

FY 2016 Follow-up Federal Annual Monitoring and Evaluation (FAME) Report

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



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I. Executive Summary

A. State Plan Activities, Trends, and Progress

The Fiscal Year (FY) 2016 FAME Report is a follow-up FAME Report. This report is focused on the Kentucky Labor Cabinet, Department of Workplace Standards, Occupational Safety and Health (KY OSH) 23(g) program's progress in making corrections to the findings and observations in the FY 2015 FAME Report. In addition, this report also assesses KY OSH's progress toward achieving its performance goals established in the FY 2016 Performance Management Plan, as well as reviews the effectiveness of programmatic areas related to enforcement activities, including a summary of an onsite evaluation.

The FY 2015 FAME Report identified 11 findings and 15 observations, and the State Plan has not implemented corrective actions for four of those findings. Specifically, the following items remain open: the State Plan's internal audit program remains insufficient; non-formal complaints alleging injuries and serious hazards continue to be classified as invalid; programmed planned health inspections are not being conducted; and construction inspections continue to result in an extremely low average number of violations, a high in-compliance rate, and a low percentage of violations classified as serious, repeat, and willful. OSHA continues to work with the State Plan to resolve their findings and observations. The FY 2016 FAME Report does not contain any new findings.

KY OSH has experienced a significant problem in the area of staffing and retention, which has directly impacted the State Plan's performance and ability to meet its mandated measures. KY OSH has implemented a strategy to address this issue by maintaining two safety position descriptions and increasing salaries based on the worker's level of certification. The State Plan also pays for the certification preparatory courses and the certification exam. However, at this time these incentives have had limited impact on worker turnover.

KY OSH conducted 992 workplace inspections during FY 2016, exceeding their goal of 843 inspections. This is an increase of 107 inspections compared to the total number of inspections conducted in FY 2015. KY OSH issued 1,096 violations, resulting in the issuance of a total of \$2,678,800 in penalties.

During this period, KY OSH participated in four stand-down events across Kentucky in support of the National Fall Prevention campaign. The KY OSH staff used the KY OSH IMPACT vehicle to distribute fall prevention campaign materials and provide training to over 800 workers. Through a cooperative effort with Lamar Advertising Company, eleven billboards promoting the stand-down appeared in eight cities across the commonwealth. The billboards ran two weeks prior to and during the stand-down and received over 444,800 impressions per week. The Division of OSH Education and Training also supported the Heat Illness Prevention Campaign and conducted concentrated statewide efforts in construction and general industry to educate the working public concerning the hazards of working in the summer heat. The outreach was conducted through distance learning, as well as direct, face-to-face jobsite contacts. The Labor Cabinet's eLearning website also hosts the interactive

Heat Stress Awareness for Construction and General Industry Module and the Occupational Heat Exposure Webinar. The module and webinar were viewed over 1,387 times in FY 2016.

The state’s latest injury and illness rate for private industry achieved an all-time low of 3.5 per 100 full-time workers in 2015. The U.S. Bureau of Labor Statistics (BLS) compiles the injury and illness rate data. Based on the most recent data released, Kentucky continues to be higher than the national average.

Total Recordable Cases (TRC) and Days Away Restricted and Transferred (DART) Rate Comparison*

CY 2015**	Kentucky		National Average		Comparison
TRC Rate	3.5	3.7*	3.0	3.3*	6% Higher Than the National Average*
DART Rate	1.9	1.9*	1.6	1.7*	11% Higher Than the National Average*

*All industries, including state and local government
 **CY = Calendar Year

During this review period, one Complaint About State Program Administration (CASPA), KY CASPA 109–FY16 (Bluegrass Agricultural Distributors Inc.), was filed regarding the State Plan’s handling of a fatality investigation. This matter was fully investigated by OSHA with the State Plan’s cooperation. Letters that included three findings with two recommendations were mailed to the State Plan and complainant on November 9, 2016.

B. State Plan Introduction

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

The General Assembly enacted legislation giving KY OSH the mission to prevent any detriment to the safety and health of all private sector and state and local government workers arising out of exposure to harmful conditions or practices at their places of work. KY OSH’s program consists of the OSH federal-state coordinator, standards specialists, and support staff, all of whom are attached to the Commissioner’s Office; the Division of

Occupational Safety and Health (OSH) Compliance; and the Division of Education and Training. The Division of OSH Compliance is responsible for the enforcement of KY OSH's standards. The Division of Education and Training assists employers and workers by promoting voluntary compliance with the KY OSH standards. The Division of Education and Training is also responsible for overseeing the Partnership Programs, as well as conducting the annual survey of occupational injuries and illnesses, the census of fatal occupational injuries, and the OSHA data collection. The Office of the Federal-State Coordinator oversees the Office of Standards Interpretation and Development. Safety and health standards specialists from this office serve as support staff to the KY OSH program and OSH Standards Board, promulgate KY OSH regulations, respond to OSHA inquiries, and provide interpretations of KY OSH standards and regulations. This office is responsible for maintaining the Kentucky State Plan, as well as handling day-to-day communications with other government agencies, both at the state and federal level, including the U.S. Department of Labor, Occupational Safety and Health Administration, BLS, and other state OSHA programs.

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

A total of 110 positions were funded under the 23(g) grant. The approved benchmark for KY OSH is 37 compliance safety and health officers (CSHOs), of which 23 are safety and 14 are health. As of September 1, 2016, there were 27 safety compliance officers and 15 health compliance officers. KY OSH's primary objective is to improve occupational safety and health in workplaces throughout the state. The worker population in Kentucky consists of approximately 1,749,657 people. There are approximately 119,115 employers in the state. The total population of private sector and state and local government workers covered by the Kentucky State Plan is approximately 1,549,264 and 260,393 workers, respectively. Program services are administered through a central office in Frankfort.

The table below shows KY OSH's funding levels from FY 2012 through FY 2016.

FY 2011-2016 Funding History					
Fiscal Year	Federal Award (\$)	State Plan Match (\$)	100% State Funds (\$)	Total Funding (\$)	% of State Plan Contribution
2016	3,393,300	3,393,300	3,892,700	10,679,300	64
2015	3,378,100	3,378,100	3,356,300	10,112,500	64
2014	3,378,100	3,378,100	3,110,200	9,866,400	68
2013	3,505,100	3,505,100	2,881,900	9,892,100	65
2012	3,505,100	3,505,100	2,504,000	9,514,200	63

C. Data and Methodology

OSHA has established a two-year cycle for the FAME process. This is the follow-up year, and as such, OSHA did not perform the level of case file review associated with a comprehensive FAME. This strategy allows the State Plan to focus on correcting deficiencies identified in the most recent comprehensive FAME.

This report was compiled using information gained from the FY 2016 State OSHA Annual Report (SOAR), as well as the State Activity Mandated Measures (SAMM) Report and State Indicator Report (SIR) for FY 2016. For this review, a three-person OSHA team was assembled to conduct a focused on-site evaluation in Frankfort, Kentucky, during the timeframe of January 9 through January 11, 2017. The OSHA team's evaluation consisted of focused enforcement and consultation case file reviews, a review of KY OSH's performance statistics, and staff interviews. The enforcement files that were reviewed consisted of 30 non-formal complaints and no inspection files/documents that were selected using a random number table. A total of 15 consultation files were selected for review, primarily focused on the findings of the previous FAME.

D. Findings and Recommendations

The FY 2015 FAME Report identified 11 findings and 15 observations. Seven of the eleven findings from FY 2015 were completed, and four findings remain open. In addition, three of the 15 observations identified in FY 2015 were closed. Details on the findings and observations are provided in Section III of this report. The FY 2016 Follow-up FAME Report does not have any new findings.

II. Assessment of State Plan Performance

A. Major New Issues

With the passage of the Bipartisan Budget Bill on November 2, 2015, OSHA raised its maximum penalties effective August of 2016 and again increased penalties according to the consumer price index (CPI) in January of 2017. As required by law, OSHA will continue to raise maximum penalties each year according to the CPI. State Plans are required to adopt both the catch-up increase and the annual increase.

B. Assessment of State Plan Progress in Achieving Annual Performance Goals

The SOAR for FY 2016 provides a summary of KY OSH's activities and results for the Strategic Plan, grant commitments, and other program accomplishments. The strategic goals have provided the focus for KY OSH's enforcement, education and training, outreach, and administrative programs. FY 2016 was the first year of KY OSH's Five-Year Strategic Plan for FY 2016-2020. The Five-Year Strategic Plan incorporated the three goals, as its direction. The three overall strategic goals are:

Goal 1. 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 2. To change workplace culture to increase employer and employee awareness of, commitment to, and involvement in occupational safety and health.

Goal 3. To maximize the efficient and effective use of human and technological resources.

The FY 2016 Annual Performance Plan developed by KY OSH was intended to support the overall goals of the Five-Year Strategic Plan. The 2016 Performance Plan included specific performance goals designed to produce measurable progress toward realization of KY OSH's strategic goals.

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

During the evaluation period, the Division of OSH Compliance conducted 27 residential construction inspections resulting in two repeat violations, 35 serious violations, and no willful violations. Total penalties were \$110,900. FY 2016 is the baseline year for this goal; therefore, FY 2016 data is not compared to that of any other year.

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

The Division of OSH Compliance received 101 reported amputations. Eighty-three inspections were conducted with four repeat violations, 70 serious violations, and 16 other-than-serious violations. Total penalties were \$347,300. FY 2016 is the baseline year for this goal; therefore, FY 2016 data is not compared to that of any other year.

Goal 1.3: Increase the total number of workers removed from hazards through a multi-pronged strategy.

This goal incorporates the efforts of both the Division of OSH Compliance and the Division of Education and Training.

The Division of OSH Compliance's portion of this goal consists of response to imminent dangers, staff training, and conducting inspections for reports of hospitalization of fewer than three workers. In FY 2016, the Division of OSH Compliance conducted 992 inspections in general industry and construction.

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 conducted in all industries. During FY 2016, the Division of Education and Training conducted 166 health

surveys, all of which were considered high-hazard. The division’s safety branch conducted 198 surveys, and again, all were considered high-hazard. Five safety and health technical assistance visits and 129 face-to-face training sessions were conducted that reached over 4,400 attendees. FY 2016 is the baseline year for this goal; therefore, FY 2016 data is not compared to that of any other year.

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

The Division of OSH Compliance conducted 11 follow-up inspections in FY 2016. However, none of the follow-up inspections were conducted to verify adherence to settlement provisions of fatality and imminent danger investigations within 10 working days of the signed settlement agreement.

This performance goal, as written, is problematic and will be re-evaluated. The Division of OSH Compliance will improve Performance Goal 1.4 to better reflect intent and measurability.

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

This goal also combines efforts by the Division of OSH Compliance and the Division of Education and Training. The following Kentucky and national incident rates for 2015 represent 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	27.3	4.3

Kentucky’s rates remain below the national averages. 2015 is the most recent year for which there is injury and illness data. FY 2016 is the baseline year for this goal; therefore, FY 2016 data is not compared to that of any other year.

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

The State Plan did not meet this goal. Five fatalities appeared as outliers in FY 2016. Two fatalities did not appear to be work-related, one was opened late due to inclement weather affecting access to a remote location, one was opened timely, and one was responded to late. The details are explained further in Section C.

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

During FY 2016, KY OSH met this goal. According to the SOAR, four cases appeared as outliers; however, appropriate explanations were provided regarding the delayed responses by the State Plan. These explanations are discussed in Section C.

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

The total recordable incidence rate in 2015 for all industries was 3.7. 2015 is the most recent year for which there is injury and illness data. FY 2016 is the baseline year for this goal; therefore, FY 2016 data is not compared to that of any other year.

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

For 2015, the incident rate for lost time events (cases away from work, job transfer, or restriction) is 1.9. 2015 is the most recent year for which there is injury and illness data. FY 2016 is the baseline year for this goal; therefore, FY 2016 data is not compared to that of any other year.

Goal 1.10: Reduce total fatalities in general industry and construction.

In FY 2016, 85 fatalities were reported to the Division of OSH Compliance. There were 21 fatality investigations conducted in general industry and seven fatality investigations conducted in construction. FY 2016 is the baseline year for this goal; therefore, FY 2016 data is not compared to that of any other year.

Goal 1.11: Reduce the total case rate in five of the top 15 industries in Kentucky with the highest injury and illness total case incident rates.

Based on 2014 BLS data, the 10 industries in Kentucky with the highest injury and illness total case incident rates and the total case rate for each industry were identified. The Division of Education and Training selected five of the aforementioned industries in FY 2016 using the 2014 BLS data collected by the division's Statistical Services Branch for outreach and assistance. The division mailed an offer to employers in those selected industries encouraging their utilization of Division of Education and Training services. Non-responders were referred to the Division of OSH Compliance. The 2015 BLS data for the FY 2016 selected industries reflects the results of those efforts. The reduction in total case rate for the five selected industries was dramatic and significant; KY OSH met the goal.

NAICS	Description	2014 Rate	2016 Rate
3211	Sawmill and Wood Preservation	15.0	5.8
3273	Cement and Concrete Product Manufacturing	13.6	3.8
327	Nonmetallic Mineral Product Manufacturing	9.0	3.4
321	Wood Product Manufacturing	8.8	6.8
3327	Machine Shops, Turned Products, and Screw Nut	8.5	4.5

	and Bolt Manufacturing		
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Goal 2.1: Ensure settlement agreements that have a monetary penalty reduction of more than \$15,000 also include OSHA's 1989 Safety and Health Management Guidelines or engage outside safety and health consultation.

This goal is focused on expanding the number of employers with safety and health management systems. In settlement cases with penalties reduced by more than \$15,000, the Division of OSH Compliance requires employers to adhere to the OSHA 1989 Safety and Health Guidelines or engage the services of an outside safety and health consultant. However, exceptions to this requirement are granted in the following cases: financial hardship, construction companies, or the reclassification of violations.

Fiscal Year	Penalties Reduced by More Than \$10,000	1989 Safety and Health Guidelines	Not Applicable*
FY 2016	10	2	8

**Cases where exceptions have been granted*

The State Plan met this goal.

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

All FY 2016 Division of OSH Education and Training comprehensive consultative surveys incorporated an evaluation of safety and health management systems. The State Plan met this goal.

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

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

Goal 2.4: 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 the Division of Education and Training included a narrative safety and health program evaluation. The State Plan met this goal.

Goal 2.5: To provide safety and health program management training.

The Division of Education and Training provided employers and workers a cost-free online eLearning safety and health program management training module on the Labor Cabinet's eLearning website, www.laborcabinetetrain.ky.gov. During FY 2016, 435 individuals viewed the module. The State Plan met this goal.

Goal 2.6: Ensure that the evaluations of worksites are conducted in a timely manner, including certification of VPP sites, the development of construction partnership agreements, and the addition of new SHARP sites.

This goal was partially accomplished during FY 2016. The State Plan continues to evaluate worksites for its VPP in a timely manner. However, two SHARP participants were released from the program in FY 2016. One facility went out of business, and the other was bought out by another entity. New Construction Partnership Program projects that began in FY 2016 include:

- Construction of the \$270+ million Omni Hotel in Louisville with Brasfield and Gorrie;
- Construction of a \$20 million science building expansion at Bluegrass Community and Technical College in Lexington with Congelton-Hacker Company;
- Construction of a \$39 million Student Activity Center at the University of Louisville with Shiel/Sexton;
- Construction of a \$56 million Pediatric Ambulatory Care Center at the University of Louisville with Messer Construction; and
- A \$62 million Belknap Campus new classroom project at the University of Louisville with Whittenburg Construction.

Goal 2.7: Implement a targeted outreach plan for all new KY OSH standards.

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

During this review period, the KY OSH program continued an extensive statewide campaign to educate employers who are newly required to record work-related injuries and illnesses subsequent to OSHA's September 18, 2014 final rule, which became effective in Kentucky on January 1, 2016. The State Plan met this goal.

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

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

OSH transmitted data to OSHA in both IMIS and OIS in FY 2016. The State Plan met this goal.

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

In FY 2016, the Division of OSH Compliance and the Division of Education and Training did not hire any new supervisory staff.

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

In FY 2016, this goal was once again effectively accomplished. The Division of OSH Compliance maintained three certified construction health and safety technician workers. The Division of OSH Compliance also sent several workers to certification preparation courses. Additionally, the Division of OSH Compliance maintained four certified safety professional workers.

Goal 3.4: Encourage and aid completion of continuing education.

During this review period, this goal was once again effectively accomplished as the State Plan continued to reward staff members that obtained advanced degrees with an increase in pay. In FY 2016, the State Plan aided the completion of an Eastern Kentucky University graduate degree for one compliance officer in the Division of OSH Compliance. The individual graduated with a Master of Science in Safety, Security, and Emergency Management degree.

Goal 3.5: Develop and publish electronic learning products.

This goal was accomplished in FY 2016. The Division of Education and Training added or updated four cost-free interactive training products to the www.laborcabinetetrain.ky.gov library. Seven new webinars were conducted, recorded, and published to the website for instant viewing.

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

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

C. Highlights from the State Activity Mandated Measures (SAMM)

KY OSH's average current penalty per serious violation in the private sector (SAMM 8: 1-250+ workers) was \$3,300.17 in FY 2016. The further review level (FRL) is -25% of the national average (\$2,279.03), which equals \$1,709.27. Penalties are one component of effective enforcement, and State Plans are required to adopt penalty policies and procedures that are "at least as effective" (ALAE) as those contained in OSHA's Field Operations Manual (FOM), which was revised on August 2, 2016, to include changes to the penalty

structure in Chapter 6 – Penalty and Debt Collection. OSHA will continue to explore ALAE analysis of State Plan penalty structures to include evaluation of average current penalty per serious violation data.

SAMM 5 –Average number of violations per inspection

In FY 2016, the 990 inspections conducted by KY OSH resulted in an average of 1.59 violations (serious/willful/repeat) per inspection. KY OSH’s performance on this SAMM is within the acceptable range of +/- 20% of the national average, which equals 1.5-2.24. A total of 1,026 violations were issued, with 2.48 violations (serious/willful/repeat/other) per inspection.

There were some deviations from the national average indicated in the data. Where deviations or outliers were identified, the data was closely monitored by OSHA and discussed with the State Plan at quarterly meetings. Those measures are explained here.

SAMMs 2a and 2b - Average number of work days to initiate complaint investigations ((2a - state formula) and (2b – federal formula))

There was no data for SAMMs 2a and 2b. The program managers no longer utilize the complaint by letter (phone and fax) process for non-formal complaints; therefore, no complaints were handled as investigations.

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

The State Plan responded to 158 of 162 imminent danger complaints and referrals within one workday. It should be noted that if a complainant or referring party states that a hazard is an imminent danger, the State Plan codes it as such in OIS without making any determination or verification. This is driving the numbers up as indicated by the large number of imminent danger complaints and referrals in OIS. The OIS report identified four outliers which were explainable. A brief summary is provided below for each outlier.

1. An imminent danger complaint from James Bushnell was received Tuesday, September 29, 2015, and the compliance officer arrived at the alleged jobsite the same day. No work was being conducted, and the address identified on the complaint was incorrect. The compliance officer returned to his workstation and contacted the complainant. An opening conference was held Thursday, October 1, 2015, and the complaint was determined to be invalid. .
2. An imminent danger referral for Custom Interiors, LLC was received Wednesday, November 25, 2015, the day before Thanksgiving, and a CSHO was assigned the same day. Due to the state Thanksgiving holiday on November 26th and 27th, an opening conference was conducted the next working day, Monday, November 30, 2015.
3. An imminent danger referral for M&S Construction Indiana, LLC was received in the late afternoon of Tuesday, February 23, 2016. The site was not active the following

day, Wednesday, February 24, 2016, due to rain. An opening conference was held Thursday, February 25, 2016. The Division of OSH Compliance responded within one working day of receiving the complaint and the worksite being active.

4. An imminent danger construction-related referral was received Friday afternoon, April 8, 2016, for Progressive Pipeline Construction. An opening conference was not conducted on Monday, April 11, 2016 due to rain and the site being inactive. An opening conference was held Tuesday, April 12, 2016. The Division of OSH Compliance responded within one working day of receiving the complaint and the worksite being active.

SAMM 9 - Percent in compliance

The one-year national rate for this measure for safety inspections is 28.85%, with an acceptable range of +/- 20%, which is between 34.62% and 23.08%. The State Plan's percent in-compliance for safety inspections is 52.85%, which greatly exceeds the acceptable range for this measure. The one-year national rate for this measure for health inspections is 35.68%, with an acceptable range of +/- 20%, which is between 42.82% and 28.54%. The State Plan's percent in-compliance for health inspections is 58.87%, which is also above the acceptable range for this measure. This is attributed to three factors. First, the State Plan has a high staff turnover and a low number of experienced staff. Secondly, KY OSH does not follow the focused-inspection guidance for construction. Comprehensive inspections are conducted for all the contractors performing work at the site, resulting in a high number of in-compliance construction inspections. Finally, given the combination of activities of the Division of Education and Training and Division of OSH Compliance with employers across the state, it is believed that many of the employers being inspected have a history of consultation and training activities, as well as enforcement inspections, which have resulted in a higher number of in-compliance inspections.

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

There were five fatalities that were outliers in FY 2016. Further investigation of the outliers revealed that, with one exception, when the State Plan did not meet the one work day response goal, it was due to reasonable delays. Below is a brief summary of the details.

1. An apparent suicide occurred at American Mitsuba Corporation on Friday, September 11, 2015, and it was reported the same day to the Division of OSH Compliance by the company's maintenance safety manager. An investigation was not scheduled due to the manner of death. On Thursday, February 18, 2016, a family member of the deceased informed the Division of OSH Compliance that the coroner had ruled the death was not a suicide. An opening conference was held Friday, February 19, 2016. The Division of OSH Compliance responded within one working day of learning that the fatality was not a suicide.
2. A fatality occurred at Kentucky Auto Auction on Tuesday, November 24, 2015, and it was reported to the Division of OSH Compliance by the Jefferson County Deputy Coroner by fax on Wednesday, December 2, 2015. An opening conference was held Monday, December 7, 2015 due to delayed notification of the event and CSHO coordination.

3. A fatal accident occurred on Sunday, January 31, 2016, at a construction site where Berry Jackson, doing business as Berry Jackson Contractor, was a contractor. The next-of-kin reported the fatality to the Division of OSH Compliance on Monday, February 8, 2016. An opening conference was held Thursday, February 18, 2016, due to inclement weather (snow) and the mountainous, remote location of the worksite.
4. A fatal shooting involving a worker at Warnock 23, LLC occurred on Thursday, February 4, 2016. The Division of OSH Compliance became aware of the incident by media reports on Friday, February 5, 2016. However, the incident was reported as a store robbery. After further media reporting, the Division of OSH Compliance learned the event was a workplace violence crime, and the case was forwarded to a CSHO on Wednesday, February 10, 2016. There was further delay in opening the case due to questions regarding investigation of the event as a crime or as a workplace occupational safety and health issue. An opening conference was conducted Friday, February 12, 2016.
5. An accident occurred at Ridgetop Ventures, LLC, doing business as Prestige Car Wash, on Saturday, July 9, 2016, resulting in a hospitalization. The accident was reported by the Louisville Metro Police Department (LMPD) to the Division of OSH Compliance the same day. On Sunday, July 10, 2016, LMPD reported the death of the worker to the Division of OSH Compliance. The message was retrieved Monday, July 11, 2016, and an opening conference was held Tuesday, July 12, 2016. The Division of OSH Compliance responded within one working day of learning about the fatality.

SAMM 11 - Average lapse time

The one-year national rate for this measure for safety is 45.16 days, with an acceptable range of +/- 20%, which is between 54.19 days and 36.13 days. The State Plan's average safety lapse time is 55.69 days, which is only 1.5% above the acceptable range for this measure. The State Plan's health lapse time for this measure is within the acceptable range. Health lapse time is discussed further in Section III of this report. The State Plan has placed an emphasis on lapse times, resulting in significant reductions. This will continue to be closely monitored.

SAMM 14 - Percent of 11(c) investigations completed within 90 days

KY OSH completed 67% of their whistleblower investigations within 90 days. Even though the State Plan is below the negotiated goal, the data is not significantly different than the federal data, and this does not impact the quality of the discrimination program.

SAMM 15 - Percent of 11(c) complaints that are meritorious

The further review level for this measure is 24%, with an acceptable range of +/- 20%, which is between 28.80% and 19.20%. The State Plan's percent of whistleblower cases that are meritorious for this measure is 5%, which is 14.2% below the acceptable range for this measure. This data is not significantly different than the federal data, and it does not impact the quality of the discrimination program.

For a complete list of SAMM results, reference Appendix D.

III. Assessment of State Plan Corrective Actions

Findings and Recommendations:

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

Recommendation: KY OSH should take appropriate action to revise 803 KAR 2:412 - Residential Construction Fall Protection to ensure that it is in line with the federal regulation.

Status-Completed: On May 10, 2016, the Standards Board adopted amendments to 803 KAR 2:412 – Residential Construction Fall Protection related to federal enforcement of a 6-foot trigger height. The amendment to 803 KAR 2:412 became effective in January 2017.

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

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

Status-Completed: Analysis determined that KY OSH conducted 855 inspections in 2015, compared to 998 inspections in FY 2014, which was a decrease of 143 inspections. There were a number of underlying reasons for the gradual reduction in inspections. These factors include: 1) the State Plan lost experienced and productive CSHOs as a result of KY OSH salaries that were not competitive with other employers; and 2) less experienced CSHOs and new hires require more time to complete inspections, especially more complicated investigations. However, in FY 2016, KY OSH met the goal that was provided in the grant application that was approved by OSHA. KY OSH has shown an increase in the number of inspections conducted in FY 2016 with 990, which is 135 more inspections than in FY 2015.

FY 2015-03 (currently FY 2016-01 and formerly FY 2014-08, FY 2013-09, FY 2010-08, and FY 2009-20): KY OSH's Division of OSH Compliance has not implemented an internal self-evaluation program as required by the State Plan Policies and Procedures Manual.

Recommendation: KY OSH should implement a process to ensure that an internal self-evaluation program possessing integrity and independence is completed and implemented.

KY OSH should also ensure that periodic evaluations of all areas of the program are evaluated and that documentation of the evaluations is made available to OSHA.

Status-Open: KY OSH provided that the implementation of a robust and effective internal self-evaluation program has taken longer than anticipated. During FY 2016, KY OSH indicated that they were nearing completion of its program and plans to deploy it in the near future.

FY 2015-04 (currently FY 2016-02): All of the 20 non-formal complaints that were reviewed were classified as invalid even though they contained allegations of serious hazards, and nothing was done to address them.

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

Status-Open: As part of the on-site follow-up review on January 9-11, 2017, 30 non-formal complaints and no inspection files/documents were randomly selected and reviewed to determine the status of this finding and recommendation. A review of these records documented serious allegations that went unaddressed, including: injuries to workers, potential chemical exposures, asbestos exposure, combustible dust hazards, confined space hazards, lockout-tagout and machine guarding hazards, fall hazards, and an instance of workplace violence, not to mention several potential recordkeeping and reporting violations. Six complaints alleged very serious injuries, including several amputations. The program managers sent these workers, former workers, and others a letter requesting that they formalize the complaint or informing them that they are not workers and cannot file a complaint.

FY 2015-05 (formerly FY 2014-05, FY 2013-05, and FY 2011-06): KY OSH conducted a total of three targeted programmed inspections of the high-hazard industries from the inspection lists under the Targeted Outreach Program or the Safety Tops Our Priority Program in FY 2015.

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

Status-Completed: During this review period, KY OSH completed 26 Targeted Outreach Program inspections and 97 other programmed planned inspections.

FY 2015-06 (currently FY 2016-03): KY OSH conducted a total of six programmed planned health inspections during this evaluation 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.

Status-Open: During this period, KY OSH did not conduct any programmed planned health inspections. The State Plan has established a goal to do two programmed planned health inspections per health compliance officer, which equates to a total of twelve inspections. This finding remains open.

FY 2015-07 (currently FY 2016-04): KY OSH has an extremely low average number of violations, a high in-compliance rate, and a low percentage of violations classified as serious, repeat, and willful for programmed construction inspections.

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

Status-Open: Data during this period shows that average number of violations and the percent of violations classified as serious, willful, and repeat remain low while the percent of inspections that are in compliance remains high. This finding remains open.

FY 2015-08: Based on data provided by the state, KY OSH has a significantly high average citation issuance lapse time for health inspections.

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

Status-Completed: The Director of OSH Compliance is managing lapse time by holding the program manager and supervisors accountable. The program manager and supervisors are holding the CSHOs accountable. There are currently two compliance officers on a Performance Improvement Plan as a result of their lapse times. In FY 2016, the health lapse time was reduced significantly and is now within the acceptable range for SAMM 11.

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

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

Status-Completed: The Acting Director of Education and Training has placed an emphasis on completing and sending employers consultation reports within 20 days. During this review period, consultation reports were completed and sent to employers on average of 16 days.

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

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

Status-Completed: KY OSH has included the required information in consultation case files and reports to the employers they serve. Also, training has been provided to consultants. This was verified through interviews and a review of the consultation case files.

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

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

Status-Completed: The Acting Director of Education and Training has developed procedures to ensure consultants are conducting sufficient sampling and/or documenting their rationale for those instances where sampling is not conducted. New procedures have been implemented and have proven to be effective. Also, training was provided to consultants. This was verified through interviews and a review of the consultation case files.

Observations:

FY 2015-OB-1 (currently FY 2016-OB-1): According to the state's data, 55.9% of programmed safety inspections, and 66.7% of programmed health inspections had violations. Additional data indicates that an average of 2.2 violations were cited per inspection and that

34.6% of safety violations and 2.3% of health violations were classified as serious, repeat, and willful. This data indicates that KY OSH is below the national average in these areas.

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

Status-Continued: According to the FY 2016 SIR, 36.2% of programmed safety inspections had violations. No programmed health inspections were conducted in FY 2016. Additional data indicates that an average of 4.74 violations were cited per inspection and that 81.5% of safety violations were classified as serious, repeat, and willful. This data indicates that KY OSH is below the national average in these areas. This observation is continued and will be a focus of the onsite case file review during the FY 2017 comprehensive FAME.

FY 2015-OB-2 (currently FY 2016-OB-2): According to the state's data, 35.7% of programmed safety inspections in construction had violations. This is a significant decline from FY 2013 when 92.1% had violations. The national average was 77.9%.

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

Status-Continued: According to OIS data, 6% or 9 of 151 programmed safety inspections in construction had violations. This is a significant decline from FY 2013 when 92.1% had violations. This observation is continued and will be a focus of the onsite case file review during the FY 2017 comprehensive FAME.

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

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

Status-Closed: In FY 2016, KY OSH issued six willful violations, 32 repeat violations, and one failure-to-abate violation. This observation is closed.

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

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

Status-Closed: According to the FY 2016 SIR, there are currently only 54 cases with open abatement. This observation is closed.

FY 2015-OB-5 (currently FY 2016-OB-3 and formerly FY 2014-OB-1): In FY 2015, 1.6% of inspections conducted were follow-ups compared to OSHA at 3.1%.

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

Status-Continued: The Division of OSH Compliance strives to perform at least 10% of safety and health inspections as follow-up inspections; however, the Division of OSH Compliance performed 11 follow-up inspections in FY 2016, representing 1.1 % of all safety and health inspections, which is a decrease from 1.6% in FY 2015. This observation is

continued and will be a focus of the onsite case file review during the FY 2017 comprehensive FAME.

FY 2015-OB-6 (currently FY 2016-OB-4): Findings provided to complainants contained generic language without a basis for the conclusion to allow for meaningful appeals.

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

Status-Continued: This observation is continued and will be a focus of the onsite case file review during the FY 2017 comprehensive FAME.

FY 2015-OB-7 (currently FY 2016-OB-5): Correspondence is sent without a method to allow for confirmation of delivery.

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

Status-Continued: This observation is continued and will be a focus of the onsite case file review during the FY 2017 comprehensive FAME.

FY 2015-OB-8 (currently FY 2016-OB-6): Administrative closures and withdrawals are not being documented correctly in IMIS.

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

Status-Continued: This observation is continued and will be a focus of the onsite case file review during the FY 2017 comprehensive FAME.

FY 2015-OB-9 (currently FY 2016-OB-7): Third-party agreements are not closely reviewed to ensure compliance with the applicable regulations (non-inclusion of gag orders, non-inclusion of language prohibiting the participation in protected activity, and acknowledgement that KY OSH is not a party to the agreement) and to ensure they are in the best interest of the complainant and respondent.

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

Status-Continued: This observation is continued and will be a focus of the onsite case file review during the FY 2017 comprehensive FAME.

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

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

Status-Closed: Respiratory protection has been provided to consultants. The KY OSH Consultation Program has always had a written respiratory protection program. This observation is closed.

FY 2015-OB-11 (currently FY 2016-OB-8): Consultation case file documentation (field notes) was lacking information, such as, but not limited to: hazard description, process,

location, measurements, number of workers exposed, the duration of exposure, pictures, and abatement recommendations.

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

Status-Continued: This observation is continued and will be a focus of the onsite case file review during the FY 2017 comprehensive FAME.

FY 2015-OB-12: Four sites surveys (SHARP renewals), each one with over 100 workers in the company, were found to need additional workers interviews. On two of these surveys, only one worker was interviewed. Worker's interview is a critical component of the evaluation of the effectiveness of the employer's safety and health management system and the consultation process. Interviews should include a representative number of workers in the company (interview at least 10% of site/company workers).

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

Status-Closed: The Acting Director of Education and Training has reinforced the established procedures to ensure consultants are conducting interviews that reflect a good representation of the workforce. Also, training was provided to consultants. This observation is closed.

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

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

Status-Closed: KY OSH now includes a combined diary sheet and telephone log in consultation files and reports to the employers they serve. This observation is closed.

FY 2015-OB-14 (currently FY 2016-OB-9): Field notes and other documentation contained in consultation files were not always conducive to achieving the highest level of hazard recognition and hazard abatement.

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

Status-Continued: This observation is continued and will be a focus of the onsite case file review during the FY 2017 comprehensive FAME.

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

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

Status-Closed: The Acting Director of Education and Training has reinforced the established procedures to ensure consultants are conducting interviews that reflect a good representation of the workforce. This observation is closed.

Appendix A – New and Continued Findings and Recommendations
FY 2016 Kentucky State Plan Follow-up FAME Report

FY 2016-#	Finding	Recommendation	FY 20XX-# or FY 20XX-OB-#
FY 2016-01	KY OSH’s Division of OSH Compliance has not implemented an internal self-evaluation program as required by the State Plan Policies and Procedures Manual.	KY OSH should implement a process to ensure that an internal self-evaluation program possessing integrity and independence is completed and implemented. KY OSH should also ensure that periodic evaluations of all areas of the program are evaluated and that documentation of the evaluations is made available to OSHA.	FY 2015-03 FY 2014-08 FY 2013-09 FY 2010-08 FY 2009-20
FY 2016-02	All of the 30 non-formal complaints that were reviewed were classified as invalid even though many contained allegations of injuries and serious hazards, and nothing was done to address them.	KY OSH should handle non-formal complaints alleging serious hazards, at a minimum, as a complaint by letter (phone/fax investigation).	FY 2015-04
FY 2016-03	KY OSH did not conduct any programmed planned health inspections during this evaluation period.	KY OSH should develop and implement a strategy to ensure a more representative number of programmed planned health inspections are conducted to adequately address the scope and seriousness of the hazards found in high-hazard health industries.	FY 2015-06
FY 2016-04	KY OSH has an extremely low average number of violations, a high in-compliance rate, and a low percentage of violations classified as serious, repeat, and willful for programmed construction inspections.	KY OSH should evaluate the cause of the extremely low average number of violations, high in-compliance rate, and the low percentage of violations classified as serious, repeat, and willful for programmed construction inspections and develop and implement a strategy to increase the average number of violations, decrease the in-compliance rate, and the increase the percentage of violations classified as serious, repeat, and willful for programmed construction inspections.	FY 2015-07

Appendix B – Observations Subject to Continued Monitoring
 FY 2016 Kentucky State Plan Comprehensive FAME Report

Observation # FY 2016-OB-#	Observation# FY 20XX-OB- # or FY 20XX- #	Observation	Federal Monitoring Plan	Current Status
FY 2016-OB-1	FY 2015-OB-1	According to the FY 2016 State Indicator Report, 36.2% or 114 of the 226 programmed safety inspections had violations. No programmed health inspections were conducted in FY 2016.	The OSHA Area Office will closely monitor the data associated with programmed inspections to ensure it is equivalent to OSHA.	Continued
FY 2016-OB-2	FY 2015-OB-2	According to OIS data, 6% or 9 of 151 programmed safety inspections in construction had violations. This is a significant decline from FY 2013 when 92.1% had violations.	The OSHA Area Office will closely monitor the data associated with programmed safety construction inspections to ensure that there is no further decline and that the in-compliance rate improves.	Continued
FY 2016-OB-3	FY 2015-OB-5 FY 2014-OB-1	In FY 2015, 1.6% of inspections conducted were follow-ups compared to OSHA at 3.1%. The Division of OSH Compliance has a goal to complete at least 10% of safety and health inspections as follow-ups.	The OSHA Area Office will continue to monitor this issue and continue to encourage KY OSH to increase its number of follow-up inspections.	Continued
FY 2016-OB-4	FY 2015-OB-6	Findings provided to complainants contained generic language without a basis for the conclusion to allow for meaningful appeals.	The OSHA Area Office will closely monitor the information provided to complainants regarding the basis for determination to ensure there is sufficient information for meaningful appeals.	Continued
FY 2016-OB-5	FY 2015-OB-7	Correspondence is sent without a method to allow for confirmation of delivery.	The OSHA Area Office will closely monitor correspondence to ensure delivery confirmation is received and maintained.	Continued
FY 2016-OB-6	FY 2015-OB-8	Administrative closures and withdrawals are not being documented correctly in IMIS.	The OSHA Area Office will closely monitor administrative closures and withdrawals to ensure they are recorded accurately in the tracking system.	Continued

FY 2016-OB-7	FY 2015-OB-9	Third-party agreements are not closely reviewed to ensure compliance with the applicable regulations (non-inclusion of gag orders, non-inclusion of language prohibiting the participation in protected activity, and acknowledgement that KY OSH is not a party to the agreement) and to ensure they are in the best interest of the complainant and respondent.	The OSHA Area Office will closely monitor third-party agreements to ensure compliance with the applicable regulations and confirm they are in the best interests of the parties.	Continued
FY 2016-OB-8	FY 2015-OB-11	Consultation case file documentation (field notes) was lacking information, such as, but not limited to: hazard description, process, location, measurements, number of workers exposed, duration of exposure, pictures, and abatement recommendations.	The OSHA Region IV Office will closely monitor consultation file documentation to ensure the appropriate information is included in the files.	Continued
FY 2016-OB-9	FY 2015-OB-14	Field notes and other documentation contained in consultation files were not always conducive to achieving the highest level of hazard recognition and hazard abatement.	The OSHA Region IV Office will closely monitor consultation case files to ensure diary sheets are included.	Continued
FY 2016-OB-10		Extensive interviews with all known or potential witnesses were not conducted nor were statements, including signed statements, obtained during all fatality and accident investigations.	The OSHA Area Office will closely monitor KY OSH compliance staff to ensure all appropriate witnesses are identified and interviewed during fatality and accident investigations.	New
PREVIOUS FAME				
	FY 2015-OB-3	In FY 2015, KY OSH did not issue any willful violations; however, 19 repeat violations were issued.		Closed
	FY 2015-OB-4	A review of state's data showed that there are 98 cases with open abatement from 1991 through 2011. This is significantly less than the 149 cases with open abatements identified during the FY 2013 FAME evaluation.		Closed

	FY 2015-OB-10	Respiratory protection is not provided to consultants for use when monitoring for a potential overexposure to air contaminants.		Closed
	FY 2015-OB-12	Four sites surveys (SHARP renewals), each one with over 100 workers in the company, were found to need additional workers interviews. On two of these surveys, only one worker was interviewed. Worker's interview is a critical component of the evaluation of the effectiveness of the employer's safety and health management system and the consultation process. Interviews should include a representative number of workers in the company (interview at least 10% of site/company workers).		Closed
	FY 2015-OB-13	Consultation files do not include a diary sheet to document dates of important actions, date reports are sent, etc.		Closed
	FY 2015-OB-15	The number of worker interviews conducted did not reflect a good representation of the workforce at facilities that received consultation services. In facilities where there were workers totaling over 100, there were files that documented less than five worker interviews. Many times, only one worker was interviewed.		Closed

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

FY 2014-#	Finding	Recommendation	State Plan Response/ Corrective Action	Completion Date	Current Status and Date
FY 2015-01 (formerly FY 2014-01)	Kentucky's state-specific regulation 803 KAR 2:412, which addresses residential construction fall protection, differs significantly from OSHA's policies and standards.	KY OSH should take appropriate action to revise 803 KAR 2:412 - Residential Construction Fall Protection to ensure that it is in line with the federal regulation.	At this time, all issues have been resolved. The Kentucky Administrative Regulation is now in line with the federal requirement. KY OSH worked diligently with OSHA regarding proposed changes to its fall protection standard for residential construction. The changes were approved during the May 2016 Standards Board meeting. The effective date was January 2, 2017.	May 2016	Completed January 2, 2017
FY 2015-02	Data indicated that there has been a significant decline in the number of inspections conducted by KY OSH, a difference of 349 from FY 2009 to FY 2015, accounting for an overall reduction of 28.2%.	KY OSH should identify the cause of the significant and gradual decline in the number of compliance inspections and develop and implement a strategy to increase and maintain the number of inspections that are conducted.	Analysis determined that KY OSH conducted 855 inspections in 2015, compared to 998 inspections in FY 2014, which was a decrease of 143 inspections. There were a number of underlying reasons for the gradual reduction in inspections. These factors include: 1) the State Plan lost experienced and productive CSHOs as a result of KY OSH salaries that were not competitive with other employers; and 2) less	October 2016	Completed January 11, 2017

			experienced CSHOs and new hires require more time to complete inspections, especially more complicated investigations. However, KY OSH met the goal that was provided in the 2015 grant application that was approved by OSHA. Also, KY OSH has shown an increase in the number of inspections conducted in FY 2016 with 990, which is 135 more inspections than in FY 2015.		
FY 2015-03 (formerly FY 2014-08, FY 2013-09, FY 2010-08, and FY 2009-20)	KY OSH's Division of OSH Compliance has not implemented an internal self-evaluation program as required by the State Plan Policies and Procedures Manual.	KY OSH should implement a process to ensure that an internal self-evaluation program possessing integrity and independence is completed and implemented. KY OSH should also ensure that periodic evaluations of all areas of the program are evaluated and that documentation of the evaluations is made available to OSHA.	Implementation of a robust and effective internal self-evaluation program has taken longer than anticipated. KY OSH is nearing completion of its program and plans to deploy it in the near future.	Not Applicable	Open January 11, 2017
FY 2015-04	All of the 20 non-formal complaints that were reviewed were classified as invalid even though they contained allegations	KY OSH should handle non-formal complaints alleging serious hazards as a referral or, at a minimum, as a complaint by letter	KY OSH has a system in place to address non-formal complaints. KY OSH sends the complainant a letter and a complaint form, asking the	Not Applicable	Open January 11, 2017

	of serious hazards, and nothing was done to address them.	(phone/fax investigation).	individual to complete, sign, and return the form. To reclassify a complaint as a “referral” is semantics and would most likely not withstand legal challenge. KY OSH also requested that OSHA update a single field in OSHA’s online complaint form to better assist the State Plan in addressing complaints that do not conform to state statute. OSHA advised that the field could be updated but has not done so.		
FY 2015-05 (formerly FY 2014-05, FY 2013-05 and FY 2011-06)	KY OSH conducted a total of three targeted programmed inspections of the high-hazard industries from the inspection lists under the Targeted Outreach Program or Safety Tops Our Priority Program in FY 2015.	KY OSH should develop and implement a strategy to ensure a representative number of targeted programmed safety and health inspections are conducted at facilities within Kentucky’s high-hazard industries.	During this review period, KY OSH completed 26 Targeted Outreach Program inspections and 97 other programmed planned inspections.	October 2016	Completed January 11, 2017
FY 2015-06	KY OSH conducted a total of six programmed planned health inspections during this evaluation period.	KY OSH should develop and implement a strategy to ensure a more representative number of programmed planned health inspections are conducted to adequately address the	During this period, KY OSH did not conduct any programmed planned health inspections. The State Plan has established a goal to do two programmed planned health inspections per health	Not Applicable	Open January 11, 2017

		scope and seriousness of the hazards found in high-hazard health industries.	compliance officer, which equates to a total of twelve inspections. This finding remains open.		
FY 2015-07	KY OSH has an extremely low average number of violations, a high in-compliance rate, and a low percentage of violations classified as serious, repeat, and willful for programmed construction inspections.	KY OSH should evaluate the cause of the extremely low average number of violations, high in-compliance rate, and the low percentage of violations classified as serious, repeat, and willful for programmed construction inspections and develop and implement a strategy to increase the average number of violations, decrease the in-compliance rate, and the increase the percentage of violations classified as serious, repeat, and willful for programmed construction inspections.	KY OSH received this finding because the State Plan inspects all contractors onsite and does not limit the inspections to “focus four” issues. However, there is no detrimental effect on its program or the safety and health of Kentucky’s construction workers KY OSH suggests this issue may be related to targeting and is not a finding.	Not Applicable	Open January 11, 2017
FY 2015-08	Based on data provided by the state, KY OSH has a significantly high average citation issuance lapse time for health inspections.	KY OSH should develop and implement a process to reduce the average lapse time for non-in-compliance health inspections.	The Director of OSH Compliance is managing lapse time by holding the program manager and supervisors accountable. The program manager and supervisors are holding the CSHOs accountable. There are currently two compliance	October 2016	Completed January 11, 2017

			officers on a Performance Improvement Plan as a result of their lapse times. In FY 2016, the health lapse time was reduced significantly and is now within the acceptable range for SAMM 11.		
FY 2015-09	Consultation reports are sent to the employers more than 20 calendar days after the closing conference.	KY OSH should ensure that written consultation reports are sent to the employers as soon as possible but no more than 20 calendar days after the closing conference.	The Acting Director of Education and Training has placed an emphasis on completing and sending employers consultation reports within 20 days. During this review period, consultation reports were completed and sent to employers on average of 16 days.	October 2016	Completed January 11, 2017
FY 2015-10	A review of the 23(g) consultation case files revealed that the description of the workplace and the working conditions at the site was not included in the employer reports.	KY OSH should provide additional training to consultants to ensure that all required information is included in the employer reports.	KY OSH has included the required documentation in consultation case files and reports to the employers they serve. Also, training has been provided to consultants.	January 2017	Completed January 11, 2017
FY 2015-11	A review of three 23(g) consultation case files revealed that sampling and the evaluation of health hazards inherent to	KY OSH should provide additional training to consultants to ensure they are conducting sufficient sampling and/or	The Acting Director of Education and Training has developed procedures to ensure consultants are conducting sufficient	January 2017	Completed January 11, 2017

	specific industries was not always completed by consultants.	evaluations of health hazards specific to the type of industries visited.	sampling and/or documenting their rationale for those instances where sampling is not conducted. Also, training was provided to consultants.		
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Appendix D – FY 2013 State Activity Mandated Measures (SAMM) Report

FY 2015 Kentucky State Plan Comprehensive FAME Report

Fiscal Year 2016 is the first year since the transition from the NCR (OSHA’s legacy data system) began that all State Plan enforcement data has been captured in OSHA’s Information System (OIS). All State Plan and federal whistleblower data continues to be captured in OSHA’s WebIMIS System. Unless otherwise noted, the data contained in this Appendix D is pulled from the State Activity Mandated Measures (SAMM) Report and State Plan WebIMIS report run on November 14, 2016, as part of OSHA’s official end-of-year data runs. The further review levels for SAMMs 5, 8, 9, 11, 12, 15, and 17 have been negotiated to rely on a three-year national average. However, due to the recent transition to OIS, the further review levels for these SAMMs will rely on a one-year national average for one more year.

U.S. Department of Labor

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

State Plan: Kentucky – KY OSH			FY 2016	
SAMM Number	SAMM Name	State Plan Data	Further Review Level	Notes
1a	Average number of work days to initiate complaint inspections (state formula)	9.52	30 days for serious hazards; 120 days for other than serious hazards	Further review level is negotiated by OSHA and the State Plan.
1b	Average number of work days to initiate complaint inspections (federal formula)	7.34	N/A	This measure is for informational purposes only and is not a mandated measure.
2a	Average number of work days to initiate complaint investigations (state formula)	0.00	TBD	Further review level is negotiated by OSHA and the State Plan.
2b	Average number of work days to initiate complaint investigations (federal formula)	0.00	N/A	This measure is for informational purposes only and is not a mandated measure.
3	Percent of complaints and referrals responded to within one workday (imminent danger)	96.91%	100%	Further review level is fixed for all State Plans.
4	Number of denials where entry not obtained	0	0	Further review level is fixed for all State Plans.
5	Average number of violations per inspection	SWRU: 1.59	+/- 20% of SWRU: 1.87	Further review level is based on a one-year national rate.

	with violations by violation type	Other: 0.98	+/- 20% of Other: .99	
6	Percent of total inspections in state and local government workplaces	3.94%	+/- 5% of 3.91%	Further review level is based on a number negotiated by OSHA and the State Plan through the grant application.
7	Planned v. actual inspections – safety/health	S: 827	+/- 5% of S: 698	Further review level is based on a number negotiated by OSHA and the State Plan through the grant application.
		H: 163	+/- 5% of H: 145	
8	Average current serious penalty in private sector - total (1 to greater than 250 workers)	\$3,300.17	+/- 25% of \$2,279.03	Further review level is based on a one-year national rate.
	a. Average current serious penalty in private sector (1-25 workers)	\$2,317.65	+/- 25% of \$1,558.96	Further review level is based on a one-year national rate.
	b. Average current serious penalty in private sector (26-100 workers)	\$3,287.91	+/- 25% of \$2,549.14	Further review level is based on a one-year national rate.
	c. Average current serious penalty in private sector (101-250 workers)	\$4,137.50	+/- 25% of \$3,494.20	Further review level is based on a one-year national rate.
	d. Average current serious penalty in private sector (greater than 250 workers)	\$5,246.25	+/- 25% of \$4,436.04	Further review level is based on a one-year national rate.
9	Percent in compliance	S: 52.85%	+/- 20% of S: 28.85%	Further review level is based on a one-year national rate.
		H: 58.87%	+/- 20% of H: 35.68%	

10	Percent of work-related fatalities responded to in one workday	79.17%	100%	Further review level is fixed for all State Plans.
11	Average lapse time	S: 55.69	+/- 20% of S: 45.16	Further review level is based on a one-year national rate.
		H: 64.13	+/- 20% of H: 57.28	
12	Percent penalty retained	79.44%	+/- 15% of 69.86%	Further review level is based on a one-year national rate.
13	Percent of initial inspections with worker walk around representation or worker interview	100%	100%	Further review level is fixed for all State Plans.
14	Percent of 11(c) investigations completed within 90 days	67%	100%	Further review level is fixed for all State Plans.
15	Percent of 11(c) complaints that are meritorious	5%	+/- 20% of 24%	Further review level is based on a three-year national average.
16	Average number of calendar days to complete an 11(c) investigation	84	90	Further review level is fixed for all State Plans.
17	Percent of enforcement presence	1.34%	+/- 25% of 1.26%	Further review level is based on a one-year national rate.