentation: to wit, (1) no case activity logs or incomplete logs, (2) insufficient/inaccurate correspondence tracking information (Specifically screening documentation between the complainant (CP) and Investigator was not present in the majority of files reviewed), and (3) erroneous IMIS entries.

**Status:** KY OSH provided it will improve acquiring necessary documentation, as well as IMIS data entry accuracy. A case file review is necessary to gather the facts needed to evaluate progress on this finding. This finding will be a focus of next year’s on-site case file review during the FY 2023 comprehensive FAME and remains open pending verification.

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#### Observations

**Continued FY 2021 Observations**

**Observation FY 2021-OB-1:** KY OSH’s Division of OSH Compliance did not make available for review their FY 2022 State Internal Evaluation Program (SIEP) Audit, as required by the State Plan Policies and Procedures Manual.

**Status:** Kentucky’s internal evaluations are legally privileged and cannot be released.

**Observation FY 2021-OB-2 (FY 2020-OB-1 and FY 2019-OB-2):** In FY 2021, the total in-compliance rates (SAMM 9) for all safety inspections was 48.03% and 67.35% for health inspections (SAMM 9b). The in-compliance rates for safety and health were well above the FRL. This observation is being continued.

**Status:** In FY 2022, the total in-compliance rates (Reference: SAMM 9) for all safety inspections were 44.51% and 75% for health inspections and remain well above the FRLs. In FY 2021, OSHA did not identify that Kentucky missed a hazard(s) and/or failed to issue a citation(s) in any case files. OSHA’s position is that Kentucky’s high in-compliance rate is related to the low number of targeted inspections and high number of in-compliance complaints inspections.

### C. State Activity Mandated Measures (SAMM) Highlights

Each SAMM has an agreed upon further review level (FRL) that can be either a single number or a range of numbers above and below the three-year national average. SAMM data that falls outside the FRL triggers a closer look at the underlying performance of the mandatory activity. Appendix D presents the State Plan’s FY 2020 State Activity Mandated Measures (SAMM) Report and includes the FRLs for each measure.

It should be noted that OSHA is in the final stages of transitioning from the Whistleblower Application in the OSHA IT Support System (OITSS), a legacy data system, to the Whistleblower module in OIS, a modern data system. OSHA encountered challenges in combining the report that generates SAMM 14, 15, and 16 from both systems. As such, OSHA will not be relying on SAMMs 14, 15, or 16 in their evaluation of the State Plans whistleblower programs for FY 2022.

The State Plan’s performance in the following SAMMs was outside the FRLs:

**SAMM 1a – Average number of workdays to initiate complaint inspections**

**Discussion of State Plan data and FRL:** The FRL for the average number of workdays to initiate complaint inspections was 30 days for serious hazards and 120 days for other-than-serious hazards. The KY OSH average number of workdays to initiate complaint inspections in FY 2022 was 38.06 days and warranted a closer look.

**Explanation:** OSHA’s complaint data including the SAMM is not broken down into serious and other-than-serious hazards. According to KY OSH complaint data, the average from the date the complaint is received to the date the inspection is opened for serious complaints was 26.9 days and 41.5 days for other-than-serious hazards. This is within the FRL.

**SAMM 3 – Percent of complaints and referrals responded to within one workday (imminent danger)**

**Discussion of State Plan data and FRL:** The FRL for the percent of complaints and referrals responded to within one workday (imminent danger) is 100% and is fixed for all State Plans. KY OSH responded to 98% of imminent danger complaints and referrals within one workday in FY 2022.

**Explanation:** KY OSH conducted ninety-one (91) imminent danger inspections in FY 2022 and two appear as outliers. The first was reported Tuesday, November 30, 2021, to the Division of OSH Compliance. The report advised the worksite was not active due to weather conditions. KY OSH contacted the complainant on Wednesday, December 1, 2021, and the work was not active due to weather conditions. The worksite was active on December 2, 2021, and an inspection opened the same day. The second outlier was reported to KY OSH on December 3, 2021, and alleged the imminent danger occurred on Thursday, December 2, 2021. The CP advised the worksite was not active. KY OSHA was informed that the site was active, however, a response was not possible for two days due to weather conditions. A compliance officer responded on Wednesday, December 8 and confirmed an imminent danger did not exist at the site. Kentucky met the requirement.

**SAMM 9 -** **Percent in-compliance**

**Discussion of State Plan data and FRL:** The FRL for percent in compliance (safety) is +/- 20% of the three-year national average, which is 32.25%. The range of acceptable data not requiring further review is from 25.80% to 38.70%. The FRL for percent in compliance (health) is +/- 20% of the three-year national average which is 44.42%. The range of acceptable data not requiring further review is from 35.54% to 53.30%. The percentages of KY OSH’s inspections that were in-compliance were 44.51% for safety and 75% for health, which are significantly above the FRLs.

**Explanation:** KRS 338.121 requires that a special inspection be conducted upon receipt of valid formal complaints that are reduced to writing and signed by a current employee, if reasonable grounds exist that there is a violation or danger, and the KY OSH prioritizes the employee complaints it receives. This results in a significant number of complaint and referral inspections, 488 of the 670 safety inspections and 288 of the 327 health inspections were complaints or referrals. 40.92% of these safety inspections and 73.48% of these health inspections were in-compliance.

**SAMM 11 - Average lapse time**

**Discussion of State Plan data and FRL:** The FRL for average lapse time is based on a three-year national average. The FRL for safety inspections was +/-20% of 54.58 days with the range of acceptable data not requiring further review from 43.66 to 65.50, and the FRL for health inspections was +/-20% of 69.03 days with the range of acceptable data not requiring further review is from 55.22 to 82.84. KY OSH’s average lapse times are 80.54 for safety and 100.61 for health, which are significantly above the FRLs.

**Explanation:** As discussed in Finding FY 2021-3, improved average lapse times are one of KY OSH’s top goals, and the State Plan is placing much attention and emphasis on decreasing lapse times. The Director of OSH Compliance is closely tracking and monitoring lapse times and is working with managers and supervisors to reduce them. As with other areas discussed in this report, staff turnover has been and remains an issue for KY OSH.

### Appendix A – New and Continued Findings and Recommendations

FY 2022 Kentucky Follow-up FAME Report

|  |  |  |  |
| --- | --- | --- | --- |
| **FY 2022-#** | **Finding** | **Recommendation** | **FY 20XX-# or**  **FY 20XX-OB-#** |
| FY 2022-1 | In FY 2022, KY OSH conducted a total of six programmed (1.83%) health inspections out of 327 health inspections during this period. | KY OSH should work with OSHA to negotiate a new benchmark for programmed inspections and develop and implement a strategy to ensure a more representative number of programmed health inspections are conducted. | FY 2021-1  FY 2020-1  FY 2019-1  FY 2018-3  FY 2017-6  FY 2016-3  FY 2015-6  FY 2014-5  FY 2013-5  FY 2011-6 |
| FY 2022-2 | In FY 2022, KY OSH conducted a total of 21 programmed safety inspections (3.14%) out of 669 planned safety inspections during this period. | KY OSH should work with OSHA to negotiate a new benchmark for safety programmed inspections and develop and implement a strategy to ensure a more representative number of programmed (planned) safety inspections are conducted. | FY 2021-2  FY 2020-2  FY 2019-2 |
| FY 2022-3 | In FY 2022, KY OSH had significantly high average citation issuance lapse times for safety and health inspections (SAMM 11a and 11b), which were outside the FRLs. | KY OSH should develop and implement a process to reduce the average lapse times for safety and health inspections to be within the acceptable FRL ranges. | FY 2021-3  FY 2020-3  FY 2019-3 |
| FY 2022-4 | In FY 2022, the Kentucky State Plan has failed to adopt OSHA’s initial FY 2016 maximum and minimum penalty increase and subsequent annual penalty amount increases. | The Kentucky State Plan should continue to work with their state authorities to complete the legislative changes necessary to adopt the maximum and minimum penalty increase and subsequent annual increases to be at least as effective as OSHA penalty levels. | FY 2021-4 |
| FY 2022-5 | The FY 2021, case file review identified eight 8 out of 14 (57%) cases, where KY OSH failed to acquire and/or maintain correct retaliation case file documentation: to wit, (1) no case activity logs or incomplete logs, (2) insufficient/inaccurate correspondence tracking information (Specifically screening documentation between CP and Investigator was not present in the majority of files reviewed), and (3) erroneous IMIS entries. | KY OSH should ensure all required documentation of the investigation is complete and included in the file to ensure the accuracy of IMIS data entries. | FY 2021-5  FY 2020-4  FY 2019-4 |

### Appendix B – Observations Subject to Continued Monitoring

FY 2022 Kentucky Follow-up FAME Report

| **Observation #**  **FY 2022-OB-#** | **Observation#**  **FY 20XX-OB-# *or* FY 20XX-#** | **Observation** | **Federal Monitoring Plan** | **Current Status** |
| --- | --- | --- | --- | --- |
| FY 2022-OB-1 | FY 2021-OB-1 | KY OSH’s Division of OSH Compliance did not make available for review their FY 2022 State Internal Evaluation Program (SIEP) Audit as required by the State Plan Policies and Procedures Manual. | Federal Monitoring Plan: The OSHA Area Office will closely monitor and review the Internal Evaluation Program (SIEP) Audit State to ensure KY OSH is performing audits of their internal operation as required by the SPPM. | Continued |
| FY 2022-OB-2 | FY 2021-OB-2  FY 2020-OB-1  FY 2019-OB-2 | The total in-compliance rates (SAMM 9a) for all safety inspections were 44.51% and (SAMM 9b) 75% for health inspections. The in-compliance percentage for safety and health was well above the FRLs. This observation is being continued. | The OSHA Area Office will closely monitor and review the SAMM, SIR, and other available data with the State Plan on a quarterly basis to ensure in-compliance rates are within the acceptable FRL range. | Continued |

### Appendix C - Status of FY 2021 Findings and Recommendations

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
| **FY 2021-#** | **Finding** | **Recommendation** | **State Plan Corrective Action** | **Completion Date** | **Current Status**  **and Date** |
| FY 2021-1 | In FY 2021, KY OSH conducted a total of six programmed (1.9%) out of 315 health inspections during this period. | KY OSH should work with OSHA to negotiate a benchmark for programmed inspections and develop and implement a strategy to ensure a more representative number of programmed (planned) health inspections are conducted. | OSHA and KY OSH are working on a negotiated benchmark for programmed inspections. Kentucky has a strategy in place to conduct programmed inspections. OSHA is also aware Kentucky is bound to conduct inspections based on the order of priority established in Kentucky’s Field Operations Manual. |  | Open |
| FY 2021-2 | In FY 2021, KY OSH conducted a total of 30 (5.5% programmed out of 549 safety inspections during this period. | KY OSH should work with OSHA to negotiate a benchmark for programmed inspections and develop and implement a strategy to ensure a more representative number of programmed (planned) safety inspections are conducted. | OSHA and KY OSH are working on a negotiated benchmark for programmed inspections. Kentucky has a strategy in place to conduct programmed inspections. OSHA is also aware Kentucky is bound to conduct inspections based on the order of priority established in Kentucky’s Field Operations Manual. |  | Open |
| FY 2021-3 | In FY 2019 and FY 2020, KY OSH had significantly high average citation issuance lapse times for safety and health inspections (SAMM 11a and 11b), which were outside the FRLs. | KY OSH should develop and implement a process to reduce the average lapse time for safety and health inspections to be within the acceptable FRL range. | Improved lapse time is one (1) of the Kentucky OSH Program’s top goals. The Director of OSH Compliance is closely tracking and monitoring lapse time and is working with managers and supervisors to reduce it. |  | Open |
| FY 2021-4 | The Kentucky State Plan has failed to adopt OSHA’s initial FY 2016 maximum and minimum penalty increase and subsequent annual penalty amount increases. | The Kentucky State Plan should continue to work with their state authorities to complete the legislative changes necessary to adopt the maximum and minimum penalty increase and subsequent annual increases to be at least as effective as OSHA penalty levels. | The Kentucky State Plan has no authority to increase maximum penalties or implement an annual penalty adjustment HB 749 sought to increase OSH civil penalties and require the Secretary to annually adjust the penalties based on the BLS Consumer Price Index for All Urban Customers. HB 749 did not advance. Kentucky will continue work to seek legislative action to amend Kentucky’s OSH penalties. |  | Open |
| FY 2021-5 | The case file review identified eight 8 out of 14 (57%) cases, where KY OSH failed to acquire and/or maintain correct retaliation case file documentation: to wit, (1) no case activity logs or incomplete logs, (2) insufficient/inaccurate correspondence tracking information (Specifically screening documentation between CP and Investigator was not present in the majority of files reviewed), and (3) erroneous IMIS entries. | KY OSH should ensure all required documentation of the investigation is complete and included in the file to ensure the accuracy of IMIS data entries. | Kentucky will improve acquiring necessary documentation as well as IMIS data entry accuracy. |  | Open |

### Appendix D – FY 2022 State Activity Mandated Measures (SAMM) Report

FY 2022 Kentucky Follow-up FAME Report

| SAMM Number | SAMM Name | State Plan Data | Further Review Level | Notes |
| --- | --- | --- | --- | --- |
| 1a | Average number of workdays to initiate complaint inspections (state formula) | 38.06 | 30 days for serious hazards; 120 days for other-than-serious hazards | The further review level is negotiated by OSHA and the State Plan. |
| 1b | Average number of workdays to initiate complaint inspections (federal formula) | 25.96 | N/A | This measure is for informational purposes only and is not a mandated measure. |
| 2a | Average number of workdays to initiate complaint investigations (state formula) | 25.78 | TBD | The further review level is negotiated by OSHA and the State Plan. |
| 2b | Average number of workdays to initiate complaint investigations (federal formula) | 22.49 | N/A | This measure is for informational purposes only and is not a mandated measure. |
| 3 | Percent of complaints and referrals responded to within one workday (imminent danger) | 98% | 100% | The further review level is fixed for all State Plans. |
| 4 | Number of denials where entry not obtained | 0 | 0 | The further review level is fixed for all State Plans. |
| 5a | Average number of violations per inspection with violations by violation type (SWRU) | 1.38 | +/- 20% of  1.77 | The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from 1.42 to 2.12 for SWRU. |
| 5b | Average number of violations per inspection with violations by violation type (other) | 0.95 | +/- 20% of  0.90 | The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from 0.72 to 1.08 for OTS. |
| 6 | Percent of total inspections in state and local government workplaces | 7.13% | +/- 5% of  4.37% | The further review level is based on a number negotiated by OSHA and the State Plan through the grant application. The range of acceptable data not requiring further review is from 4.15% to 4.59%. |
| 7a | Planned v. actual inspections (safety) | 669 | +/- 5% of  438 | The further review level is based on a number negotiated by OSHA and the State Plan through the grant application. The range of acceptable data not requiring further review is from 416.10 to 459.90 for safety. |
| 7b | Planned v. actual inspections (health) | 327 | +/- 5% of  180 | The further review level is based on a number negotiated by OSHA and the State Plan through the grant application. The range of acceptable data not requiring further review is from 171 to 189 for health. |
| 8 | Average current serious penalty in private sector - total (1 to greater than 250 workers) | $3,837.51 | +/- 25% of  $3,259.35 | The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from $2,444.51 to $4,074.19. |
|  | **a**. Average current serious penalty in private sector  (1-25 workers) | $2,556.00 | +/- 25% of  $2,145.46 | The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from $1,609.10 to $2,681.83. |
|  | **b**. Average current serious penalty in private sector  (26-100 workers**)** | $3,515.22 | +/- 25% of  $3,818.56 | The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from $2,863.92 to $4,773.20. |
|  | **c**. Average current serious penalty in private sector  (101-250 workers) | $4,956.36 | +/- 25% of  $5,469.60 | The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from $4,102.20 to $6,837.00. |
|  | **d**. Average current serious penalty in private sector  (Greater than 250 workers) | $5,182.40 | +/- 25% of  $6,725.78 | The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from $5,044.34 to $8,407.23. |
| 9a | Percent in compliance (safety) | 44.51% | +/- 20% of  32.25% | The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from 25.80% to 38.70% for safety. |
| 9b | Percent in compliance (health) | 75% | +/- 20% of  44.42% | The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from 35.54% to 53.30% for health. |
| 10 | Percent of work-related fatalities responded to in one workday | 100% | 100% | The further review level is fixed for all State Plans. |
| 11a | Average lapse time (safety) | 80.54 | +/- 20% of  54.58 | The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from 43.66 to 65.50 for safety. |
| 11b | Average lapse time (health) | 100.61 | +/- 20% of  69.03 | The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from 55.22 to 82.84 for health. |
| 12 | Percent penalty retained | 88.39% | +/- 15% of  69.97% | The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from 59.47% to 80.47%. |
| 13 | Percent of initial inspections with worker walk-around representation or worker interview | 100% | 100% | The further review level is fixed for all State Plans. |
| 14 | Percent of 11(c) investigations completed within 90 days | N/A\* | N/A\* | This measure is not being reported for FY 2022. Please see note below. |
| 15 | Percent of 11(c) complaints that are meritorious | N/A\* | N/A\* | This measure is not being reported for FY 2022. Please see note below. |
| 16 | Average number of calendar days to complete an 11(c) investigation | N/A\* | N/A\* | This measure is not being reported for FY 2022. Please see note below. |
| 17 | Percent of enforcement presence | 1.37% | +/- 25% of  1.64% | The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from 1.23% to 2.05%. |

NOTE: The national averages in this report are three-year rolling averages. Unless otherwise noted, the data contained in this Appendix D are pulled from the State Activity Mandated Measures (SAMM) Report in OIS run on November 14, 2022, as part of OSHA’s official end-of-year data run.

\*Due to the transition of 11(c) data from IMIS to OIS, SAMMs 14, 15, and 16 are not being reported for FY 2022.