

**FY 2015 Comprehensive  
Federal Annual Monitoring and Evaluation (FAME) Report**

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



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## **I. Executive Summary**

### **A. State Plan Activities, Trends, and Progress**

The purpose of Federal Annual Monitoring Evaluation (FAME) Report is to assess the State Plan's progress toward achieving their performance goals established in their Fiscal Year (FY) 2015 Strategic Management Plan and to review the effectiveness of programmatic areas related to enforcement activities, including a summary of an onsite evaluation. This report assesses the current performance of the Kentucky Labor Cabinet, Department of Workplace Standards, Occupational Safety and Health (KY OSH) 23(g) program.

A nine-person OSHA team was assembled to conduct the onsite evaluation in Frankfort, Kentucky, during the timeframe of February 1st through February 5, 2016. The OSHA team's evaluation consisted of enforcement and consultation case file reviews, a review of KY OSH's performance statistics, and staff interviews. A comparison of the FY 2013 case file review and the FY 2015 case file review showed that the State Plan is maintaining a high level of quality in the documentation of fatality investigation files and has shown improvement in the quality of the documentation contained in the complaint and programmed files.

The FY 2014 Follow-up FAME Report identified a total of eight findings, including four that were closed during FY 2015. The remaining four findings that carried over to the FY 2015 FAME Report were related to residential construction regulation, lapse times, health inspections in high-hazard industries, and the internal evaluation program. The FY 2015 Comprehensive FAME yielded a total of 11 findings and 15 observations.

### **B. State Plan Introduction**

#### *Historical 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 law in the Commonwealth of Kentucky is vested in the Labor Cabinet and assigned to the Department of Workplace Standards, headed by a Commissioner appointed by the Secretary with the approval of the governor. The KY OSH program covers all private and public sector workers in the state, with the exception of railroad workers, federal workers, maritime workers (longshoring, ship building/ship breaking, 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. The state and local government employers are covered under the State Plan and are treated the same as private sector employers.

### *Current Background:*

The General Assembly enacted legislation giving 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 places of work. KY OSH's 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 Education and Training. The Division of OSH Compliance is responsible for the enforcement of KY OSH's standards. The Division of Education and Training assists employers and workers by promoting voluntary compliance with the KY OSH standards. The Division of Education and Training is also responsible for overseeing the Partnership Programs, as well as conducting the annual survey of occupational injuries and illnesses, the census of fatal occupational injuries, and the OSHA data collection. The Office of the Federal-State Coordinator oversees the Office of Standards Interpretation and Development. Safety and health standards specialists from this office serve as support staff to the 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 other government agencies, both at the state and federal level, including the U.S. Department of Labor, Occupational Safety and Health Administration, Bureau of Labor Statistics (BLS), and other state OSHA programs.

KY OSH's primary objective is to improve occupational safety and health in workplaces throughout the state. The total population of private sector and state and local government workers covered by the Kentucky State Plan is approximately 1,489,264 and 260,393 workers, respectively. This includes approximately 4,793 state and local government employers. Program services are administered through a singular office in Frankfort.

Employee protection from worker retaliation related to occupational safety and health [KRS 338.121] is administered by KY OSH through the Frankfort office. There is one investigator who reports to the director of OSH Compliance. Worker retaliation cases found to be meritorious are prosecuted by the Office of General Counsel in the Kentucky Labor Cabinet.

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

### **C. Data and Methodology**

This report was prepared under the direction of Kurt A. Petermeyer, Regional Administrator, Region IV, Atlanta, Georgia, and covers the period from October 1, 2014 through September

30, 2015. During the period covered by this report, the Kentucky State Plan was administered by the Kentucky Labor Cabinet, Department of Workplace Standards, Occupational Safety and Health Program under the direction of Anthony Russell, Commissioner. This is OSHA's report on the operation and performance of the KY OSH Program. It was compiled using information gained from KY OSH's State Office Annual Report (SOAR) for FY 2015, OSHA Information System (OIS) reports, OSHA Express reports, as well as the State Activity Mandated Measures (SAMM) Report for FY 2015.

During this evaluation, a total of 124 inspection case files, comprised of both safety and health, were randomly selected for review. Twenty fatality inspection files were reviewed, including ten that were reviewed for next-of-kin communications only. A total of 55 complaint investigation (non-formal) and inspection files were reviewed. The others were a random selection of files selected from the following categories: programmed general industry safety; programmed general industry health; programmed construction safety; programmed construction health; referrals; and state and local government files. This was a small percentage of the 885 inspections conducted in FY 2015, but it is believed to provide an accurate picture of the enforcement program throughout the state when coupled with interviews and a review of procedures and data.

Data associated with the case files reviewed was representative of data for all inspections. Data referenced in this report was obtained from the SAMM Report, FY 2015 23(g) grant, OSHA Information System (OIS) reports, discussions with State Plan staff, and the onsite review conducted in February 2015. During the onsite evaluation, 25 State Plan staff workers were interviewed, which included five safety and health supervisors, as well as 10 compliance officers and consultants.

#### **D. Findings and Recommendations**

The FY 2014 Follow-up FAME Report contained a total of eight findings and recommendations. In FY 2015, the Kentucky State Plan took appropriate action to address four of the previously identified findings. The FY 2015 FAME yielded a total of 11 findings and 15 observations. Of the 11 findings, seven are new. All but one of the 15 observations are new.

## **II. Major New Issues**

Kentucky's gubernatorial election was conducted in November 2015. Matt Bevin, the Republican candidate, won the election and is now governor. Therefore, the FY 2015 FAME was conducted during the KY OSH program's transition in leadership. One of the first changes was the appointment of Derrick K. Ramsey as Secretary of the Labor Cabinet by Kentucky Governor Bevin. Additionally, at the time of this evaluation, the Commissioner of the Labor Cabinet's Division of Workplace Standards position remained vacant; however, Mr. Ervin Dimney was appointed Commissioner on March 7, 2016.

During this period, members of the state legislature offered House Bill (HB) 277, which

limited funding for the Labor Cabinet, and HB 256. HB 256 addressed the misclassification of workers in the construction industry; however, it also included a rider to defund the Labor Cabinet. Neither House bill was approved by the full legislature.

The FY 2015 SOAR documented that the State Plan did not meet its activity goal for compliance inspections in FY 2015. Analysis determined that KY OSH conducted 855 inspections in 2015, compared to 998 inspections in FY 2014, which was a decrease of 143 inspections. There were a number of underlying reasons that the State Plan did not meet the inspection goal. These factors include:

- The State Plan lost experienced and productive compliance safety and health officers (CSHOs) as a result of KY OSH salaries that were not competitive with other employers.
- Less experienced CSHOs and new hires require more time to complete inspections, especially more complicated investigations.

The Division of OSH Compliance lost 30 CSHOs in the last five years; nearly all departed for positions that provided a significant salary increase. This staff turnover has adversely impacted the number of inspections conducted by the program, inspection quality, as well as staff morale.

The State Plan has incentives to try to address the retention issue. First, KY OSH encourages and aids in professional certification. The Divisions of OSH Compliance and Education and Training continue to encourage and promote professional certification by maintaining two safety position descriptions, increasing salaries for the level of certification, paying for certification preparatory courses, and paying for the certification examination after successful completion. In 2014, two workers were promoted or reclassified as a result of successfully attaining professional certification. Secondly, KY OSH encourages and aids workers in the attainment of advanced degrees. In FY 2014, the Division of OSH Compliance funded graduate degrees at Eastern Kentucky University for two safety compliance officers. Both graduated with Master of Science in Safety, Security, and Emergency Management degrees. In addition, the Division of Education and Training has several workers working toward advanced degrees. Since 2009, the Division of OSH Compliance has supported nine compliance officers in attaining Master of Science degrees.

Although this is not a major new issue but a continuing issue soon to be resolved, Kentucky's regulation addressing residential fall protection in construction remains a concern. Kentucky's state-specific regulation, 803 KAR 2:412, specifically addresses residential construction fall protection. The regulation, which became effective on January 6, 2006, defines residential construction in Kentucky as construction work on a stand-alone single family dwelling, duplex, three-plex, or four-plex structure. Workers who are engaged in residential construction activities working 10 feet or more above a lower level; who are exposed to unprotected sides and edges, leading edges, hoist areas, form work, and reinforcing steel; or who are engaged in roofing work on roof slopes three in 12 or less must be protected by guardrail systems, safety net systems, personal fall arrest systems, or a specific alternative measure established in the regulation.

The *Compliance Guidance for Residential Construction* (STD 03-11-002) cancelled OSHA's interim enforcement policy (STD 03-00-001) on fall protection for certain residential construction activities and requires employers engaged in residential construction to comply with 29 CFR 1926.501(b)(13). This new guidance informed State Plans that, in accordance with the OSH Act, they must each have a compliance directive on fall protection in residential construction that, in combination with applicable State Plan standards, results in an enforcement program that is at least as effective as OSHA's program.

The following areas where the Kentucky State Plan's standards and enforcement policies for fall protection differ significantly from OSHA's policies and standards, specifically in the context of residential construction, were identified:

- KY OSH establishes a 10-foot trigger height for fall protection in certain limited, specific activities in residential construction. OSHA has a general 6-foot trigger height for fall protection in construction, including in residential construction. See 29 CFR 1926.501(b).
- KY OSH allows the use of slide guards and other means (e.g., temporary platform, warning line, safety monitor system) as acceptable fall protection methods while performing residential construction work. OSHA does not consider these alternative means to be conventional fall protection. See 29 CFR 1926.501(b)(13).
- KY OSH provides a Sample Fall Protection Plan with provisions that differ from the OSHA Sample Fall Protection Plan. See Appendix E to Subpart M of Part 1926 - Sample Fall Protection Plan.
- KY OSH's definition of residential construction differs from OSHA's definition. See OSHA STD 03-11-002, *Compliance Guidance for Residential Construction*.

On December 10, 2014, the Regional Administrator and OSHA Regional staff members met with representatives of the KY OSH program and discussed these key issues. As a result, KY OSH held meetings with and presented OSHA's concerns to the regulated community in an attempt to resolve them through possible modifications to 803 KAR 2:412 – Kentucky's residential construction fall protection regulation. At the time of the preparation of this report (March 1, 2016), all issues have been resolved. This brings the Kentucky Administrative Regulation into line with the federal requirement. It is noted that KY OSH has worked diligently to change their fall protection standard for residential construction, the proposed changes were agreed upon, and a letter from the Regional Administrator was sent to the state during the writing of this report so the State Plan can proceed with the changes. The changes should be approved during the Standards Board meeting in May.

**Finding FY 2015-01: (formerly FY 2014-01):** KY OSH has not completed the revision to 803 KAR 2:412 - Residential Construction Fall Protection.

**Recommendation:** KY OSH should take appropriate action to revise 803 KAR 2:412 -

Residential Construction Fall Protection to ensure that it is in line with the federal regulation.

### III. Assessment of State Plan Performance

As previously stated, a total of 124 inspection case files were reviewed, which included 55 complaint investigations (non-formal) and inspection files (formal) and 20 fatality investigation files. The others were a random selection of files from the following categories: programmed general industry safety; programmed general industry health; and programmed construction.

Generally, KY OSH continues to maintain sufficient documentation, based on the case files reviewed. With few exceptions, the case files that were reviewed were documented with detailed narratives explaining the inspection process, the employer’s business processes, findings, and any other factors or issues. The violations contained all of the required information and supporting documentation for a prima fascia violation, including all of the required forms, photographs, diagrams, and other technical documentation. Overall, inspections were coded with the appropriate emphasis and strategic codes. The files contained case file diary sheets to document significant actions associated with each particular case, such as calls or correspondence between KY OSH and the employer, next-of-kin correspondence, updates in the case, and informal conference notes; however, the information recorded was inconsistent and varied by compliance officers, supervisors, and program managers. When files are closed, they are scanned into the State Plan’s imaging system. The complete file is scanned, with the exception of the photographs which are saved and maintained in an inspection photograph database.

A comparison of OSHA Express and the Integrated Management Information System (IMIS) data for FY 2009 through FY 2015 indicated that there is a significant decline in the number of inspections that were conducted, as the table below illustrates. This is a difference of 349 inspections from FY 2009 to FY 2015 and has accounted for an overall reduction of 28.2%. The 2015 total of 885 inspections met the goal (projected inspection numbers per the FY 2015 grant). KY OSH identified 1,332 violations, resulting in a penalty total of \$3,156,220. This is discussed in further detail in Section II of the report.

| Fiscal Year | Total Inspection | (#) Difference | % Difference |
|-------------|------------------|----------------|--------------|
| 2015        | 885              | 113            | 11.3%        |
| 2014        | 998              | +99            | +11%         |
| 2013        | 899              | 12             | 1.3%         |
| 2012        | 911              | 143            | 13.6%        |
| 2011        | 1,054            | 10             | .94%         |
| 2010        | 1,064            | 169            | 13.7%        |
| 2009        | 1,233            | 0              | 0            |

KY OSH has made progress toward updating data and closing aged files; however, there are still a significant number of older open cases in the OSHA Express system. There are 615



open cases, including 215 open cases from FY 2015, 73 of which are active cases that are pending citations. There are 98 cases that have past due abatement of more than two weeks; 186 cases in contest; and 99 that are in revenue for penalty collection. No issues were identified with the current open cases.

The Division of Education and Training continues to work on delivering training courses and developing new training to address new and emerging hazards. Forty training sessions were presented at five Population Center training seminars throughout the commonwealth. The training addressed subjects relevant to the targeted North American Industry Classification System (NAICS) codes, such as injury and illness recordkeeping, fall protection, confined space, basic electrical safety, welding safety, bloodborne pathogens, personal protective equipment, spray finishing, lockout-tagout, electrical safe work practices, back care and ergonomics, and powered industrial trucks. Over 950 participants attended the training courses. In an effort to supplement resources in addressing high-hazard industry issues, the Division of Education and Training continued to coordinate outreach with professional and industry associations. The Division of Education and Training maintains a workplace safety and health training website. Content is created by division staff and covers a wide variety of topics. One example was the creation and successful publication of the “Globally Harmonized System of Classification and Labeling of Chemicals” module and webinar, as well as the update of four hazard communication modules. The Division of Education and Training provided employers and workers a cost-free online e-learning safety and health program management training module on the Labor Cabinet’s e-learning website, [www.laborcabinetetrain.ky.gov](http://www.laborcabinetetrain.ky.gov). During FY 2015, 256 individuals viewed the module. Toolbox talks in the form of video courses are incorporated into the Labor Cabinet’s e-learning modules. The Division of Education and Training offered a cost-free, live webinar that addressed OSHA’s April 11, 2014 final rule that created and revised general and construction industry standards related to electric power generation, transmission, and distribution, as well as electrical protective equipment. The webinar was recorded and is available at [www.laborcabinetetrain.ky.gov](http://www.laborcabinetetrain.ky.gov). It has been viewed 92 times to date. Eight new webinars were conducted, recorded, and published to the website for instant viewing. They are Safety Hazard Recognition, Proposed Rule for Exposure to Respirable Crystalline Silica, Construction Hazard Recognition, Combustible Dust, Kentucky OSH Compliance Inspections, Basic Woodworking Safety, Overview of Changes to 1910.269, and Overview of Welding Safety.

The Division of Education and Training distributes (free of charge) a compact disc that contains all state occupational safety and health regulations, federal occupational safety and health standards, KY OSH safety and health manuals, posters, conference information, and other resource links. The compact disc offers employers a mechanism to register and receive notices regarding new or amended regulations.

The Kentucky Labor Cabinet’s OSH Program participated in and fully supported a comprehensive and very successful 2015 Fall Prevention Campaign that concentrated on raising awareness of fall hazards, collaboration with partners, training, and a two week long Stand-Down, in conjunction with OSHA’s National Stand-Down. KY OSH’s 2015 campaign built off the efforts of its successful 2013 and 2014 campaigns. The 2015 effort

began five weeks prior to the National Stand-Down with the dissemination of weekly announcements, in English and Spanish, to Kentucky workers and employers, urging their participation in the Stand-Down. KY OSH also developed and printed Fall Prevention Campaign postcards that were mailed to approximately 2,000 employers across the state, encouraging participation in the Stand-Down. Over 1,200 workers participated in the campaign directly with the Labor Cabinet through the involvement of 23 employers. OSHA reports that over 4,100 Kentucky workers participated in the National Stand-Down through notification on OSHA's National Safety Stand-Down webpage.

KY OSH continued the outreach in FY 2015. The Division of Education and Training participated in the Heat Awareness Campaign and conducted concentrated statewide efforts to educate the working public on the hazards of working in the summer heat. The efforts targeted construction, as well as general industry. The outreach was conducted through distance learning, as well as direct, face-to-face jobsite contacts. The Labor Cabinet's e-learning website hosts the interactive Heat Stress Awareness for Construction and General Industry Module and the Occupational Heat Exposure Webinar. The module and webinar were viewed over 1,120 times.

**Finding FY 2015-02:** Data indicated that there has been a significant decline in the number of inspections conducted by KY OSH, a difference of 349 from FY 2009 to FY 2015, accounting for an overall reduction of 28.2%.

**Recommendation:** KY OSH should identify the cause of the significant and gradual decline in the number of compliance inspections and develop and implement a strategy to increase and maintain the number of inspections that are conducted.

## A. STATE PLAN ADMINISTRATION

During the onsite monitoring visit, interviews were conducted with the KY OSH Director of OSH Compliance, the safety and health program managers, Assistant Director of Education and Training, OSH Federal-State Coordinator, and several staff members regarding the administration and management of KY OSH. Issues addressed during these interviews included enforcement, consultation and cooperative programs, State Plan funding, the compliance staffing benchmarks, worker training, as well as other fiscal concerns. These interviews did not reveal any areas needing further evaluation at this time.

### 1) Training

Kentucky continues to adhere to guidance similar to the federal directive, TED 01-00-018, "Training Program for OSHA Compliance Personnel." In KY OSH, newly hired compliance and consultation personnel are registered in Learning Link for participation in the initial training courses conducted at the OSHA Training Institute (OTI). Additional courses are scheduled as dictated in the directive. Basic training is completed when the eight courses outlined in the directive are completed.

Since the last OSHA onsite audit KY OSHentucky has assigned a staff member to a training coordinator position. The training coordinator works cooperatively with the safety and health compliance managers to ensure that all new hires are effectively trained. The State Plan has also developed and implemented an effective Windows-based system to track all worker training. However, managers still remain responsible to scheduling workers for OTI courses.

Additionally, the KY OSH program remains supportive of the career development and advancement of compliance and consultation personnel. The State Plan pays for workers to take the certification preparation course and reimburses workers that successfully complete the certification exam. Workers that achieve professional certifications also receive a salary increase, ranging from 10% to 15%. In FY 2015, a total of 22 workers had certifications. These certifications include the following: Associate Safety Professional; Certified Safety Professional; Certified Industrial Hygienist; Occupational Health Safety Technologist; and Construction Certified Health Safety Technician. The State Plan also rewards workers that obtain advanced degrees. The State Plan promotes the Certified Fundamentals Manager degree, as well as the Certified Public Manager (CPM) degree, which is offered by Kentucky State University in Frankfort, Kentucky. During this review period, there were four workers with the CPM certification. Workers that successfully complete the two-year CPM program receive a 5% pay incentive.

## **2) Funding**

The FY 2009 - 2011 23(g) Grant Numbers SP-17739-09-55-F21, SP-19415-10-55-F21, and SP-20970-11-55-F21 were respectively awarded to Kentucky Labor Cabinet on October 1, 2009, 2010, and 2011.

The last financial monitoring visit by OSHA was conducted on September 29, 2010 and covered the FY 2008 23(g) grant for the period ending September 30, 2008. No adverse findings were reported.

### FY 2009 23(g) Grant SP-17739-09-55-F21:

During FY 2009, total authorized funds equaled \$8,738,425 (authorized federal funds equaled \$3,508,600, and the total recipient share equaled \$5,633,965 (\$3,508,600 required share and \$2,125,365 above required share)). The Financial Closeout Status Report for the quarter ending September 30, 2009 and the Health and Human Services Payment Management System (HHSPMS) recorded total federal outlays of \$3,508,600. Our review of the 23(g) grant revealed the grantee expended 100% of authorized federal funds and met and exceeded the minimum requirement threshold for the recipient share. There were no issues to report.

### FY 2010 23(g) Grant SP-19415-10-55-F21:

During FY 2010, the total authorized award equaled \$9,331,454 (authorized federal funds equaled \$3,545,100, and total recipient share equaled \$5,786,354 (\$3,545,100 required share and \$2,241,254 above required share)). The Federal Financial Report (Closeout) for the quarter ending September 30, 2010 and the HHSPMS recorded total federal outlays of

\$3,545,100. Our review of the 23(g) grant revealed the grantee expended 100% of authorized federal funds and met and exceeded the minimum requirement threshold for the recipient share. There were no issues to report.

FY 2011 23(g) Grant SP-20970-11-55-F21:

During FY 2011, the total authorized award equaled \$7,109,800 (federal funds equaled \$3,554,900, and total recipient share required equaled \$3,554,900). The Federal Financial Report (Closeout) for the quarter ending September 30, 2011 and the HHSPMS recorded total federal outlays of \$3,554,900.

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

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

### **3) Staffing**

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

Based on interviews, the onboard February 1, 2016, staffing for the KY OSH program was 23.3 safety officers and 13 industrial hygienists, with two health and four safety vacancies. During this period, there were a total of 44 consultation staff members, including 8.3 safety, 10.3 health, and 7.3 Partnership consultant positions. There are a total of four vacancies in the State Plan’s Consultative Division. Interviews with members of the program’s management staff revealed that KY OSH is committed to maintaining its staffing at the established benchmark level.

### **4) Information Management**

In FY 2013, KY OSH contracted with Assured Consulting Services, Inc. to develop an NCR replacement system. KY OSH began utilizing OSHA Express for consultation and compliance during FY 2013. In FY 2015, KY OSH deployed a customized interface that provides the State Plan's compliance and consultation data to OSHA's OIS system. KY OSH is currently transmitting data to OSHA. Additionally, the State Plan continues to maintain the NCR/IMIS system, as required by the OSHA National Office. According to the SOAR, the State Plan's new system offers 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. KY OSH uses various OSHA Express reports to manage to track compliance and consultation activity; however, these reports could be used more effectively by compliance supervisors and managers to track opportunities addressed throughout this report. The frequency of report runs can vary from weekly to quarterly as conditions dictate. By tracking activity, a potential outlier could be detected before it becomes a real issue.

### **5) State Internal Evaluation Program**

As previously mentioned, the KY OSH Division of Education and Training has developed and implemented an Internal Quality Assurance Program, which currently conducts comprehensive audits of the Division of Education and Training. The Internal Quality Assurance Program was modeled after OSHA's auditing program, with minor changes due to state-specific issues. During the FY 2011 evaluation, the State Plan stated that they were working to expand coverage of the program to the Division of OSH Compliance and developing formal written procedures for the program. Additionally, KY OSH provided that the first audit was projected for mid-FY 2012. The development and implementation of an internal self-evaluation program was a finding and recommendation that remained open in the FY 2011, 2013, and 2014 FAME Reports. KY OSH has worked on a program which has not been completed or implemented. It includes internal fiscal checks and balances, worker on-the-job evaluations, review of worker work products, and a host of other internal policies and procedures; however, these are normal daily job functions of managers and supervisors and do not meet the intent of an internal self-evaluation program. At the time of this review, the Division of OSH Compliance had not developed and implemented an internal self-evaluation program. KY OSH should complete and implement an internal self-evaluation program during FY 2016.

**Finding FY 2015-03: (formerly FY 2014-08, FY 2013-09, FY 2010-08, and FY 2009-20):** KY OSH's Division of OSH Compliance has not implemented an internal self-evaluation program as required by the State Plan Policies and Procedures Manual.

**Recommendation:** KY OSH should implement a process to ensure that an internal self-evaluation program possessing integrity and independence is completed and implemented. KY OSH should also ensure that periodic evaluations of all areas of the program are evaluated and that documentation of the evaluations is made available to OSHA.

## **B. ENFORCEMENT**

### **1) Complaints**

KY OSH's procedures for handling complaints alleging unsafe or unhealthful working conditions are very similar to those of OSHA. These procedures are covered in the KY OSH FOM, Chapter IX (10/01/2001) – Complaint and Referral Policies and Procedures. In accordance with state law [803 KAR 2:090 Section 1(2)], all valid formal complaints are scheduled for workplace inspections. Inspection data indicates that KY OSH received 615 complaints, including 180 formal complaints resulting in 170 complaint inspections, and 437 non-formal complaints in FY 2015. According to the SAMM Report, KY OSH responds to complaint inspections in a timely manner. Complaint inspections were initiated within an average of 9.4 (9.5 – state data) days. No complaints were handled as investigations/complaint by letter. A review of the OSHA Express reports revealed that during FY 2015, approximately 42.7% of their complaint inspections were in-compliance.

KY OSH handles the intake of complaints with an established intake procedure with complaints transferred to an available safety or health compliance program manager or supervisor, depending on the nature of the complaint. The State Plan places emphasis on customer service and ensuring that each complaint is given attention consistent with the complaint directive and the classification and severity/gravity of the alleged hazards. Current workers are always provided the opportunity to formalize their complaint. As a result, KY OSH inspects a relatively high percentage of complaints that have been formalized with the signature of a current worker. The source of the complaint, with those from a current worker having priority, and the severity of the alleged hazards are primary considerations for program managers when they decide the appropriate action. In accordance with state law [803 KAR 2:090 Section 1(2)], inspections are always conducted for formalized complaints regardless of the nature of the alleged hazard. This has resulted in a significant number of in-compliance inspections and inspections with only non-serious violations. The program managers no longer utilize the complaint by letter (phone and fax process) for non-formal complaints. Letters are sent, and the complaint form is sent to current workers for signature to formalize the complaint and informing them that the complaint must be reduced to writing and signed in order for the complaint to be inspected. For all complaints from sources that are not current workers, a letter is sent informing them that per state law [803 KAR 2:090 Section 1(2)], they cannot file a complaint and requesting that they have a current worker file the complaint. All of the non-formal complaints that were reviewed were classified as invalid even though they contained allegations of serious hazards, and nothing further was done with the complaints. KY OSH should handle non-formal complaints alleging serious hazards as a referral or, at a minimum, as a complaint by letter (phone/fax investigation). The State Plan has tracking mechanisms in the Complaint Audit Log and OSHA Express System for tracking complaints to ensure they are responded to timely. Formal serious complaints are inspected within a goal of 30 days.

Fifty-five complaints, including 35 inspections and 20 non-formal complaints, were reviewed to determine if they were processed in accordance with FOM Chapter IX, Complaint Policy and Procedures. Overall, a review of the complaint inspection files revealed that each

allegation was thoroughly investigated, and response letters provided clear and thorough information to the complainants regarding each alleged hazard. Complaints were handled timely and, in most cases, followed the requirements of the KY OSH FOM, Chapter IX. All complaint items were sufficiently investigated. The letter being sent to complainants is the same letter that has been used for years; however, the letter is being sent with the inspection narrative attached to inform the complainant of the findings of each complaint item. It should be noted that the safety files contain two versions of the complaint letter, one stating “If you would like a copy of the releasable portions of the investigative file, please contact our office” and the other stating “Enclosed is a copy of the releasable portions of the investigative file (narrative). Please contact our office if there are any questions.” The health files contain a letter stating “If you would like a copy of the releasable portions of the investigative file, please contact our office” and includes a notation that there is an “Attachment – Narrative”. KY OSH should implement a template letter that is uniform and consistent. However, this has not had a negative impact on the KY OSH program.

**Finding FY 2015-04:** All of the 20 non-formal complaints that were reviewed were classified as invalid even though they contained allegations of serious hazards, and nothing was done to address them.

**Recommendation:** KY OSH should handle non-formal complaints alleging serious hazards as a referral or, at a minimum, as a complaint by letter (phone/fax investigation).

## 2) Fatalities

KY OSH investigated 25 fatal accidents in FY 2015. Fatalities increased from 23 in FY 2014 to 25 in FY 2015, an increase of 8% from FY 2014. The number of workplace fatalities in FY 2013 was 21. The 18 general industry deaths increased from 10, and the five construction deaths were cut in half from ten from 2014 to 2015. The other two fatalities experienced in the state were one in agriculture and one in the state and local government. State and local government fatalities remained the same from FY 2014 to FY 2015. KY OSH’s procedures for the investigation of occupational fatalities are essentially the same as those of OSHA. Investigations are normally initiated within one day of notification of the fatality. The leading cause of the work-related fatalities in FY 2015 was struck-by with eight. Six workers died from falls from elevations, and six workers died after being caught in/between equipment and objects. There were three electrocutions, one worker died from burn injuries sustained from an explosion, and another died as a result of a heat stroke. In FY 2015, manufacturing and construction were the two leading industries for fatal accidents, with five in manufacturing and five in construction. There were four fatalities in landscaping, four fatalities in the retail/wholesale trade, and three fatalities in the transportation/warehousing and public utility industry.

|                                   | FY 2011 | FY 2012 | FY 2013 | FY 2014 | FY 2015 |
|-----------------------------------|---------|---------|---------|---------|---------|
| <b>Total Fatalities</b>           | 29      | 24      | 21      | 23      | 25      |
| <b>Construction</b>               | 8       | 8       | 10      | 10      | 5       |
| <b>General Industry</b>           | 19      | 14      | 11      | 10      | 18      |
| <b>Agriculture</b>                | 0       | 0       | 0       | 2       | 1       |
| <b>State and Local Government</b> | 2       | 2       | 0       | 1       | 1       |

KY OSH has taken a proactive approach to help prevent injuries, illnesses, and fatalities in Kentucky workplaces by establishing multiple performance goals with focused activities aimed at reducing injuries, illnesses, and fatalities in high-hazard industries.

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

KY OSH has a longstanding procedure for communication with family members of deceased workers. The CSHO is required to contact the next-of-kin by phone, inform the family of the investigation, and provide contact information for the CSHO and KY OSH office. A follow-up letter is sent after the CSHO makes contact via phone. When the investigation is complete, the Director of OSH Compliance sends the next-of-kin a letter with the investigation findings and a copy of the citations that were issued, if any. In addition, the Director of OSH Compliance sends the next-of-kin a letter informing the family of any settlement as a result of an informal conference. If the citation(s) is contested, the attorney assigned to the case from the Office of General Counsel also sends a letter to the next-of-kin with contact information and a request that the next-of-kin contact him or her if he or she does not wish to be kept apprised of developments in the litigation.

A review of the fatality inspection files showed that the correct fatality inspection procedures were followed. Fatality and catastrophe investigation files were very thorough and complete, identifying and addressing the root causes, and ensuring workers are protected. These cases can be legally supported in litigation. As a matter of fact, these were the best files reviewed during this review. All compliance officers assigned to conduct fatality and catastrophe investigations are properly trained to perform these investigations. KY OSH brought the OTI accident investigation course to Frankfort, Kentucky in February 2014. All of the KY OSH staff received the training. Fatality inspections were opened in a timely manner and the Regional Office and National Office were sent the OSHA-36 in a timely manner. Case files contained very detailed narratives, as well as proper supporting documentation, including police and coroner's reports. A number of the files reviewed did not contain the OSHA-36 and OSHA-170 forms; however, it was explained that this information is stored in OSHA Express, and this was verified. The compliance officers obtained statements and interviewed witnesses in the fatality case files. As a result of previous findings and recommendations during past FAMEs, a focus was placed on the communication with the next-of-kin. It was verified that all next-of-kin communications are being sent per the State Plan's procedure. This is no longer a deficiency.



### 3) Targeting and Programmed Inspections

According to inspection statistics run for this report, KY OSH conducted 855 inspections in FY 2015, 151 of which were programmed. This includes 42 of the 335 inspections conducted in the construction sector. It was noted that only six programmed health inspections were conducted during this period, all of which were in general industry. KY OSH should develop and implement an effective strategy to increase the number of programmed health inspections that are conducted in the high-hazard health industries. This was addressed in previous FAME Reports and was awaiting verification to be closed; however, the number of programmed health inspections declined further from 15 in FY 2013 to six in FY 2015, which is a 60% decrease. KY OSH's response provided they have a strategy to ensure programmed planned health inspections are conducted to adequately address the scope and seriousness of hazards found in high-hazard health industries. Additionally, it provided that on August 8, 2014, a change in policy was implemented, which increased the number of programmed planned health inspections. Progress in this area will continue to be measured due to staff turnover. This policy has been ineffective. According to the OSHA Express data, 55.9% of programmed safety inspections and 66.7% of programmed health inspections had violations. Additional data indicates that an average of 2.2 violations were cited per inspection and that 34.6% of safety violations and 2.3% of health violations were classified as serious, repeat, and willful.

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

| <b>General Industry Programmed Inspections</b>          | <b>KY OSH</b> |
|---|---------------|
| Average Number of Violations                            | 3.1           |
| In-Compliance Rate                                      | 21.0%         |
| % Violations Classified as Serious, Repeat, and Willful | 37.3%         |

| <b>Construction Programmed Inspections</b>              | <b>KY OSH</b> |
|---|---------------|
| Average Number of Violations                            | .07           |
| In-Compliance Rate                                      | 95.2%         |
| % Violations Classified as Serious, Repeat, and Willful | 0%            |

KY OSH had established a state site-specific targeting program known as the Targeted Outreach Program (TOP), which utilized the OSHA Data Initiative survey results. The State Plan's programmed general industry safety targeting procedure was based upon employers in the top 10 Kentucky high-hazard NAICS and specific high-hazard industries. The Division of Education and Training targeted employers at specific facilities using the 2011 OSHA Data Initiative information. This program is no longer being utilized due to discontinuation of the OSHA Data Initiative. KY OSH conducted a total of three targeted programmed inspections of the high-hazard industries from the inspection lists under the TOP or Safety Tops Our Priority (STOP) Program, KY OSH's additional state site-specific targeting program, in FY 2015.

The STOP Program utilizes data to target high-hazard industries or NAICS codes and specific employers or sites. The State Plan's programmed general industry safety targeting procedure focuses on employers in Kentucky's top 10 high-hazard NAICS and specific high-hazard industries. The 2013 BLS data was utilized to target employers in the industries with the highest injury and illness rates. More than 500 letters were sent to employers encouraging them to request consultation services. Nearly 170 employers responded to the outreach letters with survey requests. Division staff members are working with these employers to improve the safety and programs in their places of employment. Employers who did not respond or chose not to use the voluntary services of the Division of Education and Training are referred to the Division of OSH Compliance. A list of non-responders was provided to the Division of OSH Compliance; however, no inspections, safety or health, were completed. This raises concern for OSHA as this program is the State Plan's targeting program for specific high-hazard industries. Failure to conduct inspections under the program voids the incentive employers have to participate in consultation and, more importantly, leave workers at risk.

KY OSH has a variety of Emphasis Programs, some of which are associated with their strategic goals, and some of which are National Emphasis Programs (NEPs). KY OSH maintained the following Emphasis Programs: Trenching and Excavations; Lead; Hexavalent Chromium; and Isocyanates. KY OSH is also working with several organizations to address combustible dust and health hazards associated with asbestos and poisonings from chemical exposures.

KY OSH conducts programmed inspections in the construction sector under the Dodge Construction Targeting Program. These are associated with their strategic goal to reduce injuries caused by falls, struck-by, and crush accidents. 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 by 10% through a six-part strategy that combines efforts by the Division of OSH Compliance and the Division of Education and Training. Data from the BLS Survey of Occupational Injuries and Illness, in conjunction with the Division of Education and Training's Statistical Services Branch, indicate that the Kentucky incident rates for falls is 12.0 compared to the national rate of 17.7; struck-by is 36.2 compared to the national rate of 28.4; and crushed were too few incidents for rate calculation compared to the national average of 4.7.

Many programmed construction inspections are partial in scope. According to the OSHA Express data, only 4.8% of programmed safety inspections in construction had violations. This was a significant decline from FY 2013 when 92.1% had violations. KY OSH does not follow the Focused Construction Inspection Guidelines, which focus on the four leading causes of fatalities (fatal four hazards) in the construction industry, which include electrical hazards, fall hazards, struck-by hazards, and caught in-between hazards. KY OSH opens inspections and conducts inspections on all of the contractors on a worksite. This has resulted in the poor average number of violations, the high in-compliance rate, and the low percentage of violations classified as serious, repeat, and willful.

**Finding FY 2015-05:** KY OSH conducted a total of three targeted programmed inspections of the high-hazard industries from the inspection lists under the TOP or STOP Program in FY 2015.

**Recommendation:** KY OSH should develop and implement a strategy to ensure a representative number of targeted programmed safety and health inspections are conducted at facilities within Kentucky's high-hazard industries.

**Finding FY 2015-06: (formerly FY 2014-05, FY 2013-05, and FY 2011-06):** KY OSH conducted a total of six programmed planned health inspections during this evaluation period, which is a 60% decrease from FY 2013.

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

**Finding FY 2015-07:** KY OSH has an extremely low average number of violations, a high in-compliance rate, and a low percentage of violations classified as serious, repeat, and willful for programmed construction inspections.

**Recommendation:** KY OSH should evaluate the cause of the extremely low average number of violations, high in-compliance rate, and the low percentage of violations classified as serious, repeat, and willful for programmed construction inspections and develop and implement a strategy to increase the average number of violations, decrease the in-compliance rate, and the increase the percentage of violations classified as serious, repeat, and willful for programmed construction inspections.

**FY 2015-OB-1:** According to the state's data, 55.9% of programmed safety inspections and 66.7% of programmed health inspections had violations. Additional data indicates that an average of 2.2 violations were cited per inspection and that 34.6% of safety violations and 2.3% of health violations were classified as serious, repeat, and willful. This data indicates that KY OSH is below the national average in these areas.

**Federal Monitoring Plan:** The OSHA Area Office will closely monitor the data associated with programmed inspections to ensure it is equivalent to OSHA.

**FY 2015-OB-2:** According to the state's data, 35.7% of programmed safety inspections in construction had violations. This is a significant decline from FY 2013 when 92.1% had violations.

**Federal Monitoring Plan:** The national average was 77.9%. The OSHA Area Office will closely monitor the data associated with programmed safety construction inspections to ensure that there is no further decline and that the in-compliance rate improves.

#### 4) Citations and Penalties

In FY 2015, OSHA Express data provided that the 885 inspections conducted resulted in an average of 1.5 violations per non-in-compliance inspection, including 2.6 serious violations per non-in-compliance safety inspection and 2.9 serious violations per non-in-compliance health inspection, with 64.1% of safety violations and 51.7% of health violations classified as

serious. The average initial penalty per serious violation for private sector inspections was \$3,173.16 compared to an average of \$2,002 for national data. According to the SAMM Report, in FY 2015, the average lapse time (in days) from opening conference to citation issuance is identified as follows:

| <b>Average Lapse Time</b> | <b>KY OSH</b> | <b>OSHA</b> |
|---------------------------|---------------|-------------|
| Safety                    | 56.43 (54.6)  | 42.78       |
| Health                    | 79.28 (78.0)  | 53.48       |
| Total Average             | 59.0          | 44.0        |

\*State data for lapse time is in parentheses.

The safety lapse time has been reduced by more than 21% from FY 2014 to FY 2015; however, it remains 25% higher than OSHA. The health lapse time remained the same between FY 2014 and FY 2015 and is more than 28% higher than OSHA. Discussions revealed that lapse time is monitored and tracked, and the State Plan has made an effort to reduce lapse time, but they do not discuss case disposition with compliance officers until it reaches 90 days. It is recommended that the State Plan develop and implement a strategy to reduce lapse time to include manager, supervisor, and CSHOs accountability for the timely completion of inspection files.

One hundred twenty-four case files reviewed included adequate documentation overall to support the violations with detailed narratives explaining the inspection process, the employer’s business processes, findings, and any other factors or issues. The violations contained all of the required information and supporting documentation for a prima fascia violation, including all of the required forms, photographs, interview notes, field notes, diagrams, and other technical documentation. With the exception of fatality files, many of the case files reviewed did not contain witness or management statements. Interviews and persons contacted were referenced in the file, but there is little to no documentation in field notes containing interview notes. Following inspections involving chemical and/or noise exposures, sampling results were sent to the employer when sampling was performed; however, this information is not provided to the worker. Workers should be informed of their potential exposures and results of sampling. However, these issues do not appear to impact the effectiveness of the State Plan’s program. Photographs supporting the violations are placed in the files, and all inspection photographs are maintained in the files until they are scanned when the case file is closed. Photographs are maintained in a separate database when the files are scanned due to the amount of space they occupy. Supervisors indicated that they do review each case file before citations are issued or prior to closing for in-compliance cases.

In FY 2015, KY OSH did not issue any willful violations; however, 19 repeat violations were issued. When willful violations are issued, they are reviewed by the Director of OSH Compliance, the program manager, supervisor, and an attorney in the Office of General Council prior to issuance. According to OSHA Express data, KY OSH’s percent serious/willful/repeat/unclassified was 63.3 in FY 2015, compared to OSHA serious/willful/repeat/unclassified at 77.0%. A review of procedures and discussions with State Plan compliance personnel found that procedures for determining willfulness are the

same as those for OSHA. Management indicated that they are more than willing to pursue willful violations when the CSHOs and supervisors identify them. The legal department is eager and willing to support them.

Although, the State Plan’s procedures for determining the classification of violations are the same as those of OSHA, KY OSH classifies a lower percentage of violations as serious.

**Percent of Violations Cited Serious and Other Than Serious**

|                | <b>KY OSH</b> | <b>OSHA</b> |
|----------------|---------------|-------------|
| Serious (only) | 61.8%         | 69.9%       |
| OTS            | 36.7%         | 22.4%       |

In FY 2015, the average current penalty per serious, repeat, and willful violations for private sector inspections was as follows:

| <b>Classification</b> | <b>KY OSH</b> | <b>OSHA</b> | <b>% difference</b> |
|-----------------------|---------------|-------------|---------------------|
| Willful               | None issued   | \$39,385.00 | 100%                |
| Repeat                | \$11,934.21   | \$6,597.00  | 44.7%               |
| Serious               | \$3,053.75    | \$1,969.00  | 35.5%               |

KY OSH has procedures for receipt of payments and handling past due penalties. OSHA Express reports are used to track penalty payment and debt collection. An internal letter is sent, giving the employer 10 days to submit payment. Pursuant to KRS 45.239(4) and 45.241, the KY OSH program has an agreement with the Kentucky Revenue Cabinet to collect delinquent debts. Employers who have outstanding KY OSH debts are reported to the Revenue Cabinet for collection and further action. The Revenue Cabinet adds a 25% collection fee to the total debt to defray the cost of collection and may file a Notice of State Lien. The filing of a lien will be reflected in credit reports maintained by various credit bureaus and may seize all property rights, both real and personal. This includes, but is not limited to, the attachments of any funds held by a bank, any wages paid to the employer, the seizure and sale of any real estate, and any tax refund or other monies that may become due to the employer from the Commonwealth of Kentucky to offset the outstanding debt. The effort has proven successful; delinquent debts have been collected by Revenue Cabinet and returned to the KY OSH program. Also, the KY OSH program has seen an increase in employers’ efforts to resolve debt payment to avoid being reported to the Revenue Cabinet. Since October 2013, the Division of OSH Compliance has submitted 85 cases to the Revenue Cabinet for collection totaling \$641,908. To date, \$82,617 has been collected.

**Finding FY 2015-08: (formerly FY 2014-06, FY 2013-06, FY 2011-07, and FY-2009-11):** Based on data provided by the state, KY OSH has high average citation issuance lapse time for health inspections.

**Recommendation:** KY OSH should develop and implement a process to reduce the average lapse time for non-in-compliance health inspections..

**FY 2015-OB-3:** In FY 2015, KY OSH issued did not issue any willful violations; however, 19 repeat violations were issued.

**Federal Monitoring Plan:** The OSHA Area Office will closely monitor data and the issuance of willful violations to ensure that KY OSH is pursuing willful violations when the evidence supports them.

## 5) Abatement

Case files, written procedures, and inspection data reviewed indicate that KY OSH continues to obtain adequate and timely abatement information and has processes in place to track employers who are late in providing abatement information. KY OSH does not have a written procedure for abatement verification, nor is it addressed in the FOM. Currently, program managers use OSHA Express reports and manually look at open files to identify files with abatements that are due and have not been received. The program managers discuss the files with the supervisors and determine if they are going to send an abatement dunning letter or conduct a follow-up inspection. If a dunning letter is sent and the employer fails to respond, a follow-up is conducted. A review of OSHA Express reports showed that there are 98 cases with open abatement from 1991 through 2011. This is significantly less than the 149 cases with open abatements identified during the FY 2013 FAME evaluation.

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

KY OSH conducted follow-up inspections according to their policy and procedures. Supervisors assign follow-up inspections to CSHO's based on the criteria listed in the FOM, Chapter 7, XII – Follow-Up Inspection Procedures for Abatement Verification. In FY 2015, 1.6% of inspections conducted were follow-ups compared to OSHA at 3.1%.

**FY 2015-OB-4:** A review of state's data showed that there are 98 cases with open abatement from 1991 through 2011. This is significantly less than the 149 cases with open abatements identified during the FY 2013 FAME evaluation.

**Federal Monitoring Plan:** The OSHA Area Office will closely monitor data regarding open abatement to ensure cases are being closed as necessary.

**FY 2015-OB-5:** In FY 2015, 1.6% of inspections conducted were follow-ups compared to OSHA at 3.1%.

**Federal Monitoring Plan:** The OSHA Area Office will continue to monitor this issue and continue to encourage KY OSH to increase its number of follow-up inspections.

## **6) Worker and Union Involvement**

KY OSH's procedures for worker and union involvement are identical to those of OSHA. Case files reviewed disclosed that workers were included during fatality investigations and other inspections, as well as informal conferences. All of KY OSH's initial inspections were conducted with worker walk around representation or worker interviews. Unions are provided with correspondence regarding complaints and fatalities and copies of citations.

## **C. REVIEW PROCEDURES**

### **1) Informal Conferences**

KY OSH has procedures in place for conducting informal conferences and proposing informal settlement agreements. The penalty retention rate for following informal conferences was 42%. Supervisors are required to prepare an informal conference memo documenting the meeting with the employer and their recommendations for settlement. Supervisors are also required to discuss all changes and penalty reductions with the compliance program managers and get their approval for the settlement. The program managers sign the settlement memo that is provided to the employer. It was also noted that the case files contain a copy of the settlement document and that the affected parties were being informed of the changes resulting from the informal conference. Manager and supervisor interviews confirmed that employer commitments are being included in settlement documents and required for certain cases involving larger penalty reductions. KY OSH requires that agreements with a monetary penalty reduction of more than \$10,000 will include OSHA's 1989 Safety and Health Management Guidelines or engage outside safety and health consultation. During FY 2015, the Division of OSH Compliance signed 99 settlement agreements. Penalties were reduced by \$10,000 or more in 14 cases that did not include the 1989 Safety and Health Management Guidelines or require the engagement of outside safety and health consultation.

### **2) Formal Review of Citations**

In FY 2015, 8.9% of KY OSH's inspections were contested compared to 12.2% in FY 2013. The Kentucky Occupational Safety and Health Review Commission conducts hearings and issues decisions on contested citations. The Review Commission is administratively attached to the Labor Cabinet. First-level contests are heard and ruled upon by hearing officers employed by the Kentucky Attorney General's Office. The Kentucky Labor Cabinet Division of OSH Compliance has taken steps to reduce the lapse time between receipt of contest and first-level decision although that process is largely not within their control.

The Office of General Counsel provides legal representation for KY OSH. The attorneys are housed within the same office as KY OSH in Frankfort. It is common for an attorney to work closely with the compliance staff during the preparation of fatalities and other high profile inspections. Data indicates that for violations that were contested, 74% of penalties were retained, 1.44% were vacated, and .76% were reclassified. No negative trends or problems with citation documentation have been noted. Compliance officers and supervisors stated that

they have a good working relationship with the attorneys and they are knowledgeable of OSHA requirements and what is needed for a case to be legally sufficient.

## D. STANDARDS AND FEDERAL PROGRAM CHANGES (FPC) ADOPTION

### 1) Standards Adoption

In accordance with 29 CFR 1902, State Plans are required to adopt standards and Federal Program Changes within a six-month timeframe. State Plans that do not adopt identical standards and procedures must establish guidelines which are "at least as effective as" the federal rules. State Plans also have the option to promulgate standards covering hazards not addressed by federal standards. During this period, KY OSH adopted all of the OSHA-initiated standards, which required action in a timely manner. The table below identifies the OSHA-initiated standards.

| <b>Standards Requiring Action</b>  | <b>Federal Register Date</b> | <b>Adopted Identical</b> | <b>Date Promulgated</b> |
|--|------------------------------|--------------------------|-------------------------|
| Final Rule for Confined Spaces in Construction   | 05/04/2015                   | Yes                      | 10/02/2015              |
| Cranes and Derricks in Construction - Operator Certification Final Rule                                    | 09/26/2014                   | Yes                      | 05/05/2015              |
| Occupational Injury and Illness Recording and Reporting Requirements; NAICS Update and Reporting Revisions | 09/18/2014                   | Yes                      | 06/11/2015              |
| Final Rule for Electric Power Generation, Transmission, and Distribution; Electrical Protective Equipment  | 04/11/2014                   | Yes                      | 06/06/2014              |

### 2) OSHA and State Plan-Initiated Changes

During this period, KY OSH adopted all of the federal directives or "as effective as" procedures, which required action in a timely manner. Directives not implemented by the State Plan addressed maritime, inspection targeting, the discrimination investigation process, as well as the OSHA Partnership Program. In most cases the State Plan implemented an equivalent procedure, which incorporated OSHA's policies and procedures to the extent enforceable under state law. The table below identifies the federal directives which required action by the State Plan.

| <b>Federal Program Changes Requiring Action and Federal Directive Number</b> | <b>Date of Directive</b> | <b>Adopted Identical</b> | <b>Adoption Date</b> |
|--|--------------------------|--------------------------|----------------------|
| Whistleblower Investigations Manual CPL 02-03-005                            | 04/21/2015               | No                       | N/A                  |
| Inspection Procedures for the Hazard   | 07/09/2015               | No                       | N/A                  |



|   |            |     |            |
|---|------------|-----|------------|
| Communication Standard (HCS 2012) CPL 02-02-079   |            |     |            |
| Enforcement Procedures and Scheduling for Occupational Exposure to Tuberculosis CPL 02-02-078 | 06/30/2015 | Yes | 10/01/2015 |
| REVISION - National Emphasis Program – Primary Metal Industries                               | 10/20/2014 | Yes | 01/01/2015 |
| Compliance Directive for the Cranes and Derricks in Construction Standard                     | 10/17/2014 | Yes | 01/01/2015 |
| Mandatory Training Program for OSHA Compliance Personnel                                      | 7/21/2014  | Yes | 10/01/2014 |
| Inspection Procedures for Accessing Communication Towers by Hoist                             | 7/17/2014  | Yes | 10/01/2014 |
| Inspection Procedures for the Respiratory Protection Standard                                 | 6/26/2014  | Yes | 10/01/2014 |
| Shipyards Employment Tool Bag Directive CPL 02-00-157   | 02/6/2014  | Yes | 06/01/2014 |
| Site-Specific Targeting 2014 (SST-14)   | 02/02/2014 | No  | N/A        |
| OSHA Strategic Partnership Program for Worker Safety and Health                               | 11/06/2013 | No  | N/A        |
| Maritime Cargo Gear Standards and 29 CFR Part 1919 Certification                              | 09/30/2013 | No  | 01/02/2014 |

## E. VARIANCES

KY OSH currently has five permanent variances, and there are no temporary variances. The four permanent variances were approved in: FY 1978, regarding electro-mechanical holding brakes on an overhead crane; FY 1979, regarding belts and pulleys on sewing machines; FY 1989, regarding a fixed ladder used for training by firefighters; and FY 1982, regarding the use of a safety block for mechanical power presses. A detailed review of the variance case files revealed that adequate alternate protection was afforded to workers in each case. All variances are properly documented and tracked by KY OSH. The KY OSH program did not receive any variance requests during FY 2015, and no issues related to variances were identified.

## F. 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 public 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 public and private sector employers and workers. During FY 2015, KY OSH conducted 32 inspections or 3.7% of the total inspections in the state and local government.

## G. WORKPLACE RETALIATION PROGRAM

The KY OSH program is responsible for enforcing the workplace retaliation regulations under the OSH Act. The act prohibits workplace retaliation against those who engage in protected activities as defined by the Kentucky Occupational Safety and Health Act of 1972 [KRS Chapter 338.121 (relating to prohibition of workplace retaliation)]. This is comparable to OSHA’s protection from workplace retaliation under Section 11(c) of the OSH Act.

A comprehensive review of KY OSH’s workplace retaliation program was conducted during the FY 2015 FAME. The investigators for KY OSH are located in the central office in Frankfort. The program is supervised by an OSH Compliance safety supervisor and managed by the Director of OSH Compliance.

The following chart reflects KY OSH’s percent meritorious and merit cases settle for retaliation complaints in FY 2015:

| Meritorious Complaints |        | Merit Cases Settled |        |
|------------------------|--------|---------------------|--------|
| FY 2015                | 8%     | FY 2015             | 100%   |
| FY 2013                | 12.96% | FY 2013             | 0%     |
| FY 2012                | 10.77% | FY 2012             | 42.86% |
| FY 2011                | 13.64% | FY 2011             | 16.67% |

Based upon the data provided by KY OSH, during FY 2015, KY OSH received 87 complaints. A total of 20 cases were selected for review. In FY 2013, KY OSH received 64 complaints. Of the cases received in FY 2015, 14 were docketed (i.e., resulted in dismissal, withdrawal, settlement, and closure due to lack of cooperation), 58 complaints were administratively closed, two were deemed untimely, and 13 were referred to an alternate government agency. It is noted that 10 of these referrals were made to OSHA.

According to the SAMM Report, the average amount of time needed to complete investigations was 49 days, compared to 67 days in FY 2013. In FY 2015, 65% of the investigations were completed within 90 days compared to 87% in FY 2013. The dispositions of completed cases and the percentages of total cases they represent are presented in the following table.

| Status                        | Number of Cases | Percentage |
|-------------------------------|-----------------|------------|
| Merit                         | 0               | 0          |
| Dismissed-Other               | 3               | 3.4        |
| Dismissed-Lack of Cooperation | 5               | 5.7        |
| Settlement                    | 2               | 2.2        |
| Withdrawal                    | 4               | 4.5        |
| Untimely Filed                | 2               | 2.2        |
| Referral to Alternate Agency  | 13              | 14.9       |
| Administratively Closed       | 58              | 66.6       |

KY OSH has a manual that is basically the same as OSHA, but it includes some differences. The following are the three major differences between the KY OSH manual and the OSHA whistleblower manual:

- KY OSH gives complainants 120 days to file complaints versus 30 days for OSHA.
- KY OSH can issue civil penalties to respondents up to \$10,000.00 when a merit finding is made.
- KY OSH provides protection for state and political subdivisions.

The review demonstrated that case files are maintained and organized logically and in accordance with established procedures. The investigations conducted included records of witness interviews with appropriate documentation regarding the questions asked and answers received. It appears that the investigators were able to successfully take the available evidence and make a well-reasoned decision utilizing the correct analysis and standards.

There were several areas that have not resulted in a negative impact to the program, but could be improved and require continued close monitoring. Findings provided to complainants contained generic language without a basis for the conclusion. This does not allow for the complainant to make a meaningful appeal. KY OSH should ensure that the parties are receiving findings which include specific information regarding the basis for the determination which would allow for meaningful appeals. It was noted that correspondence is sent without a method to allow for confirmation of delivery. In an effort to ensure that the parties receive all critical documentation during the course of an investigation, KY OSH should send correspondence in a method to allow confirmation of delivery such as U.S. Postal Service first class certified mail, UPS, or FedEx. The confirmation should be included and maintained in the case for verification purposes. Another observation involved administrative closures and withdrawals which are not being documented correctly in IMIS. Investigators should be mindful of the procedural differences between administrative closures and withdrawals and the requirements of each and should record such dispositions accurately in IMIS. Finally, third-party agreements are not closely reviewed to ensure compliance with the applicable regulations to ensure they are in the best interest of the complainant and respondent. Third-party agreements should be closely reviewed to ensure compliance with the applicable regulations, such as but not limited to: agreements containing gag orders, language prohibiting the participation in protected activity, and that the orders contain language acknowledging that KY OSH is not a party to the agreement.

**FY 2015-OB-6:** Findings provided to complainants contained generic language without a basis for the conclusion to allow for meaningful appeals.

**Federal Monitoring Plan:** The OSHA Area Office will closely monitor the information provided to complainants regarding the basis for determination to ensure there is sufficient information for meaningful appeals.

**FY 2015-OB-7:** Correspondence is sent without a method to allow for confirmation of delivery.

**Federal Monitoring Plan:** The OSHA Area Office will closely monitor correspondence to ensure delivery confirmation is received and maintained.

**FY 2015-OB-8:** Administrative closures and withdrawals are not being documented correctly in IMIS.

**Federal Monitoring Plan:** The OSHA Area Office will closely monitor administrative closures and withdraws to ensure they are recorded accurately in the tracking system.

**FY 2015-OB-9:** Third-party agreements are not closely reviewed to ensure compliance with the applicable regulations (non-inclusion of gag orders, non-inclusion of language prohibiting the participation in protected activity, and acknowledgement that KY OSH is not a party to the agreement) and to ensure they are in the best interest of the complainant and respondent.

**Federal Monitoring Plan:** The OSHA Area Office will closely monitor third-party agreements to ensure compliance with the applicable regulations and confirm they are in the best interests of the parties.

#### H. Complaints About State Program Administration (CASPA's)

During FY 2014 and FY 2015, OSHA's Nashville Area Office responded to two CASPA's in the KY OSH program. The first CASPA was focused on 11(c) and involved a former state and local government worker. A federal review determined that KY OSH conducted an adequate investigation. The evidence developed during the State Plan's investigation indicated that the complainant was not retaliated against or terminated in violation of KRS 338.121. However, this case was not concluded within 90 days. The second CASPA was focused on migrant farming; however, KY OSH does not have jurisdiction for migrant farming. Therefore, the determination was made by the OSHA National and Regional Offices that it was not a valid CASPA for KY OSH.

#### CASPA's

| State Discrimination<br>CASPA Number | Date of<br>Acknowledgement | Date of Final Report to<br>State | Corrective Action<br>Required |
|--------------------------------------|----------------------------|----------------------------------|-------------------------------|
| KY 2014-16                           | 07/07/2014                 | 11/14/2014                       | N/A                           |
| KY 2014-17                           | N/A                        | N/A                              | N/A                           |

#### I. VOLUNTARY COMPLIANCE PROGRAM

KY OSH did not adopt the OSHA Strategic Partnership Program or the OSHA Alliance Program. However, KY OSH implemented the Kentucky Volunteer Star Program in 1997, and the program currently features 12 participating worksites. This includes one new site added during FY 2015. The program is similar to the federal VPP. However, KY OSH limits participation to the Star level while the OSHA VPP also includes Merit- and Demonstration-level participants. KY OSH continues to effectively manage the growth of its program by primarily limiting participation to employers in the manufacturing Standard

Industry Classification codes with exceptional safety and health management systems. KY OSH has also adopted the updated OSHA VPP directive, CSP 03-01-003. The directive effectively addresses enforcement activities at VPP sites, such as fatality investigations. However, during this period, none of the State Plan’s VPP sites experienced a fatal accident.

The State Plan’s program is also operated in a manner consistent with the VPP Policy Improvement Memorandums issued by OSHA. Previously, all VPP participants were required to provide a written description of any incentive programs in their annual self-evaluation report, and incentive programs that negatively impact recordkeeping were prohibited. Concerns regarding the employer’s incentive program also were fully assessed during the onsite evaluations conducted by KY OSH and documented on the VPP Site Worksheet.

**J. PRIVATE AND PUBLIC SECTOR 23(g) ON-SITE CONSULTATION PROGRAMS (KENTUCKY, PUERTO RICO, AND WASHINGTON)**

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). For FY 2015, the region reviewed case files completed by the 23(g) funded consultants in accordance with the Consultation Policies and Procedures Manual (CPPM). The regional review team held a closing conference with KY OSH’s program director to discuss the results of the on-site review and to reach agreement on actions to be taken by the program, if any, to correct deficiencies.

During the review process, KY OSH provided an overview of program accomplishments for FY 2015-2016 and provided the MARC; the list of closed consultation visits; the organization chart; and all consultants’ training records for regional review.

The Regional on-site review included an overall review of program management operations, a review of 48 (25 safety files and 23 health files) randomly selected case files, and a review of fiscal operations.

**Program Management**

**Visits**

During FY 2015, the program conducted 339 initial visits, 0 training and assistance visits, and 0 follow-up visits.

Mandated Activities Report for Consultation - FY 2015 Summary

|  | KY OSH | Reference Std. |
|--|--------|----------------|
| 1. Percent of Initial Visits in High-Hazard Establishments | 99.7%  | Not < 90%      |

|   |       |           |
|---|-------|-----------|
| 2. Percent of Initial Visits to Smaller Businesses                    | 96.2% | Not < 90% |
| 3. Visits Where Consultants Conferred with Workers                    | 100%  | Not < 90% |
| 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%        |
| 4(c) Percent of Serious Hazards Referred to Enforcement               | 0%    | 0%        |
| 5. Number of Uncorrected Serious Hazards with Correction              | 0     |           |

### **Hiring and Vacancies**

The FY 2015-2016 KY OSH 23(g) Cooperative Agreement provides for the following program positions: The Program Director; the Assistant Program Director; one Safety Program Manager; one Health Program Manager; eleven safety consultants; 10 industrial hygienist consultants; one Partnership Program Manager; one VPP Administrator; and one SHARP Administrator.

The program currently has one director position vacant and three safety consultant positions vacant. The director position is an appointed position and will be filled if and when the governor appoints an individual to this position. The three vacant consultant positions will be filled.

### **Training**

The training goals are based on the needs of individual consultants. All consultants received technical training at OTI, such as: OTI Course 1500, "Introduction to Onsite Consultation"; OTI Course 500, "Construction Trainer Course"; OTI Course 511, "Standards for General Industry"; OTI Course 1080, "Health Hazard Awareness for Safety Officers"; OTI Course 3010, "Excavation, Trenching and Soil Mechanics"; OTI Course 3090, "Electrical Standards"; OTI Course 3110, "Fall Protection"; OTI Course 3080, "Principles of Scaffolding"; OTI Course 3060, "Safety and Health Grain Handling"; OTI Course 1020, "Basic Accident Investigation"; OTI Course 2080, "Cranes and Materials Handling for General Industry"; OTI Course 1250, "Health Standards for Industrial Hygienists"; and OTI Course 2340, "Biohazards". The program manager maintains training records for each consultant. Consultants select training courses available from OTI, and the program manager selects the training according to the needs of the program and the consultant.

Additionally, the assistant program director and the safety and health managers attended the National Training Conference which was conducted in Kansas City, Missouri. During this training conference, they participated in various training related to the management of the program.

### **Accompanied Visits**

The safety and health program managers conducted two accompanied visits for each consultant. These accompanied visits included evaluations of the consultant's performance during the opening conferences, written program reviews, safety and health program assessments, walk-through and hazard recognitions, sampling requirements, documentation and closing conferences. The safety and health program managers used the Accompanied Visit Worksheet form to document their findings. These forms were reviewed, and all were highly favorable of the performance of consultants.

### **Lapse Time (Request to Delivery of Service)**

The KY OSH 23(g) Consultation Program was scheduling consultation services according to a priority method that focuses on the most serious deficiencies or hazards first, using the following criteria:

- A. Imminent Danger Situations or Congressional Designations
- B. Small, High-Hazard Employers Targeted in the Federal Strategic Plan, National Emphasis Program, Local Emphasis Program, or Other "Targeted Industries"
- C. OSHA's Site-Specific Targeting Inspections
- D. Small, High-Hazard Employers
- E. Small, Non-High-Hazard Employers
- F. Mid-Size Employers, Including Franchise Operations
- G. Larger Employers

For this category (request to delivery of service), there is not an established required timeframe. The time from the request until the delivery of services averaged 74 days. When the program receives a request and is unable to provide consultation services at that time, following CSP 02-00-02, Consultation Policies and Procedures Manual, Chapter 3.IV.A.4., a letter is issued to the employer explaining the reasons for the delay and stating that they are still responsible for providing a safe and healthful workplace.

### **Lapse Time (Closing Conference to Report Issuance)**

Directive Number CSP 02-00-02, Consultation Policies and Procedures Manual, Chapter 6.I.A requires that the written reports must be sent to the employer as soon as possible but not later than 20 calendar days after the closing conference.

During this review period, a report from the OSHA Express database showed an average of 25 days for the safety files and an average of 27 days for the health files. However, from the total of 48 files reviewed, 30 files exceeded the 20 days to issue the reports and in some

cases, took up to 99 days. None of the 48 files showed documentation to indicate why the reports were issued after the 20<sup>th</sup> day.

**Finding FY 2015-09:** Consultation reports are sent to the employers more than 20 calendar days after the closing conference.

**Recommendation:** KY OSH should ensure that written consultation reports are sent to the employers as soon as possible, but no more than 20 calendar days after the closing conference.

### **Management Reports Utilized**

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

The assistant 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 assistant director submits quarterly progress reports as required and discusses accomplishments in each of the annual performance goals with the Regional Consultation Program Manager.

### **Promotion of Safety and Health Achievement Recognition Program**

The program identifies good potential candidates through various means. Primarily, the safety and health consultant's report back to the SHARP Administrator when they find a company that appears to be a good candidate. Additionally, the SHARP Administrator reviews the BLS list of rates for companies. The SHARP Administrator recruits companies for the program by contacting these identified companies, explaining the program, and promoting it.

During FY 2015, the program added two SHARP companies and renewed five companies in their SHARP program, for a total of 24.

### **Marketing**

The program uses the following marketing tools to promote their consultation services:

- Bulk emails to all past training participants
- Bulk emails to all Governor's Safety and Health Conference participants
- Bulk emails to all Standards Interpretation Office recipients
- Quarterly Labor Cabinet newsletter
- Annual Governor's Safety and Health Conference
- Labor Cabinet website



- Face to Face Heat Stress Campaign
- Partnership brochures
- Impact Mobile Response and Training Vehicle

Additionally, the program relies on referrals from enforcement informal settlement agreements, and the OSHA website.

## **Case File Review (CFR) Summary**

The case file review focused on the quality of the services provided by the Consultation Program, including 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 48 files (25 safety files and 23 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:**

Hazard recognition was appropriate. Hazards listed in the consultants' reports were consistent with those expected for the industries they visited. The case files reviewed were well-documented with respect to company program evaluations. All files contained a supervisory checklist covering basic employer data information, required OSHA programs, proper classification, and recommendations for hazard correction and control. A diary sheet was missing from all the files reviewed, which is required to note important telephone and face-to-face conversations; the date of important actions, such as opening visit date and the date the report was sent to the employer; and any other activities deemed important enough to note on this summary of contacts. All the files reviewed were found to have the evaluation of the employer's safety and health program using the OSHA Form 33. Files were well-maintained, including IMIS forms, reports to the employer, and abatement information. Case files were found to contain field notes; however, they were lacking required information, such as clear descriptions of the hazards found, number of workers exposed, interim protection, and measurements.

Most of the safety and health files contained a copy of the employers' OSHA-300 logs, along with proper documentation in the files indicating a review and analysis of the injuries and/or illnesses. Industries visited included furniture manufacturers; metal fabrication; metal recycling; plastic manufacturers; water filter manufacturers; meat processing facilities; machine shops; baking facilities; wood product facilities; foundries; hair products companies; pre-stressed concrete product manufacturers; saw mills; and rubber work station mat

manufacturers. During this review period, the program identified a diversity of hazards related to: the fire prevention plan; the emergency action plan; the personal protective equipment (PPE) written assessment; the hazard communication program; the bloodborne pathogen exposure control plan; the respiratory protection plan; lockout/tagout; clearance limit signs not being posted; various electrical hazards; welding; fall protection; compressed air; gas cylinders; weight limits; cranes; housekeeping; and wet floor. In the cases of required programs, companies needed to either improve the program or develop one.

Reports included appendices with specific information, such as sampling results, hazards found, and program recommendations. Time periods for the abatement of hazards were appropriate. Tracking of abatement was conducted, and documentation of abatement was contained in the files. Adequate company feedback, such as abatement reports, was included in the case files.

During the course of the audit, it was noted that respiratory protection is not provided to consultants for use when monitoring for a potential overexposure to air contaminants. Overexposures have been documented through air monitoring on workers who worked inside and outside of regulated areas. There are several practices in place to prevent consultants from being exposed to air contaminants while performing these duties, such as, but not limited to: refraining from entering regulated areas, requiring monitored workers to come out of the work area for equipment checks, and overall, not exposing themselves to hazards. Although these practices may be communicated and utilized along with professional judgment, this does not negate the fact that proper preparation for sampling and duties that involve unknown levels of air contaminants necessitates providing adequate personal protective equipment, which includes respirators.

**Finding FY 2015-10:** A review of the 23(g) consultation case files revealed that the description of the workplace and the working conditions at the site was not included in the employer consultation reports.

**Recommendation:** KY OSH should provide additional training to consultants to ensure that all required information is included in the employer consultation reports.

#### **Observations:**

**FY 2015-OB-10:** Respiratory protection is not provided to consultants for use when monitoring for a potential overexposure to air contaminants.

**Federal Monitoring Plan:** The OSHA Region IV Office will closely monitor the state's policy regarding respiratory protection for consultants during exposure monitoring.

**FY 2015-OB-11:** Consultation case file documentation (field notes) was lacking information, such as, but not limited to: hazard description, process, location, measurements, number of workers exposed, duration of exposure, pictures, and abatement recommendations.

**Federal Monitoring Plan:** The OSHA Region IV Office will closely monitor site consultation file documentation to ensure the appropriate information is included in the files.

**FY 2015-OB-12:** Four sites surveys (SHARP Renewals), each one with over a hundred workers in the company, were found to need additional workers interviews. On two of these surveys, only one worker was interviewed. Worker interview is a critical component of the evaluation of the effectiveness of the employer's safety and health management system and the consultation process. Interviews should include a representative number of workers in the company (interview at least 10% of site/company workers).

**Federal Monitoring Plan:** The OSHA Region IV Office will closely monitor site surveys (SHARP Renewals) to ensure a sufficient representative number of workers are interviewed.

**FY 2015-OB-13:** Consultation files do not include a diary sheet to document dates of important actions, date reports are sent, etc.

**Federal Monitoring Plan:** The OSHA Region IV Office will closely monitor consultation case files to ensure diary sheets are included.

### **HEALTH:**

Similar to observations in past years, many files reviewed were lacking documentation. Although there were files that included a diary sheet and adequate field notes, most files reviewed lacked a diary sheet, and field notes were limited to a couple of lines. One file had no field notes despite the fact that there were several hazards cited. Key pieces of information, such as, but not limited to the description of the hazardous condition, exposed workers, location of the hazard, and how the workers were exposed, were left out of the files.

There were inconsistencies in case file data in several cases. One case interchanged the name of the company several times throughout the file. Another file had two different NAICS codes in the file for the same location. There was no company information documented to clarify which NAICS code was the correct code.

In the case file of an inspection at a pallet company, the number of workers fluctuated between 12 to 14 workers on several different forms in the file. This inconsistency continued onto the sampling forms and worksheets.

Another company was documented as a sewing manufacturer; however, the company in actuality was a manufacturer of splints, braces, and other medical restorative care equipment.

Worker interviews in many cases were lacking, as well. In one case, only one out of 150 workers was interviewed. In another case, only one out of 400 workers was interviewed. Limited interviews were being documented in cases where there were a high number of hazards cited. Conflicting data in one case left a question of whether any workers were interviewed at all since the file documents went back and forth between zero workers being interviewed or one worker being interviewed. There were hazards cited in this case, as well.

Two cases had PPE assessments cited when PPE use was confirmed. Since there was no documentation or exposure suggesting PPE was inadequate, these violations would be considered incorrectly cited. The lack of eyewashes was cited without documenting what corrosive chemical was in use that required the need for an eyewash station.

In one case, the employer was cited for not providing monitoring results to workers, but the employer had not conducted monitoring. The only monitoring had been completed by the consultant during that inspection.

Health hazards were not always evaluated during comprehensive inspections. Sampling and the evaluation of health hazards inherent to specific industries was not always completed. Two recycling centers were inspected without sampling for noise and metals, such as lead, cadmium, mercury, beryllium, hexavalent chromium, and arsenic. The lack of sampling for metals included air and wipe sampling.

In one inspection, the reason for not sampling for noise exposure was that noise screening showed “no problems”. This is despite the fact that screening was completed at a time where the baler, which is generally one of the loudest pieces of equipment in a recycling center, was not operational. In this case, screening levels would not be a true representation of the noise exposure that is normal for that work environment, therefore, making the evaluation of noise in that facility inadequately evaluated.

There were errors in noise dosimetry sampling data found in two files. Miscalculations of severity was found on one noise sampling form, and some data, such as readout for the 80 dB and 90dB thresholds, were not documented.

For inspections of facilities where there was union representation, it was not always clear what involvement the union had in the inspection process. In one inspection, the union representative was not identified. The opening conference information only listed management and one other person by first name only. That person was found to be the union representative.

A review of industrial hygiene sampling techniques, sampling equipment used, and sampling results showed that proper sampling equipment and sampling techniques are being utilized. Equipment is being calibrated properly before and after use and is being documented as required. The use of direct reading instruments and wipe samples is limited. No bulk sampling was noted in the files reviewed. Although combustible dust hazards and asbestos hazards were cited, there were no bulk samples taken for either. In several cases, consultants relied on professional judgment instead of screening through direct reading instruments and other scientific and fact-based techniques of showing a hazard did not exist, and therefore, negating the need for further sampling.

All the files reviewed, with the exception of one, were found to have the evaluation of the employer’s safety and health program using the OSHA Form 33.

Most of the safety and health files contained a copy of the employers’ OSHA-300 logs, along with proper documentation in the files, indicating a review or analysis of the injuries and/or illnesses.

Abatement time periods were adequately recommended. There were two files in which the abatement extension procedure was not followed. In one case, the reason abatement could not be completed on time was not filled out by the employer requesting the extension. In another case, the employer requested an extension after the abatement deadline had passed.

Overall, reports to the employers following consultation were informative and provided adequate information, including hazards found, sampling results, and program recommendations. Some reports provided pictures and other helpful documentation to assist employers in expeditious hazard abatement while others did not.

**Finding FY 2015-11:** A review of three 23(g) consultation case files revealed that sampling and the evaluation of health hazards inherent to specific industries was not always completed by consultants.

**Recommendation:** KY OSH should provide additional training to consultants to ensure they are conducting sufficient sampling and/or evaluations of health hazards specific to the type of industries visited.

#### **Observations:**

**FY 2015-OB-14:** Field notes and other documentation contained in consultation files were not always conducive to achieving the highest level of hazard recognition and hazard abatement.

**Federal Monitoring Plan:** The OSHA Region IV Office will closely monitor consultation case files to ensure diary sheets are included.

**FY 2015-OB-15:** The number of worker interviews conducted did not reflect a good representation of the workforce at facilities that received consultation services. In facilities where there were workers totaling over 100, there were files that documented less than five worker interviews. Many times only one worker was interviewed.

**Federal Monitoring Plan:** The OSHA Region IV Office will closely monitor consultation case files to ensure a sufficient representative number of workers are interviewed.

### **Overall Effectiveness**

The program remains cognizant of OSHA's strategic initiatives and performance goals while maintaining management oversight, providing direction utilizing computer/IMIS reports, and through frequent communication with consultants. All required elements of an Internal Quality Assurance Program are implemented and managed effectively.

## **IV. Assessment of State Plan Progress in Achieving Annual Performance Goals**

During FY 2015, KY OSH completed the final year of its Five-Year Strategic Performance Plan. KY OSH continues to demonstrate a high degree of success in accomplishing its

targeted goals. In general, these goals address the effective elimination and control of hazards in several industries, such as construction, healthcare, metal working and others.

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

This goal is focused on reducing the rates for repeat, serious, and willful violations in residential construction. The baseline set in FY 2011 was four willful, 10 repeat, and 96 serious violations in residential construction. During the evaluation period, the Division of OSH Compliance conducted 42 residential construction inspections, resulting in zero willful, four repeat, and 63 serious violations. Once again, this represents a downward trend compared to the previous year; however, the State Plan’s inspection totals are also trending downward. The State Plan met this goal.

| <b>Year</b>    | <b>Inspection</b> | <b>Willful</b> | <b>Repeat</b> | <b>Serious</b> |
|----------------|-------------------|----------------|---------------|----------------|
| <b>FY 2011</b> | 64                | 4              | 10            | 96             |
| <b>FY 2012</b> | 108               | 4              | 11            | 105            |
| <b>FY 2013</b> | 57                | 0              | 4             | 73             |
| <b>FY 2014</b> | 45                | 1              | 6             | 50             |
| <b>FY 2015</b> | 42                | 0              | 4             | 63             |

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

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

This compares with 119 hospitalizations and 81 reports of amputations received by the Division of OSH Compliance in FY 2015. Sixty-two inspections were conducted with 41 serious violations and a total penalty of \$214,075. This represents an increase in the number of reported amputations, compared to the two previous years. Therefore, the State Plan did not achieve this goal.

| <b>Year</b>    | <b>Inspections</b> | <b>Amputations</b> | <b>Repeat</b> | <b>Serious</b> | <b>Total Penalty</b> |
|----------------|--------------------|--------------------|---------------|----------------|----------------------|
| <b>FY 2011</b> | 59                 | 54                 | 4             | 41             | \$209,850            |
| <b>FY 2012</b> | 44                 | 54                 | 1             | 52             | \$324,050            |
| <b>FY 2013</b> | 41                 | 52                 | 2             | 39             | \$269,075            |
| <b>FY 2014</b> | 46                 | 58                 | 4             | 29             | \$220,950            |
| <b>FY 2015</b> | 62                 | 81                 | 1             | 41             | \$214,075            |

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

This goal addresses the total number of workers removed from hazards through a multi-pronged strategy. It incorporates efforts for both the Division of OSH Compliance and the Division of Education and Training. The Division of OSH Compliance’s portion of this goal consists of response to imminent dangers, staff training, and conducting inspections for reports of hospitalization of fewer than three workers.

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

This goal represents an attempt by the State Plan to effectively ensure that employers adhere to settlement agreements. During FY 2015, KY OSH conducted 14 follow-up inspections, compared with eight, 31, and 34 follow-up inspections in FY 2014, FY 2013, and FY 2012, respectively.

**Goal 1.5: Reduce the number of injuries caused by falls, struck-by, and crushed-by incidents in construction by 10% through a six-part strategy.**

This goal aims to reduce the number of injuries caused by falls, struck-by, and crushed-by incidents in construction by 10% through a six-part strategy. It incorporates the efforts of both the Division of OSH Compliance and the Division of Education and Training. The Division of OSH Compliance’s portion of this goal consists of response to imminent dangers, staff training, and conducting inspections for reports of hospitalization of fewer than three workers. The following Kentucky and national incident rates for 2011-2014 represent nonfatal occupational injuries and illnesses involving days away from work per 10,000 full-time workers in the construction industry.

|                        | <b>Falls</b> | <b>Struck-by</b> | <b>Crushed-by</b> |
|------------------------|--------------|------------------|-------------------|
| <b>Kentucky (2011)</b> | 10.6         | 26.0             | *                 |
| <b>Kentucky (2012)</b> | 14.5         | 16.1             | *                 |
| <b>Kentucky (2013)</b> | 14.6         | 18.6             | 4.9               |
| <b>Kentucky (2014)</b> | 12.0         | 36.2             | 0                 |
| <b>National</b>        | 17.7         | 28.4             | 4.7               |

\*Too few incidents for rate calculation (two incidents reported)

Kentucky’s rates remain below the national average, with the exception of struck-by incidents.

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

This goal addresses the initiation of all fatality and catastrophe inspections by the Division of OSH Compliance within one working day of notification. During FY 2015, the State Plan met this goal.

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

This goal addresses response time by the Division of OSH Compliance in critical situations. During FY 2015, KY OSH met this goal. According to the SOAR, three cases appear as outliers; however, appropriate explanations were provided regarding the delayed responses by the State Plan. This goal was accomplished by the State Plan.

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

This goal strives to reduce Kentucky’s total case rate for injuries and illnesses. This performance goal combines efforts for both the Division of OSH Compliance and the Division of Education and Training. The baseline incident rate for all industries was 4.5. The total recordable incident rate in 2014 for all industries in Kentucky was 3.8, compared with 4.2 for FY 2014. The State Plan achieved this goal.

|                        | <b>Total Case Rate for Injuries and Illnesses</b> |
|------------------------|---|
| <b>Kentucky (2011)</b> | 4.5   |
| <b>Kentucky (2012)</b> | 4.4   |
| <b>Kentucky (2013)</b> | 4.2   |
| <b>Kentucky (2014)</b> | 3.8   |
| <b>National</b>        | 3.2   |

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

This goal addresses the reduction of Kentucky’s lost time case rate for injuries and illnesses. It combines the efforts of both the Division of OSH Compliance and the Division of Education and Training. The 2011 baseline incident rate for lost time is 2.1. The goal of the KY OSH program is to focus on the highest hazard industries in an effort to lower the lost time incident rate. In FY 2014, the incident rate for lost time cases was 1.9, compared to 2.1 for FY 2013. This goal was achieved by the State Plan.

**Goal 1.10: Reduce the total case rate in five of the 15 most hazardous industries in Kentucky.**

This goal aims to reduce injury and illness incident rates in at least five of the 15 most hazardous industries in Kentucky and incorporates efforts from both the Division of OSH Compliance and



the Division of Education and Training. In its effort to achieve this goal, the Division of Education and Training conducted the following: safety and health surveys in the selected top 10 Kentucky high-hazard NAICS and specific high-hazard industries and formal training sessions in one of the four Population Centers.

| <b>Fiscal Year</b> | <b>Safety and Health Surveys Conducted in the Top Ten High-Hazard NAICS</b> | <b>Training Sessions Conducted</b> | <b>Employers/Workers Trained</b> |
|--------------------|---|------------------------------------|----------------------------------|
| <b>FY 2012</b>     | 128   | 37                                 | 1,106                            |
| <b>FY 2013</b>     | 100   | 39                                 | 1,088                            |
| <b>FY 2014</b>     | 153   | 40                                 | 1,800                            |
| <b>FY 2015</b>     | 169   | 40                                 | 950                              |

The Division of Education and Training targeted employers in specific NAICS classifications using 2011 data. The division mailed 521 letters encouraging utilization of the education and training services under the STOP Program. The outreach mailings were also sent under the division’s TOP. The STOP and TOP outreach efforts resulted in 169 employer requests for consultative services, compared with 174 in FY 2014.

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

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

| <b>Fiscal Year</b> | <b>Settlement Agreements</b> | <b>Penalties Reduced by More Than \$10,000</b> | <b>1989 Safety and Health Guidelines</b> | <b>Not Applicable</b> |
|--------------------|------------------------------|--|--|-----------------------|
| <b>FY 2012</b>     | 84                           | 14   | 7  | 7                     |
| <b>FY 2013</b>     | 99                           | 11   | 0  | 11                    |
| <b>FY 2014</b>     | 102                          | 24   | 5  | 19                    |
| <b>FY 2015</b>     | 99                           | 19   | 5  | 14                    |

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

During FY 2014, all full-service surveys included an evaluation of the safety and health management systems. The State Plan met this goal.

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

Once again, all general industry full-service surveys included a Safety and Health Program Assessment Worksheet, as well as a narrative safety and health program evaluation. The State Plan met this goal.

**Goal 2.4: Effectively promote the new safety and health program management training courses.**

In FY 2014, the State Plan developed online e-learning safety and health program management training courses. The Division of Education and Training published the training modules to the Kentucky Labor Cabinet's website in January 2014. During FY 2015, the module was accessed by 256 employers and workers.

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

This goal was effectively accomplished during FY 2015. The State Plan continues to evaluate worksites for its VPP in a timely manner. However, during this period, one SHARP was removed from the program due to the employer's lack of commitment.

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

The Division of Education and Training continues to offer free outreach training addressing KY OSH standards at Population Centers for employers and workers across the commonwealth. In addition, KY OSH utilizes their e-learning website to conduct outreach training.

During this review period, the State Plan mailed postcards to 2,000 employers alerting them to changes in injury and illness recordkeeping and reporting requirements. The State Plan also conducted a series of six training sessions on this subject, as well as posting a webinar which received 1,000 views.

**Goal 3.1: Maintain a reliable data repository to support the KY OSH program goals and strategies.**

The KY OSH program employs two individuals dedicated to IMIS and ensuring the maintenance of a reliable data repository. Additionally, in FY 2015, KY OSH deployed a customized interface that provided the State Plan's compliance and consultation dates to OSHA's OIS.

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

This goal aims for new supervisory staff to complete formal leadership training or complete certification. In FY 2015, the Division of OSH Compliance and the Division of Education and Training did not hire any new supervisory staff.

**Goal 3.3: Encourage and aid in the staff's professional certification.**

In FY 2015, this goal was once again effectively accomplished.

**Goal 3.4: Encourage and aid advanced degrees for occupational safety and health program workers.**

During this review period, this goal was once again effectively accomplished as the State Plan continued to reward staff members that obtained advance degrees.

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

This goal was accomplished in FY 2015 with three cost-free interactive training products added to the State Plan's training website. Additionally, eight new webinars were conducted, recorded, and published to the State Plan's website.

**Goal 3.6: Include photographs of actionable hazards in all consultation surveys.**

During this review period, photographs of actionable hazards were included in all appropriate consultation surveys. The State Plan met this goal.

**V. Other Special Measures of Effectiveness and Areas of Note**

There were none observed.

**Appendix A – New and Continued Findings and Recommendations**  
**FY 2015 Kentucky State Plan Comprehensive FAME Report**

| FY 2015-#  | Finding   | Recommendation  | FY 20XX-# or FY 20XX-OB-#                            |
|------------|---|---|--|
| FY 201501  | KY OSH has not completed the revision to 803 KAR 2:412 - Residential Construction Fall Protection.  | KY OSH should take appropriate action to revise 803 KAR 2:412 - Residential Construction Fall Protection to ensure that it is in line with the federal regulation.  | FY 2014-01   |
| FY 2015-02 | Data indicated that there has been a significant decline in the number of inspections conducted by KY OSH, a difference of 349 from FY 2009 to FY 2015, accounting for an overall reduction of 28.2%.         | KY OSH should identify the cause of the significant and gradual decline in the number of compliance inspections and develop and implement a strategy to increase and maintain the number of inspections that are conducted.   |  |
| FY 2015-03 | KY OSH's Division of OSH Compliance has not implemented an internal self-evaluation program as required by the State Plan Policies and Procedures Manual.   | KY OSH should implement a process to ensure that an internal self-evaluation program possessing integrity and independence is completed and implemented. KY OSH should also ensure that periodic evaluations of all areas of the program are evaluated and that documentation of the evaluations is made available to OSHA. | FY 2014-08<br>FY 2013-09<br>FY 2010-08<br>FY 2009-20 |
| FY 2015-04 | All of the 20 non-formal complaints that were reviewed were classified as invalid even though they contained allegations of serious hazards, and nothing was done to address them.                            | KY OSH should handle non-formal complaints alleging serious hazards as a referral or, at a minimum, as a complaint by letter (phone/fax investigation).   |  |
| FY 2015-05 | KY OSH conducted a total of three targeted programmed inspections of the high-hazard industries from the inspection lists under the Targeted Outreach Program or Safety Tops Our Priority Program in FY 2015. | KY OSH should develop and implement a strategy to ensure a representative number of targeted programmed safety and health inspections are conducted at facilities within Kentucky's high-hazard industries.   |  |
| FY 2015-06 | KY OSH conducted a total of six programmed planned health inspections during this evaluation period.  | KY OSH should develop and implement a strategy to ensure a more representative number of programmed planned health inspections are conducted to adequately address the scope and seriousness of the   | FY 2014-05<br>FY 2013-05<br>FY 2011-06               |

|            |   |  |  |
|------------|---|--|--|
|            |   | hazards found in high-hazard health industries.  |  |
| FY 2015-07 | KY OSH has an extremely low average number of violations, a high in-compliance rate, and a low percentage of violations classified as serious, repeat, and willful for programmed construction inspections. | KY OSH should evaluate the cause of the extremely low average number of violations, high in-compliance rate, and the low percentage of violations classified as serious, repeat, and willful for programmed construction inspections and develop and implement a strategy to increase the average number of violations, decrease the in-compliance rate, and the increase the percentage of violations classified as serious, repeat, and willful for programmed construction inspections. |  |
| FY 2015-08 | Based on data provided by the state, KY OSH has significantly high average citation issuance lapse time for health inspections.   | KY OSH should develop and implement a process to reduce the average lapse time for non-in-compliance health inspections.   | FY 2014-06<br>FY 2013-06<br>FY 2011-07<br>FY 2009-11 |
| FY 2015-09 | Consultation reports are sent to the employers more than 20 calendar days after the closing conference.   | KY OSH should ensure that written consultation reports are sent to the employers as soon as possible but no more than 20 calendar days after the closing conference.   |  |
| FY 2015-10 | A review of the 23(g) consultation case files revealed that the description of the workplace and the working conditions at the site was not included in the employer reports.                               | KY OSH should provide additional training to consultants to ensure that all required information is included in the employer reports.  |  |
| FY 2015-11 | A review of three 23(g) consultation case files revealed that sampling and the evaluation of health hazards inherent to specific industries was not always completed by consultants.                        | KY OSH should provide additional training to consultants to ensure they are conducting sufficient sampling and/or evaluations of health hazards specific to the type of industries visited.  |  |

**Appendix B – Observations Subject to Continued Monitoring**  
 FY 2015 Kentucky State Plan Comprehensive FAME Report

| Observation #<br>FY 2015-OB-# | Observation#<br>FY 20XX-OB-<br># or FY 20XX-<br># | Observation   | Federal Monitoring Plan  | Current Status |
|-------------------------------|---|---|--|----------------|
| FY 2015-OB-1                  |   | According to the state’s data, 55.9% of programmed safety inspections and 66.7% of programmed health inspections had violations. Additional data indicates that an average of 2.2 violations were cited per inspection and that 34.6% of safety violations and 2.3% of health violations were classified as serious, repeat, and willful. This data indicates that KY OSH is below the national average in these areas. | The OSHA Area Office will closely monitor the data associated with programmed inspections to ensure it is equivalent to OSHA.  | New            |
| FY 2015-OB-2                  |   | According to the state’s data, 35.7% of programmed safety inspections in construction had violations. This is a significant decline from FY 2013 when 92.1% had violations. The national average was 77.9%.   | The OSHA Area Office will closely monitor the data associated with programmed safety construction inspections to ensure that there is no further decline and that the in-compliance rate improves. | New            |
| FY 2015-OB-3                  |   | In FY 2015, KY OSH did not issue any willful violations; however, 19 repeat violations were issued.   | The OSHA Area Office will closely monitor data and the issuance of willful violations to ensure that KY OSH is pursuing willful violations when the evidence supports them.                        | New            |
| FY 2015-OB-4                  |   | A review of state’s data showed that there are 98 cases with open abatement from 1991 through 2011. This is significantly less than the 149 cases with open abatements identified during the FY 2013 FAME evaluation.   | The OSHA Area Office will closely monitor data regarding open abatement to ensure cases are being closed as necessary.   | New            |
| FY 2015-OB-5                  | FY 2014-OB-1                                      | In FY 2015, 1.6% of inspections conducted were follow-ups compared to OSHA at 3.1%.   | The OSHA Area Office will continue to monitor this issue and continue to encourage KY OSH to increase its number of follow-up inspections.   | Continued      |

|               |  |   |  |     |
|---------------|--|---|--|-----|
| FY 2015-OB-6  |  | Findings provided to complainants contained generic language without a basis for the conclusion to allow for meaningful appeals.  | The OSHA Area Office will closely monitor the information provided to complainants regarding the basis for determination to ensure there is sufficient information for meaningful appeals. | New |
| FY 2015-OB-7  |  | Correspondence is sent without a method to allow for confirmation of delivery.  | The OSHA Area Office will closely monitor correspondence to ensure delivery confirmation is received and maintained.   | New |
| FY 2015-OB-8  |  | Administrative closures and withdrawals are not being documented correctly in IMIS.   | The OSHA Area Office will closely monitor administrative closures and withdrawals to ensure they are recorded accurately in the tracking system.   | New |
| FY 2015-OB-9  |  | Third-party agreements are not closely reviewed to ensure compliance with the applicable regulations (non-inclusion of gag orders, non-inclusion of language prohibiting the participation in protected activity, and acknowledgement that KY OSH is not a party to the agreement) and to ensure they are in the best interest of the complainant and respondent. | The OSHA Area Office will closely monitor third-party agreements to ensure compliance with the applicable regulations and confirm they are in the best interests of the parties.           | New |
| FY 2015-OB-10 |  | Respiratory protection is not provided to consultants for use when monitoring for a potential overexposure to air contaminants.   | The OSHA Region IV Office will closely monitor the state's policy regarding respiratory protection for consultants during exposure monitoring.   | New |
| FY 2015-OB-11 |  | Consultation case file documentation (field notes) was lacking information, such as, but not limited to: hazard description, process, location, measurements, number of workers exposed, duration of exposure, pictures, and abatement recommendations.   | The OSHA Region IV Office will closely monitor site consultation file documentation to ensure the appropriate information is included in the files.  | New |
| FY 2015-OB-12 |  | Four sites surveys (SHARP Renewals), each one with over a hundred workers in the company, were found to need additional   | The OSHA Region IV Office will closely monitor site surveys (SHARP Renewals) to ensure a sufficient representative number of   | New |

|                      |              |   |   |        |
|----------------------|--------------|---|---|--------|
|                      |              | workers interviews. On two of these surveys, only one worker was interviewed. Worker's interview is a critical component of the evaluation of the effectiveness of the employer's safety and health management system and the consultation process. Interviews should include a representative number of employees in the company (interview at least 10% of site/company employees). | workers are interviewed.  |        |
| FY 2015-OB-13        |              | Consultation files do not include a diary sheet to document dates of important actions, date reports are sent, etc.   | The OSHA Region IV Office will closely monitor consultation case files to ensure diary sheets are included.                                     | New    |
| FY 2015-OB-14        |              | Field notes and other documentation contained in consultation files were not always conducive to achieving the highest level of hazard recognition and hazard abatement.  | The OSHA Region IV Office will closely monitor consultation case files to ensure diary sheets are included.                                     | New    |
| FY 2015-OB-15        |              | The number of worker interviews conducted did not reflect a good representation of the workforce at facilities that received consultation services. In facilities where there were workers totaling over 100, there were files that documented less than five worker interviews. Many times, only one worker was interviewed.   | The OSHA Region IV Office will closely monitor consultation case files to ensure a sufficient representative number of workers are interviewed. | New    |
| <b>PREVIOUS FAME</b> |              |   |   |        |
| FY 2014-OB-02        | FY 2013-OB-1 | During the past legislative sessions, bills were It proposed to reduce the special fund assessment rate from 9% to no less than 6.28% (thus affecting the funding of many programs in the Labor Cabinet including the OSH   |   | Closed |



|               |              |   |        |
|---------------|--------------|---|--------|
|               |              | Program). This would basically defund the KY OSH program.   |        |
| FY 2014-OB-03 | FY 2013-OB-3 | There was no evidence in three of the five of the non-formal complaint reviewed that a letter was sent notifying complainants of the results of the investigations.   | Closed |
| FY 2014-OB-04 | FY 2013-OB-4 | In five of the complaint inspection files reviewed, there was no documentation supporting that the safety and health programs were reviewed and there was nothing to support providing or not providing good faith. | Closed |
| FY 2014-OB-05 | FY 2013-OB-5 | Two of the five non-formal investigations alleging health related exposures did not have sampling provided by the employer to support their response that workers were not overexposed.                             | Closed |
| FY 2014-OB-06 | FY 2013-OB-6 | For inspections involving chemical and/or health exposures, sampling results were not provided to the appropriate workers, employer representatives, and worker representatives when sampling was performed.        | Closed |
| FY 2014-OB-07 | FY 2013-OB-7 | KY OSH does not effectively utilize the OSHA Express abatement report to track abatement.   | Closed |
| FY 2014-OB-08 | FY 2013-OB-8 | KY OSH's guidelines regarding telephone logs are not followed uniformly by the investigators.   | Closed |
| FY 2014-OB-09 | FY 2013-OB-9 | More consideration should be given to the analysis portion of the FIR, wherein the prima facie elements of a whistleblower complaint are considered (along with any proffered defenses).                            | Closed |

Appendix C - Status of FY 2013 Findings and Recommendations  
 FY 2015 Kentucky State Plan Comprehensive FAME Report

| FY 2014-#   | Finding   | Recommendation   | State Plan Response/<br>Corrective Action   | Completion<br>Date | Current Status<br>and Date |
|---|---|--|---|--------------------|----------------------------|
| FY 2014-01  | Kentucky's state-specific regulation 803 KAR 2:412, which addresses residential construction fall protection, differs significantly from OSHA's policies and standards. | KY OSH should take appropriate action to revise 803 KAR 2:412 - residential construction fall protection to ensure that it is in line with the federal regulation. | KY OSH acknowledges that 803 KAR 2:412 differs from 29 CFR 1926.501(b)(13) and respectfully submits that Kentucky's regulation has proven to be as effective as OSHA's enforcement. However, KY OSH is engaged with OSHA and the state's regulated community to fashion a solution that resolves OSHA's concerns.   | 01/02/2017         | Open<br>02/05/2016         |
| FY 2014-02<br>(formerly FY 2013-01, FY 2012-01, FY 2011-02, and FY 2009-13) | A significant number of the 603 open cases in IMIS that are not in contest or currently active, including 149 cases with open abatements, can be closed.                | KY OSH should implement a process to determine which cases in IMIS have completed litigation and/or have the abatement and penalty satisfied.                      | <p>KY OSH has spent considerable time analyzing the data and addressing this issue. The overwhelming majority of the cases open in IMIS are open for legitimate reasons, such as cases open due to litigation, filing of liens, or in debt collection. All of those cases are open in accordance with KY OSH program policy.</p> <p>Since OSHA's last on-site review, KY OSH has implemented a new case</p> | 09/17/2015         | Closed<br>02/05/2016       |

|  |   |   |  |            |                      |
|--|---|---|--|------------|----------------------|
|  |   |   | closure policy. Pursuant to KRS 45.239(4) and 45.241, the KY OSH program entered into an agreement with the Kentucky Revenue Cabinet to collect delinquent debts. Employers who have outstanding OSH debts are reported to the Revenue Cabinet for collection and further action. The new policy will significantly reduce the number of future cases that remain open for an extended period.   |            |                      |
| FY 2014-03 (formerly FY 2013-02, FY 2011-04, and FY 2009-05) | Complainants are not provided the findings regarding each complaint item, and they are not afforded a way of disputing or appealing the findings of a complaint inspection. | KY OSH should fully implement the augmented procedure addressed in former Commissioner Dixon's response following the FY 2011 FAME, which states "Kentucky indicated in the 2010 Follow-up Report that it augmented its procedure by addressing each complaint item individually and advising the complainant's appeal rights in the letter to complainants". Appropriate personnel should be trained in the augmented procedure, and supervisors | KY OSH is confident that all complainants were provided the findings regarding each complaint item and afforded a way of disputing or appealing the findings of a complaint inspection. KY OSH notes that OSHA's recommendation in based on a very small sample size, five files. KY OSH does not believe the sample size represents a program-wide problem. KY OSH implemented the augmented procedure addressed in former Commissioner Dixon's response following the FY | 09/17/2015 | Closed<br>02/05/2016 |

|  |  |  |  |            |                      |
|--|--|--|--|------------|----------------------|
|  |  | should review case files more carefully to ensure this procedure is fully implemented and this information is included all case files.   | 2011 FAME, and appropriate personnel were trained in the augmented procedure. KY OSH notes that OSHA's finding and recommendation do not assert that the KY OSH program is not providing the information to the complainants. OSHA's concern is the case file documentation of the information provided to the complainants. |            |                      |
| FY 2014-04 (formerly FY 2013-05, FY 2011-05, and FY 2009-07) | More than half of the fatality files reviewed did not provide evidence that one or more of the required calls were made and/or letters were sent to the next-of-kin. | KY OSH should implement a process to ensure full implementation of CPL 02-00-153 – Communicating OSHA Fatality Inspection Procedures to a Victim's Family in order to ensure that all communications with the next-of-kin are completed. | KY OSH is confident that all next-of-kin communications are completed. KY OSH notes that OSHA's finding and recommendation do not assert that the KY OSH program is not providing the next-of-kin with the appropriate notification. OSHA's concern is the case file documentation of the communication.                     | 09/17/2015 | Closed<br>02/05/2016 |
| FY 2014-05 (formerly FY 2013-05 and FY 2011-06)              | KY OSH conducted a total of 15 programmed planned health inspections during this evaluation period.  | KY OSH should develop and implement a strategy to ensure a more representative number of programmed planned health inspections are conducted to adequately address the scope and seriousness of  | Health inspections were, and continue to be, assigned and conducted in accordance with the inspection priority order established in KY OSH's Field Operations Manual. KY OSH has a strategy to ensure programmed planned health  | 01/01/2017 | Open<br>02/05/2016   |

|   |   |  |  |                   |                            |
|---|---|--|--|-------------------|----------------------------|
|   |   | <p>the hazards found in high-hazard health industries.</p>   | <p>inspections are conducted to adequately address the scope and seriousness of hazards found in high-hazard health industries. Health hazards in high-hazard industries were identified, cited, and abated during all types of health inspections conducted in FY 2013.</p> <p>KY OSH conducted a total of six programmed planned health inspections during this evaluation period, which is a 60% decrease from FY 2013.</p> |                   |                            |
| <p>FY 2014-06 (formerly FY 2013-06, FY 2011-07, and FY 2009-11)</p> | <p>KY OSH has significantly high average citation issuance lapse times for safety and health.</p> | <p>KY OSH should develop and implement a process to reduce the average lapse time for non-in-compliance safety and health inspections to the national average.</p> | <p>KY OSH does not accept or reject this finding and recommendation. KY OSH is aware of significant differences in several of the State Activity Mandated Measures (SAMMs) utilized by OSHA to calculate performance data. One of the erroneous measures is the SAMM utilized to calculate lapse times.</p> <p>KY OSH's safety lapse time was 25% higher than</p>  | <p>01/01/2017</p> | <p>Open<br/>02/05/2016</p> |

|   |   |   |   |            |                      |
|---|---|---|---|------------|----------------------|
|   |   |   | OSHA's, and KY OSH's health lapse time was 28% higher than OSHA's during this review period.  |            |                      |
| FY 2014-07  | Compliance officers are not provided progressive training opportunities as outlined by the KY OSH training guidelines.                              | KY OSH should implement a process to ensure compliance officer training is compliant with TED 01-00-018, "Training Program for OSHA Compliance Personnel," as adopted by KY OSH.  | KY OSH is implementing a process to ensure compliance officer training is compliant with TED 01-00-018. KY OSH notes that TED 01-00-019, Mandatory Training Program for OSHA Compliance Personnel, now supersedes TED 01-00-018. KY OSH is evaluating TED 01-00-019.  | 09/17/2015 | Closed<br>02/05/2016 |
| FY 2014-08<br>(formerly FY 2013-09, FY 2010-08, and FY 2009-20) | KY OSH's Division of OSH Compliance does not have an internal self-evaluation program as required by the State Plan Policies and Procedures Manual. | KY OSH should implement a process to ensure that an internal self-evaluation program possessing integrity and independence is developed and implemented. KY OSH should ensure that periodic evaluations of all areas of the program are evaluated and documentation of the evaluations is made available to OSHA. | The Division of OSH Compliance has always approached and conducted internal evaluations on several fronts, such as internal fiscal checks and balances, employee on-the-job evaluations, review of employee work products, and a host of other internal policies and procedures. However, these are normal daily job functions of managers and supervisors and do not meet the intent of an internal self-evaluation program. | 09/30/2016 | Open<br>02/05/2016   |

|  |  |  |   |  |  |
|--|--|--|---|--|--|
|  |  |  | The Division of OSH Compliance is working to develop and implement an internal self-evaluation program. |  |  |
|--|--|--|---|--|--|

## Appendix D – FY 2013 State Activity Mandated Measures (SAMM) Report

### FY 2015 Kentucky State Plan Comprehensive FAME Report

OSHA is in the final stages of moving operations from NCR, a legacy data system, to OIS, a modern data system. During FY 2015, OSHA case files and most State Plan case files were captured on OIS. However, some State Plan case files continued to be processed through NCR. The SAMM Report, which is native to IMIS, a system that generates reports from the NCR, is not able to access data in OIS. Additionally, certain algorithms within the two systems are not identical. These challenges impact OSHA's ability to combine the data. In addition, SAMMs 5, 8, 9, 11, 12, 15, and 17 have further review levels that should rely on a three-year national average. However, due to the transition to OIS, the further review levels for these SAMMs in this year's report will rely on a one-year national rate pulled only from OIS data. Future SAMM year-end reports for FY 2016 and FY 2017 should rely on a two-year national average and three-year national average, respectively. All of the State Plan and federal whistleblower data is captured directly in OSHA's WebIMIS System. See the Notes column below for further explanation on the calculation of each SAMM.

Most of the Kentucky State Plan's enforcement data was captured in the NCR during FY 2015. The Kentucky State Plan opened 876 enforcement inspections in FY 2015. Of those, 733 were captured in the NCR while 103 were captured in OIS.

**Measures 1, 2, 8, 9, 11, 12:** State Plan data is solely from the NCR. Data from OIS cannot be manually combined due to irregularities in the algorithms between OIS and the NCR.

**Measures 3, 4, 5, 6, 7, 10, 13, 17:** State Plan data is manually tabulated to include both OIS and NCR data.

**Measures 14, 15, 16:** State Plan data is from WebIMIS.



# U.S. Department of Labor

## Occupational Safety and Health Administration State Plan Activity Mandated Measures (SAMMs)

| State Plan: <b>Kentucky - KY OSH</b> |   |                        | FY 2015  |  |
|--------------------------------------|---|------------------------|--|--|
| <b>SAMM Number</b>                   | <b>SAMM Name</b>  | <b>State Plan Data</b> | <b>Further Review Level</b>  | <b>Notes</b>   |
| <b>1a</b>                            | Average number of work days to initiate complaint inspections (state formula)         | 9.43                   | 30 days for serious hazards; 120 days for other than serious hazards | State Plan data is pulled only from the NCR.<br><br>Further review level is negotiated by OSHA and the State Plan.                 |
| <b>1b</b>                            | Average number of work days to initiate complaint inspections (federal formula)       | 9.43                   | N/A  | State Plan data is pulled only from the NCR.<br><br>This measure is for informational purposes only and is not a mandated measure. |
| <b>2a</b>                            | Average number of work days to initiate complaint investigations (state formula)      | 10.28                  | TBD  | State Plan data is pulled only from the NCR.<br><br>Further review level is negotiated by OSHA and the State Plan.                 |
| <b>2b</b>                            | Average number of work days to initiate complaint investigations (federal formula)    | 10.28                  | N/A  | State Plan data is pulled only from the NCR.<br><br>This measure is for informational purposes only and is not a mandated measure. |
| <b>3</b>                             | Percent of complaints and referrals responded to within one workday (imminent danger) | 98.91%                 | 100%   | State Plan data is manually tabulated to include both OIS and NCR data.<br><br>Further review level is fixed for every State Plan. |
| <b>4</b>                             | Number of denials where entry not obtained  | 0                      | 0  | State Plan data is manually tabulated to include both OIS and NCR data.<br><br>Further review level is fixed for every State Plan. |

|          |   |            |                       |   |
|----------|---|------------|-----------------------|---|
| <b>5</b> | Average number of violations per inspection with violations by violation type             | SWRU: 1.74 | +/- 25% of SWRU: 1.92 | State Plan data is manually tabulated to include both OIS and NCR data.   |
|          |   | Other: .88 | +/- 25% of Other: .87 | Further review level is based on a one-year national rate, pulled only from OIS.  |
| <b>6</b> | Percent of total inspections in state and local government workplaces                     | 3.65%      | +/- 5% of 5.13%       | State Plan data is manually tabulated to include both OIS and NCR data.<br><br>Further review level is based on a number negotiated by OSHA and the State Plan through the grant application. |
| <b>7</b> | Planned v. actual inspections – safety/health   | S: 720     | +/- 5% of S: 705      | State Plan data is manually tabulated to include both OIS and NCR data.   |
|          |   | H: 156     | +/- 5% of H: 133      | Further review level is based on a number negotiated by OSHA and the State Plan through the grant application.  |
| <b>8</b> | Average current serious penalty in private sector - total (1 to greater than 250 workers) | \$3,173.16 | +/- 25% of \$2,002.86 | State Plan data is pulled only from the NCR.<br><br>Further review level is based on a one-year national rate, pulled only from OIS.  |
|          | <b>a.</b> Average current serious penalty in private sector (1-25 workers)                | \$2,515.69 | +/- 25% of \$1,402.49 | State Plan data is pulled only from the NCR.<br><br>Further review level is based on a one-year national rate, pulled only from OIS.  |
|          | <b>b.</b> Average current serious penalty in private sector (26-100 workers)              | \$2,927.37 | +/- 25% of \$2,263.31 | State Plan data is pulled only from the NCR.<br><br>Further review level is based on a one-year national rate, pulled only from OIS.  |
|          | <b>c.</b> Average current serious penalty in private sector (101-250 workers)             | \$4,140.70 | +/- 25% of \$3,108.46 | State Plan data is pulled only from the NCR.<br><br>Further review level is based on a one-year national rate, pulled only from OIS.  |

|           |   |            |                       |  |
|-----------|---|------------|-----------------------|--|
|           | <b>d.</b> Average current serious penalty in private sector (greater than 250 workers)    | \$4,579.83 | +/- 25% of \$3,796.75 | State Plan data is pulled only from the NCR.<br>Further review level is based on a one-year national rate, pulled only from OIS. |
| <b>9</b>  | Percent in compliance   | S: 44.32%  | +/- 20% of S: 28.47%  | State Plan data is pulled only from the NCR.   |
|           |   | H: 46.02%  | +/- 20% of H: 33.58%  | Further review level is based on a one-year national rate, pulled only from OIS.   |
| <b>10</b> | Percent of work-related fatalities responded to in one workday                            | 61.90%     | 100%                  | State Plan data is manually tabulated to include both OIS and NCR data.<br>Further review level is fixed for every State Plan.   |
| <b>11</b> | Average lapse time  | S: 56.43   | +/- 20% of S: 42.78   | State Plan data is pulled only from the NCR.   |
|           |   | H: 79.28   | +/- 20% of H: 53.48   | Further review level is based on a one-year national rate, pulled only from OIS.   |
| <b>12</b> | Percent penalty retained  | 74.69%     | +/- 15% of 67.96%     | State Plan data is pulled only from the NCR.<br>Further review level is based on a one-year national rate, pulled only from OIS. |
| <b>13</b> | Percent of initial inspections with worker walk around representation or worker interview | 100%       | 100%                  | State Plan data is manually tabulated to include both OIS and NCR data.<br>Further review level is fixed for every State Plan.   |
| <b>14</b> | Percent of 11(c) investigations completed within 90 days                                  | 65%        | 100%                  | State Plan data is pulled from WebIMIS.<br>Further review level is fixed for every State Plan.                                   |
| <b>15</b> | Percent of 11(c) complaints that are meritorious  | 8%         | +/-20% of 24%         | State Plan data is pulled from WebIMIS.<br>Further review level is based on a three-year national average pulled from WebIMIS.   |

|           |  |       |                  |   |
|-----------|--|-------|------------------|---|
| <b>16</b> | Average number of calendar days to complete an 11(c) investigation | 96    | 90               | State Plan data is pulled from WebIMIS.<br>Further review level is fixed for every State Plan.  |
| <b>17</b> | Percent of enforcement presence                                    | 1.21% | +/- 25% of 1.35% | State Plan data is manually tabulated to include both OIS and NCR data.<br><br>Further review level is based on a one-year national rate, pulled only from OIS. |