

**FY 2019 Comprehensive  
Federal Annual Monitoring and Evaluation (FAME) Report**

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



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## I. Executive Summary

The fiscal year (FY) 2019 Kentucky FAME (Federal Annual Monitoring Evaluation) resulted in a comprehensive FAME report that assesses the Kentucky Labor Cabinet, Department of Workplace Standards, Occupational Safety and Health (KY OSH) 23(g) program's progress toward achieving its performance goals established in the FY 2019 Strategic Management Plan, as well as reviews the effectiveness of areas related to enforcement activities, including a summary of an on-site evaluation. This report is also based on the results of quarterly meetings, the State Office Annual Report (SOAR), the State Activity Mandated Measures (SAMM) Report, as well as Occupational Safety and Health Administration (OSHA) Information System (OIS) and OSHA Express reports ending September 30, 2019.

The FY 2018 Follow-up FAME report included five findings and four observations. In FY 2019, three findings and three observations from FY 2018 were closed. Two findings and one observation were continued in this FY 2019 report. In addition, there are five new findings and seven new observations in FY 2019. In general, the findings address the extremely low number of programmed safety and health inspections; the significantly high average citation issuance lapse time for safety and health inspections; an issue with maintaining correct case file documentation in retaliation files; and on the spot corrections observed by the consultants were not properly documented in the field notes of the consultation casefiles. Appendix A describes the new and continued findings and recommendations. Appendix B describes observations subject to continued monitoring and the related federal monitoring plan.

On October 1, 2019, Kentucky began its fourth year of the five-year planning cycle, as documented in the Strategic Plan. The five-year Strategic Plan includes three primary outcome goals: 1) Improve workplace safety and health for all workers, particularly in high risk industries as evidenced by fewer hazards, reduced exposures, as well as fewer fatalities, injuries, and illnesses; 2) Change workplace culture to increase employer and worker awareness of, commitment to, and involvement in safety and health; and 3) Maximize efficient and effective use of human and technological resources. A detailed review of the State Plan's performance in this area is provided in Appendix E, which is the SOAR.

During FY 2019, KY OSH conducted 583 safety and 142 health inspections, which was 10% below the planned inspection goal of 810 inspections. KY OSH did 62 more inspections and identified 79 more hazards than in FY 2018. Additionally, the on-site consultation program conducted over a 100 more consultation visits than in the previous comprehensive evaluation. Turnover continues to be a significant challenge for the State Plan. As of the end of FY 2019, there were ten vacant compliance officer positions. The current experience level of the enforcement staff is discussed later in this report.

KY OSH continues its outreach to employers and employees by providing a variety of training and outreach services. In FY 2019, KY OSH participated in events to include speaker's requests, OSHA 10 & 30-hour courses, workshops, webinars, fairs and conferences. Safety and health training was provided to 4,600 attendees across the State. KY OSH provides a cost-free online eLearning safety and health program management-training module on the Labor Cabinet's

eLearning website, [www.kysafe.ky.gov](http://www.kysafe.ky.gov). During FY 2019, 280 individuals viewed the module and 255 workers were trained in Auditor I hazard recognition by KYSAFE’s Partnership Branch staff in eighteen (18) separate training classes. In addition, KYSAFE added two cost-free interactive training products to the KYSAFE online library, Mechanical Power Press Safety IV and Introduction to KYSAFE. In an effort to supplement resources in addressing high hazard industry issues, KYSAFE continued to coordinate outreach with professional and industry associations across the State.

The data below was released by the Bureau of Labor Statistics in November 2019. The State Plan’s total recordable case (TRC) rate for Calendar Year (CY) 2018 remained at historic low levels. The private sector TRC rate was 3.2 and the Days Away Restricted Transfer (DART) rate was 1.7, which are respectively slightly above the national rates.

CY 2018	Kentucky		National Average		Comparison
<i>TRC Rate</i>	3.2	3.4*	2.8	3.1*	12.5% Higher/8.8% Higher*
<i>DART Rate</i>	1.7	1.8*	1.6	1.7*	5.9% Higher/5.6% Higher*

*\*All industries, including state and local government*

## II. State Plan Background

### A. Background

The Kentucky Occupational Safety and Health State Plan received final 18(e) approval on June 13, 1985. The official designated as responsible for administering the Kentucky Occupational Safety and Health (OSH) Program is the Commissioner of the Kentucky Labor Cabinet. The Commissioner of the Kentucky Labor Cabinet is an appointed executive position in the Kentucky State government appointed by the Governor to oversee the Labor Cabinet’s Department of Workplace Standards, whose mission is to is to administer Kentucky’s workplace standards and workers’ compensation laws through education, mediation, adjudication and enforcement in order to promote safe, healthful and quality working environments for employees and employers; to foster cooperative relationships between labor and management; and to ensure fair compensation. The Commissioner of Labor Cabinet during the period covered by this evaluation is Dwayne Depp. Within the Department of Workplace Standards, the Division of Occupational Safety and Health Compliance and the Division of Occupational Safety and Health Education and Training (KY SAFE) has responsibility for carrying out the requirements of the State Plan. Randy Harris serves as the Director of OSH Compliance and Danny Davis served as the Director of Education and Training for KY OSH.

KY OSH has 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 is comprised of three sections: The Division of Occupational Safety

and Health (OSH) Compliance, the Division of Education and Training, and the OSH federal-state coordinator. The central office is located in Frankfort, Kentucky with CSHOs working from their homes throughout the State. A total of 98 positions were funded under the 23(g) grant. At the end of FY 2019, there were a total of 17 safety and 11 health compliance personnel on staff, with seven safety and three health vacancies. The approved benchmark for KY OSH is 37 compliance safety and health officers (CSHOs), of which 23 are safety and 14 are health, as well as one position that is dedicated to investigating cases of alleged OSH retaliation. The worker population in Kentucky consists of approximately 1,798,905 workers, and nearly 118,916 employers.

Worker protection from retaliation related to occupational safety and health [KRS 338.121] is administered by KY OSH through the central office in Frankfort. There is one investigator, who reports to the director and or assistant 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. 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.

The table below shows KY OSH’s funding levels from FY 2015 through FY 2019.

<b>FY 2015-2019 Funding History</b>					
<b>Fiscal Year</b>	<b>Federal Award (\$)</b>	<b>State Plan Match (\$)</b>	<b>100% State Funds (\$)</b>	<b>Total Funding (\$)</b>	<b>% of State Plan Contribution</b>
<b>2019</b>	3,393,300	3,393,300	5,054,127	11,832,727	71.39
<b>2018</b>	3,393,300	3,393,300	4,247,900	11,034,500	69.25
<b>2017</b>	3,393,300	3,393,300	4,028,200	10,814,800	68.62
<b>2016</b>	3,393,300	3,393,300	3,892,700	10,679,300	68.23
<b>2015</b>	3,378,100	3,378,100	3,556,300	10,312,500	67.24

[Reference: State Plan Grant]

## **B. New Issues**

In response to previous FAME findings and the CASPAs in previous two years involving the fatality investigations in Kentucky, the Regional Administrator directed a follow-up to the Special Study focused on the State Plan’s fatality investigations for the past year. The study included a comprehensive review of all fatality investigations from FY 2019, to determine if the corrective actions implemented by KY OSH have been fully implemented and the fatality investigations are being completely and thoroughly investigated, and to determine if the policies and procedures for fatality investigations were followed. The Special Study is discussed in detail in the Enforcement section of this report.

## Maximum Penalty Increase

In accordance with the Bipartisan Budget Bill passed on November 2, 2025, OSHA Published a rule on July 1, 2016, raising its maximum penalties. As required by law, OSHA then increased maximum penalties annually, according to the Consumer Price Index (CPI). KYOSH has not yet completed the legislative changes to increase maximum penalties.

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

#### **A. Data and Methodology**

OSHA established a two-year cycle for the FAME process. FY 2019 is a comprehensive year, and as such, OSHA was required to conduct an on-site evaluation and case file review. An eight-person OSHA team, which included a whistleblower investigator, was assembled to conduct this at the KY OSH office during the timeframe of January 27-31, 2020. A total of 168 safety and health enforcement inspections, whistleblower, VPP, and consultation case files were reviewed. The safety and health inspections and consultation files were randomly selected from closed inspections and consultation visits conducted during the evaluation period (Oct 1, 2018, through September 30, 2019). The selected population included the following:

- Forty-seven (47) fatality case files;
- Twenty (20) complaint case files;
- Fifteen (15) programmed planned case files;
- Fifteen (15) referral case files (including employer reported referrals);
- Three (3) follow-up files;
- Twenty (20) UPA (Phone & Fax) files
- Eight (8) closed whistleblower case files;
- Forty (40) consultation case files.

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

- State Activity Mandated Measures Report (Appendix D);
- State Information Report;
- State OSHA Annual Report (Appendix E);
- State Plan Annual Performance Plan;
- State Plan Grant Application;
- Quarterly monitoring meetings between OSHA and the State Plan; and
- Comprehensive cases file review.

Each State Activity Mandated Measures (SAMM) Report has an agreed-upon Further Review Level (FRL), which can be either a single number, or a range of numbers above and below the

national average. State Plan SAMM data that fall outside the FRL trigger a closer look at the underlying performance of the mandatory activity. Appendix D presents the State Plan's FY 2019 State Activity Mandated Measures Report and includes the FRL for each measure.

## **B. Review of State Plan Performance**

### **1. PROGRAM ADMINISTRATION**

#### **a) Training**

The State Plan continues to operate a training and education program, which is identical to the federal training and education directive TED 01-00-019, "Training Program for OSHA Compliance Personnel." In KY OSH, newly hired compliance and consultation personnel are registered in LearningLink 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. A review of training records, interviews with managers, supervisors, and compliance officers indicated that safety compliance officers are receiving the required training. Additional staff developmental training includes the following courses: Investigative Report Writing; Investigative Interviewing; Secondary Traumatic Stress; Tree Care; Wood Chippers; Excavations; Trenching; Process Safety; Fall Arrest Systems; Residential Construction Fall Protection; as well as Electric Power Generation, Transmission and Distribution. The whistleblower investigators receive the same training through OTI as the federal whistleblower investigators, with the exception of the 1460 Course on the Federal Statutes, which is not applicable to the state's retaliation program.

KY OSH fully supports and encourages personnel interested in obtaining their professional certifications. The State Plan maintains two (2) safety position descriptions and increased salaries for the level of certification, pays for certification preparatory courses, and pays for the certification examination after successful completion. KY OSH currently has 25 employees with certifications, including five Construction Health and Safety Technicians (CHSTs), six Occupational Health and Safety Technologists (OHSTs), two Certified Industrial Hygienists (CIHs), four Certified Safety Professionals, and eight dual certified, including seven CIHs/CSPs and one CIH/ASP.

KY OSH also conducted outreach training, by providing safety and health training to workers and employers throughout the state. A total of 104 training sessions on safety and health topics were conducted for approximately 4,600 attendees across the State. Training addressed subjects relevant to the targeted NAICS, such as Injury and Illness Recordkeeping, Fall Protection, Confined Space, Hazard Communication, Basic Electrical Safety, Excavation & Trenching, Bloodborne Pathogens, Personal Protective Equipment, Spray Finishing, Asbestos Awareness, Fire Protection and Egress, Walking and Working Surfaces, Electrical Safe Work Practices, Eyewash Requirements, Silica and Ergonomics.

### Statistical Training Information FY 2019

Private sector employers trained	4,600
State and local government employers trained	889
Total number of workers that received training	5,489

#### b) OSHA Information System (OIS)

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. According to the State Plan, its system continues to offer several advanced capabilities, including report writing, time management, and program performance reports. Each division also has specific functionality, and capabilities unique to their individual needs. KY OSH uses various OSHA Express reports to manage and track compliance, and consultation activities.

#### c) State Internal Evaluation Program Report

The KY OSH Division of Compliance, as well as the Division of Education and Training, have now developed and implemented an Internal Quality Assurance Program. The Internal Quality Assurance Program was modeled after OSHA's auditing program, with minor changes due to state-specific issues. The internal self-evaluation program ensures that all aspects of the State Plan's safety and health program operate effectively. At the time of the on-site evaluation, the State Plan had suspended the evaluations, due to a legal concern regarding Kentucky's Open Record Act (KORA) that do not protect information contained in audits from release. The State Plan is working with their General Counsel to work through this issue to re-evaluate the process.

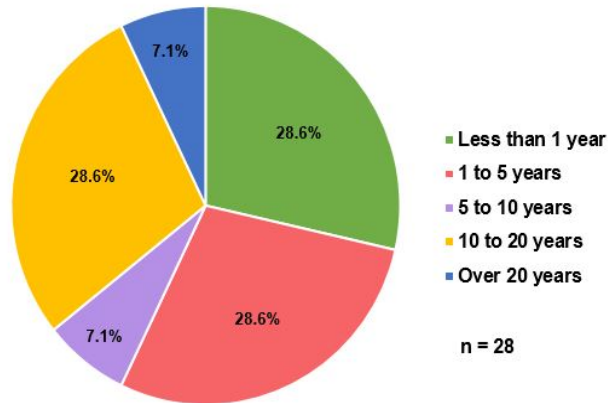
#### d) Staffing

During this period, KY OSHA's staffing levels were below the established benchmarks for the program, but at an acceptable level, based on the benchmark criteria. However, the State Plan remains committed to staffing its program at the appropriate level and has worked aggressively to get to benchmark, within the current budgetary constraints.

At the time of this review, KY OSH's compliance staffing included 17 safety compliance officers and 11 health compliance officers. During most of FY 2019, KY OSH operated below the staffing benchmark. There are currently seven vacant safety compliance positions and three vacant health compliance positions. There is also one vacant safety supervisor position. During this period, the State Plan has worked aggressively to fill all vacant positions. At the time of this evaluation, 28% of compliance officers have less than one year of experience.



**Compliance Officer  
Length of Service**  
As of September 16, 2019



## 2. ENFORCEMENT

### a) Complaints

KY OSH's procedures for handling complaints and referrals 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. Inspection data indicates that KY OSH handled 557 complaints in FY 2019 of which 184 (33%) were complaint inspections and 140 (25%) were complaint investigations. [Reference: OIS Inspection Summary] According to the SAMM Report, KY OSH responds timely to complaints. The average number of days to initiate a complaint inspection in FY 2019 was 14.03, well below the negotiated standard of 30 days for serious hazards and 120 days for other-than-serious. The average number of days to initiate a complaint investigation was 24.38, which is also well below the negotiated standard of 30 days. OSHA selected 20 complaint investigations, and 20 complaint inspections for review, during this evaluation of the KY OSH program. Approximately 56.7% of complaint inspections were found to be in compliance of the total inspections.

KY OSH has a centralized complaint and referral intake procedure, where complaints are 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 ensuring that each formal 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. 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 determine the appropriate action. KY OSH considers electronic complaints obtained through the federal complaint system as a formal complaint. After the receipt of an electronic complaint, a follow-up

call to the complainant is usually made to clarify the complaint items and perfect the complaint. The source of the complaint, with those from a current employee having priority, and the severity of the alleged hazards, are primary considerations for supervisors to decide, whether to handle the complaint by letter or by inspection.

In FY 2019, 557 referrals were processed by the State. Referrals are alleged hazards or violations of the OSH Act, which are typically received from other federal, state, or local agencies, the media, a compliance officer, or an employer reporting an injury or illness. KY OSH evaluates the employer reported referrals and makes a decision, as to whether to conduct an inspection.

#### b) Fatalities

Workplace fatalities in Kentucky increased significantly in FY 2019. A total of 81 fatalities were reported to KY OSH in FY 2019, up from 54 the previous year. Thirty-three of the reported fatalities were work-related. SAMM 10 and State data indicates that the State Plan responded to all reported events within one workday.

Next-of-Kin (NOK) were contacted on all investigations. KY OSH has a procedure for communication with family members of deceased workers. The CSHO is required to contact the NOK 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 NOK a letter with the investigation findings and a copy of the citations that were issued, if any. In addition, the Director of OSH Compliance sends the NOK a letter informing the family of any settlement, as a result of an informal conference. If the citation(s) is contested, the attorney assigned to the case from the Office of General Counsel also sends a letter to the NOK with contact information and a request that the NOK contact him or her, if the NOK does not wish to be kept apprised of developments in the litigation.

According to fatality figures for FY 2019, the State Plan experienced ten fatalities in the construction industry, which are two less than the same period last year. The State Plan experienced six fatalities in the waste management and remediation services industry and five fatalities in the manufacturing industry, as compared with two and four in those industries for the same period, respectively. KY OSH uses all available resources, including the Bureau of Labor Statistics rates to assess trending and appropriate targeting of resources, as well as their statistics and trends to focus their targeting and resources to prevent workplace fatalities. KY OSH has taken a proactive approach to help prevent injuries, illnesses, and fatalities in Kentucky's workplaces by establishing multiple performance goals with focused activities aimed at reducing injuries, illnesses, and fatalities in high-hazard industries.

The tables below detail the industries, where fatalities occurred in FY 2018 and FY 2019.

<b>By Industry</b>	<b>FY 2018</b>	<b>FY 2019</b>
Construction	8	10
Manufacturing	4	5
Transportation	1	3
Wholesale/Retail Trade	3	4
Services	4	6
Agriculture, Forestry, Fishing	1	3
Government (Public Utilities)	2	1
Finance: Insurance & Real Est.	1	0
Other	0	1
<b>Total</b>	<b>24</b>	<b>33</b>

KY OSH's average penalty per inspection for fatality cases was \$5,593. Penalties were reduced an average of 8.6% on citations related to fatalities that were resolved by means of an informal settlement agreement (ISA).

KY OSH's procedures for investigation of occupational fatalities are effectively the same as OSHA's. The established KY OSH procedure for fatality investigations: FOM, Chapter 8, Fatality/Catastrophe Investigation is designed to ensure the quality of the fatality investigations. Investigations are normally initiated within one day of notification of the fatality. An attorney is assigned to each fatality to work closely with the supervisor and CSHO, when the case file is being prepared to ensure that the case documentation is legally sufficient. Fatality investigations are reviewed by at least three levels of management, including the supervisor, compliance program manager, and the Director of OSH Compliance to ensure that the causes of the accidents are identified, and a thorough investigation was completed. The Director of OSH Compliance signs all fatality related citations. Informal settlement agreements related to fatality cases also receive a higher level of review and approval.

The FAME on-site review identified that the State Plan's fatality files were well organized, and with few exceptions, investigations were documented for legal sufficiency. Investigations were conducted thoroughly, as demonstrated by files with statements, violations supported with adequate documentation, and the cause of the accident was clearly explained.

In response to an alarming increase in the number of fatal accidents in FY 2019, the Labor Cabinet created a Fatality Prevention Task Force with leading industries and associations to create collaboration, build partnerships, and leverage resources. The Task Force is a result of the Labor Cabinet's effort to create ways to prevent fatalities. The group meets regularly to discuss fatality rates, solutions, and opportunities. The work of the task force

has been well received and it has made a positive impact. The task force focused on fatalities in the top five industries including the following: Manufacturing; Landscape Services; Site Prep Contractors; Roofing Contractors; and Highway, Street and Bridge Construction. The task force shared information with all industry contacts; briefed and collaborated with industry associations, utilized social media, and encouraged associations to regulate and mandate safety training. Kentucky developed a smartphone application “KYSAFE” as a resource to stay abreast of safety and health events and related information. The app contains six major functional areas including the following: Important Happenings; Contacts; Web Page; Messages; Tool Box Talks; and Report a Hazard. Important happenings provide information about free training sessions, hazard emphasis programs, and other important information. Contacts provides information for the Program Managers. Webpage provides direct links to the KYSAFE website. Tool Box Talks provides short meeting scripts for focused information and pre-job safety discussions. The app also features a hazard-reporting tool, under the heading, Report a Hazard. This tool allows the user to take a photo of a hazard, provide information, and send the hazard to KY OSH. The app is currently available on the android platform and will soon be available for Apple devices.

### **Special Study**

As stated previously in this report, a Special Study focused on the State Plan’s fatality investigations was conducted as part of this review in response to previous FAME findings and the CASPAs in previous two years involving the fatality investigations in Kentucky, The study included a comprehensive review of all fatality investigations from FY 2019 to determine if the corrective actions implemented by KY OSH have been fully implemented and the fatality investigations are being completely and thoroughly investigated, and to determine if the policies and procedures for fatality investigations were followed.

A review of the fatality inspection files for this period found that all of the corrective actions were implemented and fatalities are being completely and thoroughly investigated by KY OSH. In response to the 2017 FAME, KY OSH implemented major changes that have impacted the quality of fatality investigative files, including directives requiring CSHOs to interview potential witnesses and document the interviews, and requiring all fatality files to be documented with the cause of the accident. In addition, the State Plan developed a formal witness statement, provided voice recorders for CSHOs to document interviews, and developed statements. CSHOs are required to document interviews by recording or through use of the statement form. All CSHOs received accident investigation training, as well as training on investigation interviewing techniques. Managers and supervisors are thoroughly reviewing and scrutinizing fatality files. Case file reviews identified that the new Directives were fully implemented by the end of the first quarter of FY 2019. While it was observed that deficiencies were identified in several files completed during the first quarter, the quality of the files were much improved for the remainder of the year, and it is clear that the corrective actions have been implemented and are effective. No major deficiencies were identified in a majority of the 44 fatality files that were reviewed. All witnesses are being identified, interviewed, and statements are being developed. The cause of the accident is being identified and addressed through citations. The investigations are now determining the actual cause of the accident, including

contributing factors.

### c) Targeting and Programmed Inspection

According to inspection statistics reviewed, KY OSH conducted 725 inspections in FY 2019, of which only 22 were programmed. Only six of the inspections were conducted in the construction industry. KY OSH has a Special Emphasis Program (SEP) for fall protection. Inspections conducted are associated with the State Plan's strategic goal to reduce construction fatalities. According to the SIR, 71.54% of private sector programmed safety inspections and 77.13% of private sector programmed health inspections had violations, and that of those 84.62% of safety inspections and 82.40% of health inspections currently had a serious, repeat, and/or willful violation (SRW) [SIR Measure 2c].

It was noted that only seven programmed health and fifteen programmed safety inspections were conducted during this period. The low number of programmed health inspections conducted by Kentucky has been a repeat issue for four years, dating back to FY 2015, when only six health inspections were conducted. In FY 2018, KY OSH conducted seven programmed health inspections and 15 programmed safety inspections. This equates to 4.93% of the total health and 3.62% of the total safety inspections that were programmed. This is significantly lower than the national average, which is 27.45% for health and 49.03% for safety. The State Plan attributes this to the increased number of complaints and employer reported referrals.

KY OSH has a variety of Special Emphasis Programs (SEPs) for construction and general industry some are associated with their strategic goals, and others support National Emphasis Programs (NEPs). Kentucky's strategy for reducing injury, illness, and fatality rates is based on addressing specific high hazard industries that have the greatest impact on the overall rates. These goals incorporate targeted inspections employing an inspection scheduling system, the DODGE inspection scheduling system, and local and national emphasis programs. KY OSH's General Schedule Program uses data provided by BLS to identify the top ten high rate industries in the State. KY SAFE targeted these industries in a direct mail campaign. Additionally, training sessions relevant to the targeted industries were provided throughout the State. Employers who choose not to participate in consultation were referred to enforcement for inspection. In FY 2019, 14 of the general schedule inspections came from 2017-2019 KYSAFE referrals. Due to the high injury rate in construction, KY OSH has focused inspections on these sites in an attempt to prevent injuries and illnesses. Trenching and excavation operations have continued to be targeted under the National Emphasis Program (NEP). KY OSH has a performance goal, which aims to reduce the number of injuries caused by falls, struck-by, and crushed-by incidents in construction. These hazards continued to be targeted during their construction inspections.

Kentucky also participates in the Federal NEP's including the following: Hexavalent Chromium; and Lead. KY OSH is also working with several organizations to address combustible dust, and health hazards associated with asbestos, and poisonings from chemical exposures. Additionally, the State Plan has also supported the federal FY 2019 Agency Priority Goal for Trenching and Excavation;

The following table outlines the total number of violations for programmed activity:

All General Industry Programmed Inspections	KY OSH	All Construction Programmed Inspections	KY OSH
Average Number of Violations/Inspection	2.64	Average Number of Violations/Inspection	2.0
In-Compliance Rate	33.3%	In-Compliance Rate	0%
% Violations Classified as Serious, Repeat and Willful	40.5%	% Violations Classified as Serious, Repeat and Willful	100%

**Finding FY 2019-1:** (formerly FY 2018-03, FY 2017-06, FY 2016-03, FY 2015-06, FY 2014-05, FY 2013-05, and FY 2011-06): KY OSH conducted a total of seven programmed health inspections during this period.

**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 2019-2:** KY OSH conducted a total of 15 programmed safety inspections during this period.

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

#### d) Citations and Penalties

In FY 2019, the 725 inspections conducted resulted in an average of 1.66 SWRU violations per inspection and 0.98 other-than-serious violations per inspection. KY OSH is within range of the FRL for SWRU, which is 1.43 to 2.15 (SAMM 5) and the FRL for other-than-serious, which is 0.78 to 1.16. Serious violations are categorized as high, medium or low severity serious, for penalty calculation purposes. Additionally, 11 repeat violations and 11 willful violations were issued by the State Plan. In addition, KY OSH has an enforcement presence in the workplace at 0.98%, as compared to the National average at 1.23%, which is within the FRL (SAMM 17).

Actual inspections (SAMM 7) increased in FY 2019 from FY 2018. However, KY OSH conducted 583 safety and 142 health inspections, which was 89.5% of the planned

inspection goal of 810 inspections. KY OSH exceeded the safety inspection goal however; they were 20 inspections below the health inspection goal. Turnover rate and the loss of experienced compliance health officers contributed to the lower number of safety and health inspections.

KY OSH maintained a significantly higher average lapse time from opening conference to citation issuance date than the FRL (SAMM 11) as referenced below:

Average Lapse Time	KY OSH	FRL
Safety	95 days	38.08 – 57.13
Health	102 days	45.78 – 68.68

Case files reviewed included adequate documentation to support the violations. The case files that were reviewed were adequately documented overall, to support the violations with minor exceptions. The inspection files had very detailed narratives and interview documentation explaining the inspection process, the employer’s business/processes, findings, and any other issues.

The total in-compliance rate (SAMM 9) for all safety inspections in FY 2019 was 49.52% and 57.14% for health inspections. The percentage for safety and health was well above the FRL.

KY OSH average current penalty per serious violation in the private sector (SAMM 8: 1-250+ workers) was \$3,922.42 in FY 2019. The further review level (FRL) is less than 25% of the three-year national average \$2,871.96. KYOSH is issuing penalties that are higher than the FRL (109% of the FRL).

**Finding FY 2019-3:** (formerly FY 2018-04, FY 2017-07, FY 2015-08, FY 2014-06, FY 2013-06, FY 2011-07, and FY2009-11): KY OSH has a significantly higher average citation issuance lapse time for safety and health inspections, which are outside the FRLs.

**Recommendation:** KY OSH should develop and implement a process to reduce the average lapse time for safety and health inspections to the national average.

**FY 2019-OB-1:** KY OSH conducted 725 inspections, which was 89.5% of the planned inspection goal of 810 inspections.

**Federal Monitoring Plan:** OSHA will monitor the Kentucky State Plan during FY 2019 to ensure they meet or exceed the inspection goal they provided in the grant.

**FY 2019-OB-2:** The total in-compliance rate (SAMM 9) for all safety inspections in FY 2019 was 49.52% and 57.14% for health inspections. The percentage for safety and health was well above the FRL.

**Federal Monitoring Plan:** OSHA will monitor the Kentucky State Plan during FY 2019

to ensure non-compliance rate for all safety and health inspections is within the FRL.

e) Abatement

Available procedures and inspection data indicate that KY OSH obtains adequate and timely abatement information in most case files and has processes in place to track employers who are late in providing abatement information. Program managers use OSHA Express reports 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 inspection is conducted.

Follow-up inspections accounted for .8% of the total inspections in Kentucky for FY 2019. Follow-up inspections are useful to ensure abatement, if there is a problem with abatement verification. According to the State Indicator Report (SIR) for FY 2019, the number of private sector inspections that have unabated violations that are greater than 60 calendar days for safety, and 90 calendar days for health, past the issuance date, was 41 for safety and six for health, respectively. The number of open, non-contested cases with abatement not complete in excess of 60 calendar days is 74. In addition, there were 46 valid unprogrammed activities handled as inspections, which have been open more than 60 days, and there were 48 valid complaints handled as an investigation (phone/fax), which were open more than 30 days. KY OSH should ensure that the number of complaint investigations open remains low, so that hazards are quickly eliminated.

The majority of case files reviewed contained written documentation, photos, work orders, or employer's certification of abatement. Petitions for Modification of Abatement (PMA) were appropriately provided when the employer requested an extension for their corrective action timeframe and interim protection information was provided in the case file.

In the files reviewed, where serious hazards were identified, and the abatement was classified as "Corrected During Inspection (CDI)", the files had the specific description outlining the corrective action observed by the compliance officer, as well as photos for evidence. A violation can be considered corrected during the inspection, when the compliance officer witnesses the correction to the specific violation while onsite. KY OSH requires that the worksheet contain information on how the violation was abated.

**FY 2019-OB-3:** Follow-up inspections accounted for .8% of the total inspections in Kentucky for FY 2019. The number of open, non-contested cases with abatement not completed in excess of 60 calendar days is 74.

**Federal Monitoring Plan:** During next year's FAME, OSHA will review a sample of non-contested case files with abatement not completed in excess of 60 calendar days to determine if this issue has been resolved.

f) Worker and Union Involvement

Kentucky's procedures for employee and union involvement are identical to those of OSHA's.



Case file review disclosed that employees were included in 100% of fatality investigations, and other inspections. This determination was supported by SAMM measure 13.

### **3. REVIEW PROCEDURES**

#### **a) Informal Conferences**

KY OSH has procedures in place for conducting informal conferences, and proposing informal settlement agreements, and these procedures appear to be followed consistently by the managers and supervisors. According to the State Indicator Report (SIR), 0.87% of violations were vacated, and 0.66% of violations were reclassified as a result of informal settlement agreements. The percent of penalty retained was 80.25%, which exceeds the national average of 66.38%. Case files reviewed had similar results, with very few violations noted as being vacated or reclassified, and some cases were resolved with some penalty reduction. 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. No negative trends or problems with citation documentation have been noted.

#### **b) Formal Review of Citations**

In FY 2019, 17.3% of inspections with citations were contested. KY OSH is represented by the Labor Cabinet's Office of General Counsel. Attorneys in the Office of General Counsel represents the entire Labor Cabinet including KY OSH. The General Counsel participates in organizations, such as the State OSHA Litigators Organization (SOLO), where State and Federal high-profile cases, and cases with special legal issues, are shared and discussed. The attorneys work closely with the compliance staff, during the preparation of fatality inspections and other high-profile inspections. The attorneys are very knowledgeable of OSHA requirements, and what is needed for a case to be legally sufficient. No negative trends or problems with citation documentation have been identified.

The Kentucky Occupational Safety and Health Review Commission holds hearings and issues decisions on contested citations. The Review Commission is administratively attached to the 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 a contest and first-level decision, although that process is largely not within their control.

During FY 2019, the State Plan did not receive any negative decisions by the Kentucky Occupational Safety and Health Review Commission. All decisions are reviewed by the Commissioner of Labor and senior management staff to determine if changes in policies and procedures need to be made.

#### 4. STANDARDS AND FEDERAL PROGRAM CHANGE (FPC) ADOPTION

In accordance with 29 CFR 1902, State Plans are required to adopt standards and Federal program changes (FPCs) within a six-month timeframe. State Plans that do not adopt identical standards and procedures must establish requirements that are ALAE 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 only exceptions were the maximum penalty increase, the implementation of directives for areas outside the State Plan’s jurisdiction and the Alternative Dispute Resolution (ADR) directive for Whistleblower, which did not require adoption. The tables below provide a complete list of the Federal directives and standards, which required action during this period:

##### Status of FY 2019 Federal Standards Adoption

<b>Standard:</b>	<b>Response Due Date:</b>	<b>State Plan Response Date:</b>	<b>Intent to Adopt:</b>	<b>Adopt Identical:</b>	<b>Adoption Due Date:</b>	<b>State Plan Adoption Date:</b>
Final Rule on the Standards Improvement Project - Phase IV 1904,1910,1915,1926 (5/14/2019)	7/13/2019	TBD	Yes	Yes	11/14/2019	Presently in promulgation process
Final Rule on the Implementation of the 2019 Annual Adjustment to Civil Penalties for Inflation 29 CFR 1902,1903 (1/23/2019)	3/23/2019	On hold	On hold	On hold	7/23/2019	On hold
Final Rule on Crane Operator Certification Requirements 29 CFR Part 1926 (11/9/2018)	1/9/2019	12/3/2018	Yes	Yes	5/9/2019	5/3/2019
Final Rule on Maximum Penalty Increases	9/12/2016	On hold	On hold	On hold	1/01/2017	On hold

**Status of FY 2019 Federal Program Change (FPC) Adoption**

<b>FPC Directive/Subject:</b>	<b>Response Due Date:</b>	<b>State Plan Response Date:</b>	<b>Intent to Adopt:</b>	<b>Adopt Identical:</b>	<b>Adoption Due Date:</b>	<b>State Plan Adoption Date:</b>
<i>Adoption Required</i>						
National Emphasis Program on Trenching and Excavation CPL 02-00-161 (10/1/2018)	11/30/2018	12/08/2018	Yes	No	4/1/2019	1/1/2019
<i>Equivalency Required</i>						
Confined and Enclosed Spaces and Other Dangerous Atmospheres in Shipyard Employment CPL 02-01-061 (5/22/2019)	7/21/2019	1/28/2020	Yes	Yes	11/22/2019	10/1/2019
Shipyard Employment "Tool Bag" Directive CPL 02-00-162 (5/22/2019)	7/21/2019	N/A	N/A	N/A	11/22/2019	OSHA exercises maritime jurisdiction in Kentucky
Enforcement Guidance for Personal Protective Equipment (PPE) in Shipyard Employment CPL 02-01-060 (5/22/2019)	7/21/2019	N/A	N/A	N/A	11/22/2019	OSHA exercises maritime jurisdiction in Kentucky
Site-Specific Targeting 2016 (SST-16) CPL 02-18-01 (10/16/2018)	12/15/2018	12/4/2018	No	N/A	N/A Adoption not required	Kentucky will utilize this directive to supplement the State targeting system.
Alternative Dispute Resolution (ADR) Processes for Whistleblower Protection Programs CPL 02-03-008 (2/4/2019)	4/5/2019	N/A	N/A	N/A Adoption not required	N/A	

## 5. VARIANCES

All variances are properly documented and tracked by KY OSH. The KY OSH program did not receive any variance requests during FY 2019, and no issues related to variances were identified.

## 6. STATE AND LOCAL GOVERNMENT WORKER PROGRAM

Kentucky state law [KRS 338 “Occupational Safety and Health of Employees”] establishes definitions for employer and worker, which do not exclude public employers and 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.

KY OSH conducted 35 state and local government sector inspections in FY 2019, which accounted for 4.85% of all inspections. [Reference: SAMM 6] The average citation lapse time for state and local government sector enforcement files is 103 days. The 2018 TCIR for the state and local government sector in Kentucky is 4.7, slightly lower than the national average of 4.8.

## 7. WHISTLEBLOWER 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 2019 FAME. The sole investigator for KY OSH is located in the central office in Frankfort. The program is supervised and managed by the Assistant Director, Division of OSH Compliance.

The following chart reflects KY OSH’s percent meritorious and merit cases settle for retaliation complaints in FY 2013 through 2019:

Meritorious Complaints		Cases Settled	
<b>FY 2019</b>	0	<b>FY 2019</b>	0
<b>FY 2018</b>	0	<b>FY 2018</b>	0
<b>FY 2017</b>	0	<b>FY 2017</b>	0
<b>FY 2016</b>	5%	<b>FY 2016</b>	100%
<b>FY 2015</b>	8%	<b>FY 2015</b>	100%

FY 2019 Status	Number of Cases	Percentage
<b>Merit</b>	0	0%
<b>Dismissed</b>	2	7%
<b>Settlement</b>	0	0%
<b>Withdrawal</b>	7	26%
<b>Administratively Closed</b>	18	67%

Based on the data provided, KY OSH received a total of 27 complaints, nine of which were docketed for investigation and 18 administratively closed. Of the nine docketed, two were dismissed and seven were withdrawn by the Complainant.

According to the SAMM, the average time to complete investigations was 104 days. KY OSH investigators conduct investigations, according to KY OSH Discrimination Field Operations Manual. This manual has many similarities to the federal Whistleblower Investigations Manual, but the following differences are noted:

- Complainants in KY have 120 days to file complaints of retaliation.
- Civil penalties up to \$10,000 can be issued to respondents immediately upon a merit determination.
- A person may be cited for discriminatory action against an employee of another person.
- Employees of state and political subdivisions are covered.
- Complainants may be reinstated prior to a final order.

It is initially noted that the investigator and Assistant Director were hired in this fiscal year. As a result, the majority of the case files reviewed did not represent the work-product of the new staff. OSHA provided training during this reporting period and believes certain improvements to the program are being planned or have already been implemented. Furthermore, as of January 1, 2020, KY OSH has adopted a new Compliance Field Operations Manual with Chapter X establishing the Discrimination program.

Based upon the case file review, several deficiencies were identified, that could have resulted in a negative impact to the program. Those findings and observations are as follows:

**Finding FY 2019-04:** The case file review identified a number of cases where KYOSH failed to acquire and/or maintain correct retaliation case file documentation: to wit, (1) lack of determination letters or unsigned determination letters, (2) no case activity logs, (3) insufficient/inaccurate correspondence tracking information, and (4) erroneous IMIS entries.

**Recommendation:** KYOSH should establish procedures by which the Retaliation manager routinely reviews case files and online systems to ensure a thorough investigation was conducted, ensure that case file documentation is being retained in accordance with established retention policy, and ensure the accuracy of IMIS data entries.

**FY 2019-OB-4:** There was insufficient supervisory review of the retaliation investigations. Specifically, the investigator is conducting the investigation, making a findings recommendation, and finalizing the findings without input/approval from a supervisor.

**Federal Monitoring Plan:** During next year's FAME, OSHA will review a sample of retaliation investigation case files to determine if this issue has been resolved.

**FY 2019-OB-5:** Retaliation complaints were being closed for a lack of cooperation when a complainant fails to return a follow-up questionnaire or elects not to provide a rebuttal to the position statement.

**Federal Monitoring Plan:** During next year's FAME, OSHA will review a sample of retaliation investigation case files to determine if this issue has been resolved.

**FY 2019-OB-6:** In one case, the program failed to identify a retaliation complaint, which implicated a Federal statute and thus the matter was not referred to OSHA for investigation. Additionally, another retaliation case was improperly dismissed based upon an incorrect understanding of protected activity. Specifically, it appears that the investigator failed to apply the reasonable belief standard when assessing complainant's engagement in protected activity, dismissing a complaint because no specific standard exists addressing complainant's concern.

**Federal Monitoring Plan:** The OSHA Area Office will closely monitor incoming complaints to ensure proper referrals to OSHA.

## **8. COMPLAINT ABOUT STATE PROGRAM ADMINISTRATION (CASPA)**

No CASPAs were filed during this evaluation period.

## **9. VOLUNTARY COMPLIANCE PROGRAM**

KY OSH did not adopt the OSHA Strategic Partnership Program (OSPP), or the OSHA Alliance Program. The State Plan's Partnership program is different from OSHA's OSPP and is well managed by the State Plan. The State Plan continues to offer Site-based, Association-based, and Training-based Partnerships. There is currently a total of 13 active Partnerships in Kentucky. The State Plan's Partnership participants meet annually, in conjunction with the Governor's Safety and Health Conference to address concerns, as well as program enhancements.

KY OSH implemented the Kentucky Volunteer Star Program in 1997, and the program currently features 14 participating worksites. During this period, three (3) new site joined, and no employers withdrew from the program. 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 established appropriate guidelines, which are equivalent to the OSHA VPP directive, CSP 03-01-003. The directive effectively addresses enforcement activities at VPP sites, such as fatality investigations. Incentive programs were fully assessed during the onsite evaluations conducted by KY OSH and documented on the VPP Site Worksheet.

## **10. PRIVATE AND STATE AND LOCAL GOVERNMENT 23(g) ON-SITE CONSULTATION PROGRAM**

The Kentucky Consultation Program is administered by the Kentucky Labor Cabinet, Department of Workplace Standards, Division of Occupational Safety and Health Education and Training. The Region must conduct an Onsite Review, at least every two years, to assess the effectiveness of the Program's system for the delivery of consultative services, particularly in relation to mandated program elements not covered by the Mandated Activities Report for Consultation (MARC). KY OSH has adopted OSHA's Consultations Policies and Procedures Manual (CPPM) and therefore

their program was reviewed for compliance with the CPPM. The Regional on-site review included an overall review of program management operations, a review of 40 (20 safety files, 20 health files) randomly selected consultation case files, and a review of the FY 2019 operations.

## **Program Management**

### **Visits**

During FY 2019, the Program conducted 390 initial visits, 0 training and assistance visits, and 0 follow-up visits. Hazards identified and eliminated as a result of consultative visits totaled 5,097. Of these 3,328 were serious hazards and 1769 were other-than-serious hazards.

### **Mandated Activities Report for Consultation (MARC) - FY 2019 Summary**

		Reference Std.
1. Percent of Initial Visits in High-Hazard Establishments	98.9%	Not < 90%
2. Percent of Initial Visits to Smaller Businesses	94.8%	Not < 90%
3. Visits Where Consultants Conferred with Employees	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 Date > 90 Days Past Due	0%	0%

### **Hiring and Vacancies**

The FY 2019 Kentucky 23(g) Cooperative Agreement provides for the following program positions: Director; the Assistant Director; one Safety Program Manager; one Health Program Manager; one Partnership Program Manager; one VPP Administrator; one SHARP Administrator 15 Safety Consultants; 11 Industrial Hygienist Consultants.

The Program had one Director, three Safety Consultants, and three vacant Industrial Hygienist Consultant positions. Two Safety Consultant and two Health Consultant positions will be filled during FY 2020. The remaining vacant positions will continue to be filled.

There were no issues found with this category.

### **Training**

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

There were no issues found in this category.

### **Accompanied Visits**

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

There were no issues found in this category.

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

For this category (request to delivery of service), there is not an established required period. During this review period, the time from the request until the delivery of services averaged over 185 days.

Additionally, when the Program receives a request and is unable to provide consultation services at that time, following the Directive Number CSP 02-00-03 (CPPM), Chapter 3.IV.A.4, a letter is issued to the employer explaining the reasons for the delay and that they are still responsible for providing a safe and healthful workplace.

There were no issues found in this category.

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

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



During this review period, the time between the closing and the issuance of the reports to the employers averaged 14 calendar days.

There were no issues found with this category.

### **Management Reports Utilized**

The Kentucky 23(g) Consultation Program has a trained System Specialist who uses the 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 submitted quarterly progress reports as required and discussed accomplishments in each of the Annual Performance Goals with the Regional Consultation Program Manager.

There were no issues found with this category.

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

The Program has succeeded maintaining a Safety & Health Achievement Recognition Program (SHARP). The Program renewed 13 companies, since the last review. At the end of the review period, the Program had 15 participants. The Program identifies potential candidates through various means. The Safety and Health consultants' report back to the SHARP Administrator when they find a company that appears to be a viable candidate. The SHARP Administrator recruits companies for the SHARP program by contacting these identified companies, explaining the program and promoting it.

There were no issues found with this category.

### **Marketing**

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

- Bulk emails to all past training participants
- Bulk emails to all Governor's Safety and Health Conference participants
- Bulk emails to all Standard Interpretation
- Quarterly Labor Cabinet newsletter
- Annual Governor's Safety and Health Conference
- Labor Cabinet Website
- Face to Face Heat Stress Campaign
- Partnership brochures

There were no issues found with this category.

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

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

### **File Selection**

A total of 40 files (20 safety files, 20 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/control. A diary sheet was included in the files, however some files had limited information. Most files contain notes such as scheduled visit date verification, date report was sent to the employer, and other communications.

All the files reviewed were found to have an evaluation of the employers' safety and health program using the OSHA Form 33. Files were well maintained, including OES forms, reports to the employer, and abatement information. The written reports to the employer contained abatement information; however "on the spot" corrections method, when observed by the consultant, were not documented in the field notes on six of the files reviewed.

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/analysis of the injuries and/or illnesses. TCIR/DART rates were calculated when required and compared to the national average, in a few files. Only one-year data was used to calculate the rate instead of the previous three (3) years. Industries visited included the following: wood container and pallet manufacturing; other plastics product manufacturing; home health care services; sheet metal work manufacturing; wood office furniture manufacturing; grocery and related product merchant wholesalers; nursing care facilities; hazardous waste treatment and disposal; landscaping services; motor vehicle and motor vehicle parts and supplies merchant wholesalers; motor vehicle body manufacturing; metal and mineral merchant wholesalers; janitorial services; offices of physicians; fabricated structural metal manufacturing; other building material dealers; and concrete block and brick manufacturing. During this review period, the program identified a diversity of hazards related to the following:

walking and working surfaces; hazard communication programs; noise; emergency action plan; PPE written assessment; various electrical hazards; welding; fall protection; weight limits; and housekeeping.

Reports to the employers were thorough and included appendices with specific information on hazards found and program recommendations. Time periods for abatement of hazards were appropriate. Tracking of abatement was conducted, however, there were some instances of granting abatement extension with multiple hazards where the interim measures in place to protect employees while the hazards were being corrected were not adequately documented in the request. Abatement completion report from the employer was included in the files.

### **HEALTH:**

The health portion of the Kentucky Consultation program review included a review of twenty health consultation files. The reviewed files demonstrated consultation services were offered to and utilized by a variety of different facilities across the state.

As the consultation program transitioned into a digital filing system, it was noted that files and the corresponding data was properly managed, with the exception of isolated scanning oversights, data and files were managed well by the program.

There was consistent use of the diary sheets in all files reviewed. Several files included detailed information about the visits and phone calls on the log. Some files had limited information about the visits; however, the majority of the files included diary sheets with enough detail to ensure an understanding of what had taken place during the consultation visit.

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 calibrated properly before and after use and the calibration is documented as required on the appropriate sampling forms. Consultants visited numerous industries and sampling reflected proper hazard identification through the variety of sampling conducted, including but not limited to noise, formaldehyde, acetic acid, and methylene diphenyl diisocyanate (MDI). All sampling was documented on the appropriate sampling forms and included in each file. Sampling strategies were also documented in the field notes of some files, which added a better description of the potentially hazardous conditions.

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

All files reviewed were found to have the evaluation of the employer's safety and health program using the OSHA Form 33.

Health files contained a copy of the employers' OSHA 300 logs or, at a minimum, documented that a log review had been completed. The information gained through the review was in the file along with calculations of the TCIR/DART for those employers.

Abatement timelines were adequately recommended and adhered to, except for a few instances of granting abatement extensions without the proper verification of why the extension was needed and the interim measures in place to protect employees while the hazard was being corrected. In one visit extensions were requested for valid reasons; however, the request came after the abatement due date.

The written reports used by consultants provided detailed information. Information including, but not limited to, the identity of the consultants who performed the visit, TCIR/DART rate calculations that compared the facility's data to the industry average, sampling data, and appropriate actions the employer needed to take were all documented in each written report. Written reports to the employers were processed timely with only a few exceptions where the report was not sent within 20 days. However, the average number of days for reports to the employer was well below the requirement.

**Finding FY 2019-5:** In six of the 40 (15%) of the consultation case files, “on the spot corrections” observed by the consultant were not correctly documented in the field notes as required by the CPPM, Chapter 4 III.C.2.

**Recommendation:** KY OSH should closely monitor consultation file documentation to ensure on the spot corrections are properly documented in the field notes including the correction method use to abate the hazardous condition.

**FY 2019-OB-7:** In 9 out of 40 (23%) consultation case files reviewed, abatement extensions were granted without properly verifying the reason for the extension and confirming that interim measures were in place to protect employees while the hazard was being corrected.

**Federal Monitoring Plan:** During next year's FAME, OSHA will review a sample of KYOS's consultation files to ensure employer request for abatement extensions contain interim measures for all hazards listed in the request.

### **Overall Effectiveness**

Overall, the Kentucky Consultation Program has shown great improvements in all areas and the Program remains cognizant of OSHA's strategic initiatives and performance goals, while maintaining management oversight. The Program provides direction utilizing available technologies, OSHA Express reports, and through frequent communication with Consultants. This shows that the program has been impactful to numerous employers and employees in the state. All required elements of an Internal Quality Assurance Program are implemented and managed effectively.

**Appendix A – New and Continued Findings and Recommendations**  
 FY 2019 Kentucky Comprehensive FAME Report

FY 2019-#	Finding	Recommendation	FY 2018-# or FY 2018-OB-#
FY 2019-1	KY OSH only conducted seven programmed health inspections during this 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 hazards found in high-hazard health industries.	FY 2018-03 FY 2017-06 FY 2016-03 FY 2015-06 FY 2014-05 FY 2013-05 FY 2011-06
FY 2019-2	KY OSH only conducted 15 programmed safety inspections during this period.	KY OSH should develop and implement a strategy to ensure a more representative number of programmed planned safety inspections are conducted to adequately address the scope and seriousness of the hazards found in high-hazard safety industries.	
FY 2019-3	KY OSH has a significantly high average citation issuance lapse time for safety and health inspections, which are outside the FRLs.	KY OSH should develop and implement a process to reduce the average lapse time for safety and health inspections to the national average.	FY 2018-04 FY 2017-07 FY 2015-08 FY 2014-06 FY 2013-06 FY 2011-07 FY-2009-11
FY 2019-4	The case file review identified a number of cases where KYOSH failed to acquire and/or maintain correct case file documentation in retaliation files: to wit, (1) lack of determination letters or unsigned determination letters, (2) no case activity logs, (3) insufficient/inaccurate correspondence tracking information, (4) erroneous IMIS entries.	KY OSH should establish procedures by which the whistleblower manager routinely reviews case files and online systems to ensure a thorough investigation was conducted, ensure that case file documentation is being retained, in accordance with established retention policy, and ensure the accuracy of IMIS data entries.	
FY 2019-5	In six of the 40 (15%) of the consultation case files, “on the spot corrections” observed by the consultant were not correctly documented in the field notes as required by the CPPM, Chapter 4 III.C.2.	KY OSH should closely monitor consultation file documentation to ensure on the spot corrections are properly documented in the field notes, including the correction method used to abate the hazardous condition.	

## Appendix B – Observations Subject to New and Continued Monitoring

### FY 2019 Kentucky State Plan FAME Report

Observation # FY 2019-OB-#	Observation# FY 2018-OB-# or FY 2018-#	Observation	Federal Monitoring Plan	Current Status
FY 2019-OB-1	FY 2018-OB-03	KY OSH conducted 725 inspections, which was 89.5% of the planned inspection goal of 810 inspections.	The OSHA Area Office will closely monitor and review the SAMM and other available data with the State on a quarterly basis to ensure KY OSH is on target to meet the inspection goals established in the Grant.	Continued
FY 2019-OB-2		The total in-compliance rate (SAMM 9) for all safety inspections in FY 2019 was 49.52% and 57.14% for health inspections. The percentage for safety and health was well above the FRL.	The OSHA Area Office will closely monitor and review the SAMM, SIR, and other available data with the State on a quarterly basis to ensure KY OSH is within the FRL for in-compliance rate.	New
FY 2019-OB-3		Follow-up inspections accounted for .8% of the total inspections in Kentucky for FY 2019. The number of open, non-contested cases with abatement does not complete in excess of 60 calendar days is 74.	During next year's FAME, OSHA will review a sample of KY OSH's non-contested case files with abatement not completed in excess of 60 calendar days to determine if this issue has been resolved.	New
FY 2019-OB-4		There was insufficient supervisory review of the retaliation investigations. Specifically, the investigator is conducting the investigation, making a findings recommendation, and finalizing the findings without input/approval from a supervisor.	During next year's FAME, OSHA will review a sample of KY OSH's retaliation investigation case files to determine if this issue has been resolved.	New
FY 2019-OB-5		Retaliation complaints are being closed for a lack of cooperation when a Complainant fails to return a follow-up questionnaire or elects not to provide a rebuttal to the position statement.	During next year's FAME, OSHA will review a sample of KY OSH's retaliation investigation case files to determine if this issue has been resolved.	New

## Appendix B – Observations Subject to New and Continued Monitoring

### FY 2019 Kentucky Comprehensive FAME Report

FY 2019-OB-6		<p>In one case, the program failed to identify a retaliation complaint which implicated a Federal statute and thus the matter was not referred to OSHA for investigation. Additionally, another retaliation case was improperly dismissed based upon an incorrect understanding of protected activity. Specifically, it appears that the investigator failed to apply the reasonable belief standard when assessing retaliation complainant’s engagement in protected activity, dismissing a complaint because no specific standard exists addressing Complainant’s concern.</p>	<p>The OSHA Area Office will closely monitor incoming complaints to ensure proper referrals to OSHA.</p>	New
FY 2019-OB-7		<p>In 9 out of 40 (23%) consultation case files reviewed, abatement extensions were granted without properly verifying the reason for the extension and confirming that interim measures were in place to protect employees while the hazard was being corrected.</p>	<p>During next year’s FAME, OSHA will review a sample of KYOS’s consultation files to ensure employer request for abatement extensions contain interim measures for all hazards listed in the request.</p>	New

## Appendix C - Status of FY 2018 Findings and Recommendations

### FY 2019 Kentucky Comprehensive FAME Report

FY 2018-#	Finding	Recommendation	State Plan Response/Corrective Action	Completion Date	Current Status and Date
FY 2018-1	In most fatality files, the interviews that were conducted during the investigations were inadequate and statements were essentially non-existent.	KY OSH should develop and implement a strategy to ensure adequate and thorough interviews are conducted and statements are developed for all witnesses, workers, supervisors, and managers with knowledge of the incident, hazards, conditions, work practices, policies and procedures, and any other pertinent information.	In August of 2018, a directive was issued to all CSHOs to interview all potential witnesses. Per the August 2018 Quality and Accountability Directive, interviews are required to be documented by recording, or by a detailed typewritten narrative. In January 2019, twenty CSHOs received required Investigative and Interviewing Techniques training through the OTI. KYOSH developed and implemented witness statement forms for developing and documenting witness statements.	12/6/2019	Closed
FY 2018-2	A review of the fatality inspection files found that fatalities are not being completely and thoroughly investigated to identify the cause of the accident. The cause of the accident was not identified in 19 of the 44 fatality files that were reviewed.	KY OSH should develop and implement a strategy to ensure all fatalities are completely and thoroughly investigated identifying and documenting the cause. Corrective action complete; awaiting verification.	In August of 2018, a Quality and Accountability Directive was issued requiring all compliance officers to explicitly state the cause of the accident in all case reports. KY OSH managers and supervisors continue to re-emphasize with regards to open fatality inspections, requiring a written "cause" in all cases. In October of 2018, a mandatory review process for all inspections was implemented to ensure that each inspection is thoroughly reviewed in a timely manner by the supervisor. An inspection checklist was developed for both CSHOs and supervisors to follow to ensure quality in the investigation file. Fatalities are being completely and thoroughly investigated and the cause is being documented in all accident files.	12/6/2019	Closed



## Appendix C - Status of FY 2018 Findings and Recommendations

### FY 2019 Kentucky Comprehensive FAME Report

FY 2018-3	KY OSH conducted four programmed health inspections during this period.	KY OSH should develop and implement an effective 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. Corrective action complete; Awaiting verification.	KY OSH conducted a total of four programmed health inspections in FY 2018. In FY 2019, KY OSH conducted a total of seven surpassing the FY 2018 number. There was no further response by KY OSH following the FY 2018 review regarding this specific finding.		Open
FY 2018-4	KY OSH has significantly high average citation issuance lapse times for safety and health inspections, which are outside the FRLs.	KY OSH should develop and implement a process to reduce the average lapse time for safety and health inspections to reduce lapse times to the national average. Corrective action complete; awaiting verification.	No response by KY OSH following the FY 2018 review regarding this specific finding.		Open
FY 2018-5	In a majority of both complaint and general case files, there is little to no documentation of the interviews conducted. In cases where employees were interviewed, the interviews were minimally documented with short bullet notes in fragmented sentences.	KY OSH should develop and implement a strategy to ensure adequate and thorough interviews are conducted and documented for workers, supervisors, and managers with knowledge of the hazards, work practices, policies and procedures, and any other pertinent information. Corrective action complete; awaiting verification.	In August of 2018, a directive was issued to all compliance officers to interview all potential witnesses. Per the August 2018 Quality and Accountability Directive, interviews are required to be documented by recording, or by a detailed typewritten narrative. In January 2019, twenty Compliance Officers received required Investigative and Interviewing Techniques training through OTI. Interviews are being documented in all files.	1/31/2020	Closed

## Appendix D - FY 2019 State Activity Mandated Measures (SAMM) Report

FY 2019 Kentucky Comprehensive FAME Report

U.S. Department of Labor				
Occupational Safety and Health Administration State Plan Activity Mandated Measures (SAMMs)				
State Plan: Kentucky – <b>KYOSH</b>			FY 2019	
SAMM Number	SAMM Name	State Plan Data	Further Review Level	Notes
<b>1a</b>	Average number of work days to initiate complaint inspections (state formula)	22.34	30 days for serious hazards; 120 days for other than serious hazards	The 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)	14.03	N/A	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)	25.40	TBD	The 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)	24.38	N/A	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)	98.45%	100%	The further review level is fixed for all State Plans.
<b>4</b>	Number of denials where entry not obtained	0	0	The further review level is fixed for all State Plans.

## Appendix D - FY 2019 State Activity Mandated Measures (SAMM) Report

### FY 2019 Kentucky Comprehensive FAME Report

<b>5</b>	Average number of violations per inspection with violations by violation type	SWRU: 1.66	+/- 20% of SWRU: 1.79	The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from 1.43 to 2.15 for SWRU and from 0.78 to 1.16 for OTS.
		Other: 0.98	+/- 20% of Other: 0.97	
<b>6</b>	Percent of total inspections in state and local government workplaces	4.85%	+/- 5% of 4.94%	The further review level is based on a number negotiated by OSHA and the State Plan through the grant application. The range of acceptable data not requiring further review is from 4.69% to 5.19%.
<b>7</b>	Planned v. actual inspections – safety/health	S: 580	+/- 5% of S: 688	The further review level is based on a number negotiated by OSHA and the State Plan through the grant application. The range of acceptable data not requiring further review is from 653.60 to 722.40 for safety and from 115.90 to 128.10 for health.
		H: 142	+/- 5% of H: 122	
<b>8</b>	Average current serious penalty in private sector - total (1 to greater than 250 workers)	\$3,922.42	+/- 25% of \$2,871.96	The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from \$2,153.97 to \$3,589.95.
	a. Average current serious penalty in private sector (1-25 workers)	\$2,965.47	+/- 25% of \$1,915.86	The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from \$1,436.89 to \$2,394.82.
	b. Average current serious penalty in private sector (26-100 workers)	\$3,551.13	+/- 25% of \$3,390.30	The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from \$2,542.73 to \$4,237.88.
	c. Average current serious penalty in private sector (101-250 workers)	\$4,609.38	+/- 25% of \$4,803.09	The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from \$3,602.31 to \$6,003.86.
	d. Average current serious penalty in private sector (greater than 250 workers)	\$5,090.81	+/- 25% of \$5,938.59	The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from \$4,453.94 to \$7,423.23.

## Appendix D - FY 2019 State Activity Mandated Measures (SAMM) Report

### FY 2019 Kentucky Comprehensive FAME Report

<b>9</b>	Percent in-compliance	S: 49.52%	+/- 20% of S: 30.30%	The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from 24.24% to 36.36% for safety and from 28.90% to 43.35% for health.
		H: 57.14%	+/- 20% of H: 36.12%	
<b>10</b>	Percent of work-related fatalities responded to in one workday	88.37%	100%	The further review level is fixed for all State Plans.
<b>11</b>	Average lapse time	S: 95.00	+/- 20% of S: 47.61	The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from 38.08 to 57.13 for safety and from 45.78 to 68.68 for health.
		H: 101.60	+/- 20% of H: 57.23	
<b>12</b>	Percent penalty retained	85.89%	+/- 15% of 66.38%	The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from 56.42% to 76.33%.
<b>13</b>	Percent of initial inspections with worker walk around representation or worker interview	100%	100%	The further review level is fixed for all State Plans.
<b>14</b>	Percent of 11(c) investigations completed within 90 days	100%	100%	The further review level is fixed for all State Plans.
<b>15</b>	Percent of 11(c) complaints that are meritorious	0%	+/- 20% of 23%	The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from 18.40% to 27.60%.
<b>16</b>	Average number of calendar days to complete an 11(c) investigation	104	90	The further review level is fixed for all State Plans.
<b>17</b>	Percent of enforcement presence	0.98%	+/- 25% of 1.23%	The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from 0.92% to 1.54%.

NOTE: The national averages in this report are three-year rolling averages. Unless otherwise noted, the data contained in this Appendix D is pulled from the State Activity Mandated Measures (SAMM) Report in OIS and the State Plan WebIMIS report run on November 12, 2019, as part of OSHA's official end-of-year data run.

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**KENTUCKY  
OCCUPATIONAL SAFETY AND HEALTH PROGRAM**

**STATE OFFICE ANNUAL REPORT**

**for**

**FEDERAL FISCAL YEAR 2019**

**Larry L. Roberts, Secretary  
Kimberlee C. Perry, Commissioner**

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### INTRODUCTION

The Kentucky Occupational Safety and Health (OSH) Program was established in 1972 by the Kentucky General Assembly. In July of 1973, the U.S. Department of Labor's Occupational Safety and Health Administration (OSHA) approved Kentucky's state plan.

The Kentucky Labor Cabinet has experienced two (2) significant reorganizations. By Executive Order 2004-731, issued by Governor Ernie Fletcher in 2004, the Labor Cabinet was abolished with all duties, responsibilities, employees, and functions transferred to the Environmental and Public Protection Cabinet, Department of Labor. Executive Order 2004-731 was ratified into law during the 2005 General Assembly by Senate Bill 41.

Executive Order 2008-472, issued by Governor Steven L. Beshear and effective June 16, 2008, re-established the Labor Cabinet, headed by a Secretary appointed by the Governor, and assigned to it all organizational entities within, attached to, or associated with the former Department of Labor, including all duties, functions, responsibilities, personnel, records, files, equipment, budgets, appropriations, allotments, and cash balances assigned to those entities. All duties, responsibilities, records, files, equipment, budgets, appropriations, allotments, and cash balances assigned to the Office of Occupational Safety and Health were assigned to the Department of Workplace Standards, headed by a Commissioner appointed by the Governor.

Executive Order 2008-472 was not ratified in the 2009 Regular Session of the General Assembly. Therefore, Executive Order 2009-537 was issued by Governor Beshear on June 12, 2009, to preserve the organizational structure established in Executive Order 2008-472. Executive Order 2009-537 once again established the Labor Cabinet and assigned to it all organizational entities associated with the former Department of Labor as stated in Executive Order 2008-472.

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Under the reorganization, the appointed directors of the Division of OSH Compliance and Division of OSH Education and Training report to the Commissioner of Workplace Standards who, in turn, reports to the Secretary of the Labor Cabinet.

On March 25, 2010, Governor Beshear signed into law House Bill 393, an act relating to reorganization. House Bill 393 amended and created various sections of the Kentucky Revised Statutes to abolish the Environmental and Public Protection Cabinet and created (re-established) the Labor Cabinet. Kentucky's OSH Program now consists of the Division of OSH Compliance, headed by a Director; the Division of OSH Education and Training, headed by a Director; and the OSH Federal-State Coordinator. The OSH Federal-State Coordinator and the appointed directors of the Division of OSH Compliance and Division of OSH Education and Training report to the Commissioner of Workplace Standards who, in turn, reports to the Secretary of the Labor Cabinet. Supplementing the functions of these units directly is a standards promulgation unit, the OSH Standards Board, as well as an adjudicatory body, the OSH Review Commission. Administrative staffs support the division directors, the commissioner's office of the Department of Workplace Standards, and the OSH Federal-State Coordinator's office.

Executive Order 2018-586, issued by Governor Bevin and effective July 16, 2018, abolished the OSH Standards Board. The Board adopted and promulgated occupational safety and health rules, regulations, and standards. All duties of the Board transfer to the Office of the Secretary.

On October 1, 2018, the Division of OSH Compliance and the Division of OSH Education and Training moved from their home of over thirty (30) years to 657 Chamberlin Avenue, Frankfort, KY 40601.

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The Kentucky OSH Program encompasses all areas, issues, and responsibilities that are covered by OSHA with the exception of private sector maritime activities, non-OSH related discrimination, temporary labor camps and field sanitation, federal employers and employees, private contractors on properties ceded to the Federal Government (including Job Corps Centers and Federal Correctional Institutions), Tennessee Valley Authority facilities, and federal military bases. Kentucky's jurisdiction also extends to all state and local public employers and employees. The state's effort, with the exception of state and local government, does not include enforcement in any area over which OSHA does not exercise jurisdiction.

Kentucky's OSH statutes, Kentucky Revised Statute (KRS) Chapter 338, include definitions of employer and employee that do not exclude public employers and public employees. The exclusions to KRS 338 cover only employees of the United States government and places of employment over which Federal agencies other than OSHA exercise statutory authority. In addition, written opinions of the Kentucky Attorney General's Office support the Labor Cabinet's position that public employees are included in the OSH Program jurisdiction, which subjects Kentucky's public employers and employees to the same requirements, sanctions, and benefits as private sector employers and employees. Kentucky statutes, regulations, and policies make no distinction between the public and private sectors.

The Division of OSH Education and Training, also known as KYSAFE, and the Division of OSH Compliance have an effective and comprehensive effort to promote the safety, health, and general welfare of the people of the Commonwealth. This effort focuses on preventing hazardous working conditions and practices at places of work. The Kentucky OSH Program provides voluntary compliance services, education and training, enforcement



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through inspections of workplaces, onsite consultation services, research, statistics, and other functions that meet the mandate of the Title XXVII – Labor and Human Rights, KRS Chapter 338, Occupational Safety and Health of Employees.

The Kentucky Labor Cabinet remains fully committed to promoting the safety, health, and general welfare of the Commonwealth of Kentucky by preventing any detriment to the safety and health of all employees, both public and private, arising out of exposure to harmful conditions and practices at places of work. In addition, the Cabinet is fully involved in preserving our human resources by providing for education and training, inspection of workplaces, consultation services, research, reports, statistics, and other means of advancing progress in occupational safety and health.

David Dickerson served as Labor Cabinet Secretary and Dwayne Depp served as Commissioner of the Department of Workplace Standards during FY 2019.

Kentucky's Division of OSH Compliance maintains, at a minimum, benchmark staff of twenty-three (23) Compliance Safety and Health Officers (CSHO) and fourteen (14) Industrial Hygienists (IH). Another single position is devoted to investigating cases of alleged OSH discrimination. The Division of OSH Education and Training maintains three (3) main operational branches, safety, health, and partnership. Full staffing in the safety and health branches are nine (9) consultants for each branch, eighteen (18) total. In FY 2019, there were six (6) consultants in the safety branch and seven (7) IHs in the health branch. The Partnership Branch maintains a staff of five (5) safety consultants and IHs as well as a Voluntary Protection Partnership (VPP) Administrator, a Safety and Health Achievement Recognition Program (SHARP) Administrator, and a Construction Partnership Program (CPP)

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Administrator. The VPP Administrator position was unfilled for the majority of FY 2019 and the SHARP Administrator position has been unfilled since August 2019.

The Kentucky OSH Program implemented a five (5) year strategic plan for Fiscal Years (FY) 2016-2020 that utilizes a combination of resources to address workplace hazards, including enforcement strategies, consultations, training and education, partnership programs, technical assistance, and standards development. The synergistic effect of these combined resources enables the OSH Program to significantly impact worker safety and health in the Commonwealth of Kentucky.

This report is presented in three (3) sections. Section I addresses Kentucky's success in achieving FY 2019 Performance Plan goals. Section II addresses mandated activities during FY 2019. Section III addresses noteworthy accomplishments achieved by the Kentucky OSH Program during FY 2019.

Information presented in this report reflects accurate data for the period sampled. Some case files have matured since preparation of this report while others are still working through the process. Subsequently, some of the information may vary if resampled. It is important to note that at the time of report submission, there were 356 FY 2019 open enforcement inspections. The data is not fully mature.

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### SECTION I SUCCESS ACHIEVING PERFORMANCE GOALS

The first strategic goal of the 2016-2020 Strategic Plan is to improve workplace safety and health for all workers, particularly in high-risk industries, as evidenced by fewer hazards, reduced exposures, and fewer fatalities, injuries, and illnesses.

Goal 1.1 of the FY 2019 Annual Performance Plan addresses the aforementioned Strategic Plan goal. Goal 1.1 is to reduce the number of hazards associated with hospitalizations, amputations, injuries, and illnesses in general industry as well as construction.

In the FY 2016 baseline year, the Division of OSH Compliance received 101 reported amputations. Eighty-three (83) inspections were conducted with four (4) repeat serious violations, seventy (70) serious violations, and sixteen (16) other than serious violations with penalties totaling \$347,300. In FY 2019, ninety-four (94) amputations were reported to the Division of OSH Compliance. Sixty-seven (67) inspections were conducted with six (6) repeat serious violations, eighty (80) serious violations, and twenty (20) other than serious violations. Total penalties were \$523,850.

In the FY 2016 baseline year, the Division of OSH Compliance received 304 hospitalization reports. Ninety-nine (99) inspections were conducted resulting in four (4) repeat serious violations, forty-five (45) serious violations, and sixteen (16) other than serious violations with penalties totaling \$297,575. In FY 2019, 296 hospitalizations were reported to the Division of OSH Compliance and 137 inspections were conducted with four (4) repeat serious violations, 100 serious violations, and forty-eight (48) other than serious violations. Total penalties were \$660,550.

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Performance Goal 1.2 addresses the total number of hazards identified through a multi-pronged strategy that incorporates efforts for both the Division of OSH Compliance and KYSAFE.

The Division of OSH Compliance's portion of this goal consists of the number of inspections in construction and general industry. In the FY 2016 baseline year, the Division of OSH Compliance conducted 990 inspections, 544 were in general industry and 446 were in construction. In FY 2019, the Division of OSH Compliance conducted 725 inspections, 454 in general industry, 271 in construction, and none in maritime.

The Division of OSH Education and Training's portion of this goal consists of surveys and training contact hours conducted in high hazard industries, as well as the total number of training courses, contact hours, surveys, and technical assistance visits in all industries.

Kentucky's injury and illness data is also an indicator for this goal.

During the FY 2016 baseline year, KYSAFE conducted 166 health surveys of which all were considered high hazard. The division's safety branch conducted 198 surveys, of which all were considered high hazard. Five (5) safety and health technical assistance visits and 129 face-to-face training sessions were conducted that impacted over 4,400 persons. In FY 2019, KYSAFE conducted 196 health surveys of which all were considered high hazard. The division's safety branch conducted 194 surveys, all were considered high hazard. Three (3) safety and health technical assistance visits and 104 face to face training sessions were conducted that impacted over 4,600 persons.

Performance Goal 1.3 strives to ensure that employers are adhering to settlement provisions for fatality investigations through follow-up inspections.

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In the FY 2016 baseline year, the Division of OSH Compliance conducted eleven (11) follow-up inspections. None of the inspections were conducted to verify adherence to settlement provisions of fatality investigations. Six (6) follow-up inspections were conducted in FY 2019; however, there were no inspections conducted to verify adherence to settlement provisions. The agreements contained no applicable provisions or terms for employers compliance.

Performance Goal 1.4 aims to reduce by two (2) percent the number of construction industry injuries caused by falls, struck-by, and crushed-by incidents through a six (6) part strategy that combines efforts by the Division of OSH Compliance and the Division of OSH Education and Training. In addition to the information presented immediately below, Performance Goal 1.2 and 2.6 also relate to this goal.

In the FY 2016 baseline year, 444 inspections were conducted in the construction industry. In FY 2019, 271 inspections were conducted in the construction industry.

In the FY 2016 baseline year, twenty (20) sites were enrolled in the CPP. In FY 2019, there were twenty (20) sites enrolled in the CPP.

In the FY 2016 baseline year, KYSAFE conducted seventeen (17) surveys, and presented nineteen (19) training courses totaling 2,175 contact hours in the construction industry. In FY 2019, KYSAFE conducted twenty-seven (27) surveys, one (1) technical assistance visit, and presented nineteen (19) training courses totaling 1,746 contact hours in the construction industry.

FY 2016 baseline year data collected by the Bureau of Labor Statistics (BLS) Survey of Occupational Injuries and Illness in cooperation with the Division of OSH Education and Training's Statistical Services Branch, established the following Kentucky and National

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incident rates for 2015. This baseline data represents nonfatal occupational injuries and illnesses involving days away from work per 10,000 full-time workers in the construction industry.

2015	Falls	Struck-by	Crushed
Kentucky	13.2	14.8	0
National	18.8	27.4	4.3

All of Kentucky's rates presented in the FY 2016 SOAR were notably below national rates.

Data collected by the BLS Survey of Occupational Injuries and Illness in cooperation with the Division of OSH Education and Training's Statistical Services Branch, established the following Kentucky and National incident rates for 2018. This data represents nonfatal occupational injuries and illnesses involving days away from work per 10,000 full-time workers in the construction industry.

2018	Falls	Struck-by	Crushed
Kentucky	8.1	23.7	7.0
National	17.8	23.9	4.7

KYSAFE continues monitoring the number of training courses, contact hours, surveys, and technical assistance efforts conducted in construction, as well as CPP

Performance Goal 1.5 aims to initiate all fatality inspections as well as hospitalizations of three (3) or more employees within one (1) working day of notification. Kentucky

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conducted forty-seven (47) fatality inspections in FY 2019 and six (6) appear as outliers. A brief summary is provided below for each outlier.

1. The same day death of a JM Test Systems Inc. employee was reported by the employer Wednesday, October 24, 2018 that appeared to be natural causes. An inspection opened Wednesday, October 31, 2018 to confirm causation based upon new procedures established in the Division of OSH Compliance.
2. On Thursday, November 15, 2019, the employer reported the Friday, November 9, 2018 death of a Kroger employee. An inspection opened November 16, 2018. Kentucky responded within twenty-four (24) hours of notification.
3. On Wednesday, March 20, 2019, a media referral reported the Friday, March 15, 2019 death of a Henry Sizemore Jr DBA Sizemore Tree Service employee. An inspection was attempted Thursday, March 21, 2019; however, Kentucky was provided incorrect employer information. After days of investigative work, an inspection opened Tuesday, March, 26, 2019. Kentucky attempted response within twenty-four (24) hours.
4. On Friday, February 22, 2019, the Henderson County Deputy Coroner reported the same day death of a Pines Auto Transport & Hauling Service LLC employee. An inspection did not open due to an apparent lack of employer-employee relationship. The next-of-kin provided additional information on Tuesday, March 26, 2019 and an inspection opened Wednesday, March 27, 2019. Kentucky responded within twenty-four (24) hours of receiving additional information.
5. On Monday, July 29, 2019, the Division of OSH Compliance was notified by a third party of the July 27, 2019 death of a Ross Contracting and Remodeling

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employee. Preliminary investigation established the deceased was the owner and family patriarch. The decision was made to contact the employer after the August 1, 2019 funeral. The Division of OSH Compliance reached out to the employer on Friday, August 2, 2019 and an opening conference was scheduled for Wednesday, August 7, 2019; the employer did not appear. An inspection opened Thursday, August 8, 2019.

7. On Monday, July 8, 2019, the next of kin reported the May 14, 2019 fatality of a Crown Services Inc. temporary employee. An inspection opened Tuesday, July 23, 2019.

Performance Goal 1.6 aims to initiate Division of OSH Compliance inspections of all imminent danger reports within one (1) working day of notification.

The Division of OSH Compliance conducted 142 imminent danger inspections in FY 2019 and three (3) appear as outliers. A brief summary is provided below for each outlier.

1. An imminent danger was reported Wednesday, October 9, 2018 alleging roofing work on a four (4) story structure without fall protection. An inspection was attempted Thursday, October 10, 2018; however, there was no roofing activity. A CSHO returned to the site Friday, October 11, 2018 and opened an inspection. Kentucky responded within one (1) day of notification.

2. On Wednesday, July 3, 2019, email notification was provided alleging minors working on a construction site without proper footwear and protective equipment as well as concerns regarding scaffolding. The manager who received the notification was on vacation and did not have access to email until Saturday, July 6, 2019. An



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inspection was attempted Sunday, July 7, 2019. No workers were observed at the site and the project appeared complete.

3. On Tuesday, February 19, 2019, notification was received alleging roofing work without fall protection. The CSHO assigned to the inspection was attending mandatory training and had a mandatory staff meeting on Wednesday, February 20, 2019. The supervisor incorrectly instructed the CSHO to get a fresh start the following morning. An inspection opened Thursday, February 21, 2019.

Performance Goal 1.7 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 KYSAFE.

The FY 2016 baseline total case rate for injuries and illness, established from FY 2015 BLS data, was 3.7. The FY 2019 total case rate for injuries and illness, established from FY 2018 BLS data, was 3.4.

Performance Goal 1.8 aims to reduce the lost time case rate for injuries and illnesses. This performance goal combines efforts for both the Division of OSH Compliance and the Division of OSH Education and Training.

The FY 2016 baseline lost time case rate for injuries and illnesses, established from FY 2015 BLS data, was 1.9. The FY 2019 lost time case rate for injuries and illnesses, established from FY 2018 BLS data, was 1.8.

Performance Goal 1.9 aims to reduce total fatalities in general industry and construction.

In the FY 2016 baseline year, eighty-five (85) fatalities were reported to the Division of OSH Compliance resulting in twenty-one (21) fatality investigations conducted in general

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industry and seven (7) fatality investigations conducted in construction. Eighty-one (81) fatalities were reported to the Division of OSH Compliance in FY 2019 and forty-seven (47) inspections were conducted. Thirty-seven (37) fatality inspections were conducted in general industry resulting in forty-seven (47) serious, thirty-nine (39) other than serious, two (2) willful, and three (3) repeat violations with penalties totaling \$445,550. Ten (10) construction industry fatality inspections were conducted resulting in two (2) willful, fifteen (15) serious, and two (2) other than serious violations with penalties totaling \$161,100.

Performance Goal 1.10 aims to reduce the total case rate in two (2) of the top ten (10) industries, identified by NAICS, in Kentucky with the highest injury and illness total case incident rates. This goal combines efforts for both the Division of OSH Compliance and KYSAFE.

Based on 2017 BLS data, the industries in Kentucky with the highest injury and illness total case incident rates and the total case rate for each industry were:

<b>NAICS</b>	<b>Description</b>	<b>Rate</b>
71	Arts, entertainment and recreation	10.2
622	Hospitals (state government)	9.9
3219	Other wood product manufacturing	8.8
424	Merchant wholesalers, nondurable goods	6.9
623	Nursing and residential care facilities (private industry)	6.8
3321	Forging and stamping manufacturing	6.7
92212	Police protection	6.5
3211	Sawmill and wood preservation	6.4
92	Public protection	6.2

In FY 2019, a sampling of each high rate industry was targeted by KYSAFE in a direct mail campaign. Using the reported information from the Injury Tracking Application, 2017 data was reviewed to identify locations with high Total Case Rates (TCR). Three (3) mailings were conducted based on TCR and number of employees. The initial mailing went to employers with less than twenty-six (26) employees and a TRC greater than twenty (20).

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The second mailing targeted employers with twenty-six (26) to 125 employees. The final mailing targeted employers with 126-250 employees and a TCR greater than twenty (20). In total, 489 letters were mailed; seventy-nine (79) letters were returned undeliverable and 116 employers requested safety and health surveys. Non-responders were referred to the Division of OSH Compliance. Surveys continue and to date, surveys conducted identified 555 serious and 292 other than serious hazards potentially exposing approximately 2,000 employees.

Additionally, thirty-four (34) training sessions were presented at four (4) Population (POP) Center Training seminars throughout the Commonwealth; over 1,620 participants attended the training. The training addressed subjects relevant to the targeted NAICS such as Injury and Illness Recordkeeping, Hazard Communication, Basic Electrical Safety, Bloodborne Pathogens, Personal Protective Equipment, Ergonomics, Fire Protection and Egress, Walking-Working Surfaces, Electrical Safe Work Practices, and Eyewash Requirements.

Through a partnership with Eastern Kentucky University's OSHA Training Institute Education Center, participants that successfully completed the four (4) hour Injury and Illness Recordkeeping training or the new seven (7) hour Bloodborne Pathogens training received an OSHA OTI certificate. In FY 2019, 247 participants received the Injury and Illness training certificate while ninety (90) participants received the Bloodborne Pathogens training certificate.

In an effort to supplement resources in addressing high hazard industry issues, KYSAFE continued to coordinate outreach with professional and industry associations.

KYSAFE remains committed to working with employers and continues its focus on industries and employers with the worst injury and illness rates. The Division of OSH

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Compliance continues its programmed inspection focus in the industries with the highest injury and illness total case incident rates.

The Division of OSH Compliance conducted twenty-seven (27) general schedule inspections in fiscal year 2019; twenty-two (22) program planned and five (5) program related. Fourteen (14) of those general schedule inspections came from 2017-2019 KYSAFE referrals. An additional four (4) KYSAFE referral inspections were attempted.

Performance goal 1.11 is to identify and assist industries with a total case incident rate four (4) times above the average Kentucky total case incident rate. According to the BLS data collected by KYSAFE Statistical Services Branch, there were no Kentucky industries with a total case incident rate equal to or greater than 13.2, which is 4 times the Kentucky average of 3.3. Kentucky met the goal.

The second goal of Kentucky's 2016-2020 Strategic Plan is to change workplace culture to increase employer and employee awareness of, commitment to, and involvement in occupational safety and health.

Performance Goal 2.1 addresses settlement agreements; agreements with a monetary penalty reduction of \$15,000 or more include documented implementation of OSHA's 2016 "Recommended Practices for Safety & Health Programs" if general industry; or OSHA's 2016 "Recommended Practices for Safety & Health Programs in Construction" if construction; or the ANSI/AIHA/ASSE Z10 "Occupational Health and Safety Management Systems"; or engage the services of an outside safety / health consultant.

During FY 2019, the Division of OSH Compliance signed forty-five (45) settlement agreements. Penalties were reduced \$15,000 or more in one (1) settlement agreement that included documented implementation of OSHA's 2016 "Recommended Practices for Safety

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& Health Programs” if general industry; or OSHA’s 2016 “Recommended Practices for Safety & Health Programs in Construction” if construction; or the ANSI/AIHA/ASSE Z10 “Occupational Health and Safety Management Systems”; or engaged the services of an outside safety / health consultant. Penalties were reduced \$15,000 or more in four (4) agreements that did not include documented implementation of OSHA’s 2016 “Recommended Practices for Safety & Health Programs” if general industry; or OSHA’s 2016 “Recommended Practices for Safety & Health Programs in Construction” if construction; or the ANSI/AIHA/ASSE Z10 “Occupational Health and Safety Management Systems”; or engage the services of an outside safety / health consultant. In general, settlement agreements that did not include documented implementation of an internal safety and health management program or engage use of outside consultation may be permitted based on, or a combination of:

1. The documented financial condition of the employer; and/or
2. The citation(s) was dismissed; and/or
3. The citation(s) was reclassified resulting in a penalty decrease of \$15,000 or more.

A brief synopsis of the aforementioned four (4) agreements follows.

1. The penalty in Gibbs Die Casting Corp. dba Synchronous Division was reduced from \$91,000 to \$45,500 due to Citation 1 Item 1 and Citation 2 Item 2 being withdrawn.
2. The penalty in Jackson Purchase Energy Corporation was reduced from \$24,500 to \$6,300 due to Citation 1, Items 1, 2, 4, and 5 grouping into one (1) serious citation item.

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3. The penalty in Landmark Sprinkler Inc. was reduced from \$23,200 to \$6,800 due to Citation 1, Items 2 and 3 grouping into a single serious citation item and Citation 1, Item 5 reclassification to other than serious.

4. The penalty in Pic Group Inc. was reduced from \$21,000 to \$0 due to dismissal of Citation 1, Items 1, 2, and 3.

Performance Goal 2.2 is to incorporate evaluation of safety and health management systems in 100 percent of the full-service comprehensive surveys. All FY 2019 KYSAFE comprehensive consultative surveys incorporated an evaluation of safety and health management systems. Kentucky met the goal.

Performance Goal 2.3 seeks to utilize the Safety and Health Program Assessment Worksheet in 100 percent of the general industry full-service surveys. All FY 2019 KYSAFE comprehensive general industry consultative surveys utilized the Safety and Health Program Assessment Worksheet. Kentucky met the goal.

Performance Goal 2.4 aims to include a narrative safety and health program evaluation in 100 percent of the full-service consultation surveys. All general industry full-service surveys conducted by KYSAFE in FY 2019 included a narrative safety and health program evaluation.

Performance Goal 2.5 aims to provide safety and health program management training. KYSAFE provided employers and employees a cost-free online eLearning safety and health program management training module on the Labor Cabinet's eLearning website, [www.kysafe.ky.gov](http://www.kysafe.ky.gov). During FY 2019, 280 individuals viewed the module. 255 employees were trained in Auditor I hazard recognition by KYSAFE's Partnership Branch staff in eighteen (18) separate training classes. Kentucky met the goal.

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Performance Goal 2.6 addresses the evaluations of worksites on a timely basis to certify and re-certify VPP sites, develop CPP agreements, and add new employers to the SHARP as well as the maintenance and re-certification of current SHARP sites. The Partnership Program was very active in FY 2019 working with current participants, adding new participants as well as reaching out and looking for new VPP, SHARP, and CPP participants.

There were twenty (20) active CPP sites in FY 2019 with a total project cost over three (3) billion dollars. The Partnership Branch had fifty-three (53) contacts / visits with CPP sites in FY 2019 affecting over 3,300 employees. The most significant new CPP project in FY 2019 was a \$650 million expansion at Nucor Steel Gallatin. The expansion was in addition to an ongoing CPP project at Nucor Steel Gallatin that began in FY 2018 and concluded Spring FY 2019. Nucor Steel Gallatin was the general contractor for the FY 2018 project as well as the FY 2019 expansion.

Other significant CPP projects that began in FY 2019 were:

- A new \$1.5 billion Amazon project began with Whiting/Turner-Kokosing Joint Venture in late FY 2019; and
- A new \$100 million Diageo Lebanon Distillery project with Gray Construction.

VPP continues to be successful and sets the standard for program and participant quality. The Partnership Program is working diligently with several facilities in their quest to become VPP while maintaining fourteen (14) very strong, successful sites for the year that included two (2) new facilities, Marathon Refinery Catlettsburg and Nucor Galatian Steel. Nucor joined in December 2018 and Marathon in May 2019. Marathon is the largest PSM facility in the state and the only active refinery in Kentucky. Their inclusion into VPP is the

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pinnacle of eleven (11) years working with the Labor Cabinet and the Partnership Branch.

The Partnership Branch is also actively working with several other sites pursuing VPP. They include another large PSM site, a pharmaceutical production facility, and five (5) oil pipeline distribution facilities.

SHARP started FY 2019 with seventeen (17) active sites and ended the fiscal year with fifteen (15) active sites. Unfortunately, two (2) sites departed SHARP both due to increasing injury and illness rates that would not allow them to continue in the program. One (1) of the sites has expressed great interest in rejoining SHARP and Kentucky is actively working with the employer to reach that goal. Kentucky is also looking for avenues to recruit new SHARP sites.

In FY 2019, the Partnership Branch experienced 347 significant contacts. 216 were site visits affecting 21,890 employees that identified 4,668 hazards, 747 were serious and 3,921 were other than serious. Kentucky met the goal.

Performance Goal 2.7 addresses the implementation of a targeted outreach plan for 100 percent of new Kentucky OSH standards. There were no new standards in FY 2019 that necessitated implementation of a targeted outreach plan.

KYSAFE continues to offer free outreach training at population centers (POP Centers) for employers and employees across the Commonwealth addressing other Kentucky OSH standards. The Kentucky Labor Cabinet also maintains updated and accurate information on the Kentucky OSH webpage as well as cost free publications for employers and employees. The Division of OSH Education and Training distributes a compact disc that contains all state OSH regulations, federal OSH standards, Kentucky safety and health manuals, posters,



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conference information, and other resource links. The Kentucky OSH Program provides the compact disc free of charge.

The Kentucky OSH Program does not print the federal regulations. Kentucky prints a document entitled “Kentucky Occupational Safety and Health Standards for Construction and General Industry.” The document contains Kentucky specific OSH general industry and construction regulations that supersede OSHA’s standards.

The third goal of Kentucky’s 2016-2020 Strategic Plan is to maximize the efficient and effective use of human and technological resources.

Performance Goal 3.1 is to maintain a reliable data repository.

The Kentucky OSH Program deployed comprehensive data management software in FY 2013 for both the Division of OSH Compliance and KYSAFE that “replaced” OSHA’s NCR/IMIS and OIS system. The software did not actually replace OSHA’s systems; NCR equipment was maintained as required by OSHA but Kentucky OSH Program staff members did not utilize it. Kentucky’s software communicated to OSHA’s systems “behind the scenes.” In FY 2015, Kentucky deployed a customized interface that provides the state’s compliance and consultation data to OSHA’s OIS system.

In addition to the collection, retention, and transmission of Kentucky’s data to OSHA, Kentucky’s software provides advanced OSH Program capabilities including report writing, inspection and survey milestone tracking, time management, program performance reports, etc. Each division also has specific functionality and capabilities unique to their individual needs. The software is very beneficial to the OSH Program.

The Division of OSH Compliance employs one (1) individual dedicated to maintaining reliable data. The Division of OSH Education and Training also employs one (1)

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individual dedicated to maintaining reliable data. Both divisions continue to maintain a reliable data repository. Kentucky met the goal.

Performance Goal 3.2 aims for new supervisory staff to complete formal leadership training or complete certification.

The Division of OSH Compliance hired five (5) supervisory staff in FY 2019. One (1) supervisor completed the Governor's Minority Management Program. All other newly hired supervisory staff attended, or scheduled to attend, leadership training. Additionally, supervisory staff that completed leadership training over three (3) years ago are scheduled for refresher training. Kentucky met the goal.

Performance Goal 3.3 encourages and aids attainment of professional certification. During FY 2019, the Division of OSH Compliance maintained three (3) certified Construction Health and Safety Technician (CHST) employees and three (3) Occupational Health and Safety Technologist (OHST) employees. The Division of OSH Compliance maintained three (3) Certified Safety Professional (CSP) employees.

The Division of OSH Compliance continues to encourage and promote professional certification by maintaining two (2) safety position descriptions and increased salaries for the level of certification, paying for certification preparatory courses, and paying for the certification examination after successful completion. The Health Program Manager, who retired August 1, held a Certificate of Management Fundamentals. The new Health Program Manager began September 1, 2019, and is a Certified Industrial Hygienist (CIH) and CSP.

During FY 2019, KYSAFE maintained one (1) CIH employee, six (6) CIH-CSP employees, three (3) CSP employees, three (3) OHST certified employees, and two (2) CHST certified employees. Three (3) division employees have completed the Certified Public

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Manager (CPM) Program through Kentucky State University's Governmental Services Center.

The Office of the Federal-State Coordinator maintained one (1) dual CIH-CSP employee and one (1) dual CSP-ASP employee. Kentucky met the goal.

Performance Goal 3.4 encourages and aids completion of continuing education. In FY 2019, KYSAFE staff completed over 1,200 hours of continuing education. KYSAFE and Division of OSH Compliance staff training concerning, but not limited to, Investigative Report Writing, Investigative Interviewing, Secondary Traumatic Stress, Tree Care, Wood Chippers, Excavations, Trenching, Process Safety, Fall Arrest Systems, Residential Construction Fall Protection, as well as Electric Power Generation, Transmission and Distribution. Staff also attended the Annual Governor's Safety and Health Conference and Exposition, Kentucky American General Contractors Conference, Kentucky League of Cities Conference, EHS Today Leadership Conference, and Gray Construction Safety Summit.

Additionally, since 2009, the Division of OSH Compliance has supported eleven (11) compliance officers attaining Master of Science degrees.

Performance Goal 3.5 aims to develop and publish electronic learning products. KYSAFE added two (2) cost-free interactive training products to the KYSAFE online library at [kysafe.ky.gov](http://kysafe.ky.gov), *Mechanical Power Press Safety IV* and *Introduction to KYSAFE*. Kentucky met the goal.

Performance Goal 3.6 seeks to include photographs of actionable hazards in 100 percent of surveys. Photographs of actionable hazards were included in all consultation

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surveys when feasible and is monitored through the review of all consultation reports.

Kentucky met the goal.

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### SECTION II MANDATED ACTIVITIES

The Occupational Safety and Health Act and 29 CFR 1902 establish a number of mandated activities or core elements for any state plan program. Kentucky's Annual Performance Plan, while involving many of these core elements, does not address every mandated activity. Mandated core elements of Kentucky's OSH program are addressed in this section.

#### Unannounced Inspections, Including Prohibition Against Advance Notice Thereof

During FY 2019, the Division of OSH Compliance conducted 697 unannounced inspections of work sites under the authority of KRS 338.101. Advance notice of inspections is prohibited and punishable under KRS Chapter 338.991(9).

#### Employee Involvement in Inspection Process

803 KAR 2:110 establishes that an authorized representative of the employees is given an opportunity to accompany compliance officers during inspections. The Division of OSH Compliance contacts a representative(s) of employee-organized groups upon entry onto a site in order to afford employees' participation in the inspection process. Representatives of employee groups may participate in the inspection process by attending the opening conference, accompanying the inspector and employer on the walk-around, and attending the closing conference. Employee representatives are also allowed to observe employee interviews. If no employee-organized group exists at the facility, employee interviews are conducted.

Following the inspection, 803 KAR 2:130 requires that employee representative(s) be afforded the opportunity to observe any informal conference requested by the employer. 803

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KAR 50:010 Section 14 allows the employee organization, or any interested employee, to intervene in any subsequent contest.

#### First Instance Sanctions Against Employers Who Violate the Act, Including Citations

KRS Chapter 338.141 mandates the issuance of citations for violations of any OSH requirement. The Division of OSH Compliance continued to improve Kentucky's work environment through enforcement operations, which include first instance citations for violations of workplace safety and health standards and regulations.

The Division of OSH Compliance conducted a total of 725 inspections in FY 2019, 583 safety inspections and 142 health inspections. 697 inspections were un-programmed, breaking down as:

- 176 referrals;
- 123 employer referrals;
- 184 complaints;
- 158 un-programmed related;
- Two (2) monitoring;
- One (1) other
- Six (6) follow-ups; and
- Forty-seven (47) fatalities/catastrophes.

Twenty-eight (28) programmed inspections break down as:

- Twenty-two (22) planned; and
- Six (6) programmed related.

271 inspections were in the construction industry and 454 were in manufacturing. 690 private sector and thirty-five (35) public sector employers were inspected. The Division of OSH Compliance conducted 583 safety inspections, which constitutes 80.4% of total inspections while health conducted 142 inspections, representing 19.6% of total inspections.

Twenty-four (24) inspections were conducted under the national emphasis programs.

Twenty-two (22) of these were safety and two (2) were health related.

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Safety averaged 33.7 hours per case with 139 average days from opening conference to citation issuance. Health averaged 66.7 hours per case with 149 average days from opening conference to citation issuance. 869 citations were issued in FY 2019 with penalties totaling \$3,147,950 and break down as:

Ten (10) willful violations with penalties issued totaling \$512,000;  
Eleven (11) repeat violations with penalties issued totaling \$233,550;  
528 violations classified as serious with penalties issued totaling \$2,289,650; and  
320 violations classified as other than serious with penalties issued totaling \$112,750.

In FY 2019, the total amount of penalties collected by the Division of OSH Compliance was \$1,312,878.60. Fifty-one (51) cases were contested representing seven (7) percent of total inspections.

The Division of OSH compliance inspected establishments employing 390,212 employees and the inspections covered 38,516 employees. The Division of OSH Compliance vacated eight (8) private sector violations pre-contest, which represents 1.0% of the violations issued. The Division of OSH Compliance vacated fifty-one (51) private sector violations post-contest, which represents 6.43% of the violations issued. Additionally, the division reclassified six (6) or 0.75%, violations pre-contest. The division reclassified nine (9), or 1.1%, violations post-contest.

The overall penalty retention in FY 2019 was 74.29%.

#### Ensuring Abatement of Potentially Harmful or Fatal Conditions

Hazardous conditions identified by Kentucky compliance officers and consultants are required to be abated. In order to ensure the correction of violations, KRS 338.991(4) provides specific penalties for any employer who fails to correct a cited violation. In addition, 803 KAR 2:060 establishes that employers must certify that each cited violation has been

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abated. Follow-up inspections are conducted to verify that potentially harmful conditions have been abated. The Division of OSH Compliance strives to perform at least ten (10) percent of safety and health inspections as follow-up inspections. The division follows up to ensure employers are complying with settlement provisions and abated hazards for fatality investigations. Also on the follow-up list are employers who fail to provide the Division of OSH Compliance with abatement documentation. The Division of OSH Compliance conducted six (6) follow-up inspections in FY 2019, representing 0.8% of all safety and health inspections. There were no inspections conducted to verify adherence to settlement provisions of fatality investigations because there were no applicable FY 2019 fatality settlement agreements; however, four (4) inspections were follow-ups to ensure fatality-related abatement.

Discrimination rights established in KRS 338.121 and 803 KAR 2:250 are explained to complainants when they contact the Division of OSH Compliance. Employees interviewed during OSH inspections are also informed of their rights. The Division of OSH Compliance prints discrimination rights on the back of staff business cards which are given to employees during inspections.

The Division of OSH Compliance has the force of KRS 338.131(1) which gives the executive director who is the Commissioner of Workplace Standards the authority to issue an immediate abatement order in the event of “. . .an imminent danger which reasonably could be expected to cause death or serious physical harm.” This ensures prompt abatement or removal of employees from the hazard. If an employer fails to comply with an abatement order issued under KRS 338.131(1), the Division of OSH Compliance shall apply to the



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Franklin Circuit Court through its Office of General Counsel for an order to restrain such condition or practice.

Serious hazards identified by KYSAFE consultants must also be corrected. Employers who fail to correct serious hazards identified in KYSAFE consultative surveys are subject to referrals to the Division of OSH Compliance for inspection.

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#### Prompt, Effective Standard Adoption and Promulgation

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House Bill 314, signed by Governor Matt Bevin March 9, 2018, gave the Secretary of the Labor Cabinet the ability to suspend, delay, or alter enforcement of a promulgated standard by an administrative order (AO) if the federal government has suspended, delayed, or enjoined the corresponding federal regulation or suspended, delayed, enjoined, or altered the enforcement thereof. Any action taken by the Secretary to suspend, delay, or alter the enforcement of an occupational safety and health administrative regulation pursuant to this subsection shall be consistent with those taken by the federal government, except the Secretary may enforce an administrative regulation or standard which immediately preceded the administrative regulation whose enforcement is amended, delayed, or altered.

OSHA's August 9, 2018 beryllium final rule delayed enforcement of certain ancillary requirements of the general industry beryllium standard. Administrative Order 2018-007 was issued August 20, 2018 by the Secretary to delay enforcement to be consistent with OSHA's final rule. Kentucky adopted the rule by regulation on May 3, 2019.

On May 3, 2019, Kentucky adopted OSHA's November 9, 2018 final rule for cranes and derricks in construction. OSHA clarified each employer's duty to ensure the competency of crane operations through training, certification or licensing, and evaluation. Additionally, the rule altered the provision that required different levels of certification according to the rated lifting capacity of equipment. While testing organizations are no longer required to issue certifications based on rated capacities, they are permitted to do so. Employers can also continue to rely on certifications based on crane type alone. Finally, the rule established minimum requirements for determining operator competency.

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#### Allocation of Sufficient Resources

The Kentucky OSH Program continued to match federal funding at the required rate. The state provides significant additional dollars beyond the federal match to meet the program's needs. Kentucky's ratio of state to federal funds for FY 2019 was 71:29.

#### Counteraction of Imminent Dangers

KRS 338.131 provides enforcement personnel with the authority to order that imminent danger conditions be immediately abated. Such authority includes the enforcement of necessary measures to avoid, correct, or remove the imminent danger and prohibit the presence of individuals where the imminent danger exists. Reports of imminent danger are given the highest priority for inspection by the Division of OSH Compliance.

The Division of OSH Compliance received 142 reports of imminent danger in FY 2019 and met the goal for 139 of the reported imminent dangers. A brief summary is provided below for each outlier.

1. An imminent danger was reported Wednesday, October 9, 2018 alleging roofing work on a four (4) story structure without fall protection. An inspection was attempted Thursday, October 10, 2018; however, there was no roofing activity. A CSHO returned to the site Friday, October 11, 2018 and opened an inspection. Kentucky responded within one (1) day of notification.
2. On Wednesday, July 3, 2019, email notification was provided alleging minors working on a construction site without proper footwear and protective equipment as well as concerns regarding scaffolding. The manager who received the notification was on vacation and did not have access to email until Saturday, July 6, 2019. An

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inspection was attempted Sunday, July 7, 2019. No workers were observed at the site and the project appeared complete.

3. On Tuesday, February 19, 2019, notification was received alleging roofing work without fall protection. The CSHO assigned to the inspection was attending mandatory training and had a mandatory staff meeting on Wednesday, February 20, 2019. The supervisor incorrectly instructed the CSHO to get a fresh start the following morning. An inspection opened Thursday, February 21, 2019.

#### Response to Complaints

Kentucky's statutes ensure that employees and their representatives have a right to notify the OSH Program of perceived workplace violations. KRS 338.121 requires that a special inspection be conducted upon receipt of such notifications if reasonable grounds exist that there is a violation or danger. The Division of OSH Compliance prioritizes the employee complaints it receives.

Valid, formal complaints are scheduled for workplace inspections. Formal complaints are given priority based upon classification and gravity of the alleged hazard. Formal serious complaints, for example, are inspected within thirty (30) days; however, it is stressed to compliance officers to respond within five (5) days after assignment of the complaint.

The Complaint Audit Log Report indicates that the average response time to all complaints was twenty-four (24) days for safety and 16.3 days for health. The division's overall average for serious complaints was 19.8 days from the date the complaint is received to the date the inspection is opened. The Complaint Audit Log indicates the average response time to complaints alleging other than serious hazards for safety was 26.5 days, and 17.3 days

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for health. The division's overall average was 20.6 days for other than serious hazards from the date the complaint was received to the date the inspection was opened.

Of the 623 complaints received in FY 2019, 166 were processed as formal complaints resulting in 129 inspections and 457 were processed as informal complaints.

#### Response to Referrals

The Division of OSH Compliance responded to 299 referrals in FY 2019, 123 were employer-referrals. The Referral Audit Log indicates the average response time to referrals alleging imminent dangers for safety was 0.2 days and 1.0 days for health. The overall average for all safety referrals was 15.1 days and 7.3 days for health from the date of all referrals received to the date the inspection opened.

#### Fatality/Catastrophe Investigations

Only imminent danger investigations are given a higher priority in the scheduling of inspections by the Division of OSH Compliance than fatality/catastrophe investigations. It is the policy of the Division of OSH Compliance to investigate all job-related fatalities and hospitalizations of three (3) or more employees as thoroughly and expeditiously as possible. There were thirty-three (33) work-related fatalities in FY 2019. There were no hospitalizations of three (3) or more employees reported to the Division of OSH Compliance in FY 2019.

#### The Investigation of Discrimination and Employee Protection from Discrimination

KRS 338.121(3) offers protection to employees from reprisals which might result from the exercise of rights afforded by the OSH statutes. A system of citations and penalties, appeals to the OSH Review Commission, and reinstatement authority by the Commissioner while final determination is pending before the Review Commission, distinguishes the

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Kentucky anti-discrimination effort. In addition, 803 KAR 2:240 allows any employee who believes he or she has been discriminated against, to file a complaint within 120 days of the alleged violation, as opposed to the thirty (30) days allowed by federal law. The Division of OSH Compliance is responsible for the enforcement of the state's anti-discrimination provisions.

During FY 2019, the Division of OSH Compliance received approximately 276 discrimination complaints or perceived discrimination complaints. Thirty-six (36) cases were docketed and approximately 240 were either referred to other agencies or addressed by telephone conversation. Of the thirty-six (36) cases that were docketed, twenty (20) were administratively closed, three (3) were withdrawn, three (3) were determined to have no merit, and ten (10) cases are active.

When complainants call the Division of OSH Compliance, they are informed of their discrimination rights, as are employees interviewed during OSH inspections. The Division of OSH Compliance also prints discrimination rights on the back of its business cards which are given to employees during inspections.

#### Ensuring Employees Access to Health and Safety Information

KRS 338.161(2) and 803 KAR 2:060 require employers to post notices informing employees of the protections and obligations provided for them in the law, including the proper contact for assistance and information. Kentucky regulations also provide for the availability of copies of the law and all regulations through the Kentucky Labor Cabinet. Employers who have obtained copies of these materials are required to make them available to employees or their authorized employee representatives. Failure to comply with posting requirements and information sharing provisions are citable offenses that may carry penalties.

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There was one (1) citation issued in FY 2019 for failure to ensure employee access to health and safety information with a penalty of \$500.

#### Ensuring Employee Access to Information on Exposure to Toxic or Harmful Agents

Kentucky adopted 29 CFR 1910.1020, which assures employee access to information on exposure to toxic materials and medical records. Employers who fail to comply with these requirements are subject to citations and monetary penalties. In addition, Kentucky has a regulation, 803 KAR 2:062, entitled “Employers’ Responsibility Where Employees are Exposed to Toxic Substances.” The regulation requires employers to monitor areas of exposure to potentially toxic substances and to notify employees who have been or are being exposed to toxic materials. Monitoring records are to be maintained and made available to employees, former employees, or employee representatives.

In FY 2019, the Division of OSH Compliance conducted fifty-five (55) (two overlapping) inspections relating to toxic material and harmful agents breaking down as:

- Three (3) inspections related to combustible dust with six (6) violations and penalties totaling \$168,100;
- Twenty-four (24) inspections related to bloodborne pathogens with thirty-seven (37) violations and penalties totaling \$63,000;
- Seven (7) inspections related to silica with twelve (12) violations and penalties totaling \$4,050;
- Eleven (11) inspections related to formaldehyde with four (4) violations and penalties totaling \$7,650; and
- Twelve (12) inspections related to indoor air quality with seven (7) violations and penalties totaling \$12,800.

#### Coverage of Public Employees

KRS Chapter 338 “Occupational Safety and Health of Employees” establishes definitions for employer and employee which do not exclude public employers and public employees. The exclusions to KRS Chapter 338 cover only employees of the United States

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government and places of employment over which federal agencies other than OSHA have exercised statutory authority. In addition, written opinions of the Kentucky Office of the Attorney General support the Kentucky Labor Cabinet's position that public employees are included in the Kentucky OSH Program's jurisdiction. Therefore, Kentucky's public employers and employees are subject to the same requirements, sanctions, and benefits as Kentucky's private sector employers and employees. Consequently, Kentucky statutes, regulations, and policies make no distinction between public and private sector employers and employees. During FY 2019, the Division of OSH Compliance conducted thirty-five (35) inspections of public sector work sites, which includes programmed inspections and responses to public employee complaints. This calculates to 4.8% of the total number of Division of OSH Compliance inspections.

Services offered by KYSAFE are available to state and local public agencies in the same manner and to the same degree as private employers. During FY 2019, twenty-seven (27) training sessions were provided to public sector employers and employees totaling 889 participants. Forty-two (42) safety and health consultative surveys were conducted in public sector facilities resulting in the identification of 403 serious and 212 other than serious hazards.

#### Recordkeeping and Reporting

KRS Chapter 338.161 "Statistical records – Posting of notices" requires that employers keep, preserve, and make available to the Kentucky OSH Program and the Secretary of the U.S. Department of Labor or the Secretary of the U.S. Department of Health and Human Resources, records relating to occupational safety and health as may be prescribed by regulation. Kentucky promulgated a regulation, 803 KAR 2:180, which specifically



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addresses occupational injury and illness recordkeeping, as well as reporting of fatalities, hospitalizations, and loss of an eye. The reporting requirement is limited to hospitalizations that occur within seventy-two (72) hours of the incident. Employers are also required to report any amputation or loss of an eye suffered by an employee from any work-related incident. Hospitalizations of one (1) or two (2) employees, as well as amputations and loss of eye injuries, must be reported to the Kentucky OSH Program within seventy-two (72) hours after the employer, his agent, or another employee is informed of such a condition.

The Division of OSH Compliance inspection scheduling system prioritizes reported hospitalizations, amputations, and loss of eye injuries. This allows compliance resources to be focused on serious hazards in the workplace. In FY 2019, 296 hospitalizations were reported to the Division of OSH Compliance and 137 inspections were conducted with four (4) repeat serious violations, 100 serious violations, and forty-eight (48) other than serious violations. Total penalties were \$660,550.

In FY 2019, ninety-four (94) amputations were reported to the Division of OSH Compliance. Sixty-Seven (67) inspections were conducted with six (6) repeat serious violations, eighty (80) serious violations, and twenty (20) other than serious violations. Total penalties were \$523,850.

In FY 2019, the Division of OSH Compliance received one (1) report of loss of eye injury resulting in one (1) inspection with no penalty or citation issued.

Total penalties for violations related to amputation and hospitalization injuries in FY 2019 was \$1,184,400.

#### Education, Training, and Consultation Services

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The Kentucky General Assembly, in enacting the Commonwealth's occupational safety and health laws, clearly expressed in its Statement of Purpose and Policy, found at KRS 338.011, that the means of preventing workplace injuries and illnesses were to include education, training, and consultation services. The Legislature created a Division of OSH Education and Training for Occupational Safety and Health to help serve this purpose.

Since 1973, the Division of OSH Education and Training has offered a full range of services, including cost-free on-site consultation, technical assistance, training programs, and publications.

The division also has a full range of partnership and recognition programs including:

1. The Kentucky VPP which is similar to OSHA's VPP.
2. The Safety Partnership Program (SPP) offers long term assistance to smaller employers who have a history of high injury/illness rates and high workers' compensation costs.
3. The CPP focuses specifically on partnering with contractors and builders to address the unique issues of the construction industry.
4. The Kentucky SHARP mirrors the federal SHARP by encouraging small high hazard employers to operate exemplary safety and health management systems.
5. The Governor's Safety and Health Award Program recognizes employers who have reached certain milestones without a lost work time injury or illness.

KYSAFE conducted 390 consultative surveys in FY 2019 identifying and ensuring the abatement of 3,222 serious hazards. The division also conducted 104 training courses and reached over 4,600 attendees in response to training requests from employers. Division staff

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members provided three (3) on-site technical assistance visits and responded to hundreds of inquiries from public and private employers regarding OSH concerns.

The Kentucky OSH Program, through KYSAFE, offers a full range of education, training, and consultation services to employers and employees in the Commonwealth.

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### SECTION III NOTEWORTHY ACCOMPLISHMENTS

Many daily activities of the Kentucky OSH Program result in accomplishments that are not easily measured. The impact of the on-site presence of OSH personnel; the hazards identified and corrected through inspection or consultation; and the injuries, illnesses and fatalities that were prevented, while critically important, are ones that do not easily lend themselves to be singularly classified as outstanding accomplishments. Nevertheless, the day-to-day efforts of Kentucky OSH field and office personnel should not go unrecognized. During FY 2019, there were events, activities, and results that merit attention as outstanding accomplishments.

#### Injury and Illness Rate

The total recordable incidence rate for all industries in Kentucky was essentially unchanged and tied the second lowest rate in Kentucky since the BLS began recording the data in 1996. The FY 2019 rate, based on 2018 BLS data, was 3.4, up .1 from the record low FY 2018 rate of 3.3. It is worth noting that Kentucky's rate in 1996, when BLS began recording the data was 8.4. Kentucky's FY 2019 incidence rate is .3 higher than the national average of 3.4. Kentucky remains committed to further reducing the state's total case rate.

#### Workplace Safety Savings

In 2019, KYSAFE identified 3,222 serious hazards that exposed over 134,100 employees and saved employers over \$22,554,000 in potential fines. In 2019, KYSAFE also identified 1,723 other than serious hazards that exposed over 88,000 employees and saved employers \$3,446,000 in potential fines.

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#### Voluntary Protection Partnership

Kentucky's VPP Program recognizes employers who have reached a level of excellence in their safety and health programs and removes them from programmed inspection lists. Detailed reviews of records and written programs, as well as intensive on-site surveys of worksite operations, assure that only companies with a strong commitment to workplace safety and health, institutionalized safety and health management systems in place, and proven success maintaining a safe and healthful workplace, qualify for Kentucky's highest achievement recognition.

The fourteen (14) Kentucky VPP sites are:

- ABB, Louisville;
- Cintas, Grayson;
- Dow Corning Corporation, Carrollton;
- General Electric Aircraft Engines, Madisonville;
- General Electric Aviation Infrastructure, Erlanger;
- International Paper Corporation, Bowling Green;
- Kimberly-Clark, Owensboro;
- L'Oreal (USA) Florence Manufacturing, Florence;
- Marathon Big Sandy Asphalt Terminal, Catlettsburg;
- Marathon Refinery, Catlettsburg;
- Nucor Steel Gallatin, Ghent;
- Raytheon Corporation, Louisville;
- Southwire, Hawesville; and
- WestRock, Nicholasville.

VPP continues to be successful and sets the standard for program and participant quality. The Partnership Program is working diligently with several facilities in their quest to become VPP while maintaining fourteen (14) very strong, successful sites, the highest number of active sites in the history of the program.

Two facilities were added to the VPP family in FY 2019, Nucor Steel Gallatin and Marathon Refinery Catlettsburg. Work is underway with another large PSM facility with the

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goal of reaching VPP status, as well as a pharmaceutical manufacturer and several oil pipeline distribution facilities.

#### Construction Partnership Program

KYSAFE continues to focus on the construction industry by promoting CPP. There were twenty (20) active CPP sites in FY 2019 with a total project cost of over \$3 billion. There were fifty-three (53) site audits with CPP sites in FY 2019 affecting over 3,300 employees. The most significant CPP project in FY 2019 was the \$650 million expansion at Nucor Gallatin Steel, who served as their own general contractor. The expansion will greatly increase the amount of steel that will be produced at the site. The new Amazon \$1.5 billion project with Whiting/Turner-Kokosing Joint Venture was also signed late in the fiscal year; however an official audit was not conducted during FY 2019.

Some new CPP projects of note that began in FY 2019 include:

- The new Diageo Lebanon Distillery, a \$100 million project with Gray Construction; and
- The aforementioned Nucor expansion project.

#### SHARP

SHARP started FY 2019 with seventeen (17) active sites and ended FY 2019 with fifteen (15) active sites. Unfortunately, two (2) sites departed SHARP, both due to increasing injury and illness rates that did not allow them to continue in the program. One of the sites expressed great interest in rejoining SHARP and the partnership branch is actively working with them to reach that goal.

#### Compliance Emphasis on Serious Hazards

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The Division of OSH Compliance maintains an emphasis on addressing serious

hazards. In FY 2019, the Division of OSH Compliance cited:

Ten (10) willful violations with penalties issued totaling \$512,000;  
Eleven (11) repeat violations with penalties issued totaling \$233,550;  
528 violations classified as serious with penalties issued totaling \$2,289,650; and  
320 violations classified as other than serious with penalties issued totaling \$112,750.

Information presented in this report reflects accurate data for the period sampled. Some case files have matured since preparation of this report while others are still working through the process. Subsequently, some of the aforementioned information may vary if resampled. It is important to note that at the time of report submission, there were 356 FY 2019 open enforcement inspections. The data has not fully matured.

Citations issued in FY 2019 with noteworthy penalties include:

- \$168,600 to a general industry employer for two (2) serious willful violations related to failure to provide a place of employment free from recognized hazards causing or likely to cause death or serious physical harm for failure concerning access doors in an oven exhaust ventilation ductwork that handles combustible dust and use of powered industrial trucks in combustible dust atmospheres; five (5) serious violations related to failure to provide a place of employment free from recognized hazards causing or likely to cause death or serious physical harm concerning non-sparking tools in a combustible dust atmosphere, suitable facilities for quick drenching or flushing of the eyes and body, personal protective equipment, emergency action training for employees designated to use firefighting equipment, and label hazardous chemicals; and two (2) other than serious violations related to voluntary respirator use and safety data sheets.

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- \$128,800 to a construction industry employer for two (2) serious willful violations related to the lack of fall protection; two (2) serious violations related to fall protection training and bloodborne pathogens; and one (1) other than serious violation related to a written hazard communication program.
- \$98,000 to a general industry employer for two (2) repeat serious violations related to procedures to prevent employee exposure to potentially hazardous energy and safeguarding operating areas; three (3) serious violations related to periodic inspection where lockout was used for energy control, failure to provide retraining for all employees experiencing a change in assignment, machine, equipment or processes that presented a new hazard or change in energy control procedure, and retraining when the employer had reason to believe there were deviations or inadequacies in employee's knowledge or use of energy control procedures; and two (2) other than serious violations related to safe means of access and egress to and from walking working surfaces as well as failure to keep aisles and passageways clear and in good repair.
- \$88,000 to a general industry employer for one (1) serious willful violation related to unprotected sides for walking-working surfaces with fall hazards; one (1) repeat violation related to the lack of powered industrial truck operator training including formal instruction, practical training, and performance evaluation; five (5) serious violations related to failure to provide employees a workplace free of recognized hazards, scaffolds not meeting requirements, failure to ensure each operator was competent to operate a powered industrial truck safely and successfully completed required training, and failure to lower the forks; and one (1) other than serious violation related to the Exposure Control Plan.



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- \$78,600 to a construction employer for two (2) serious willful violations related to aerial lift and fall protection violations; and two (2) serious violations related to the lack of head protection and fall protection training.
- \$70,000 to a general industry employer for one (1) serious willful violation related to the lack of fall protection.
- \$53,200 to a general industry employer for sixteen (16) serious violations related to walking-working surfaces, fall protection, emergency shower and eye-wash, lockout-tagout, crane inspections, machine guarding, installation of mechanical equipment, and several electrical violations; eleven (11) other than serious violations related to injury and illness records, respiratory protection, cranes, electrical, hazard communication, powered industrial trucks, and workplace labeling of hazardous chemicals.
- \$50,400 to a construction employer for two (2) serious repeat violations related to safe means of egress for trench excavations and cave-in protection when entering or exiting areas protected by shields; and two (2) serious violations related to protective helmets as well as materials and equipment that were not at least two (2) feet from the edge of excavations.
- \$49,000 to a general industry employer for one (1) repeat serious violation related periodic inspection of the energy control procedure; and two (2) serious violations related to lockout/tagout procedures and machine guarding.
- \$45,550 to a general industry employer for eight (8) serious violations related to unprotected sides for walking-working surfaces, lockout/tagout training records, pulley and belt guarding, chain and sprocket enclosure, equipment use according to

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listing or label, flexible cords and cables, guarding live electrical parts, reverse polarity, grounding of circuits, equipment, and enclosures; and five (5) other than serious violations related to hospitalization reporting, recordkeeping, unused openings in cabinets, boxes, and fittings, and hazard communication training.

- \$41,500 to a construction industry employer for one (1) willful violation related to fall protection; and two (2) serious violations related to fall protection retraining and ladder use.
- \$41,400 to a general industry employer for nine (9) serious violations related to general duty obligations, overhead and gantry cranes, alloy steel chain slings, and machine guarding.
- \$40,700 to a general industry employer for six (6) serious violations related to the lack of fall protection and permit-required confined spaces; and five (5) other than serious violations related to bloodborne pathogens.

All of the aforementioned penalties were assessed using \$70,000 as the maximum penalty for a willful violation, \$70,000 as the maximum for a repeat serious violation, and \$7,000 as the maximum for a serious violation.

#### Combustible Dust

The Kentucky Labor Cabinet entered into an Interagency Agreement in 2005 with the Office of Housing, Building and Construction, Division of Fire Prevention (State Fire Marshal). Under the agreement, during the inspection of industrial facilities by the State Fire Marshal in which the potential for combustible dust hazards may exist, the State Fire Marshal informs employer representatives of the availability of education and technical assistance services that are available from the Kentucky OSH Program's Division of OSH Education and

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Training. If there are safety and health issues, the State Fire Marshal will make a referral to the Division of OSH Compliance.

If the Kentucky OSH program becomes aware of the existence of fire and safety issues, it will notify the State Fire Marshal. Both the State Fire Marshal and the Division of OSH Compliance will cooperate in the investigation of all fires and explosions involving combustible dust. The Kentucky Labor Cabinet and State Fire Marshal are cooperating to identify facilities and conduct joint investigations, when possible, where combustible dust hazards exist.

The Division of OSH Compliance conducted three (3) inspections in FY 2019 related to combustible dust with six (6) violations and penalties totaling \$161,000.

#### Notification of Asbestos Abatement/Demolition/Renovation or Ten (10) Day Notice

The Division of OSH Compliance has an agreement with the Division of Air Quality (DAQ) in the Department for Environmental Protection of the Energy and Environment Cabinet in which the Division of OSH Compliance is alerted of asbestos removals conducted in the Commonwealth. Employers are required to notify the Division of Air Quality ten (10) days in advance of any job involving asbestos removal.

The Division of OSH Compliance did not receive any referrals from DAQ in FY 2019.

#### Occupational Poison Alerts

The Division of OSH Compliance receives notices of incidents involving occupational exposure to toxins and poisons from The Kentucky Regional Poison Center of Kosair Children's Hospital. These notices made the Division of OSH Compliance aware of events that may have otherwise been overlooked. Many have resulted in citations and penalties.

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This informal arrangement and notice provides a mechanism to protect employees from future exposures.

During FY 2019, the Division of OSH Compliance received fourteen (14) notices from the Poison Control Center.

#### Professional Development

During FY 2019, KYSAFE maintained one (1) CIH employee, six (6) CIH-CSP employees, three (3) CSP employees, three (3) OHST certified employees, and two (2) CHST certified employees. Three (3) division employees have completed the Certified Public Manager (CPM) Program through Kentucky State University's Governmental Services Center.

The Office of the Federal-State Coordinator maintained one (1) dual CIH-CSP employee and one (1) dual CSP-ASP employee.

The Division of OSH Compliance followed OSHA's TED 01-00-019, Mandatory Training Program for OSHA Compliance Personnel during FY 2019. The Division of OSH Education and Training utilized TED 01-00-018 as guidance for training newly hired employees.

The Division of OSH Compliance remains committed to developing and maintaining an experienced, diverse staff and continues to encourage professional development and professional certification, such as the CSP and CIH. Since the development of the CSP/OHST/CHST position within the division, a number of compliance officers have attained certification and more are in the process of doing so.

During FY 2019, the Division of OSH Compliance maintained three (3) certified Construction Health and Safety Technician (CHST) employees and three (3) Occupational

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Health and Safety Technologist (OHST) employees. The Division of OSH Compliance maintained three (3) Certified Safety Professional (CSP) employees. The Division of OSH Compliance continues to encourage and promote additional personnel to achieve certification in the safety and health field by maintaining two (2) safety certified position descriptions, paying for certification preparatory courses, and paying for the certification examination upon successful completion of the examination. The former Health Program Manager (retired in FY 2019) held a Certificate of Management Fundamentals. The Health Program Manager hired in FY 2019 is dual certified CIH and CSP.

Since 2009, the Division of OSH Compliance has supported eleven (11) compliance officers attaining Master of Science degrees.

#### Focused OSH Public Speaking / Presentations

The Kentucky OSH Program continues to serve as a resource for associations, employers, organizations, etc. requesting specialized and insightful speakers addressing various OSH-related topics.

The Division of OSH Education and Training conducted 104 face-to-face training courses and reached over 4,600 attendees in response to training requests from employers.

Thirty-four (34) training sessions were presented at four (4) POP Center Training seminars throughout the Commonwealth; over 1,620 participants attended the trainings. The trainings addressed subjects relevant to the targeted NAICS such as Injury and Illness Recordkeeping, Fall Protection, Confined Space, Hazard Communication, Basic Electrical Safety, Excavation & Trenching, Bloodborne Pathogens, Personal Protective Equipment, Spray Finishing, Asbestos Awareness, Fire Protection and Egress, Walking and Working Surfaces, Electrical Safe Work Practices, Eyewash Requirements, Silica, and Ergonomics.

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Through a partnership with Eastern Kentucky University's OSHA Training Institute Education Center, participants that successfully completed the four (4) hour Injury and Illness Recordkeeping training or the new seven (7) hour Bloodborne Pathogens for Healthcare training received an OSHA OTI certificate. In FY 2019, 247 participants received the Injury and Illness training certificate while 90 received the Bloodborne Pathogens training certificate.

Attendance and positive feedback demonstrate that Kentucky OSH Program staff participation at such events is beneficial for the Labor Cabinet, employers, and employees.

#### Standards Interpretation and Development

The OSH Standards Specialists and OSH Federal-State Coordinator provided 1,219 OSH interpretations during FY 2019.

#### Governor's Safety and Health Conference and Exposition



The Labor Cabinet, in conjunction with the Kentucky Safety and Health Network, Inc., presented the 35<sup>th</sup> Annual Governor's Safety and Health Conference and Exposition in Louisville on May 6-9, 2019. The 2019 event, which is the largest safety and health exposition in the Commonwealth, featured pre-conference technical courses, facility tours, technical training, twenty-seven (27) concurrent workshops, and outstanding keynote speakers.

In conjunction with the Governors Safety and Health Conference, KYSAFE hosted "Partnership Day." The day consisted of five (5) presentations on various OSH topics by representatives of active partnership sites, a lunch sponsored by Nucor Steel Gallatin, and a reception hosted by Marathon Refinery Catlettsburg. There were approximately ninety (90)

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participants and an abundance of outstanding information shared by the presenters. The event also allowed an excellent opportunity to network and build relationships.

Additionally, Scholastic Achievement for Education Awards, or “SAFE” awards, totaling \$18,750 were presented at the conference to twelve (12) university students matriculating in the areas of occupational safety and health, industrial hygiene, or a closely related field. Kids Chance of Kentucky, Inc. also presented scholarships to children of Kentucky workers killed or seriously injured in Kentucky work-related incidents.

Thirty-two (32) Kentucky employers received the Governor’s Safety and Health Award at the event. The award is presented to employers and employees who together achieve a required number of hours worked without experiencing a lost time injury or illness. An additional sixteen (16) companies received the Governor’s Safety and Health Award at their facilities in FY 2019.

#### Collection of Delinquent OSH Penalties

Pursuant to KRS 45.239(4) and 45.241, the Kentucky OSH Program entered into an agreement with the Kentucky Department of Revenue in FY 2013 to collect delinquent debts. Employers who have outstanding OSH debts are reported to the Department of Revenue for collection and further action. Such action may include:

- Adding a 25% collection fee to the total debt to defray the cost of collection.
- Filing a notice of State Lien. The filing of a lien is reflected in credit reports maintained by various credit bureaus.
- Seizing 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, and the seizure and sale of any real estate.
- Using any tax refund or other monies that may become due to the employer from the Commonwealth of Kentucky to offset the outstanding debt.

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The effort has proven successful; delinquent debts have been collected by Revenue and returned to the OSH Program. And, the OSH Program has seen an increase in employer's efforts to resolve debt payment to avoid being reported to the Department of Revenue. Since October 2013, the Division of OSH Compliance has submitted 165 cases to the Department of Revenue for collection totaling \$1,505,788.29. To date, \$274,367.43 has been collected.

#### Additional Efforts

The Labor Cabinet recognized the need to make occupational safety and health training more accessible and economical for all of Kentucky's employers and employees and charged the OSH Program with achieving the goal. The Kentucky OSH Program applied for, and received, a one (1) time federal award in FY 2011 to purchase web conferencing software, a video editing computer, and video equipment. After much planning and preparation, the Cabinet launched an online workplace safety and health training website, [www.kysafe.ky.gov](http://www.kysafe.ky.gov), the same year. Employers and employees have cost-free, 24/7 access to a variety of OSH webinars and training courses. The eLearning program has grown by leaps and bounds since its launch. To date, more than 160,000 participants have utilized the website.

Webinars are streamed and provide real-time instruction and offer immediate feedback to participants. Advanced registration for webinars is required and is free to all participants. As each webinar is presented, it is recorded and available for review at any time.

KYSAFE added two (2) cost-free interactive training products to the [www.kysafe.ky.gov](http://www.kysafe.ky.gov) library, *Powered Industrial Trucks Module 3 and Aerial Lift Safety*.



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Kentucky is particularly proud of the fact that [www.kysafe.ky.gov](http://www.kysafe.ky.gov) was created, designed, and developed solely by Labor Cabinet staff. In addition to performing their full plate of regular duties, Division of OSH Education and Training consultants compose all course content and a division training development specialist assists with presentation and production details.

#### Fall Prevention Stand-Down

Through a cooperative effort with LAMAR Advertising Company, fourteen (14) fall prevention “National Stand-Down to Prevent Falls” billboards appeared in cities across the Commonwealth. The billboards ran prior to, during, and after the Stand-Down for a minimum of four (4) weeks and received over 2,780,000 impressions!



#### Heat Campaign

Since 2011, the Division of OSH Education and Training has participated in the heat awareness campaign and conducted concentrated state-wide efforts to educate the working public concerning the hazards of working in the summer heat. The efforts targeted construction as well as general industry.

Kentucky continued the outreach in FY 2019. In August, KYSAFE provided heat stress training at three (3) events in three (3) different Kentucky cities. The events were coordinated by GAP Connections, a 501(c)(5) nonprofit agricultural membership organization

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that helps farmers with education and resources. They serve as an agriculture “Connection” between growers, companies, industry, and the public. The target audience were growers, migrant, seasonal, and local farm workers. KYSAFE provided the heat stress training in English and Spanish. The information was presented to 173 Spanish speaking participants and 48 English speaking participants. 221 individuals were impacted over the three (3) events. Additional outreach was conducted through distance learning. The Labor Cabinet’s eLearning website hosts the interactive *Heat Stress Awareness for Construction and General Industry* module and *Occupational Heat Exposure* webinar. The module and webinar were viewed over 311 times in FY 2019.

#### App

In late September, the Labor Cabinet launched the KYSAFE app! The app is a resource from the Division of OSH Education and Training that can be downloaded from the Google Play Store and should be available soon for Apple devices. Users can watch videos, view a calendar of free training events in Kentucky, see a directory of all consultation managers, and connect to the KYSAFE website, which is chock-full of relevant information. The app also features a messaging function to report a hazard(s) or violation(s) with a photograph and provides the OSH Program with a drop pin location.

#### Fatality Task Force

In response to an alarming increase of fatalities in FY 2019, the Labor Cabinet created a Fatality Prevention Task Force with leading industries and associations to create collaboration, build partnerships, and leverage resources. The Task Force is a result of the Labor Cabinet’s effort to create ways to prevent fatalities and build partnerships in industries, associations, and communities. The task force meets regularly to discuss fatality rates,

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solutions, and opportunities. The work of the task force has been well received and made a positive impact. The task force will continue its work in FY 2020.

#### Field Operations Manual

Kentucky undertook (and completed in FY 2020) an all-encompassing comprehensive revision of the Division of OSH Compliance Field Operations Manual (FOM). The FOM revision was a collaborative effort between staff members from the Division of OSH Compliance, the Office of General Counsel, the Federal-State Coordinator's office, and KYSAFE. Team members evaluated, reviewed, and rewrote the FOM with intense scrutiny. The effort began December 2018 and concluded approximately one (1) year later, representing thousands of hours dedicated to the task. Prior review of the FOM occurred July 1993 with only a few chapters receiving updates then and in subsequent years. The effective date for the revised FOM was January 1, 2020.