**FY 2023 Comprehensive**

**Federal Annual Monitoring Evaluation (FAME) Report**

**KENTUCKY EDUCATION AND LABOR CABINET**

**DEPARTMENT OF WORKPLACE STANDARDS**

**OCCUPATIONAL SAFETY AND HEALTH PROGRAM**



**Evaluation Period: October 1, 2022 – September 30, 2023**

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**Prepared by:**

**U. S. Department of Labor**

**Occupational Safety and Health Administration**

**Region IV**

**Atlanta, Georgia**



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1. **Executive Summary**

The fiscal year (FY) 2023 Kentucky Federal Annual Monitoring Evaluation (FAME) resulted in a comprehensive FAME report that assesses Kentucky Occupational Safety and Health (OSH) Program (KY OSH’s) progress toward achieving its performance goals established in the FY 2023 Performance Plan. This report assesses the State Plan’s progress in resolving outstanding findings from its previous FAME report. This report also reviews the effectiveness of programmatic areas related to enforcement and consultation activities, including a summary of an onsite evaluation.

The Kentucky Occupational Safety and Health (KY OSH) Five Year Strategic Plan for FY 2021 to FY 2025 established three strategic goals: Goal 1, Improve workplace safety and health for all workers, particularly in high-risk industries as evidenced by fewer hazards, reduced exposures, as well as fewer fatalities, injuries, and illnesses; Goal 2, Change workplace culture to increase employer and employee awareness of, commitment to, and involvement in occupational safety and health; and Goal 3, Maximize the efficient and effective use of human and technological resources. FY 2023 is the third year of the 2021-2025 Strategic Plan. KY OSH establishes the framework in an annual performance plan to accomplish the goals in its Strategic Plan. During FY 2023, Kentucky was successful at meeting or exceeding all Performance Plan goals.

An OSHA team was assembled to conduct the onsite evaluation in Frankfort, KY, during the time frame of January 8, 2024, through January 11, 2024. The OSHA monitoring teams’ evaluation involved case file reviews, assessment of the KY OSH’s performance statistics, training documentation, policies and procedures, consultation, whistleblower, as well as staff interviews. Care was taken to ensure this evaluation was based upon KY OSH’s Field Operation Manual (FOM), compliance with established policies and directives, as well as electronic copies of case file documentation.

A detailed explanation of the findings and recommendations of the KY OSH’s performance evaluation is found in Section III, Assessment of State Plan Progress and Performance. In FY 2023, there were no new findings identified. The FY 2022 Follow-up FAME identified five findings and two observations. This report contains two continued findings and two observations, including one new observation and one observation that is continued. Appendix A describes the new and continued findings and recommendations. Appendix B describes the observations and the related federal monitoring plans. Appendix C describes the status of all FY 2022 recommendations in detail.

KY OSH has been instrumental in providing outreach and training to their constituents. KY OSH’s Performance Goal 1.10 aims to reduce the total case rate in two (2) of the top ten (10) industries, identified by NAICS, in Kentucky with the highest injury and illness total case incident rates. The effort, known as “Safety Tops Our Priority” (S.T.O.P), is an initiative by Division of OSH Education and Training, referred to as KYSAFE. Compliance and KYSAFE. KYSAFE launched a NAICS code 92 S.T.O.P. initiative in FY 2023 and mailed 118 S.T.O.P. letters to counties and seventy-nine (79) S.T.O.P. letters to cities throughout the state. The response rate to the S.T.O.P. initiative was outstanding and resulted in 177 survey requests and 197 surveys during FY 2023. There are more surveys to complete in response to the initiative. Another FY 2023 KYSAFE outreach initiative, the Targeted Outreach Program (T.O.P.), sent 226 T.O.P. letters to employers that did not report OSHA 300 data to the Federal Injury Tracking Application (ITA). The T.O.P. initiative resulted in 113 survey requests and seventy-six (76) surveys. There are more surveys to complete in response to the initiative. Forty-one (41) KYSAFE training sessions were presented at five (5) Population (POP) Center training seminars in FY 2023; 744 participants attended the training. The training addressed subjects relevant to the targeted NAICS, such as Basic Electrical Safety, Excavation and Trenching, Silica, Walking / Working Surfaces, Hazard Communication, Personal Protective Equipment, Fall Protection, and Confined Space Entry.

**II. State Plan Background**

1. **Background**

The Kentucky Education and Labor Cabinet’s Department of Workplace Standards has been administering the Kentucky Occupational Safety and Health program (KY OSH), since 1972. The Secretary of the Education and Labor Cabinet is the State Plan designee, and KY OSH’s office is in Frankfort, Kentucky.

KY OSH’s statutory authority is established in Kentucky Revised Statutes (KRS) Chapter 338. Under these statutes, KY OSH conducts workplace inspections, issues citations and penalties, and provides administrative and judicial review processes for employers seeking to contest citations and/or penalties. Kentucky law prohibits employers from retaliating against workers, who exercise their rights established by KY OSH’s statutes, and authorizes the investigation and prosecution of complaints of workplace retaliation.

The State Plan designee and the Commissioner, Department of Workplace Standards (DWS) are responsible for administering the program under KRS Chapter 338. The DWS is led by Kimberlee C. Perry, Commissioner. Within DWS, the Division of OSH Compliance, and the Division of OSH, has responsibility for carrying out the requirements of the State Plan. Seth Bendorf served as the Director of OSH Compliance and Lynn Whitehouse served as the Director of OSH Education and Training.

In 1978, the U.S. Court of Appeals, in AFL-CIO v. Marshall, ordered OSHA to create a formula to set enforcement staffing benchmark levels for each State Plan. Meeting these staffing benchmark levels is a requirement for a State Plan to attain final approval status. KY OSH received final approval, under Section 18(e) of the OSH Act on June 13, 1985. Currently, there are 115 positions funded, under the 23(g) grant.

KY OSH is comprised of three sections: The Division of OSH Compliance, KYSAFE, as well as the OSH Federal-State Coordinator, which administers standard adoption, regulation promulgation, and provides technical staff. KYSAFE program managers and OSH compliance supervisors are KY OSH’s first-line supervisors. At full staffing, KY OSH has 23 safety compliance officers and 14 health compliance officers assigned to the Frankfort office and to their homes throughout the State. In FY 2023, KY OSH covered approximately 1,785,953 workers and 131,497 business establishments in the State.

In FY 2023, KY OSH’s base level funding award was $3,851,400. In addition to matching the federal funding amount of $3,851,400, KY OSH also contributed $7,596,732. Thus, the final FY 2023 funding amount was $15,299,532 (which consisted of $3,851,400 in federal funds and $11,448,132 in State funds).

1. **New Issues**

None

**III. Assessment of State Plan Progress and Performance**

1. **Data and Methodology**

OSHA established a two-year cycle for the FAME process. FY 2023 was a comprehensive year, and as such, OSHA was required to conduct an evaluation and case file review. From January 8 through January 11, 2024, OSHA conducted an evaluation of KY OSH’s enforcement and consultation program. OSHA’s team consisted of twelve personnel who reviewed 103 safety and health inspection files, 26 whistleblower investigation files, and 33 consultation files, which were randomly selected from a universe of 846 inspections, 142 whistleblower investigations, and 366 consultation visits KY OSH opened and closed, during FY 2023. The review was conducted in Frankfort at the KY OSH office.

OSHA conducted informal interviews with CSHOs, program managers, and the Directors of OSH Compliance and KYSAFE. Topics addressed related to the operation of the State Plan, such as, progress in resolving findings and observations from the FY 2022 Follow-up FAME Report, cases file reviews, standard and federal program change (FPC) adoptions, complaint processing, compliance assistance, abatement tracking, as well as other relevant issues.

The analyses and conclusions described in this report are based on information obtained from a variety of monitoring sources, including the:

* State Activity Mandated Measures (SAMM) Report (Appendix D)
* State Information Report (SIR)
* Mandated Activities Report for Consultation (MARC)
* State OSHA Annual Report (SOAR)
* State Plan Annual Performance Plan
* State Plan Grant Application
* Quarterly monitoring meetings between OSHA and the State Plan
* Full case file review
* Staff interviews

SAMMs are enforcement data points that OSHA and the State Plans have agreed are important in monitoring State Plan performance. 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 national average. State Plan SAMM data that fall outside the FRL triggers a closer look at the underlying performance of the mandatory activity. Appendix D presents the State Plan’s FY 2023 SAMM Report, and includes the FRL for each measure.

1. **Review of State Plan Performance**

**1. PROGRAM Administration**

1. Training

The State Plan continues to operate a training and education program, which is identical to the federal training and education directive TED 01-00-019, “Training Program for OSHA Compliance Personnel.” The State Plan’s training and development program for new hires starts with a four-hour in-house orientation, which is focused on the Kentucky Education and Labor Cabinet. Next, new hires register in Blackboard to ensure they are eligible for OTI courses. Compliance and consultation program managers oversee the training process and ensure their staff receive OTI training in a timely manner. Additionally, the health compliance manager is also responsible for workplace discrimination proper enrollment in Blackboard. The State’s discrimination manager and its two investigators receive the same training through OTI as the federal whistleblowers, except for the OSHA 1460 course, as this course addresses federal statutes, which are not enforced by the State Plan.

The Division of OSH Compliance and KYSAFE encourage and promote professional certification, maintaining dedicated position descriptions with increased salaries for the level of certification attained, paying for certification preparatory courses, and paying for the certification examination after successful completion. Additional details regarding this program are available in the State Office Annual Report (SOAR) for FY 2023.

b) OSHA Information System

The State continues to use the OSHA Express System, which interfaces with OSHA’s OIS System. According to the State Plan, its system continues to offer several advanced capabilities including report writing, time management, and program performance reports. Each division also has specific functionality and capabilities unique to their individual needs. The State also uses various OSHA Express reports to manage and track compliance, as well as consultation activities.

c) State Internal Evaluation Program Report

The State continues to use its Internal Quality Evaluation Program (IQEP), which was last updated in January 2024. According to the State, this system was modeled after OSHA’s auditing program. The internal quality evaluation program ensures that all aspects of the State’s safety and health program operate effectively. In FY 2023, the following aspects of the State’s safety health program were audited using this system: citation review; penalty payment; personnel; data management and tracking; as well as case control. Based on the IQEP, action has been taken by the State to enhance the effectiveness of its program. However, since a member of the legal staff participates in the audit access to the documents are strictly controlled.

d) Staffing

During this period, KY OSH’s staffing did not meet the established benchmarks for the program, based on the benchmark criteria. Data provided by the State shows that the turnover rate is 47.06%, and there were 10-15 vacant compliance officer positions for each of the 12-months of the fiscal year. The State Plan remains committed to staffing its program at the appropriate level. The Kentucky OSH Program enacted a salary increase in FY 2023 with a subsequent six (6) percent increase for all state employees. The base pay for all Division of OSH Compliance enforcement officers and KYSAFE consultants increased and is permanent.

**2. ENFORCEMENT**

a) Complaints

KY OSH procedures for handling complaints are detailed in Chapter 9: Complaint and Referral Processing in the KY OSH Field Operations Manual (FOM), which are very similar to OSHA’s FOM in this regard. SAMMs 1 through 3 assess the program’s efficiency in handling complaints. In FY 2023, KY OSH received 1,850 complaints, including 286 that resulted in inspections, and 985 that were handled informally by letter. In addition, the State received 271 total referrals, including 193 employer reported referrals, involving reports of serious injuries resulting in hospitalizations, amputations, and loss of an eye.

**SAMM 1a – Average number of workdays to initiate complaint inspections (state formula)**

Discussion of State Plan Data and FRL: The negotiated FRL for this measure is 30 days for serious hazards; 120 days for other-than-serious hazards. KY OSH’s FY 2023 average was 65.72 workdays.

Explanation: OSHA could not compare the average number of workdays to initiate a complaint inspection to determine the State FRL because the SAMM data cannot differentiate between serious and other-than-serious. OSHA will continue to monitor and discuss this with the State, as well as working on updating the FRL.

**SAMM 2a - Average number of workdays to initiate complaint investigations (state**

**formula)**

Discussion of State Plan Data and FRL: The negotiated FRL is to be determined (TBD). KY OSH’s average in FY 2023 was 37.06 workdays. In FY 2022 it was 25.78.

Explanation: OSHA will continue to monitor and discuss this with the State Plan, as well as working on negotiating an FRL.

**SAMM 3 - Percent of complaints and referrals responded to within one workday**

**(imminent danger)**

Discussion of State Plan Data and FRL: The FRL of 100 percent is fixed for all State Plans. In

FY 2023, KY OSH received and responded to 99.08% of imminent dangers, within one working day.

Explanation: There was one outlier; however, it was determined the State Plan responded timely, since the site was no longer active.

**SAMM 4 - Number of denials where entry not obtained**

Discussion of State Plan Data and FRL: The FRL of zero is fixed for all State Plans. In FY

2023, KY OSH’s result was zero.

Explanation: KY OSH did not have any denials of entry, in FY 2023.

1. Fatalities

There were 37 work-related fatalities in FY 2023. OSHA reviewed ten fatality inspections, none of which were in-compliance. Fatality files were well organized, and investigations were documented for legal sufficiency. Investigations were thorough, as demonstrated by files with statements, violations were supported with adequate documentation, and the cause of the accident was clearly explained.

 **SAMM 10 - Percent of work-related fatalities responded to in one workday**

Discussion of State Plan Data and FRL: The FRL of 100 percent is fixed for all State Plans. In FY 2023, KY OSH’s result was 93.94% percent.

Explanation: There were three that appear as outliers; however, it was determined that the State Plan responded timely.

c) Targeting and Programmed Inspection

According to inspection statistics reviewed, KY OSH conducted 847 inspections in FY 2023, of which 91 were programmed. [Reference SIR 1a and 1b] Twenty-nine percent were conducted in the construction industry. [Reference OIS Inspection Summary Report] According to the SIR, 83.3% of private sector programmed safety inspections and 55.6% of private sector programmed health inspections had violations, and of those 82% of safety inspections and 40% of health inspections had a serious, repeat, and/or willful violation (SRW) [SIR Measure 2c].

For programmed inspections in construction, KY OSH has focused inspections on these sites to prevent injuries and illnesses, due to the high injury and illness rates. Falls and trenching and excavation operations continued to be targeted, under their Local Emphasis Program and the Trenching and Excavation National Emphasis Program (NEP). KY OSH has a performance goal, which aims to reduce the number of injuries caused by falls, struck-by, and crushed-by incidents in construction. These hazards continued to be targeted during construction inspections.

For programmed inspections in general industry, KY OSH’s targeting program uses data provided by BLS to identify the top ten high-rate industries in the State. KYSAFE targeted these industries with a direct mail campaign. Additionally, training sessions relevant to the targeted industries were provided throughout the State. Employers, who chose not to participate in consultation, were referred to enforcement for inspection. Kentucky also participates in most federal NEP’s, including hexavalent chromium and lead.

**SAMM 7 - Planned v. actual inspections – safety/health**

Discussion of State Plan Data and FRL: The FRL is based on a number negotiated by OSHA and the State Plan through the grant application. In FY 2023, KY OSH planned to conduct 500 safety inspections and 160 health inspections. The FRL range was from 475.00 to 525 for safety inspections, and from 152 to 168 for health inspections. In FY 2023, KY OSH conducted 630 safety inspections and 217 health inspections.

Explanation: KY OSH exceeded the inspection goal.

d) Citations and Penalties

KY OSH issued 1,207 citations with penalties totaling $5,464,950 from the 847 inspections that were conducted, in FY 2023. The 1,207 citations included 743 serious violations, 12 willful violations, 49 repeat violations, and 403 other-than-serious violations.

**SAMM 5 - Average number of violations per inspection with violations by violation type**

Discussion of State Plan Data and FRL: The FRL is based on a three-year national average. KY OSHA’s FY 2023 average of 1.75 was within the FRL range of 1.4 to 2.10 for serious, willful, repeat, or unclassified (SWRU) violations. For other-than-serious (OTS) violations, the State Plan’s average of 0.89 is within the FRL range of 0.71 to 1.07.

Explanation: KY OSH was within the FRL for serious and other than serious violations issued.

**SAMM 9 – Percent in compliance**

The FRL for percent in-compliance for safety inspections (SAMM 9a) is +/- 20% of the three-year national average of 31.73%, which equals a range of 25.38% to 38.08%. The Kentucky State Plan’s percent in-compliance for safety is 46.65%, which is higher than the FRL. The FRL for percent in-compliance for health inspections is +/- 20% of the three-year national average of 43.82%, which equals a range of 35.06% to 53.58%. The percent in-compliance for health is 71.68%, which also exceeded the FRL.

Explanation: It was determined that the high in-compliance rate is attributed to the significant number of formal complaints that KY OSH is required to inspect.

**FY 2023-OB-1:** (formerly FY 2022-OB-2, FY 2021-OB-02, FY 2020-OB-1 and FY 2019-OB-2) In FY 2023, the total in- compliance rate (SAMM 9) for all safety inspections was 46.65% and 71.68% for health inspections. The percentages for safety and health were well above the FRLs.

**Federal Monitoring Plan:** 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.

**SAMM 11 - Average lapse time**

Discussion of State Plan Data and FRL: The FRL is based on a three-year national average. In FY 2023, the FRL range was from 44.18 workdays to 66.28 workdays for safety, and from 55.78 workdays to 83.66 workdays for health. KY OSH’s averages were 83.36 workdays for safety and 94.02 workdays for health, which were above the acceptable FRL range.

Explanation: KY OSH placed emphasis on reducing lapse times and has made some progress in reducing health lapse times; however, lapse times still remain high. In FY 2023, the safety average citation lapse time was 83.36 days, and the health average citation lapse time was 94.02 days. At the time of this evaluation, the health supervisor positions were vacant, which impacted lapse times.

**Finding FY 2023-01:** (formerly FY 2021-03 FY 2020-03 and FY 2019-03)In FY 2023, KY OSH had a significantly high average citation issuance lapse times for safety and health inspections, which were outside the FRLs.

**Recommendation:** KY OSH should develop and implement an action plan to reduce the average lapse times for safety and health inspections to within the FRL levels. The OSHA Area Office will closely monitor the lapse times on a quarterly basis.

**SAMM 8 - Average current serious penalty in private sector**

Discussion of State Plan data and FRL: Each FRL in SAMM 8 is the total average current penalty per serious violation for the specific worker range, as shown below. These FRLs are based on three-year national averages.

(1 to greater than 250 workers): The FRL is +/-25% of $3,625.21. The range of acceptable data not requiring further review is from $2,718.91 to $4,531.51. KY OSH’s total average current penalty per serious violation is $3,843.63, which within the FRL.

**a.** (1-25 workers): The FRL is +/-25% of $2,348.03. The range of acceptable data not requiring further review is from $1,761.02 to $2,935.04. The Kentucky State Plan’s total average current penalty per serious violation (1 - 25 workers) is $2,856.00, which is within the FRL.

**b.** (26-100 workers): The FRL is +/-25% of $4,167.28. The range of acceptable data not requiring further review is from $3,125.46 to $5,209.10. The Kentucky State Plan’s total average current penalty per serious violation is $3,249.46, which is within the FRL.

**c.** (101-250 workers). The FRL is +/-25% of $6,052.04. The range of acceptable data not requiring further review is from $4,539.03 to $7,565.05. The Kentucky State Plan’s total average current penalty per serious violation (101 – 250 workers) is $5,014.04, which is within the FRL.

**d.** (Greater than 250 workers): The FRL is +/-25% of $7,331.41. The range of acceptable data not requiring further review is from $5,498.56 to $9,164.26. The Kentucky State Plan’s total average current penalty per serious violation is $5,307.61, which is below the FRL.

Explanation: The Kentucky State Plan met or exceeded the FRL in all but one category, greater than 250 workers, which was slightly below the FRL. During this legislative session, a bill has been introduced with nine (9) sponsors, to enact the Final Rule on the Department of Labor Civil penalties for Inflation Adjustment Act – Annual Adjustment for 2023 in Kentucky. In Kentucky, the deadline to introduce the house bill was February 26th, and the deadline to introduce a Senate bill was February 28th.

OSHA published a rule on July 1, 2016, raising its maximum and minimum penalties. See 81 FR 43429. OSHA then increased penalties annually, most recently on January 17, 2023, according to the Consumer Price Index (CPI). Kentucky has not yet adopted the corresponding increase to maximum penalty amounts. This finding for penalty adoption is being continued.

1. Abatement

During the on-site case file review, OSHA determined case files contained adequate documentation of abatement. OSHA did not identify any issues with abatement periods, use of extensions, and overall timeliness.

f) Worker and Union Involvement

KY OSH procedures for employee and union involvement are identical to OSHA’s. Case file review disclosed that employees were included in 100% of fatality investigations, and other inspections. This determination was supported by SAMM measure 13.

**SAMM 13 – Percent of initial inspections with worker walk around representation or worker interview**

Discussion of State Plan Data and FRL: The FRL of 100 percent for SAMM 13 is fixed for all State Plans. In FY 2023, KY OSH’s result was 100 percent.

Explanation: KY OSH met the FRL.

**3. REVIEW PROCEDURES**

1. Informal Conferences

KY OSH has procedures in place for conducting informal conferences, and proposing informal settlement agreements, and these procedures are followed by the managers and supervisors. Case files reviewed identified very few violations noted as being vacated or reclassified, and some cases were resolved with some penalty reduction. Manager and supervisor interviews confirmed that employer commitments are included, and required for certain cases involving larger penalty reductions. No negative trends or problems with citation documentation were noted.

**SAMM 12 - Percent penalty retained**

Discussion of State Plan Data and FRL: The FRL is based on a three-year national average. In FY 2023, KY OSH’s percent penalty retained of 82.75 percent was just outside the FRL range of 61.06 percent to 82.62 percent.

Explanation: KY OSH met the FRL.

1. Formal Review of Citations

KY OSH is represented by the Education and Labor Cabinet’s Office of General Counsel. Attorneys in the Office of General Counsel represent the entire Education and Labor Cabinet including KY OSH. The Office of General Counsel participates in organizations, such as the State OSHA Litigators Organization (SOLO), where state and federal high-profile cases, and cases with special legal issues, are shared and discussed. The attorneys work closely with compliance staff during the preparation of fatality inspections and other high-profile inspections. No negative trends or problems with citation documentation were identified.

The Kentucky Occupational Safety and Health Review Commission holds hearings and issues decisions on contested citations. The Review Commission is administratively attached to the Education and Labor Cabinet. First-level contests are heard and ruled upon by hearing officers employed by the Kentucky Attorney General's Office.

During FY 2023, the State Plan did not receive any negative decisions by the Kentucky Occupational Safety and Health Review Commission. Decisions are reviewed by the Commissioner and senior management staff to determine if changes in policies and procedures need to be made.

**4. Standards and Federal Program Change (FPC) Adoption**

In general, 29 CFR 1902 requires the adoption of standards and federal program changes (FPCs) within a six-month timeframe. However, there are three different categories for FPCs. Those requiring adoption, those requiring equivalency, and finally, those with optional adoption. State Plans that do not adopt identical standards and procedures must establish requirements that are at least effective (ALAE) as the federal rules. State Plans also have the option to promulgate standards covering hazards not addressed by federal standards. During this period, with two (2) exceptions, the Kentucky OSH Program adopted the FPCs and Standards in a timely manner and implemented appropriate equivalent policies. However, the adoption of one (1) OSHA-initiated standard was not conducted in a timely manner: the adoption of the Final Rule on the Department of Labor Civil penalties for Inflation Adjustment Act – Annual Adjustment for 2023 is still pending. During this legislative session, a bill has been introduced with nine (9) sponsors, to enact the Final Rule on the Department of Labor Civil penalties for Inflation Adjustment Act – Annual Adjustment for 2023 in Kentucky. In Kentucky, the deadline to introduce the house bill was February 26th and the deadline to introduce a Senate bill was February 28th. The table below provides a complete list of the federal directives and standards, which required during this period:

**Table A**

**Status of FY 2022 and FY 2023 Federal Standards Where Adoption Was Required**

*(May include any delinquent standards from earlier fiscal years)*

| **Standard** | **Response Due Date** | **State Plan Response Date** | **Intent to Adopt** | **Adopt Identical** | **Adoption Due Date** | **State Plan Adoption Date** |
| --- | --- | --- | --- | --- | --- | --- |
| Occupational Exposure to COVID-19; Healthcare Emergency Temporary Standard: COVID-19 Log and Reporting Provisions 29 CFR 1910.502(q)(2)         (4/14/2022) | 4/14/2022 | 4/15/2022 | Yes | Yes | 8/14/2022 | 2/14/2022 |
| Updated COVID-19 Vaccination and Testing; Emergency Temporary Standard29 CFR 1910(11/5/2021) | 1/7/2022 | N/A | No | No | 1/24/2022 | NA |
| Final Rule on the Department of Labor Civil penalties for Inflation Adjustment Act – Annual Adjustment for 2023 29 CFR Part 1903 (1/13/2022) | 3/15/2022 | 3/22/2022 | Yes | N/A | 7/15/2022 | -- |
| Occupational Exposure to COVID-19; Healthcare Emergency Temporary Standard: COVID-19 Log and Reporting Provisions29 CFR 1910.502(q)(2)(ii), (q)(3)(ii)-(iv) and (r)(2/14/2022) | 4/14/2022 | 4/15/2024 | Yes | Yes | 8/14/2022 | 7/20/2021 |
| Final Rule on the Department of Labor Civil penalties for Inflation Adjustment Act – Annual Adjustment for 2023 29 CFR Part 1903         (1/13/2023) | 3/15/2023 | 3/07/2023 | Yes | N/A | 7/14/2023 | -- |
| Final Rule to Improve Tracking of Workplace Injuries and Illnesses  29 CFR Part 1904         (7/21/2023) | 9/21/2023 | 9/27/2023 | Yes | Yes | 1/21/2024 | 7/21/2023 |

**For Vaccination and Testing standards:**

* Write “N/A” in the chart for State Plan response date if the State Plan did not adopt.
* In the written narrative, if describing this standard, state that “the Emergency Temporary Standard for COVID-19 Vaccination and Testing was withdrawn” and do not count it towards any total for standards not adopted timely.

**Table B**

**Status of FY 2022 and FY 2023 Federal Program Change (FPC) Where Adoption**

 **Was Required**

*(May include any delinquent FPCs from earlier fiscal years)*

| **FPC Directive/Subject** | **Response Due Date** | **State Plan Response Date** | **Intent to Adopt** | **Adopt Identical** | **Adoption Due Date** | **State Plan Adoption Date** |
| --- | --- | --- | --- | --- | --- | --- |
| Revised Combustible Dust NEP CPL 03-00-008      (1/30/2023)      | 3/31/2023 | 3/22/2023 | Yes | No | 7/30/2023 | 12/22/2023 |
| Warehousing and Distribution Center Operation NEP CPL 03-00-026   (7/13/2023)    | 9/11/2023 | 9/8/2023 | Yes | No | 1/13/2024 | 2/13/2024 |

**Table C**

**Status of FY 2022 and FY 2023 Federal Program Change (FPC) Where Equivalency**

 **Was Required**

*(May include any delinquent FPCs from earlier fiscal years)*

| **FPC Directive/Subject** | **Response Due Date** | **State Plan Response Date** | **Intent to Adopt** | **Adopt Identical** | **Adoption Due Date** | **State Plan Adoption Date** |
| --- | --- | --- | --- | --- | --- | --- |
| Cranes and Derricks in Construction StandardCPL 02-01-2022  (2/11/2022)    | 7/3/2022 | 6/21/2022 | Yes | No | 8//1/2022 | 7/3/2022 |
| OSHA Whistleblower Investigations ManualCPL 02-03-011   (4/29/2022)    | 10/11/2022 | 9/15/2022 | No | N/A | 10/29/2022 | N/A |

**Table D**

**Status of FY 2022 and FY 2023 Federal Program Change (FPC) Where Adoption**

 **Was Encouraged**

*(May include any delinquent FPCs from earlier fiscal years)*

| **FPC Directive/Subject** | **Response Due Date** | **State Plan Response Date** | **Intent to Adopt** | **Adopt Identical** | **Adoption Due Date** | **State Plan Adoption Date** |
| --- | --- | --- | --- | --- | --- | --- |
| OSHA’s Use of Small Unmanned Aircraft Systems CPL 03-00-022      (12/22/2021)   | 2/22/2022 | 2/23/2022 | No | N/A | n/a adoption not required | N/A |
| Outdoor and Indoor Heat-related Hazards NEP CPL 03-00-024(4/8/2022) | 6/8/2022 | 4/26/2022 | No | N/A | 10/8/2022 | N/A |

**Table E**

**FY 2022 and FY 2023 State-Initiated Changes**

| **State-Initiated Change** | **Adoption Date** | **Effective Date** |
| --- | --- | --- |
| N/A |  |  |

**Finding FY 2023-02** **(Formerly FY 2022-02 and FY 2021-04):** The Kentucky State Plan failed to adopt OSHA’s initial FY 2016 maximum and minimum penalty increase and subsequent annual penalty amount increases.

**Recommendation:** KY OSHshould 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 federal OSHA penalty levels. During this legislative session, a bill has been introduced with nine (9) sponsors, to enact the Final Rule on the Department of Labor Civil penalties for Inflation Adjustment Act – Annual Adjustment for 2023 in Kentucky. In Kentucky, the deadline to introduce the house bill was February 26th, 2023, and the deadline to introduce a Senate bill was February 28th, 2023.

**5. Variances**

Kentucky has four permanent variances, and there are no temporary variances. All variances are properly documented and tracked by the State Plan. KY OSH did not receive requests for any additional permanent or temporary variances in FY 2023.

**6. STATE AND LOCAL government WORKER Program**

Kentucky State law [KRS 338 “Occupational Safety and Health of Employees”] establishes definitions for employer and worker, which do not exclude public employers and state and local government workers. Kentucky’s public employers and workers are subject to the same requirements, sanctions, and benefits, as Kentucky’s private sector employers and workers. Consequently, Kentucky statutes, regulations, and policies make no distinction between state and local government and private sector employers and workers.

KY OSH conducted 47 state and local government sector inspections in FY 2023, which accounted for 5.55% of all inspections. [Reference: SAMM 6].

**SAMM 6 - Percent of total inspections in state and local government workplaces**

Discussion of State Plan Data and FRL: In FY 2023, the FRL range was from 7.92 percent to 8.75 percent. KY OSH’s 5.55% was below the FRL range.

Explanation: KY OSH was slightly below the FRL, regarding the state and local government inspection goal, but it exceeded the goal for private sector. KYSAFE, launched a NAICS code 92 S.T.O.P. initiative in FY 2023 and mailed 118 S.T.O.P. letters to counties and seventy-nine (79) S.T.O.P. letters to cities throughout the state. The response rate to the S.T.O.P. initiative resulted in 177 survey requests and 197 surveys during FY 2023. As a result, fewer enforcement inspections were initiated in the Public Sector.

**7. WHISTLEBLOWER Program**

The KY OSH program bears the responsibility for enforcing workplace retaliation regulations established by KRS 333, which explicitly prohibits workplace retaliation against individuals engaged in protected activities. This statute parallels with Section 11(c) of the Occupational Safety and Health Act.

The Agency employs two full-time investigators, who are supervised by the Director of OSH Compliance. Discrimination investigations adhere to the procedures set forth in the KY OSH FOM, comparable to OSHA’s Whistleblower Investigations Manual (WIM). Key distinctions between OSHA and KY OSH procedures include a 120-day window for complainants to file Kentucky discrimination complaints, immediate imposition of civil penalties up to $10,000 upon a merit determination, the authority to cite an individual for discriminatory actions against a complainant, coverage of both Commonwealth employees and employers deemed political subdivisions, and the availability of preliminary reinstatement for complainants prior to a final determination.

In FY 2023, KY OSH received 135 complaints. Among these, 50 complaints were docketed, and 85 were administratively closed. Noteworthy is the commendable improvement in the average duration for resolving closed retaliation cases in FY 2023, standing at 169 days—a marked enhancement from the 297-day average observed in FY 2021. [Reference: OSHA Information System Reports]

Significant enhancements have been effectuated in the management of discrimination case files, with standardized documentation ensuring uniformity among all cases. An evaluation of 26 case files shows good organization aligned with policies set forth in OSHA’s WIM.

KY OSH utilized the Web Integrated Management Information System (WebIMIS) to monitor case progress and document final outcomes; however, on October 1, 2023, the agency implemented OSHA Express for all case tracking. The investigators demonstrated a good grasp of the investigative procedures and evidentiary criteria pertinent to allegations of retaliation, e.g., docketed cases that were closed in FY 2023 with a settlement rate at 91%. Meritorious determinations were reached in 73% of closed docketed cases. Investigative reports within case files are well documented to substantiate drawn conclusions. All complaints appear to have been appropriately investigated.

**8. Complaint About State Program Administration (CASPA)**

During this evaluation period, the Region received one CASPA, regarding the Division of OSH Compliance. This CASPA is not considered a significant CASPA and is closed.

**9. Voluntary Compliance Program**

The State’s Voluntary Protection Partnership is similar to federal OSHA’s VPP. However, Kentucky's program limits participation at the star level. Additionally, participation in the program is limited to employers in the manufacturing sector. There are currently 20 sites in the State Plan’s VPP. The State Plan effectively manages the program with policies and procedures equivalent to OSHA’s VPP directive, CSP 03-01-003. One method used by KY OSH to effectively monitor the program is the implementation of 90-day follow-up visits after each verification visit.

KY OSH’s Construction Partnership Program (CPP) is the State Plan’s version of OSHA’s Strategic Partnership Program (OSPP). During FY 2023, there were 19 active CPP sites. In addition to the site-based construction partnership participants, KY OSH also has two training-based Partnerships with Eastern Kentucky University (EKU) and the State’s chapter of the National Electric Contractor’s Association (NECA). The State Plan conducts quarterly visits to its CPP sites. During FY 2023, a total of 89 visits were conducted, 709 hazards were identified, of which 408 were serious; all were abated, and over 14,000 workers were safeguarded. The State Plan’s Partnership Programs are closely and effectively monitored to ensure adherence with the KY OSH’s policies and procedures.

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

The Kentucky Consultation Program is administered by the Kentucky Education and Labor Cabinet, Department of Workplace Standards, Division of Occupational Safety and Health Education and Training, referred to as KYSAFE. The Region must conduct an onsite review, at least every two years to assess the effectiveness of the Program’s system for the delivery of consultative services, particularly in relation to mandated program elements not covered by the Mandated Activities Report for Consultation (MARC). KY OSH adopted OSHA’s Consultation Policies and Procedures Manual (CPPM), and therefore their program was reviewed for compliance with the CPPM. The Regional on-site review, included an overall review of program management operations, a review of 33 (18 safety files, 15 health files) randomly selected consultation case files, and a review of the FY 2023 operations.

**Program Management**

**Visits**

During FY 2023, the Program conducted 364 initial visits, 0 training and assistance visits, and 0 follow-up visits. Hazards identified and eliminated, as a result of consultative visits totaled 3,768. Of these 2,838 were serious hazards and 930 were other-than-serious hazards.

Mandated Activities Report for Consultation

(MARC) - FY 2023 Summary Reference/Standard

1. Percent of Initial Visits in

High-Hazard Establishments 100% Not less than 90%

 2(a). Percent of Initial Visits to

Smaller Businesses (Less than 250) 90.88% Not less than 90%

 2(b). Percent of Initial Visits to 100% Not less than 90%

 Smaller Businesses (Less than 500)

 3(a). Initial Visits Where Consultants

Conferred with Employees 100% 100%

4(a). Percent of Serious Hazards

Verified Corrected in a Timely Manner 100% 100%

 4(b). Percent of Serious Hazards Not

 Verified in a Timely Manner 0.0% 0%

4(c). Percent of Serious Hazards

Referred to Enforcement 0% 0%

5. Number of Uncorrected Serious Hazards with 0 0

Correction Date > 90 Days Past Due

**Hiring and Vacancies**

KY OSH’s 23(g) grant application articulates the following KYSAFE positions: one (1) director; one (1) assistant director; one (1) safety program manager; one (1) health program manager; one (1) partnership program manager; one (1) VPP administrator; one (1) CPP administrator; one (1) SHARP administrator; six (6) safety consultants; six (6) industrial hygienist consultants; five (5) partnership consultants, and six (6) support staff.

Based on a personnel snapshot taken September 30, 2023, there was one (1) assistant director, one (1) safety program manager, one (1) health program manager, five (5) safety consultants, and five (5) industrial hygienists. At the time of the program review, there was one (1) vacant safety position, and one (1) vacant industrial hygienist position. The positions were not necessarily vacant throughout the entire review period. The division maintained ample staffing throughout the review period with minimal vacancies.

There were no issues found with this category.

**Training**

The training goals are based on the needs of individual consultants. All consultants received technical training at the Occupational Safety and Health Administration Training Institute (OTI) and attended other available training sources such as the following: OTI-1500 Introduction to On-Site Consultation; OTI-2450 Safety and Health Management System; OTI-2540 Machine Guarding and Hazardous Energy Control; OTI-3010 Trenching and Excavation; OTI-1050 Introduction to Safety Standards for Safety Officers; OTI-5500 VPP Team Leader Training: OTI-3220 Applied Welding; OTI-1310 Investigative Interviewing Techniques; Fall Protection in Residential Construction; Confined Spaces in Construction; Altec Sentry Tree Care Aerial Device Training; and Recordkeeping Rule Seminar.

There were no issues found in this category.

**Accompanied Visits**

The Safety and Health Program Managers conducted one accompanied visit for each consultant. Accompanied visits include the following: evaluations of consultant’s performance during the opening conference; written program review; safety and health program assessment; walk-through and hazard recognition; sampling requirements; documentation and closing conference. The Safety and Health Program Managers use the “Accompanied Visit Worksheet” form to document their findings. These forms were reviewed, and all were highly favorable of the performance of consultants.

There were no issues found in this category.

**Lapse Time (time of request to delivery of service)**

For this category (request to delivery of service), there is not an established required period. During this review period, the time from the request until the delivery of services averaged 125 days.

Additionally, when KY OSH receives a request and is unable to provide consultation services at that time, following the Directive, CSP 02-00-04 (CPPM), Chapter 3.IV.A.4, a letter is issued to the employer explaining the reasons for the delay, and that they are still responsible for providing a safe and healthful workplace.

There were no issues found in this category.

**Lapse Time (time of closing conference to reporting of issuance)**

As per the Directive Number CSP 02-00-04 “Consultation Policies and Procedures Manual” (CPPM), Chapter 6. I. A requires that the written reports must be sent to the employer, as soon as possible, but not longer than 20 calendar days after the closing conference. During this review period, the time between the closing and the issuance of the reports to the employers averaged 10 calendar days.

There were no issues found with this category.

**Management Reports Utilized**

The Kentucky 23(g) Consultation Program has a Procedures Development Specialist, who uses the OSHA Express System to enter all forms and reports, as each phase of the consultation occurs. Consultants also draft written reports to employers, and administrative staff members send the reports to employers.

The Director runs weekly reports related to open abatements, open requests, and open reports. These reports are reviewed and shared with the safety and health managers and their respective consultants for tracking purposes.

The Director submitted quarterly progress reports as required, and discussed accomplishments in each of the Annual Performance Goals with the Regional Consultation Program Manager.

There were no issues found with this category.

**Promotion of Safety and Health Achievement Recognition Program (SHARP)**

The Program succeeded maintaining SHARP. At the end of the review period, KY SHARP had 14 participants. The Program identifies potential candidates through various means. The Safety and Health Consultants report back to the SHARP Administrator when they find a company that appears to be a viable candidate. The SHARP Administrator recruits companies for the SHARP program by contacting these identified companies, explaining the program, and promoting it.

There were no issues found with this category.

**Marketing**

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

* Bulk emails to past training participants;
* Bulk emails to Governor’s Safety and Health Conference and Exposition participants;
* Annual Governor’s Safety and Health Conference;
* Labor Cabinet Website;
* Face to Face Heat Stress Campaign;
* Partnership brochures; and
* KYSAFE mobile app.

There were no issues found with this category.

**Case File Review (CFR) Summary**

The case file review focused on the quality of the services provided by KYSAFE, including the following: safety and health assistance; identification and classification of hazards; recommendations for hazard correction and control; the relationship of the hazards found to the deficiencies in the safety and health management system; training and education; exemption program evaluations; and written reports to employers.

**File Selection**

A total of 33 files (18 safety files, 15 health files) were randomly selected for review by both federal monitors. The files represented surveys related to OSHA’s initiatives, OSHA’s Strategic Plan, and employers participating in SHARP.

**File Review**

**SAFETY:**

Hazards listed in the consultant’s reports were consistent with those expected for the industries they visited. The consultants did a good job capturing the hazards in photos, and no hazards were observed in the photos that were not addressed. Most case files were found to contain field notes of some sort. Most of the notes were written in shorthand, and in some cases, they were unable to be interpreted by the reviewer. There was little information about the actual hazard. Most notes appeared to be written as a reminder to the consultant, and there was little information captured that would support the basis for the hazard being addressed. However, detailed information was provided to the employer in the written report, which allowed the employer to properly identify and abate the hazards.

All files had diary sheets.  Most of the diary sheets were in the form of a print screen of the communication tab.  Some files reviewed that were limited service were found not to have the evaluation of the employer’s safety and health program using the OSHA Form 33.  The program management was advised of the information contained in the CPPM in reference to completing OSHA Form 33’s (CPPM – Chapter 4, II, B, 3) and encouraged to use this form on every consultation visit.

The OSHA Form 33’s that were completed, were found to have comments for all evaluations resulting in a 2 or less. Although it is understood that the consultants provide information and assistance to the employers verbally onsite, the comments documented on the Form 33 were generic and failed to give specific information to the employer, when recommendations were made to implement a specific program or policy. The comments should be more specific as to what programs, policies, or procedures need to be improved or implemented.

OSHA 300 logs and programs were reviewed as indicated by DART/TRC rate calculations and transcription into the file the information contained on the OSHA 300A, as well as the completion of OSHA Form 33. However, most files did not contain copies of the OSHA 300 logs or programs. The program management was advised of the information contained in the CPPM (Appendix H, Section V.A.5), in reference to collecting OSHA 300 logs.

Files were well maintained and included reports to the employer and abatement information. Most of the files listed the “Source of Request” as “Other,” and there was no indication in the file, as to how the employer came to make the request. It is suggested that the “Coverage Text” box be used to better explain the source, in cases where the source of request is “other.”

Although reports to the employers were generic and in the form of a letter, they were thorough and included appendices with specific information, such as hazards found, program recommendations, a brief description of the workplace and working conditions, and contact information for the consultant. Interim measures were covered in the closing conference and during the walk-around. Time periods for abatement of hazards were appropriate. Tracking of abatement was conducted, and documentation of abatement was contained in the files. Adequate feedback, such as abatement reports and emails were included in the case files. A couple of files reviewed were granted abatement extensions. All abatement extension requests were in writing, and described the interim abatement that would be used to keep the employees safe, while correcting the hazard. The program has shown improvement in the handling of hazard abatement from previous years.

Industries visited included landscaping, retail, manufacturing, public administration, building material sales and delivery.

During this review period, the program identified a variety of hazards related to lockout/tagout; electrical; fall protection; permit required confined spaces; PPE written assessment; compressed air; compressed gas; means of egress and exit signs; fire protection; powered industrial trucks; machine guarding; and housekeeping. In the cases of required programs, companies needed to either improve the current program or develop one.

**HEALTH:**

The health portion of the Kentucky Consultation program review, included a review of fifteen health consultation files. The reviewed files demonstrated that the health consultants exhibited an appropriate level of hazard recognition.

Files and the corresponding data were properly managed. The electronic files were easily accessible and presented in a manner that was easy to review.

There was consistent use of the communication log (diary sheet) in all files reviewed. The log included details on the type of communication that took place (phone, email, etc.), which was helpful. Several files included very detailed information about the visits and phone calls on the log, while others were more abbreviated.

A review of industrial hygiene sampling, equipment used, and sampling results showed that proper techniques were utilized. Equipment is calibrated properly before and after use, and the calibration is documented, as required on the appropriate sampling forms. Consultants visited numerous industries and sampling reflected proper hazard identification, through the variety of sampling conducted, including but not limited to, noise, formaldehyde, and respirable dust. All sampling was documented on the appropriate sampling forms and included in each file. Sampling strategies were also documented in the field notes of some files, which added a better description of the potentially hazardous conditions. Sampling was full-shift sampling and spot checks were annotated. Overall, the health program has demonstrated appropriate sampling techniques and reporting of those hazards to the employers.

The number of employees interviewed for each consultation visit was appropriate based on the number of employees in the company. This information was documented, as required on the visit form of each file.

An OSHA Form 33 was not found in all files requiring a review of the employer’s Safety and Health program. One of the fifteen files reviewed was a limited scope visit and was missing the OSHA Form 33. In the other files, the employer was provided very detailed comments that correlated those elements to the hazards found during the visit.

Abatement extensions were requested in writing, with the employer documenting the interim protections that were in place. Most of the files included the documentation in the notes, Written Report to Employer (WRE), and photographs that showed the abated hazards. The program is identifying hazards and getting appropriate abatement from the employers; thereby effectively removing employees from hazardous conditions.

The written reports used by consultants provided detailed information. Information including, but not limited to, the identity of the consultants who performed the visit, TCRC/DART rate calculations that compared the facility’s data to the industry average, sampling data, and appropriate actions the employer needed to take were all documented in each written report. Of the 15 files reviewed, all written reports to the employers were processed timely, within 20 days. Overall, the reports sent were informative and useful to the employer.

**FY 2023-OB-2:** 18 out of 33 consultation files reviewed did not have copies of the OSHA 300 logs.

**Federal Monitoring Plan:** The OSHA Area Office will closely monitor and review a sample of consultation files to verify the OSHA 300 logs are included in the files.

| **FY 2023-#** | **Finding** | **Recommendation** | **FY 20XX-# or** **FY 20XX-OB-#** |
| --- | --- | --- | --- |
| FY 2023-01 | In FY 2023, KY OSH had a significantly high average citation issuance lapse time for safety and health inspections, 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 within the FRL range. | FY 2021-03, FY 2020-03 and FY 2019-03 |
| FY 2023-02 | The Kentucky State Plan has failed to adopt OSHA’s initial FY 2016 maximum and minimum penalty increase and subsequent annual penalty amount increases. | KY OSHshould 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’s penalty levels. | FY 2022-02 and FY 2021-04 |

| **Observation #****FY 2023-OB-#** | **Observation#****FY 202XX-OB-# *or* FY 20XX-#** | **Observation** | **Federal Monitoring Plan** | **Current Status** |
| --- | --- | --- | --- | --- |
|  | FY 2022-OB-1 and 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. | The OSHA Area Office will closely monitor and review the State Internal Evaluation Program to ensure KY OSH is performing audits of their internal operation, as required by the SPPM. | Closed |
| FY 2023-OB-1 | FY 2022-OB-2, FY 2021-OB-02, FY 2020-OB-1 and FY 2019-OB-2 | In FY 2023, the total in-compliance rate (SAMM 9) for all safety inspections was 46.65% and 71.68% for health inspections. The percentages for safety and health were well above the FRLs. | 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 |
| FY 2023-OB-2 |  | 18 out of 33 consultation files reviewed did not have copies of the OSHA 300 logs. | The OSHA Area Office will closely monitor and review a sample of consultation files to verify the OSHA 300 logs are included in the files. | New |

| **FY 2021-#** | **Finding** | **Recommendation** | **State Plan Corrective Action** | **Completion Date (if Applicable)** | **Current Status** **(and Date if Item is** **Not Completed)** |
| --- | --- | --- | --- | --- | --- |
| 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. | Since the FY 2021 FAME, Kentucky worked with OSHA and successfully negotiated a benchmark for programmed inspections. Kentucky also, as OSHA is aware, implemented a strategy to ensure a more representative number of programmed (planned) safety inspections are conducted. In FY 2023, KY OSH conducted 14 programmed planned health inspections.  | 1/11/2024 | Closed |
| 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. | Since the FY 2021 FAME, Kentucky worked with OSHA and successfully negotiated a benchmark for programmed inspections. Kentucky also, as OSHA is aware, implemented a strategy to ensure a more representative number of programmed (planned) safety inspections are conducted. In FY 2023, KY OSH conducted 47 programmed planned safety inspections. | 1/11/2024 | Closed |
| 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. | Kentucky received 54%+ more complaints in FY 2022 than FY 2021, conducted 28%+ more complaint inspections in FY 2022 than in FY 2021, and conducted 15%+ more total inspections in FY 2022 than FY 2021. It is important to note that Kentucky’s increased activity in FY 2022 was accomplished with less enforcement staff than in FY 2021. Like OSHA and other State Plans, enforcement staff retention and recruitment are a significant challenge. The increased workload carried by decreased enforcement staff had a direct, negative impact on lapse time. That impact will most likely continue in FY 2023. Nonetheless, improved lapse time is one (1) of Kentucky’s top goals. Lapse times remain high and well above the FRL.  | Not Applicable | Open |
| 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. | 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. | Not Applicable | Open |
| 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. | Kentucky improved acquiring documentation as well as IMIS data entry accuracy. All required documentation of the investigation is complete and included in the file. | 1/11/2024 | Closed |

| SAMM Number | SAMM Name | State Plan Data | Further Review Level | Notes |
| --- | --- | --- | --- | --- |
| 1a | Average number of work days to initiate complaint inspections (state formula) | 65.72 | 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 work days to initiate complaint inspections (federal formula) | 44.86 | N/A | This measure is for informational purposes only and is not a mandated measure. |
| 2a | Average number of work days to initiate complaint investigations (state formula) | 37.06 | TBD | The further review level is negotiated by OSHA and the State Plan. |
| 2b | Average number of work days to initiate complaint investigations (federal formula) | 36.02 | 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) | 99.08% | 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) | 1.75 | +/- 20% of 1.75 | The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from 1.40 to 2.10 for SWRU.  |
| 5b | Average number of violations per inspection with violations by violation type (other) | 0.89 | +/- 20% of 0.89 | The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from 0.71 to 1.07 for OTS. |
| 6 | Percent of total inspections in state and local government workplaces | 5.55% | +/- 5% of8.33% | 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 7.92% to 8.75%. |
| 7a | Planned v. actual inspections (safety) | 630 | +/- 5% of 500 | 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 475.00 to 525 for safety. |
| 7b | Planned v. actual inspections (health) | 217 | +/- 5% of 160 | 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 152 to 168 for health. |
| 8 | Average current serious penalty in private sector - total (1 to greater than 250 workers) | $3,843.63 | +/- 25% of $3,625.21 | The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from $2,718.91 to $4,531.51. |
| 8a | Average current serious penalty in private sector (1-25 workers) | $2,856.00 | +/- 25% of $2,348.03 | The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from $1,761.02 to $2,935.04. |
| 8b | Average current serious penalty in private sector (26-100 workers**)** | $3,249.46 | +/- 25% of $4,167.28 | The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from $3,125.46 to $5,209.10. |
| 8c | Average current serious penalty in private sector(101-250 workers) | $5,014.04 | +/- 25% of $6,052.04 | The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from $4,539.03 to $7,565.05. |
| 8d | Average current serious penalty in private sector(greater than 250 workers) | $5,307.61 | +/- 25% of $7,331.41 | The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from $5,498.56 to $9,164.26. |
| 9a | Percent in compliance (safety) | 46.65% | +/- 20% of31.73% | The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from 25.38% to 38.08% for safety. |
| 9b | Percent in compliance (health) | 71.68% | +/- 20% of43.82% | The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from 35.06% to 52.58% for health. |
| 10 | Percent of work-related fatalities responded to in one workday | 93.94% | 100% | The further review level is fixed for all State Plans. |
| 11a | Average lapse time (safety) | 83.36 | +/- 20% of 55.23 | The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from 44.18 to 66.28 for safety. |
| 11b | Average lapse time (health) | 94.02 | +/- 20% of 69.72 | The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from 55.78 to 83.66 for health. |
| 12 | Percent penalty retained | 82.75% | +/- 15% of71.84% | The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from 61.06% to 82.62%. |
| 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 2023 due to the transition of 11(c) data from IMIS to OIS. |
| 15 | Percent of 11(c) complaints that are meritorious | N/A\* | N/A\* | This measure is not being reported for FY 2023 due to the transition of 11(c) data from IMIS to OIS.  |
| 16 | Average number of calendar days to complete an 11(c) investigation | N/A\* | N/A\* | This measure is not being reported for FY 2023 due to the transition of 11(c) data from IMIS to OIS. |
| 17 | Percent of enforcement presence | 1.08% | +/- 25% of0.93% | The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from 0.70% to 1.17%. |

NOTE: The national averages in this report are three-year rolling averages. Unless otherwise noted, the data contained in this Appendix D is pulled from the State Activity Mandated Measures (SAMM) Report in OIS and the State Plan WebIMIS report run on November 14, 2023, as part of OSHA’s official end-of-year data run.