

**FY 2017 Comprehensive  
Federal Annual Monitoring Evaluation (FAME) Report**

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



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## I. Executive Summary

The purpose of the Federal Annual Monitoring Evaluation (FAME) Report is to assess the State Plan's progress in achieving their performance goals, established in its Fiscal Year (FY) 2017 Strategic Plan, and to review the effectiveness of programmatic areas related to enforcement activities, including a summary of the onsite evaluation. This report assesses the current performance of the Kentucky Labor Cabinet, Department of Workplace Standards, Occupational Safety and Health (KY OSH) 23(g) program.

The Occupational Safety and Health Administration (OSHA) assembled a nine-person team to conduct the onsite evaluation in Frankfort, Kentucky, during the timeframe of January 8 through January 12, 2018. The Nashville Area Director returned to Frankfort to complete the review January 24, 2018 through January 26, 2018. The OSHA team's evaluation consisted of the following: the review of case files; the review of the KY OSH's performance statistics; the review of training documentation; the review of policies and procedures; as well as staff interviews.

OSHA has continued to work cooperatively with Kentucky to make progress on the previous four findings from FY 2016. Finding FY 2016-01, which has been a carry-over since the 2009 Enhanced FAME report, was completed during FY 2017 with the development and implementation of an internal self-evaluation program. KY OSH developed an internal self-evaluation program to ensure that all aspects of the state's safety and health program operate effectively. At the time of the on-site evaluation, the state's first self-evaluation was in-process. In addition, OSHA closed Finding FY 2016-04 regarding KY OSH's high non-compliance rate because it was determined that KY OSH's practice of opening inspections for all of the contractors on a worksite drives up the non-compliance rate and drives down the percentage of violations classified as serious, repeat, and willful. The remaining two findings address improper handling of non-formal complaints and failure to conduct programmed health inspections, and are carried over into the FY 2017 report. In addition, 11 new findings have been identified in FY 2017 (one was a repeat finding from FY 2015). In general, these findings address lack of training, failure to accept electronic complaints, deficiencies in the fatality case files, high lapse times, lack of documentation in case files, and issues with KY OSH's consultation program.

There were 10 observations from the FY 2016 Follow-up FAME Report; eight were closed, one was converted to a finding, and one was carried over as an observation in FY 2017. Appendix A describes the new and continued findings and recommendations. Appendix B describes observations subject to continued monitoring and the related federal monitoring plan. Appendix C describes the status of previous findings with associated completed corrective actions.

The Labor Cabinet renewed its focus in FY 2017 on the Division of OSH Education and Training with the launching of KYSAFE. KYSAFE is a re-branding of the cost-free consultative services offered by the Division of OSH Education and Training to all employees and employers in Kentucky. The Division of OSH Education and Training now markets itself as KYSAFE and includes a new website, [www.kysafe.ky.gov](http://www.kysafe.ky.gov), promotional materials, and web-based training.

During FY 2017, KY OSH decreased the number of inspections that were conducted by 205 and reduced the number of hazards that were identified by 173. The 16% reduction in the number of hazards identified was a significant decline, and is attributed to the high turnover and inexperience of 21 compliance officers with less than two years of experience. Sixty-three percent of the state's compliance officers are Compliance Officer III /Industrial Hygienist III or below and have typically three years or less experience. Twenty-five percent are Compliance Officer I / Industrial Hygienist I, which are considered trainees, and have less than one year of experience.

## **II. State Plan Background**

### **A. Background**

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

During the review period, the Commissioner for the Kentucky Labor Cabinet was Ervin Dimney, and the Deputy Commissioner was Michael Donta. This report covers the time period from October 1, 2016, through September 30, 2017, and it was prepared under the direction of Kurt A. Petermeyer, Regional Administrator for Region IV headquartered in Atlanta, Georgia.

The General Assembly enacted legislation giving KY OSH the mission to prevent any detriment to the safety and health of all private sector and state and local government workers arising out of exposure to harmful conditions or practices at their places of work. KY OSH's program consists of the OSH federal-state coordinator, standards specialists, and support staff, all of whom are attached to the Commissioner's Office; the Division of Occupational Safety and Health (OSH) Compliance; and the Division of Education and Training. The Division of OSH Compliance is responsible for the enforcement of KY OSH's standards. The Division of Education and Training assists employers and workers by promoting voluntary compliance with the KY OSH standards. The Division of Education and Training is also responsible for overseeing the Partnership Programs, as well as conducting the annual survey of occupational injuries and illnesses, the census of fatal occupational injuries, and the OSHA data collection. The Office of the Federal-State Coordinator oversees the Office of Standards Interpretation and Development. Safety and health standards specialists from this office serve as support staff to the KY OSH program and OSH Standards Board, promulgate KY OSH regulations, respond to OSHA inquiries, and provide interpretations of KY OSH standards and regulations. This office is

responsible for maintaining the Kentucky State Plan, as well as handling day-to-day communications with other government agencies, both at the state and federal level, including the U.S. Department of Labor, Occupational Safety and Health Administration, Bureau of Labor Statistics (BLS), and other state OSHA programs. A total of 98 positions were funded under the 23(g) grant. At the time of the onsite evaluation, there were a total of 21 safety and 16 health compliance personnel on staff, as well as four safety and one 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 discrimination. Compliance safety and health officers work out of the central office in Frankfort or from their homes, throughout the State.

The table below shows KY OSH’s funding levels from FY 2013 through FY 2017.

<b>FY 2012-2017 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>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
<b>2014</b>	3,358,900	3,358,900	3,129,400	9,847,200	65.89
<b>2013</b>	3,358,900	3,358,900	2,881,900	9,599,700	65.01

(Reference: State Plan Grant)

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 1,596,243 workers. There are approximately 118,600 work establishments in the state. Program services are administered through a singular office in Frankfort.

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

For the second year in a row, the total recordable incidence rate for all industries in Kentucky was the lowest rate in Kentucky, since the U.S. Bureau of Labor Statistics (BLS) began recording the data in 1996. The FY 2017 rate, based on 2015 BLS data, was 3.4, down .3 from the then record low FY 2016 rate of 3.7. Kentucky’s rate in 1996, when BLS began recording the data was 8.4. The state’s FY 2017 incidence rate is slightly higher than the national average of

2.9; however, Kentucky has experienced a drop from 4.2 in 2012 to 4.1 in 2013, 4.5 in FY 2014, 3.8 in 2015, 3.7 in 2016 and now to 3.4.

Kentucky continued to actively support and participate in several of OSHA's National Safety and Health Campaigns. Kentucky conducted its National Fall Prevention Stand-down in cooperation with LAMAR Advertising Company, which resulted in the company providing the State with fifteen (15) billboards promoting the event in four (4) major markets across the State. According to LAMAR these fifteen (15) billboards, which promoted the event throughout the campaign, represented over 3,047,000 impressions.

KY OSH also continued its participation in the OSHA Heat Illness Prevention Campaign. State-wide events were conducted, which educated the working public regarding the hazards of working in the summer heat. The efforts targeted construction as well as general industry. The outreach was conducted through distance learning as well as direct, face-to-face jobsite contacts. KYSAFE partnered with Good Agriculture Practice Connections to present Heat Stress training to over 280 participants. The information was presented in English and Spanish. Additionally, the Labor Cabinet's eLearning website hosted the interactive Heat Stress Awareness for Construction and General Industry module and Occupational Heat Exposure webinar. The module and webinar were viewed over 750 times in FY 2017.

## **B. Major New Issues**

On March 21, 2017, House Bill 50 was signed into law by Governor Matthew Bevin. This bipartisan bill establishes a seven year sunset provision for all ordinary administrative regulations. The law requires that all state agencies, such as the Kentucky OSH Program, file a certification letter to amend its regulations' effective date and ensure that they remain active. The state has implemented an effective standard/regulation management process to ensure compliance with this new requirement.

The Nashville area office has received five Complaints About State Program Administration (CASPA), from August 2016 to January 2018, from next-of-kin (NOK) that allege common failures in KY OSH's investigations of the accidents involving their loved ones. These concerns have been communicated to both the regional and area office by NOK, as well as groups advocating on behalf of family members. All of the complaints allege that the Kentucky Labor Cabinet's Department of Workplace Standards mishandled the fatality investigation, and/or did not conduct a complete and thorough investigation. The common allegations include: witnesses were not interviewed and/or properly interviewed, and statements were not completed to include the eye witnesses to the incident; management officials were never interviewed, and statements were not taken regarding the incident, policies, procedures, practices, or any other pertinent information; KY OSH did not obtain and review reports related to this incident, such as the investigative reports by other outside agencies/organizations; apparent violation(s) not being cited and no citation(s) issued to address the cause of this incident; the Kentucky investigators/Compliance Officers, who conducted the investigations, were not properly trained in the hazards associated with the accidents, and/or to conduct an accident investigation; and families' names are not being spelled properly, nor are families being properly communicated with, during investigations. Family and family advocacy groups have expressed concerns that KY OSH supervisors, managers, and officials are biased in favor of employers, and/or not

reviewing the fatality investigations to ensure complete and thorough investigations.

In response to the CASPAs and ongoing activity involving the fatality investigations in Kentucky, the Regional Administrator directed a Special Study focused on the State's fatality investigations for the past two years. The study included a comprehensive review of all fatality investigations from FY 2016 and 2017, to determine if KY OSH mishandled the fatality investigation, and/or did not conduct a complete and thorough investigation, and to determine if the policies and procedures for fatality investigation were followed. The Special Study is discussed in detail in the Enforcement section of this report.

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

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

OSHA established a two-year cycle for the FAME process. FY 2017 is a comprehensive year and as such, OSHA was required to conduct an on-site evaluation and case file review. A nine-person OSHA team, which included a whistleblower investigator, was assembled to conduct a full on-site case file review. The case file review was conducted at the Kentucky Labor Cabinet, Department of Workplace Standards, Occupational Safety and Health (KY OSH), Kentucky State Plan office during the timeframe of January 8-18 and 24-26, 2017. A total of 140 safety, health, and whistleblower inspection case files and 41 consultation files were reviewed. The safety and health inspection files were randomly selected from closed inspections conducted during the evaluation period (Oct 1, 2016 through September 30, 2017). The selected population included:

- Forty-four (44) fatality case files;
- Thirty-five (35) complaint case files;
- Thirty-five (35) programmed planned case files;
- Ten (10) referral case files (including employer reported referrals);
- Ten (10) un-programmed case files;
- Three (3) follow-up files;
- Five (5) No Inspection files; and
- Sixteen (16) closed whistleblower case files.

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

- State Activity Mandated Measures 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
- Full case 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 2017 State Activity Mandated Measures Report, and includes the FRL for each measure.

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

### **1. PROGRAM ADMINISTRATION**

#### **a) Training**

The KY OSH Program adopted the federal directive TED 01-00-019, "Training Program for OSHA Compliance Personnel," with minimal changes. 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 not receiving the required phase 1 initial courses, as outlined in the directive. However, Consultation and Health Compliance Officers are attending most, if not all of the required training. A review of training related documents revealed that supervisors were recommending training for their safety compliance officers, however they were never signed up to attend the training. Only two safety compliance officers have attended the Investigative interviewing Techniques course #1310, and none have attended the evaluation of Safety and Health Management System course # 2450; however, all have attended the Initial Compliance course # 1000. After completing the OTI initial training courses, compliance officers receive on-the-job training (OJT) and support from senior staff members. 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 discrimination program.

Additionally, the KY OSH Program remains supportive of the career development and advancement of compliance and consultation personnel. The State pays for employees to take the certification preparation course, and reimburses employees that successfully complete the certification exam. Employees that achieve professional certifications also receive a salary increase, range from five to ten percent. In FY 2017, a total of 20 employees had certifications. These certifications include the following: Associate Safety Professional (ASP); Certified Safety Professional (CSP); Certified Industrial Hygienist (CIH); Occupational Health Safety Technologist (OHST); and Construction Certified Health Safety Technician (CCHST).

**Finding FY 2017-01:** Safety compliance officers are not provided with progressive training opportunities, as outlined in TED 01-00-019 and adopted by KY OSH.

**Recommendation:** KY OSH should implement a process to ensure safety compliance



officer training is compliant with TED 01-00-019 “Training Program for OSHA Compliance Personnel,” as adopted by KY OSH.

#### **b) Information Management**

In FY 2013, KY OSH contracted with Assured Consulting Services, Inc. to develop an NCR replacement system. KY OSH began utilizing OSHA Express for consultation and compliance during FY 2013. In FY 2015, KY OSH deployed a customized interface that provides the State Plan’s compliance and consultation data to OSHA’s OIS system. KY OSH is currently transmitting data to OSHA. According to the state, 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**

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. A copy of the written policy manual, which outlined the program, was provided to the on-site review team. The Internal Quality Assurance Program was modeled after OSHA’s auditing program, with minor changes due to state-specific issues. The development and implementation of an internal self-evaluation program was the topic of a finding and recommendation that had remained open in the FY 2011, 2013, 2014, 2015 and 2016 FAME Reports. The internal self-evaluation program ensures that all aspects of the State’s safety and health program operate effectively. At the time of the on-site evaluation, the state’s first self-evaluation was in-process.

#### **d) Staffing**

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

Based on interviews and an analysis of the state’s staffing, in FY 2017, it was determined that Kentucky has maintained an average of 12 industrial hygienists onboard, and 25 safety compliance officers. At time throughout the 12-month period, the number of industrial hygienist and safety compliance officers both dropped below the benchmark levels. A review of this data also revealed that the program’s management staff is committed to maintaining its staff at the required levels of operation. However, turnover and staff retention remain a serious concern for the program. During the 1<sup>st</sup> quarter of FY

2017, 64 percent of the industrial hygiene staff had three or more years of experience; however, by the 4<sup>th</sup> quarter of FY 2017, 64 percent of the staff had three, or less, years of experience. Similar concerns were also documented, regarding the state's safety compliance staff. Interviews with members of the program's management staff revealed employee recruitment and retention remain an ongoing challenge for the program.

## 2. ENFORCEMENT

### a) Complaints

KY OSH's procedures for handling complaints alleging unsafe or unhealthful working conditions are very similar to those of OSHA. These procedures are covered in the KY OSH FOM, Chapter IX (10/01/2001) – Complaint and Referral Policies and Procedures. 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. In accordance 803 KAR 2:090 Section 1(2), all valid formal complaints are scheduled for workplace inspections. 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. Complaints from sources other than current employees and unsigned complaints are not inspected or investigated, including the electronic complaints received through OSHA's online system. For complaints filed by current employees that are unsigned, a letter is mailed with a complaint form to the complainant for signature and nothing further is done until the complaint with a signature is received. For all complaints from sources that are not current workers, a letter is sent informing them that per state law [803 KAR 2:090 Section 1(2)], they cannot file a complaint and requesting that they have a current worker file the complaint. Also, KY OSH does not acknowledge the electronic complaints that have electronic signatures as being valid signed complaints, even though state law KRS 369 – Information Technology allows for state agencies to recognize electronic signatures as being acceptable forms of signature. Electronic complaints that are forwarded to KY OSH are not being properly addressed.

All of the 10 non-formal complaints that were reviewed, were classified as invalid, even though six of the ten contained allegations of serious hazards, including four with allegations of serious injuries. No action was taken on the complaints, aside from letters being sent to the current employees for signature, or letters sent to non-employee sources informing them that their complaints are not valid because they are not current employees. There is nothing in Chapter IX. Complaints and Referrals of the KY OSH Field Operations Manual – L. Procedures for an Investigation Complaint, preventing KY OSH from handling non-formal complaints, including complaints from non-current employee sources and electronic complaints by letter (phone and fax). KY OSH should handle non-formal complaints alleging serious hazards, at a minimum, as a complaint by letter (phone/fax investigation).

**Finding FY 2017-02:** KY OSH has elected to not acknowledge complaints with electronic signatures as being valid signed complaints, even though state law KRS 369 – Information Technology allows agencies to recognize electronic signatures as being acceptable forms of signature. Electronic complaints that are forwarded to KY OSH are

not being properly addressed. This policy is not at least as effective as OSHA's policy of accepting electronic signatures as valid signatures.

**Recommendation:** KY OSH should accept electronic complaints with electronic signatures as valid formal complaints, and process these complaints in accordance with their policies and procedures for processing complaints.

**Finding FY 2017-03:** (formerly FY 2015-04 and FY 2016-02)

KY OSH interprets their state law as prohibiting inspection or investigation of a non-formal (non-employee) complaint. As a result, six of the 10 non-formal complaints reviewed were classified as invalid, even though they contained allegations of serious hazards and/or serious injuries.

**Recommendation:** KY OSH and its attorneys should work with OSHA to change their current interpretation of the state law and start handling non-formal complaints alleging serious hazards either with an inspection or, at a minimum, by letter (phone/fax investigation).

Inspection data indicates that in FY 2017, Kentucky received 756 complaints, including 213 formal complaints which resulted in 176 complaint inspections. This left 543 non-formal complaints with no action beyond the letters discussed above. According to the SAMM Report, KY OSH responds to complaint inspections in a timely manner. Complaint inspections were initiated within an average of 13.28 days, which is with the negotiated goal of 30 days for serious hazards/120 days for other than serious. (Reference: SAMM 1a). No complaints were handled as investigations/complaint by letter (SAMM 2a). KY OSH handles the intake of complaints with an established 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. As a result, KY OSH inspects a relatively high percentage of complaints that have been formalized with the signature of a current worker. The source of the complaint, with those from a current worker having priority, and the severity of the alleged hazards are primary considerations for program managers, when they determine the appropriate action.

The State Plan has complaint tracking mechanisms in the Complaint Audit Log and OSHA Express System to ensure complaints are responded to in a timely manner. Formal serious complaints are inspected, within a goal of 30 days. Thirty-five complaint files, including 25 inspections (formal), and 10 non-formal complaints were reviewed to determine, if they were processed in accordance with FOM Chapter IX, Complaint Policy and Procedures. Overall, a review of the complaint inspection files revealed that complaint items were properly investigated, with the exception of employee interviews. The review identified that 13 of 25 complaint inspection files were lacking, or contained poor interview documentation. The KY OSH Field Operations Manual (FOM), Chapter

III, General Inspection Procedures, Section D, Conduct of the Inspection, subsection 8, Walkaround Inspection, paragraph d, Interviews, provides, “A free and open exchange of information between the CSHO and employees is essential to an effective inspection.” Furthermore, Chapter III.D.8.d(5) states that interview statements shall be obtained whenever the CSHO determines that such statements would be useful in adequately documenting an apparent violation. Interviews shall normally be reduced to writing, and the individual shall be encouraged to sign and date the statement. The issue of poor interview documentation overall is addressed in Finding FY 2017-08 below.

The review of the complaint inspection files found that response letters provided clear and thorough information to the complainants, regarding each alleged hazard. The letter being sent to complainants is the same letter that has been used for years; however, the letter is emailed with the inspection narrative attached; to inform the complainant of the findings of each complaint item.

b) Fatalities

Kentucky experienced a significant percent decrease of 26% in the number of fatalities, in FY 2017. The total number of fatalities reported to the Division of Occupational Safety and Health Compliance in FY 2017 was 62, as compared to 85 in FY 2016. KY OSH investigated 20 fatal accidents in FY 2017. The number of workplace fatalities in FY 2015 was 25. The 11 general industry deaths in FY 2017 was a decrease from 13 in FY 2016, and the five construction deaths were cut almost in half from nine. The other four fatalities experienced in the state were two in agriculture, and two in the state and local government. State and local government fatalities remained the same from FY 2016 to FY 2017. KY OSH’s procedures for the investigation of occupational fatalities are essentially the same as those of OSHA. Investigations are normally initiated within one day of notification of the fatality. The leading cause of the work-related fatalities in FY 2017 was struck-by and falls from elevations with six each. Four workers died after being caught in/between equipment, materials, and objects. There were two electrocutions, one worker died from a workplace violence event, and another was determined to be a non-work related heart attack. In FY 2017, construction and manufacturing were the two leading industries for fatal accidents, with six in construction and five in manufacturing. There were four fatalities in the retail/wholesale trade, three fatalities in the transportation/warehousing and public utility industry, two fatalities in agriculture, and one in a residential disability care facility.

	<b>FY 2013</b>	<b>FY 2014</b>	<b>FY 2015</b>	<b>FY 2016</b>	<b>FY 2017</b>
<b>Total Fatalities</b>	21	23	25	27	20
<b>Construction</b>	10	10	5	9	5
<b>General Industry</b>	11	10	18	13	11
<b>Agriculture</b>	0	2	1	3	2
<b>State and Local Government</b>	0	1	1	2	2

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.

KY OSH has a longstanding 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 she, if he or she does not wish to be kept apprised of developments in the litigation.

## **SPECIAL STUDY**

As stated previously in this report, a Special Study focused on the state's fatality investigations was conducted as part of this review in response to the CASPAs and ongoing activity involving the fatality investigations in Kentucky. The study included a comprehensive review of all fatality investigations from FY 2016 and 2017 to determine if KY OSH mishandled fatality investigations, did not conduct a complete and thorough investigation, and/or failed to follow their policies and procedures for fatality investigations.

A review of the fatality inspection files found that fatalities are not being completely and thoroughly investigated by KY OSH. Thorough investigations were not completed for many of these fatalities. Numerous deficiencies were identified in a majority of the 44 fatality files that were reviewed, with the most serious related to the cause of the accidents. The cause of the accident was not identified in 19 of the 44 files. In some cases, the investigation determined that there were violations related to the accident; however, it did not determine the actual cause of the accident. Furthermore, the case files did not document the actual findings, including the cause and contributing factors of the accident. In most cases documenting the investigation, it was determined that there were no violations, or there were violations related to the accident and what happened; however, they did not document the cause, or why it happened. Three specific cases concerning the state's failures to properly identify and address the cause of the accidents include the following:

- 1) In one case involving a ladder fatality, violations should have been documented and citations issued for improper set-up of the ladder and ladder use, ladder training, and possibly frequent and regular inspections of the worksite;
- 2) In another case involving a front-end loader, it appears the Quick Coupler bucket may have failed. The CSHO asked a few questions; however, the Quick Coupler bucket was not thoroughly addressed; and

3) In a third case, the worker was killed while working under a car elevated by a car jack. The energy source (gravity) was not controlled to prevent the car from falling and crushing the worker. There appears at a minimum to be a violation of LOTO. The CSHO determined that essentially, it was the worker's fault. The CSHO stated there was no management knowledge because the general manager was not present. However, the general manager did know he was going to work on the car because he asked and made him do it. The employee expressed that he did not want to do it the day prior. Additionally, the desk clerk who was acting as the management official also knew that he was working on the car. The CSHO did not adequately document employee misconduct. There is no work rule, regarding working on personal vehicles, and there is nothing showing that the employer communicated any work rule. No efforts were made to identify non-compliance with any work rule, or enforce any work rule. Finally, the interview notes do not support that the CSHO questioned employees, or management, regarding the hazards associated with the accident, as well as the affirmative defenses. It appears that the state is just taking managements' word. The general manager was not interviewed. His knowledge of the circumstances that led up to the accident, his instruction to the worker, etc., was very important to this investigation.

The review of the fatality files identified that interviews that were conducted during investigations were inadequate and statements were essentially non-existent. In most cases, there were no notations in the work notes or file identifying the actual witnesses, and therefore, it could not be determined if they were all interviewed. In cases where there was evidence that employees were interviewed, the documentation was minimal with short bulleted notes in fragmented sentences. In most cases, the notes are not detailed, and do not adequately address the incident, operations, policies and procedures, training, and other relevant information to support findings. There was one file of the 44 that had an employee statement. A review of two investigations identified that the sole eyewitness was never contacted, or interviewed. In 33 of the 44 cases, there was evidence that managers and supervisors were interviewed; however, statements were only developed in two cases. Management interviews had little to no documentation of questioning, regarding policies and procedures, the hazardous conditions, or questions related to the work activities and hazards to support knowledge and heightened knowledge. There were only two cases, where statements were obtained. Overall, the employee and management interviews were not detailed, and did not add quality or value to the case file. Detailed signed statements should be developed for all witnesses, employees with knowledge of conditions, or any other pertinent information, and management officials to support findings and enforcement action. It does not appear that managers and supervisors are adequately reviewing the case files. KY OSH FOM, Chapter VII, Fatality/Catastrophe Investigations, Section A.3, Fatality/Catastrophe Investigations states, "upon initial contact the employer shall be informed that an investigation will be conducted and that extensive interviews will be necessary. The purpose of an accident investigation shall be explained; namely, to determine a. The cause of the accident. B.2. Investigation Procedures states every reasonable effort shall be made to determine the cause of the accident. B.2.a." The Scope states, "Fatality/Catastrophe investigations shall include a complete investigation of the

circumstances of the accident, consistent with the purpose outlined in A.3.” As mentioned previously in this report, KY OSH Chapter III.D.8.d sets out the importance of a free and open exchange of information between CSHO and employees. And Chapter III D.8.d(5) provides that interview statements shall be obtained whenever the CSHO determines that such statements would be useful in adequately documenting an apparent violation. Interviews with KY OSH compliance staff during the on-site review support the importance and need to obtain good statements. Management officials agreed that it is very important that all CSHOs attend interview training, so they can do effective interviews and develop statements. Discussions with state attorneys, regarding interview statements revealed that the attorneys firmly support thorough interviews that result in supportive interview statements.

**Finding FY 2017-04:** In most fatality files, the interviews that were conducted during the investigations were inadequate and statements were essentially non-existent.

**Recommendation:** 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, policies and procedures, and any other pertinent information.

There were several other deficiencies in the fatality cases that were identified during this review. In 11 of the 44 files reviewed, hazards were identified that were not addressed, including several that are related to the cause of accidents. There was no documentation in the files to support that violations of the identified standards were considered. The result is workers are continuously exposed to serious hazards that remain unabated. This is directly related to the other deficiencies addressed in this study, and supports that complete and thorough investigations are not being conducted. In many cases, Good Faith reductions of 15-25% were provided, without any justification. The narrative stated that it was, "Based on the evaluation of the employer's safety and health program as summarized below." However, the summary of the Evaluation of the employer's overall safety and health program was blank, as was the opening conference checklist, when one was present. Additionally, these cases are the result of a fatal accident, and in one case it was a second unrelated fatality in the same week, which indicates a complete lack of an effective safety and health program, and/or at least a failure in the program. Good faith was not appropriate. For Past History, many of the narratives state, "No prior related history." However, a history reduction was not provided. There is no evidence that the CSHO and supervisor actually reviewed the history. There were instances, where the company was a larger employer with numerous sites, where it would be unusual for the company to not have a history. There were instances, where a size reduction was not appropriate and yet was granted, and where a size reduction was appropriate, and it was not granted. There were multiple instances, where there was no evidence that 300 logs were obtained and reviewed, when the company size required them. Finally, all of the violations cited were coded with the Related Event Code (REC) as being accident-related, regardless as to whether they were actually related to the cause of the fatality. For example, a worker that is not using fall protection falls to his death, and violations for fall protection and hardhats are issued. The hard hat violation should not be coded with the

REC code, since it was not related to the fall.

KY OSH has procedures to ensure the quality of fatality investigations; however, they are not effective. Compliance staff provided that a supervisor and a program manager work closely with the CSHO, during case file preparation to ensure that the case documentation is legally sufficient. In addition, the KY OSH Office of General Council assigns an attorney to provide assistance to the Division of OSH compliance in the development of the case. KY OSH's policy is that fatality investigations are reviewed by at least three levels of management, including the supervisor, compliance program manager (CPM), and the Director of OSH Compliance, as well as the staff attorney. However, in many of the files, there is no documentation showing who reviewed the file and citations, prior to issuance, beyond the CPMs signature on the citation. In the past, the determination of investigations required a signature of the Director of OSH Compliance, before issuance. The Director of OSH Compliance is supposed to review and approve all citations involving fatalities. With the numerous deficiencies identified, it does not appear this is happening. Informal settlement agreements related to fatality cases also receive a higher level of review and approval.

**Finding FY 2017-05:** 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.

**Recommendation:** KY OSH should develop and implement a strategy to ensure all fatalities are completely and thoroughly investigated; identifying and documenting the cause.

**FY 2017-OB-1:** All of the violations cited in the fatality files were coded with the Related Event Code (REC) as being accident-related, even if the accident was neither related to the fatality, nor a cause of the fatality.

**Federal Monitoring Plan:** The OSHA Area Office will closely monitor violations cited in fatality files to ensure related violations are properly coded with REC coding and non-related violations are not coded with REC code.

c) Targeting and Programmed Inspection – *SAMM 17*

According to inspection statistics run for this report, KY OSH conducted 788 inspections in FY 2017, 146 of which were programmed. This includes 94 of the 310 inspections conducted in the construction sector. It was noted that only four programmed health inspections were conducted during this period, all of which were in general industry. The low number of programmed health inspections conducted by Kentucky has been a repeat issue for three years, dating back to FY 2015, when only six were conducted. In 2016, KY OSH did not conduct any programmed health inspections. In response to the finding and recommendation, the former Director of OSH compliance established a goal of two programmed planned health inspections per health compliance officer, which, at the time, equated to 12 inspections. This did not happen in FY 2017. KY OSH should develop and



implement an effective strategy to increase the number of programmed health inspections that are conducted in the high-hazard health industries. In response to the 2015 FAME’s finding and recommendation, KY OSH provided that they have a strategy to ensure programmed planned health inspections are conducted to adequately address the scope and seriousness of hazards found in high-hazard health industries. Additionally, it provided that on August 8, 2014, a change in policy was implemented, which increased the number of programmed planned health inspections. This policy has been ineffective. According to the OIS data, 64.3% of programmed safety inspections, and 100% of programmed health inspections had violations. Additional data indicates that 69.2% of the inspections were in compliance, an average of 3.5 violations were cited per inspection and that 35.1% of safety violations, and 31.6% of health violations were classified as serious, repeat, and willful.

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

<b>General Industry Programmed Inspections</b>	<b>KY OSH</b>
Average Number of Violations	4.31
In-Compliance Rate	32.7%
% Violations Classified as Serious, Repeat, and Willful	35.8%

<b>Construction Programmed Inspections</b>	<b>KY OSH</b>
Average Number of Violations	1.31
In-Compliance Rate	89.4%
% Violations Classified as Serious, Repeat, and Willful	25%

(Reference: 2017 OIS Inspection Summary Report)

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

KY OSH conducts programmed inspections in the construction sector, under the Dodge Construction Targeting Program. These are associated with their strategic goal to reduce injuries caused by falls, struck-by, and crush accidents. KY OSH has a performance goal which aims to reduce the number of injuries caused by falls, struck-by, and crushed-by incidents in construction by two percent through a seven-part strategy that combines efforts by the Division of OSH Compliance and the Division of Education and Training. Data from the BLS Survey of Occupational Injuries and Illness, in conjunction with the Division of Education and Training’s Statistical Services Branch, indicate that the

Kentucky incident rate for falls is 13.3 compared to the national rate of 18.8; struck-by is 14.8 compared to the national rate of 27.4; and crushed were too few incidents for rate calculation to compare to the national average of 4.3.

Many programmed construction inspections are partial in scope. According to the OIS data, 94 of the 310 construction inspections conducted by KY OSH were programmed inspections including 16 programmed planned and 78 programmed related. Only 10.6% of programmed inspections in construction had violations, and 3.2% of the violations were classified as serious, willful, or repeat. KY OSH does not follow the Focused Construction Inspection Guidelines, which focus on the four leading causes of fatalities (fatal four hazards) in the construction industry, which include electrical hazards, fall hazards, struck-by hazards, and caught-in-between hazards. KY OSH opens inspections and conducts inspections on all of the contractors on a worksite. This has resulted in the high in-compliance rate, and the low percentage of violations classified as serious, repeat, and willful.

**Finding FY 2017-06:** (formerly FY 2016-03, FY 2015-06, FY 2014-05, FY 2013-05, and FY 2011-06): KY OSH conducted a total of four 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.

d) Citations and Penalties – *SAMM 17*

In FY 2017, OIS data provided that the 788 inspections conducted resulted in an average of 2.3 violations per non-incompliance inspection, including 2.6 violations per non-incompliance safety inspection, and 2.6 violations per non-in-compliance health inspection, with 58.6% of safety violations, and 38.9% of health violations classified as serious. The average initial penalty per serious violation for private sector inspections was \$4,033, as compared to an average of \$5,011 for national data. (Reference: 2017 OIS Inspection Summary Report) According to the SAMM Report, in FY2017, the average lapse time (in days) from opening conference to citation issuance is identified as follows:

<b>Average</b>	<b>KY OSH</b>	<b>FRL</b>	<b>OSHA</b>
Safety	66.23	36.23 – 54.35	45
Health	81.70	44.8 2- 67.24	62

(Reference: SAMM 11 and 2017 OIS Inspection Summary Report)

The overall lapse time has increased by more than 13% with safety lapse time increasing by more than 15%, and health lapse time increasing by 4% from FY 2016 to FY 2017; however, it remains 31% greater than OSHA’s. The safety lapse time is 32% higher and the health lapse time is more than 24% greater than OSHA’s and both are outside the

FRLs. During the FY 2016 review, the former Director of OSH Compliance was managing lapse time by holding the program managers and supervisors accountable, and the program managers and supervisors were holding the CSHOs accountable. In FY 2016, the health lapse time was reduced significantly, and was within the acceptable range for SAMM 11. The progress by the former Director of OSH Compliance to reduce lapse times is no longer evident. The inconsistency created by the continuous transition in Directors, as well as the turnover of compliance officers, has contributed to high lapse times. For these reasons, it is critical for the program managers and supervisors to track and manage lapse time closely. It is recommended that the State Plan develop and implement a strategy to reduce lapse time to include manager, supervisor, and CSHOs accountability for the timely completion of inspection files.

**Finding FY 2017-07:** (formerly FY 2015-08, FY 2014-06, FY 2013-06, FY 2011-07, and FY-2009-11): KY OSH has significantly high 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 non-in-compliance safety and health inspections to reduce lapse times to the national average.

Similar to the complaint and fatality case files, there were also numerous deficiencies in the general case files. The review identified that interviews that were conducted during inspections were inadequate. Interviews and persons contacted were referenced in the file, but there is little to no documentation in the field notes containing interview notes. In cases where employees were interviewed, the interviews were minimally documented with short bullet notes in fragmented sentences. In most cases, the notes are not detailed, and do not adequately address the incident, operations, policies and procedures, training and other relevant information to support findings. As with the worker interviews, management interviews had little to no documentation of questioning regarding policies and procedures, the hazardous conditions, or questioning related to the work activities, and hazards to support knowledge.

There were multiple instances of missed violations for hazards associated with LOTO and falls. There were six cases of amputation and/or serious injuries involving workers unjamming or cleaning equipment and no citations were issued for specific LOTO procedures. There was no evidence of requesting training for affected/ authorized employees; no evidence that periodic inspections for LOTO was requested or reviewed; and authorized employees' were not interviewed to establish that there was a lack of LOTO procedures. There were four cases of involving inspections where fall issues were inspected and the failure to obtain information and question fall protection training and workers knowledge of fall hazards and fall protection was missing in all of the cases which could have resulted in violations related to fall protection training and/or the certification of training. In another case involving fall hazards, a citation was issued for no fall protection; however, it was established in the case that the employer was using warning lines and safety monitor and one area of the roof the warning line was not erected. The employer should have been cited for the warning line not being erected

around all sides of the roof work area. Additionally, the safety monitor was not questioned regarding the warning line and monitoring duties.

**Finding FY 2017-08:** 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.

**Recommendation:** KY OSH should develop and implement a strategy to ensure adequate and thorough interviews are conducted and adequately documented for workers, supervisors, and managers with knowledge of the hazards, work practices, policies and procedures, and any other pertinent information.

The review identified seven inspections where safety and health programs were requested as part of the inspection, but there is no evidence that the program was actually evaluated. Potential missed violations were identified in all seven of the cases. In one case, employees were first responders and cleaned the blood after an amputation injury, and the Exposure Control Plan (ECP) was requested, and the plan had deficiencies, including the plan had not been revised since 2005, and there was no job description, or exposure determination. In another case, the exposure control plan did not contain any job description or task; and the energy control program (LOTO) did not have specific procedures. In another case, the company was pouring concrete on sidewalks exposing employees to Portland cement, and the Hazard Communication program, and training was not requested or reviewed. Another instance involved workers cleaning up blood, and the Exposure Control Plan (ECP) was not requested and reviewed. During another inspection, the Confined Space program was requested, and the program was very general, and contained several deficiencies; however, they were not addressed.

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

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

	<b>KY OSH</b>	<b>OSHA</b>
Serious (only)	56.2%	70.5%
OTS	40.4%	21.1%

(Reference: OIS Inspection Summary Reports)

The state’s policy and practices for grouping violations are essentially the same as OSHA’s. When a source of a hazard is identified which involves interrelated violations of different standards, the violations may be grouped into a single violation. When violations classified either as serious, or other than serious, are so closely related they may constitute as a single hazardous condition, such violations can be grouped and the overall classification is normally be based on the most serious item. When two or more violations are found which, if considered individually, represent other than serious violations, but together create a substantial probability of death or serious physical harm,

the violations may be grouped as a serious violation. The state does not group for violations discovered during multiple inspections of a single worksite, for violations at separate establishments of the same employer, for general duty violations, and egregious violations. Case file reviews support that the state is following their procedures when grouping violations.

In FY 2017, KY OSH issued two willful and 22 repeat violations. When willful violations are issued, they are reviewed by the Director of OSH Compliance, the program manager, supervisor, and an attorney in the Office of General Counsel before issuance. According to OIS data, KY OSH's percent serious/willful/repeat/ unclassified was 58.9 in FY 2017, compared to OSHA serious/willful/repeat/unclassified at 77.0%. A review of procedures and discussions with State Plan compliance personnel found that procedures for determining willfulness are the same as those for OSHA. Management indicated that they are more than willing to pursue willful violations when the CSHOs and supervisors identify them. The legal department is eager and willing to support them.

KY OSH has procedures for receipt of payments and handling past due penalties. OSHA Express reports are used to track penalty payment and debt collection. An internal letter is sent, giving the employer 10 days to submit payment. Pursuant to KRS 45.239(4) and 45.241, the KY OSH program has an agreement with the Kentucky Revenue Cabinet to collect delinquent debts. Employers who have outstanding KY OSH debts are reported to the Revenue Cabinet for collection and further action. The Revenue Cabinet adds a 25% collection fee to the total debt to defray the cost of collection, and may file a Notice of State Lien. The filing of a lien will be reflected in credit reports maintained by various credit bureaus, and may seize all property rights, both real and personal. This includes, but is not limited to, the attachments of any funds held by a bank, any wages paid to the employer, the seizure and sale of any real estate, and any tax refund or other monies that may become due to the employer from the Commonwealth of Kentucky to offset the outstanding debt. The effort has proven successful; delinquent debts have been collected by Revenue Cabinet and returned to the KY OSH program. Also, the KY OSH program has seen an increase in employers' efforts to resolve debt payment to avoid being reported to the Revenue Cabinet. Since October 2013, the Division of OSH Compliance has submitted 136 cases to the Revenue Cabinet for collection totaling \$1,071,973. To date, \$184,437 has been collected.

#### e) Abatement

Case files, written procedures, and inspection data reviewed indicate that KY OSH continues to obtain adequate and timely abatement information, and has processes in place to track employers, who are late in providing abatement information. KY OSH does not have a written procedure for abatement verification, nor is it addressed in the FOM. Currently, program managers use OSHA Express reports 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.

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

KY OSH conducted follow-up inspections according to their policy and procedures. Supervisors assign follow-up inspections to CSHO's based on the criteria listed in the FOM, Chapter 7, XII – Follow-Up Inspection Procedures for Abatement Verification. In FY 2017, 2.3% of inspections conducted were follow-ups compared to OSHA at 3.3%.

#### f) Worker and Union Involvement

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

### **3. REVIEW PROCEDURES**

#### a) Informal Conferences

KY OSH has procedures in place for conducting informal conferences and proposing informal settlement agreements. The penalty retention rate for following informal conferences was 58%. Supervisors are required to prepare an informal conference memo documenting the meeting with the employer, and their recommendations for settlement. Supervisors are also required to discuss all changes, and penalty reductions with the compliance program managers, and get their approval for the settlement. The program managers sign the settlement memo that is provided to the employer. It was also noted that the case files contain a copy of the settlement document, and that the affected parties were being informed of the changes resulting from the informal conference. Manager and supervisor interviews confirmed that employer commitments are being included in settlement documents, and required for certain cases involving larger penalty reductions. KY OSH requires that agreements with a monetary penalty reduction of more than \$15,000 will include documented implementation of an internal safety and health management program, or engage use of outside safety and health consultation. During FY 2017, the Division of OSH Compliance signed 273 settlement agreements. Penalties were

reduced by \$15,000 or more in one case that included the documented implementation of an internal safety and health management program, and/or engaged the use of outside safety and health consultation.

b) Formal Review of Citations

In FY 2017, 9.2% of KY OSH's inspections were contested, as compared to 8.9% in FY 2015. The Kentucky Occupational Safety and Health Review Commission hold 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.

The Office of General Counsel provides legal representation for KY OSH. The attorneys are housed within the same office as KY OSH in Frankfort. It is common for an attorney to work closely with the compliance staff during the preparation of fatalities and other high profile inspections. Data indicates that for violations that were contested, 84% of penalties were retained, 12% were vacated, and 4.55% were reclassified. Compliance officers and supervisors stated that they have a good working relationship with the attorneys, and they are knowledgeable of OSHA requirements, and what is needed for a case to be legally sufficient.

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

In accordance with 29 CFR 1902, State Plans are required to adopt standards and FPCs within a six-month timeframe. State Plans that do not adopt identical standards and procedures must establish requirements that are "at least as effective as (ALAE)" the federal rules. State Plans also have the option to promulgate standards covering hazards not addressed by federal standards.

During this period, Kentucky adopted all of the OSHA-initiated standards which required action in a timely manner. The only exceptions were the standards impacting its penalty level.

##### **Maximum Penalty Increase**

With the passage of the Bipartisan Budget Bill on November 2, 2015, OSHA raised its maximum penalties effective August of 2016. As required by law, OSHA then increased maximum penalties annually, on January 1, 2017 and January 1, 2018, according to the Consumer Price Index (CPI). State Plans are required to adopt both initial increase and subsequent annual increases.

KY OSH has not yet completed the legislative changes to increase maximum penalties. OSHA will continue to work with KY OSH on this issue. The table below identifies KY

OSH response to OSHA-initiated standards.

**Standards Adoption FY 2016 and FY 2017**

<b>Standards Requiring Action</b>	<b>Federal Register Date</b>	<b>Adopted Identical</b>	<b>Date Promulgated</b>
Final Rule on the Implementation of the 2017 Annual Adjustment to Civil Penalties for Inflation	1/18/2017	No	No Action
Final Rule on Occupational Exposure to Beryllium	1/9/2017	Yes	6/2/2017
Final Rule on Walking-Working Surfaces and Personal Protective Equipment (Fall Protection Systems)	11/18/2016	Yes	3/31/2017
Interim Final Rule on Maximum Penalty Increases	7/1/2016	No	No Action
Final Rule to Improve Tracking of Workplace Injuries and Illnesses	5/12/2016	Yes	12/02/2016
Final Rule for Occupational Exposure to Respirable Crystalline Silica	3/25/2016	Yes	9/2/2016

During this period, Kentucky adopted federal directives requiring action, or appropriate equivalent procedures in a timely manner. In most cases, the state implemented equivalent procedures, when several aspects of the federal directive did not apply to the state, such as shipbreaking and discrimination statutes beyond section 11(c).

The table below identifies the federal directives which required action by the State Plan.

**Federal Program/State Initiated Changes FY 2016 and FY 2017**

<b>Federal Program Changes Requiring Action and Federal Directive Number</b>	<b>Date of Directive</b>	<b>Adopted Identical</b>	<b>Adoption Date</b>
Enforcement Procedures and Scheduling for Occupational Exposure to Workplace Violence	1/10/2017	No	N/A
Field Operations Manual Directive CPL 02-00-160	8/2/2016	No	N/A
National Emphasis Program on Shipbreaking CPL 03-00-020	3/7/2016	No	N/A
Whistleblower Investigations Manual CPL 02-03-007	1/28/2016	No	N/A
Consultation Policies & Procedures Manual, Directive CSP-02-00-003	11/19/2015	Yes	05/19/2016
Mandatory Training Program for OSHA	10/8/2015	No	N/A



Whistleblower Investigators TED 01-00-020			
Field Operations Manual Directive CPL 02-00-159	10/1/2015	No	N/A
Alternative Dispute Resolution Process for Whistleblower Protection Program CPL 02-03-006	8/18/2015	No	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 2017, 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. During FY 2017, KY OSH conducted 34 inspections or 4.3% of the total inspections in the state and local government. This exceeded the goal of 3.78% set by the State Plan.

## 7. WHISTLEBLOWER PROGRAM – SAMMs 14, 15, 16

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 2017 FAME. The sole investigator for KY OSH is located in the central office in Frankfort. The program is supervised by and managed by the Director of OSH Compliance.

The following chart reflects KY OSH’s percent meritorious and merit cases settle for retaliation complaints in FY 2017:

Meritorious Complaints		Merit Cases Settled	
<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%
<b>FY 2013</b>	12.96%	<b>FY 2013</b>	75%

<b>Status</b>	<b>Number of Cases</b>	<b>Percentage</b>
<b>Merit</b>	0	0
<b>Dismissed Non-Merit</b>	4	22.2%
<b>Dismissed, Lack of Cooperation</b>	7	33.8%
<b>Settlement</b>	0	0%
<b>Withdrawal</b>	2	11.1%
<b>Untimely Filed</b>	0	0%
<b>Screened and Closed, Lack of Jurisdiction</b>	5	27.7%

Based on the data provided, KY OSH received 17 complaints that were docketed in FY 2017, as compared to 14 docketed complaints in FY 2015. All 17 cases files were reviewed. There is no information available, regarding the actual number of complaints received by KY OSH (i.e. no jurisdiction, referred to another agency) because these were not recorded in WebIMIS. There is a noticeable decline in the number of received complaints between FY 2015 and FY 2017. In FY 2015, KY OSH received a total of 87 complaints. Of those, 14 were docketed with 58 complaints being administratively closed with 13 of those being referred to alternate government agencies. Additionally, it appeared that complainants who reported retaliation because of a workplace injury were referred to KY Office of Worker’s Compensation for assistance, rather than being handled by KY OSH. There appeared to be confusion over who was actually responsible for the investigation of these complaints. It should be noted that there was a change in governmental administration between the two FAME’s. Additionally, there were personnel shifts in the administration during FY 2017, and the sole investigator was on medical leave for the first nine weeks of FY 2017. It is clear that if a plan for continuity does not exist, one should. If a plan does in fact exist, it should be reviewed, and possibly retailored to fit current needs.

According to the SAAM, the average time to complete investigations was 105 days compared to 49 days in FY 2015. KY OSH investigators conduct investigations, according to KY OSH Discrimination Field Operations Manual. This manual has some similarities to the federal Whistleblower Investigations Manual. The three major differences are as follows:

- Complainants in KY have 120 days to file complaints of discrimination versus 30 days for OSHA complainants.
- Civil penalties up to \$10,000 can be issued to respondents immediately upon a merit determination.
- Complainants who are employees of the Commonwealth or any of the Commonwealth’s political subdivisions are protected.

A review of case files showed they are maintained and organized in a logical manner, in accordance with procedures established by the agency. It appears the investigator has a

working knowledge of the investigative process, and the pertinent evidentiary burdens that are applicable to a discrimination allegation. Investigative findings are accurately documented in the case files, and support the findings. All complaints appeared to have been investigated at least as thoroughly as OSHA would have investigated.

Several items were documented in the FY 2015 FAME that had not necessarily resulted in a negative impact on the program. However, these items were documented as observations that necessitated an FY 2017 follow-up. Those observations are as follows: One observation was that complainants are mailed a questionnaire that must be completed and returned to KY OSH within ten days, before an investigation begins. In FY 2017, eight complainants failed to return their questionnaires within the required timeframe. Two of the complainants had their cases administratively closed with no appeal rights. The remaining six complainants had their cases dismissed with appropriate appeal rights.

**FY 2017-OB-2 (Formerly 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 findings provided to complainants to ensure they are provided with sufficient information.

**FY 2017-OB-3:** There is a lack of consistency when disposing of whistleblower cases where a complainant fails to return the initial questionnaire within the required timeframe. Some complaints have been closed administratively, due to a lack of cooperation. Others have been dismissed with investigative findings issued.

**Federal Monitoring Plan:** The OSHA Area Office will closely monitor the disposition of cases, where a lack of participation is recorded in WebIMIS due to a complainant’s failure to return the required questionnaire. All instances should either be administratively closed without further remedy available to the complainant, or they should be dismissed with appropriate appeal rights.

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

Since the last on-site evaluation in FY 2015, OSHA’s Nashville Area Office has responded to three (3) CASPA’s, regarding the KY OSH program. One CASPA investigation focused on workplace safety and health concerns, while the other two raised concerns, regarding the state’s investigation of workplace fatalities. Federal OSHA’s review of the workplace inspection resulted in a determination that KY OSH handled the matter appropriately. However, federal OSHA has made recommendations to the state, regarding its investigation of workplace fatalities. Additionally, details regarding the State Plan’s investigation of fatal accidents are provided in the Special Study section of this report.

**CASPAs**

State Discrimination CASPA Number	Date of Acknowledgement	Date of Final Report to State	Corrective Action Required
KY 2016-18	08/08/2016	12/15/2016	Corrective Action

			Pending
KY 2017-19	05/23/2017	08/29/2017	N/A
KY 2017-20	05/25/2017	09/13/2017	Corrective Action Pending

**\* Note: The above table only reflects the CASPAs received by the State Plan during the 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 federal OSHA’s OSPP; however, the program is well managed by the State. The State Plan continues to offer Site-based, Association-based, and Training-based Partnerships. There are currently a total of 18 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 11 participating worksites. During this period, one (1) new site joined, and two (2) 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 updated OSHA VPP directive, CSP 03-01-003. The directive effectively addresses enforcement activities at VPP sites, such as fatality investigations. However, during this period, none of the State Plan’s VPP sites experienced a fatal accident.

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

## **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. A closing conference was held with the Program Assistant Director, and with Mr. Chuck Stribling, Federal and State Coordinator, to discuss the results of the on-site review, and to reach agreement on actions to be taken by the Program to correct deficiencies. The Regional on-site review included an overall review of program management operations, a review of 41 (21 safety files, 20 health files) randomly selected consultation case files, and a review of fiscal operations.

**Program Management**

**Visits**

During FY 2017, the Program conducted 271 initial visits, 0 training and assistance visits, and 0 follow-up visits.

**Mandated Activities Report for Consultation (MARC) - FY 2017 Summary**

Reference Std.

1. Percent of Initial Visits in High-Hazard Establishments	100%	Not < 90%
2. Percent of Initial Visits to Smaller Businesses	95.20%	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		0

**Hiring and Vacancies**

The FY2017 Kentucky 23(g) Cooperative Agreement provides for the following Program positions: The Program Director; the Assistant Program Director; one Safety Program Manager; one Health Program Manager; one Partnership Program Manager; one VPP Administrator; one SHARP Administrator 15 Safety Consultants; 11 Industrial Hygienist Consultants.

The Program currently has one Director, two Safety Consultants, and three vacant Industrial Hygienist Consultant positions. One Safety Consultant and one Health Consultant positions will be filled during FY 2018. The remaining vacant positions will not be filled due to lack of funding.

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) such as: OTI Webinar Course 0070 “OSHA Logs – How to Use Them”; OTI Webinar Course 0095 “Electrical Hazards”; OTI Webinar Course 0039 “Seaman’s Protection Act – Whistleblower Issues”; OTI Webinar Course 0016 “OSHA’s Field Operations Manual Overview”; OTI Webinar Course 0002 “The Control of Hazardous Energy”; OTI Webinar Course 3160 “Steel Erection”; OTI Course 2260 “Permit-Required Confined Space Entry”; OTI Course 3080 “Principles of Scaffolding”; OTI Course 2220 “Respiratory Protection”; DOL OASAM Course “Archives and Records Centers – Information System”; OTI Course “Voluntary Protection Programs”; OTI Course 2010 “Hazardous Materials”; OTI Course 0007 “Process Safety Management of Reactive Hazards”; OTI Course 1500 “Introduction to On-site Consultation”; OTI Webinar Course 0124 “Active Personal Fall Arrest System”; OTI Webinar Course 0069 “Recognizing Failures in Machine Safeguarding Systems”; OTI Course 2210 “Principles of Industrial Hygienist”; OTI Course 2350 “Expanded Health Standards”; OTI Course 2540 “Machine Guarding and Hazardous Energy Control”; OTI Webinar Course 0037 “Fall Protection in Residential Construction”; and OTI Course 3100 “Applied Spray Finishing and Coating Principles”.

Additionally, the Assistant Program Director; and the Safety and Health Managers attended the National Training Conference which was conducted in Little Rock, Arkansas. During this Training Conference, they participated in various training sessions, related to the management of the program.

There were no issues found in this category.

### **Accompanied Visits**

The Safety and Health Program Managers have conducted two accompanied visits for each consultant. These accompanied visits include, 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 time frame. However, during this review period, most of site visits were not promptly scheduled following the employer's request, with the majority of delays existing for three to six months. The information detailing the delayed site visits was not captured in the OSHA Express because the employer's request date was not accurately entered into the Request Form. The date the consultant contacted the employer to schedule the site visit was incorrectly entered as the employer's request date.

This is the only issue identified 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. This demonstrated an improvement from the previous program review for which the average was 26 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 Program 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 Program 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 Program 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 identifies good 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 good candidate. Additionally, the SHARP Administrator reviews the Bureau of Labor Statistics (BLS) list of rates for companies. The SHARP Administrator recruits companies for the SHARP program by contacting these identified companies, explaining the program and promoting it.

During FY 2017, the Program added three companies and renewed 16 companies to their SHARP program, for a total of 19.

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 office recipients
- Quarterly Labor Cabinet newsletter
- Annual Governor's Safety and Health Conference
- Labor Cabinet Website
- Face to Face Heat Stress Campaign
- Partnership brochures
- Impact Mobile Response and Training vehicle

Additionally, the Program relies on referrals from Enforcement Informal Settlement Agreements, and the Federal OSHA Web site.

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: 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 41 files (21 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 missing from five out of the 21 files reviewed. It is required, in order to note important telephone and face-to-face conversations, the date of important actions such as the opening visit date, the date the report was sent to the employer, and any other activities deemed important enough to note in this summary of contacts.

All the files reviewed were found to have an evaluation of the employers' safety and health program using the OSHA Form 33. While the CPPM says 23(g) State Plans *may* use the Form 33, KY OSH has elected to use it and therefore must use it correctly in accordance with the CPPM. Ten out of the 21 files reviewed were found with scores between one and two and without comments as to how to improve in these areas. The comments will provide the employers meaningful recommendations on how to meet or improve on a specific attribute. If comments are omitted, an employer has no guidance on which area to prioritize for action in order to improve the overall safety and health profile of the establishment. Files were well maintained, including required forms, reports to the employer, and abatement information. Case files were found to contain field notes; however, they were lacking required information such as, clear descriptions of the hazards found; the number of employees exposed to the hazards; interim protection; and measurements.

Most of the safety and health files contained a copy of the employers' OSHA 300 logs, along with proper documentation in the files indicating a review/analysis of the injuries and/or illnesses. Industries visited included furniture manufacturers; metal fabrication; metal recycling; plastic manufacturers; water filter manufacturers; meat processing facilities; machine shops; baking facilities; wood product facilities; foundries; hair products companies; pre-stressed concrete product manufacturers; sawmills; and rubber workstation mat manufacturers. During this review period, the program identified a diversity of hazard related to: fire prevention plan; emergency action plan; PPE written assessment; hazard communication program; bloodborne pathogen exposure control plan; respiratory protection plan; lockout/tagout; clearance limit signs not posted; various electrical hazards; welding; fall protection; compressed air; gas cylinders; weight limits; cranes; housekeeping; and wet floor. In the cases of required programs, companies needed to either improve the program or develop one.

Reports 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, and documentation of abatement was contained in the files. Case files contained abatement reports for adequate company feedback.

### **HEALTH:**

Although improvement over previous years was noted, some files were still lacking sufficient documentation. For instance, a few of the files lacked sufficient detail to explain the severity classification assessment, and the hazardous conditions resulting in PPE violations, including respiratory protection violations. Files did not contain any SDSs or notations, regarding the SDS content for pertinent products containing hazardous chemicals to which employees of the site were exposed. The rationale documented in the field notes that was used to explain why consultants did not conduct sampling contained minimal information. There was an increased usage of diary sheets contained in the files, as compared to past years. About half of the diary sheets contained only 1 or 2 entries, even though more notations were warranted.

Health hazards were not always evaluated during comprehensive inspections. For example, noise screening/sampling was not conducted during a concrete grinding process, which is typically a loud activity that results in exposures to high noise levels. The case file did not contain any rationale explaining the reason for not conducting noise sampling. Overall, thirteen of the health site visits were conducted at job sites where high noise would be expected. The consultants conducted noise sampling at four of those job sites. For the nine job sites where noise sampling was not conducted, seven of the case files did not contain sufficient documentation to explain why the consultant did not conduct noise sampling. The following was in the case files: the consultant indicated that there were no noise issues in metal fabrication shops with any further explanation. There were instances when previous sampling had been conducted at the same or similar job site with no further details provided.

Consultants did not always conduct air sampling when warranted. For example, lead sampling was not conducted to evaluate lead exposures in a lead soldering process. The case file field notes were very limited, and provided only a vague rationale to explain the consultant's lack of sampling, i.e. the process was intermittent. Air sampling to evaluate toluene was not conducted because the process only occurred one hour a day. Based on the existence of an OSHA 8-hour, time-weighted average, ceiling, and peak for toluene, sampling by the consultant was warranted. Consultants did not conduct air sampling during three site visits, based upon previous site sampling, and did not include sufficient documentation in the case file to support their decision.

A review of industrial hygiene sampling techniques, sampling equipment used, and sampling results showed that proper sampling equipment and sampling techniques were being utilized. Equipment was being calibrated properly, before and after use, and calibrations were being documented as required. The use of direct reading instruments was limited primarily to noise screening. Wipe, as well as bulk sampling, was not noted in the case files reviewed.

The majority of the case files with sampling contained correct calculations, which is an improvement over previous years. Only two minor errors were identified: a miscalculation of the silica PEL and a miscalculation of a manganese exposure severity. Neither error resulted in incorrect findings related to the exposures.

The vast majority of the case files contained appropriate findings (hazard identification, severity, applicable standards, etc.) based on the supporting documentation in the case file. The few deficiencies identified were primarily related to the use of personal protective equipment, including respiratory protection. For example, one case file did not include a finding to address the employer's failure to provide respiratory protection for a silica overexposure. No supporting documentation was included in the case file. In multiple case files, the applicable sub-section of the respiratory protection standard was not referenced properly for voluntary use of respirators. However, that error did not adversely affect the consultants' recommendations. Additionally, the case file for a site visit where lead was present did not include findings/hazards to address the employer's failure to provide lead training and initial lead sampling.

All the files reviewed with the exception of one partial inspection, were found to have the evaluation of the employer's safety and health program using the OSHA Form 33. However, the majority of the OSHA 33s were deficient, with missing and/or limited comments, including supporting statements and recommendations.

Most of the health files contained an analysis of the employers' OSHA 300 information. However, only one year's data was analyzed, limiting the consultant's analysis of historical injury/illness data and its comparison to industry rates. The CPPM provides that if the employer did not provide the Log of Work-Related Injuries and Illnesses (OSHA Form 300) information before the visit, the consultant must review the employer's current and previous three (3) years' Form 300 logs to determine the employer's rates. The consultant must calculate the rates, compare them to the national average for the employer's NAICS code, and inform the employer of the results.

Delayed closing conferences were a common occurrence in the health case files that were reviewed. About 50% of the case files had delayed closing conferences documented, which were infrequently explained. About 25% of the delayed closing conferences occurred following site visits that did not include sampling. According to the CPPM, closing conferences must be conducted on-site during the initial visit. Consultants may not delay conducting the closing conference to give them more time to complete the Written Report or wait for laboratory results. Note that the Written Report must be sent to the employer no later than 20 calendar days after the closing conference is held.

Abatement time periods were adequately recommended and appropriate abatement information was documented in the case files. 25% of the case files contained the employer's request for an extension of the original assigned Correction-Due Date, all of which were documented and processed correctly.

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

**Finding FY 2017-09:** In most safety and health consultation case files, the OSHA Form 33 was used with scores between one and two, and the required comments for improvement were not included as required by the CPPM, Chapter 4, II, F.

**Recommendation:** KY OSH should provide additional training to consultants to ensure that all the required improvement comments are entered in the OSHA Form 33.

**Finding FY 2017-10:** Consultation case file documentation (field notes) was lacking the following: hazard description; processes; locations; measurements; the number of workers exposed; the duration of exposure; pictures; and abatement recommendations.

**Recommendation:** The Kentucky Consultation Program should closely monitor consultation file documentation to ensure the appropriate information is included in the files.

**Finding FY 2017-11:** In most cases, the employer's request date were not accurately reflected on the request form, and the scheduled site visit date was incorrectly entered as the employer's request date, with the majority of delays existing for three to six months. Therefore, delays in KY OSH conducting visits were not tracked due to incorrect data entry.

**Recommendation:** The Kentucky Consultation Program should provide additional training to consultants to ensure they are correctly entering the employer's request date in OSHA express.

**Finding FY 2017-12:** In 9 of 18 (50%) of consultation case visits recorded as comprehensive visits, there were potential (or likely) health hazards present and yet there was no health sampling done to evaluate the potential and there was no documentation in the file to explain why this sampling was not conducted.

**Recommendation:** The Kentucky Consultation Program should provide additional training to consultants to ensure they are conducting sufficient sampling, and/or evaluations of health hazard specific to the type of industries visited. Ensure consultants provide an adequate explanation, when sampling is not conducted.

**FY 2017-OB-4:** Closing conferences for consultation visits were often delayed and conducted at a much later date than the site visit.

**Federal Monitoring Plan:** The OSHA Area Office will closely monitor consultation files to ensure timely closing conferences are conducted.

**FY 2017-OB-5:** Some of the reviewed consultation files did not have a diary sheet to document the chronological actions taken during the consultation activity. About half of the diary sheets were limited to only one or two entries, even though more notations were warranted.

**Federal Monitoring Plan:** OSHA will closely monitor the consultation files to ensure they have a diary sheet to document consultation activity.

**FY 2017-OB-6:** The OSHA injury illness data (OSHA 300) for only one prior year was analyzed and documented on the written report to the employer, and in the case file.

**Federal Monitoring Plan:** OSHA will closely monitor the consultation files. OSHA 300s are reviewed for three years.

### **Overall Effectiveness**

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

## Appendix A – New and Continued Findings and Recommendations

### FY 2017 Kentucky Comprehensive FAME Report

FY 2017-#	Finding	Recommendation	FY 20XX-# or FY 20XX- OB-#
FY 2017-01	Safety compliance officers are not provided with progressive training opportunities as outlined by the KY OSH training guidelines.	KY OSH should implement a process to ensure compliance officer training is compliant with TED 01-00-019 “Training Program for OSHA Compliance Personnel,” as adopted by KY OSH.	
FY 2017-02	KY OSH has elected to not acknowledge complaints with electronic signatures as being valid signed complaints, even though State law KRS 369 – Information Technology allows agencies to recognize electronic signatures as being acceptable forms of signature. This policy is not at least as effective as OSHA’s policy of accepting electronic signatures as valid signatures. Electronic complaints that are forwarded to KY OSH are not being properly addressed. This policy is not at least as effective as OSHA’s policy of accepting electronic signatures as valid signatures.	KY OSH should elect to accept complaints with electronic signatures as valid signed complaints and process these complaints in accordance with their policies and procedures for processing complaints.	
FY 2017-03	KY OSH interprets their state law as prohibiting inspection or investigation of a non-formal (non-employee) complaint. As a result, six of the 10 non-formal complaints reviewed were classified as invalid, even though they contained allegations of serious hazards and/or serious injuries.	KY OSH and its attorneys should work with OSHA to change their current interpretation of the state law and start handling non-formal complaints alleging serious hazards either with an inspection or, at a minimum, by letter (phone/fax investigation).	FY 2016-02 FY 2015-04
FY 2017-04	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	

## Appendix A – New and Continued Findings and Recommendations

### FY 2017 Kentucky Comprehensive FAME Report

		pertinent information.	
FY 2017-05	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.	
FY 2017-06	KY OSH conducted a total of four 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 2016-03 FY 2015-06 FY 2014-05 FY 2013-05 FY 2011-06
FY 2017-07	KY OSH has 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 non-in-compliance safety and health inspections to reduce lapse times to the national average.	FY 2015-08 FY 2014-06 FY 2013-06 FY 2011-07 FY-2009-11
FY 2017-08	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.	FY 2016-OB-10
FY 2017-09	In most safety and health consultation case files, the OSHA Form 33 was used with scores between one and two, and the required comments for improvement were not included as required by the CPPM, Chapter 4, II, F.	KY OSH should provide additional training to consultants to ensure that all the required improvement comments are entered in the OSHA Form 33.	
FY 2017-10	Consultation case file documentation (field notes) was lacking the following: hazard description; processes; locations; measurements; the number of workers exposed; the duration of exposure; pictures; and abatement recommendations.	The Kentucky Consultation Program should closely monitor consultation file documentation to ensure the appropriate information is included in the files.	
FY 2017-11	In most cases, the employer's request date were not accurately reflected on the request form, and the	The Kentucky Consultation Program should provide additional training to consultants to ensure they are	

## Appendix A – New and Continued Findings and Recommendations

### FY 2017 Kentucky Comprehensive FAME Report

	scheduled site visit date was incorrectly entered as the employer's request date, with the majority of delays existing for three to six months. Therefore, delays in KY OSH conducting visits were not tracked due to incorrect data entry.	correctly entering the employer's request date in OSHA express.	
FY 2017-12	In 9 of 18 (50%) of consultation case visits recorded as comprehensive visits, there were potential (or likely) health hazards present and yet there was no health sampling done to evaluate the potential and there was no documentation in the file to explain why this sampling was not conducted.	The Kentucky Consultation Program 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. Ensure consultants provide adequate explanation when sampling is not conducted.	



## Appendix B – Observations and Federal Monitoring Plans

### FY 2017 Kentucky Comprehensive FAME Report

Observation # FY 2017-OB-#	Observation# FY 2016-OB-# or FY 2016-#	Observation	Federal Monitoring Plan	Current Status
FY 2017-OB-1		All of the violations cited in the fatality files were coded with the Related Event Code (REC) as being accident-related, even if the accident was neither related to the fatality, nor a cause of the fatality.	The OSHA Area Office will closely monitor violations cited in fatality files to ensure related violations are properly coded with REC coding and non-related violations are not coded with REC code.	New
FY 2017-OB-2	FY 2016-OB-04	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 findings provided to complainants to ensure they are provided with sufficient information.	Continued
FY 2017-OB-3		There is a lack of consistency when disposing of whistleblower cases, where a complainant fails to return the initial questionnaire within the required timeframe. Some complaints have been closed administratively, due to a lack of cooperation. Others have been dismissed with investigative findings issued.	The OSHA Area Office will closely monitor disposition of cases; where a lack of participation is recorded in WebIMIS, due to a complainant's failure to return the required questionnaire. All instances should either be administratively closed without further remedy available to the complainant, or they should be dismissed with appropriate appeal rights.	New
FY2017-OB-4		Closing conferences for consultation visits were often delayed and conducted at a much later date than the site visit.	The OSHA Area Office will closely monitor the consultation files to ensure closing conferences are not delayed.	New

## Appendix B – Observations and Federal Monitoring Plans

### FY 2017 Kentucky Comprehensive FAME Report

Observation # FY 2017-OB-#	Observation# FY 2016-OB-# or FY 2016-#	Observation	Federal Monitoring Plan	Current Status
FY 2017-OB-5		Some of the reviewed consultation files did not have a diary sheet to document the chronological actions taken during the consultation activity. About half of the diary sheets were limited to only one or two entries, even though more notations were warranted. Field notes and other file documentation were not always conducive to achieving the highest level of hazard recognition, and hazard abatement.	The OSHA Area Office will closely monitor the consultation files to ensure they have a diary sheet to document consultation activity.	New
FY 2017-OB-6		The OSHA injury illness data (OSHA 300) for only one prior year was analyzed and documented on the written report to the employer and in the consultation case file.	The OSHA Area Office will closely monitor the consultation files. OSHA 300s are reviewed for three years.	New
	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.		Closed
	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.		Closed
	FY 2016-OB-3 FY 2015-OB-5 FY 2014-OB-1	In FY 2015, 1.6% of inspections conducted were follow-ups, as 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.		Closed

## Appendix B – Observations and Federal Monitoring Plans

### FY 2017 Kentucky Comprehensive FAME Report

Observation # FY 2017-OB-#	Observation# FY 2016-OB-# or FY 2016-#	Observation	Federal Monitoring Plan	Current Status
	FY 2016-OB-5 FY 2015-OB-7	Correspondence is sent without a method to allow for confirmation of delivery.		Closed
	FY 2016-OB-6 FY 2015-OB-8	Administrative closures and withdrawals are not being documented correctly in IMIS.		Closed
	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.		Closed
	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.		Closed
	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.		Closed
	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.		Converted to a Finding

## Appendix C – Status of FY 2016 Findings and Recommendations

### FY 2017 Kentucky Comprehensive FAME Report

FY 2016-#	Finding	Recommendation	State Plan Corrective Action	Completion Date	Current Status
FY 2016-01 (formerly FY 2015-03 FY 2014-08 FY 2013-09 FY 2010-08 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.	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. A copy of the written policy manual, which outlined the program, was provided to the on-site review team.	1/8/2018	Completed
FY 2016-02 (formerly FY 2015-04)	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).	KY OSH has not implemented a corrective action.	Not Completed	Open

## Appendix C – Status of FY 2016 Findings and Recommendations

### FY 2017 Kentucky Comprehensive FAME Report

FY 2016-03 (formerly FY 2015-06)	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.	KY OSH has not implemented a corrective action.	Not Completed	Open
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.		1/8/2018	Closed

## Appendix D – FY 2017 State Activities Mandated Measures (SAMM) Report

FY 2017 Kentucky Comprehensive FAME Report

<b>U.S. Department of Labor</b>				
Occupational Safety and Health Administration State Plan Activity Mandated Measures (SAMMs)				
State Plan: Kentucky – KY OSH			<b>FY 2017</b>	
<b>SAMM Number</b>	<b>SAMM Name</b>	<b>State Plan Data</b>	<b>Further Review Level</b>	<b>Notes</b>
<b>1a</b>	Average number of work days to initiate complaint inspections (state formula)	13.28	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)	9.40	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)	0.00	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)	0.00	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)	100%	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.
<b>5</b>	Average number of violations per inspection with violations by violation type	SWRU: 1.31	+/- 20% of SWRU: 1.83	The further review level is based on a two-year national average. The range of acceptable data not requiring further review is from 1.46 to 2.20 for SWRU and from 0.79 to 1.19 for OTS.
		Other: 0.82	+/- 20% of Other: 0.99	
<b>6</b>	Percent of total inspections in state and local government workplaces	4.32%	+/- 5% of 3.78%	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 3.59% to 3.97%.

## Appendix D – FY 2017 State Activities Mandated Measures (SAMM) Report

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SAMM Number	SAMM Name	State Plan Data	Further Review Level	Notes
<b>7</b>	Planned v. actual inspections – safety/health	S: 663	+/- 5% of S: 701	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 665.95 to 736.05 for safety and from 137.75 to 152.25 for health.
		H: 124	+/- 5% of H: 145	
<b>8</b>	Average current serious penalty in private sector - total (1 to greater than 250 workers)	\$4,494.75	+/- 25% of \$2,516.80	The further review level is based on a two-year national average. The range of acceptable data not requiring further review is from \$1,887.60 to \$3,146.00.
	a. Average current serious penalty in private sector (1-25 workers)	\$3,479.67	+/- 25% of \$1,706.10	The further review level is based on a two-year national average. The range of acceptable data not requiring further review is from \$1,279.58 to \$2,132.63.
	b. Average current serious penalty in private sector (26-100 workers)	\$3,434.41	+/- 25% of \$2,867.94	The further review level is based on a two-year national average. The range of acceptable data not requiring further review is from \$2,150.96 to \$3,584.93.
	c. Average current serious penalty in private sector (101-250 workers)	\$8,320.31	+/- 25% of \$3,952.26	The further review level is based on a two-year national average. The range of acceptable data not requiring further review is from \$2,964.20 to \$4,940.33.
	d. Average current serious penalty in private sector (greater than 250 workers)	\$6,463.41	+/- 25% of \$5,063.48	The further review level is based on a two-year national average. The range of acceptable data not requiring further review is from \$3,797.61 to \$6,329.35.
<b>9</b>	Percent in compliance	S: 51.10%	+/- 20% of S: 29.53%	The further review level is based on a two-year national average. The range of acceptable data not requiring further review is from 23.62% to 35.44% for safety and from 28.62% to 42.94% for health.
		H: 65.96%	+/- 20% of H: 35.78%	
<b>10</b>	Percent of work-related fatalities responded to in one workday	88.24%	100%	The further review level is fixed for all State Plans.
<b>11</b>	Average lapse time	S: 66.23	+/- 20% of S: 45.29	The further review level is based on a two-year national average. The range of acceptable data not requiring further review is from 36.23 to 54.35 for safety and from 44.82 to 67.24 for health.
		H: 81.70	+/- 20% of H: 56.03	

## Appendix D – FY 2017 State Activities Mandated Measures (SAMM) Report

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SAMM Number	SAMM Name	State Plan Data	Further Review Level	Notes
<b>12</b>	Percent penalty retained	84.03%	+/- 15% of 67.44%	The further review level is based on a two-year national average. The range of acceptable data not requiring further review is from 57.32% to 77.56%.
<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	0%	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 25%	The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from 20% to 30%.
<b>16</b>	Average number of calendar days to complete an 11(c) investigation	99	90	The further review level is fixed for all State Plans.
<b>17</b>	Percent of enforcement presence	1.06%	+/- 25% of 1.26%	The further review level is based on a two-year national average. The range of acceptable data not requiring further review is from 0.95% to 1.58%.



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**KENTUCKY  
OCCUPATIONAL SAFETY AND HEALTH PROGRAM**

**STATE OFFICE ANNUAL REPORT**

for

**FEDERAL FISCAL YEAR 2017**

Derrick K. Ramsey, Secretary Ervin Dimeny, Commissioner

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### FY 2017 Kentucky Comprehensive FAME Report

## 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

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Order 2008-472.

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.

The Kentucky OSH Program encompasses all areas, issues, and responsibilities that are covered by the Occupational Safety and Health Administration (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

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government, does not include enforcement in any area over which OSHA does not exercise jurisdiction.

Kentucky's OSH statutes, KRS 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 have supported 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 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 Divisions of OSH Education and Training and OSH Compliance provide for voluntary compliance services, education and training, enforcement through inspections of workplaces, onsite consultation services, research, statistics, and other functions that meet the mandate of the Title XXVII – Labor and Human Rights, Kentucky Revised Statutes (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

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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.

The Labor Cabinet renewed its focus in FY 2017 on the Division of OSH Education and Training with the launching of KYSAFE. KYSAFE is a re-branding of the cost-free consultative services offered by the Division of OSH Education and Training to all employees and employers in Kentucky. The Division of OSH Education and Training now markets itself as KYSAFE and includes a new website, [www.kysafe.ky.gov](http://www.kysafe.ky.gov), promotional materials, and web-based training.

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). One (1) of these positions 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 partnerships. Full staffing in safety and health branches are nine (9) consultants for each branch. In FY 2017, 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) Administrator.

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

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Kentucky.

This report is presented in three (3) sections. Section I addresses Kentucky's success in achieving FY 2016 Performance Plan goals. Section II addresses mandated activities during FY 2017. Section III addresses noteworthy accomplishments achieved by the Kentucky OSH Program during FY 2017.

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 this report, there were 154 FY 2017 open enforcement inspections. The data has not fully matured.

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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 2017 Annual Performance Plan addresses the aforementioned Strategic Plan goal. Goal 1.1 aims to reduce the recidivism rate for repeat, serious, and willful violations in residential construction.

The baseline set in FY 2016 was twenty-seven (27) residential construction inspections resulting in two (2) repeat serious violations, thirty-five (35) serious violations, and no willful violations with penalties totaling \$110,900.

In FY 2017, the Division of OSH Compliance conducted twenty-two (22) residential construction inspections resulting in one (1) repeat serious citation and twenty-eight (28) serious citations with penalties totaling \$98,600.

KYSAFE offers training, technical assistance, and consultative services, upon request, to employers engaged in residential construction. The division also published several internet-based training modules applicable to residential construction, such as fall protection. Several offerings are available in Spanish. Kentucky met the goal.

Performance Goal 1.2 is to reduce the hazards associated with hospitalizations, amputations, 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 violation, seventy (70)

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serious violations, and sixteen (16) other than serious violations with penalties totaling \$347,300.

In FY 2017, 123 amputations were reported to the Division of OSH Compliance. Ninety-six (96) inspections were conducted with seven (7) repeat serious violations, seventy-five (75) serious violations, and forty-four (44) other than serious violations. Total penalties were \$625,200.

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 2017, 291 hospitalizations were reported to the Division of OSH Compliance and 119 inspections were conducted with eighty-four (84) serious violations, and thirty-four (34) other than serious violations. Total penalties were \$449,300.

Performance Goal 1.3 addresses the total number of hazards identified through a multi-pronged strategy that incorporates efforts for both the Division of OSH Compliance and the Division of OSH Education and Training.

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 2017, the Division of OSH Compliance conducted 787 inspections, 486 were in general industry and 301 were in construction.

The Division of OSH Education and Training's portion of this goal consist 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



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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 2017, KYSAFE conducted 147 health surveys of which all were considered high hazard. The division's safety branch conducted 125 surveys, all were considered high hazard. Six (6) safety and health technical assistance visits and 142 face to face training sessions were conducted that impacted over 4,300 persons.

Injury and illness data is addressed in the discussion of Performance Goal 1.5. Other efforts conducted by the division in FY 2017 and data related to this goal are addressed throughout this report. Kentucky met the goal.

Performance Goal 1.4 strives to ensure that employers are adhering to settlement provisions and verify abatement for fatality investigations.

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 within ten (10) working days of the signed settlement agreement.

Seventeen (17) follow-up inspections were conducted in FY 2017. None of the inspections were conducted to verify adherence to settlement provisions of fatality investigations within ten (10) working days of the signed settlement.

This performance goal, as written, is unattainable. Experience establishes that for construction-related issues, the majority of fatality investigations pertain to conditions or

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worksites that cannot accommodate a follow-up inspection. In other words, a follow-up inspection is not feasible because the work has been completed or the worksite is no longer active. The FY 2018 Performance Goal 1.4 was updated to better reflect intent and measurability.

Performance Goal 1.5 aims to reduce by two (2) percent the number of construction industry injuries caused by falls, struck-by, and crushed-by incidents through a seven (7) 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 Goals 1.1 and 2.6 also relate to this goal.

In the FY 2016 baseline year, 444 inspections were conducted in the construction industry. In FY 2017, 301 inspections were conducted in the construction industry.

In the FY 2016 baseline year, twenty (20) employers were enrolled in the Construction Partnership Program (CPP). In FY 2017, there were twenty-two (22) employers enrolled in the Construction Partnership Program (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 2017, KYSAFE conducted eleven (11) surveys, one (1) technical assistance visit, and presented twenty-seven (27) training courses totaling 1,286 contact hours in the construction industry.

FY 2016 baseline year data collected by the Bureau of Labor Statistics 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 2015. This baseline data represents nonfatal occupational injuries and illnesses involving

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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 Bureau of Labor Statistics 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 2016. This data represents nonfatal occupational injuries and illnesses involving days away from work per 10,000 full-time workers in the construction industry.

2016	Falls	Struck-by	Crushed
Kentucky	10.1	29.4	0
National	19.4	31.5	5.2

Once again, all of Kentucky's rates are below national rates.

The Division of OSH Education and Training continues its Construction Partnership Program (CPP) as well as monitoring the number of training courses, contact hours, surveys, and technical assistance efforts conducted in construction. In FY 2017, the Division of OSH Education and Training conducted eleven (11) surveys, one (1) technical assistance visit, and presented twenty-seven (27) training courses in construction representing 1,286 contact hours.

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Performance Goal 1.6 aims to initiate all fatality and hospitalizations of three (3) or more employees by the Division of OSH Compliance within one (1) working day of notification.

Three (3) fatalities appear as outliers in FY 2017. A brief summary is provided below for each outlier.

1. On Monday, October 10, 2016, the Jefferson County Coroner reported the fatality of an employee of Raymond R Trent Jr. DBA Raymond E Trent Jr. The cause of death was due to a work related accident that occurred on Tuesday, May 24, 2016 at a logging location contracted to the employer. The inspection opened on Thursday, October 13, 2016. Because the event had occurred five (5) months prior to the death, the need for an inspection was not considered to be imminent. The supervisor approved the delayed response.

2. A fatality occurred at Dumpster Dan Sanitation LLC on Thursday, October 13, 2016 and was reported to the Division of OSH Compliance seven (7) days later on Thursday, October 20, 2016. Because the fatality occurred a week prior to reporting and was due to a motor vehicle accident, the need for an inspection was not considered to be imminent. The supervisor approved the delayed response.

3. On Saturday, April 15, 2017, Tyson Chicken Inc. DBA River Valley Animal Foods reported the fatality of an employee struck by a semi-truck on the employer's property. The Division of OSH Compliance interpreted the fatality report to be a motor vehicle accident and did not immediately respond. After contacting the employer's local police department, it was discovered the police were not conducting an investigation because

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the accident occurred on the employer's property—not a public roadway. An inspection opened on Wednesday, April 19, 2017.

Performance Goal 1.7 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 received 109 reports of imminent danger in FY 2017 and all were responded to within one (1) working day. Kentucky met its goal.

Performance Goal 1.8 strives to reduce Kentucky's total case rate for injuries and illnesses. This performance goal combines efforts for both the Division of OSH Compliance and the Division of OSH Education and Training.

The FY 2016 baseline total case rate for injuries and illness, established from FY 2015 BLS data, was 3.7. The FY 2017 total case rate for injuries and illness, established from FY 2016 BLS data, is 3.4.

Performance Goal 1.9 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 2017 lost time case rate for injuries and illnesses, established from FY 2016 BLS data, was 1.8.

Performance Goal 1.10 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 industry and seven (7) fatality investigations conducted in construction.

Fifty-six (56) fatalities were reported to the Division of OSH Compliance in FY 2017.

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Fourteen (14) fatality inspections were conducted in general industry resulting in one (1) willful violation, twelve (12) serious violations, and seven (7) other than serious citations were issued with penalties totaling \$86,500. Six (6) construction industry fatality inspections were conducted resulting in nine (9) serious citations totaling \$38,500 in penalties.

Performance Goal 1.11 aims to reduce the total case rate in five (5) of the top fifteen (15) industries in Kentucky with the highest injury and illness total case incident rates and incorporates efforts for both the Division of OSH Compliance and KYSAFE.

Based on 2015 Bureau of Labor Statistics (BLS) data, the fifteen (15) 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>
485	Transit and ground passenger transportation	13.0
623	Nursing and residential care facilities	10.3
92214	Correctional institutions	10.1
48-49	Transportation and warehousing	9.5
92	Public administration	7.5
321	Wood product manufacturing	6.8
3331	Agriculture, construction, and mining machinery manufacturing	6.8
3219	Other wood product manufacturing	6.7
3335	Metalworking machinery manufacturing	6.7
336	Transportation equipment manufacturing	6.5
624	Social Assistance	6.4
622	Hospitals	6.2
32191	Millwork	6.1
3323	Architectural and structural metals manufacturing	5.9

KYSAFE selected four (4) of the aforementioned industries in FY 2017 for outreach and assistance using BLS data collected by the division's Statistical Services Branch. The decision to select (4) industries instead of five (5) was deliberate and purposeful. The rationale for that decision is not addressed in this report.

The division mailed an offer to employers in those selected industries encouraging their

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utilization of KYSAFE services. Non-responders were referred to the Division of OSH

Compliance. The data for the FY 2017 selected industries reflects the results of those efforts.

<b>NAICS</b>	<b>Description</b>	<b>Rate</b>
485	Transit and ground passenger transportation	13.1
92214	Correctional institutions	7.2
48-49	Transportation and warehousing	9.5
92	Public administration	8.5

During FY 2017, KYSAFE conducted ninety-four (94) safety and health surveys in the ten (10) most hazardous industries. During FY 2017, KYSAFE provided outreach to all identified employers in the four (4) selected industries. The division mailed an offer to employers in those selected industries encouraging their utilization of KYSAFE services. Non-responders were referred to the Division of OSH Compliance.

Additionally, forty-eight (48) training sessions were presented at six (6) Population (POP) Center Training seminars throughout the Commonwealth; over 1,200 participants attended the training. The training addressed subjects relevant to the targeted NAICS such as Injury and Illness Recordkeeping, Fall Protection, Confined Space, Hazard Communication, Hearing Conservation, Basic Electrical Safety, Welding Safety, Bloodborne Pathogens, Personal Protective Equipment, Spray Finishing, Lockout-Tagout, Fire Protection and Egress, Walking-Working Surfaces, Electrical Safe Work Practices, Powered Industrial Trucks, Silica, Crane Standard for Construction, and Confined Space in Construction.

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 received an OSHA OTI certificate. In FY 2017, 303 participants received the certificate.

In an effort to supplement resources in addressing high hazard industry issues, KYSAFE

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continued to coordinate outreach with professional and industry associations.

Bureau of Labor Statistics 2015 data was utilized to target employers in the industries with the highest injury and illness rates. 214 letters were sent to employers encouraging them to request KYSAFE services. Sixty-one (61) employers responded to the outreach letters with survey requests. Division staff members are working with employers to improve the safety and programs in their places of employment. The outreach included an emphasis on NAICS 48-49, Transportation and warehousing, NAICS 92214, Correctional institutions, as well as NAICS 3331, Agriculture, construction, and mining machinery manufacturing. Employers who did not respond or chose not to use the voluntary services of KYSAFE were referred to the Division of OSH Compliance.

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 Compliance continues its programmed inspection focus in the industries with the highest injury and illness total case incident rates. In FY 2017, sixty (60) establishments in the NAICS 327, Cement and Concrete Product Manufacturing, and nine (9) establishments in NAICS 3331, Agriculture, Construction, and Mining Machinery Manufacturing were referred for programmed planned inspections. Eleven (11) establishments were eliminated due to inadequate address, one (1) establishment was eliminated because it was out of business, and one (1) establishment was eliminated because it was utilizing the services of KYSAFE. Two (2) establishments were eliminated because they had been inspected within the previous year.

The Division of OSH Compliance conduct two (2) general schedule inspections from the referrals. An additional ten (10) programmed planned inspections were attempted or completed in FY 2017 from KYSAFE's FY 2016 referrals.



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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 an internal safety and health management program or engage use of outside consultation.

During FY 2017, the Division of OSH Compliance signed 273 settlement agreements. Penalties were reduced \$15,000 or more in one (1) settlement agreement that included documented implementation of an internal safety and health management program or engaged use of outside consultation.

Penalties were reduced \$15,000 or more in seven (7) agreements that did not include documented implementation of an internal safety and health management program or engage use of outside consultation. 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.
2. The employer was a construction company. Construction activities are covered by 29 CFR Part 1926, Subpart C.
3. The citation(s) were reclassified resulting in a penalty reclassification of \$15,000 or more.

A brief synopsis of the aforementioned seven (7) agreements follows.

- The penalty in Owl's Head Alloys Inc. was reduced from \$36,000 to \$13,250 due to the

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reclassification of Citation 1 from serious to other than serious.

- The penalty in Great Northern Holding LLC was reduced from \$61,000 to \$10,000 based on the documented financial hardship of the company.
- The penalty in Cleary Construction Inc. was reduced from \$28,000 to \$12,500.

Construction activities are not addressed in OSHA's 1989 Safety and Health Program Management Guidelines because they are covered 29 CFR Part 1926, Subpart C.

- The penalty in United Parcel Service was reduced from \$73,800 to \$45,000 due to the reclassification of Citation 1, Item 1 from willful to repeat serious, and reclassification of Citation 2, Item 1 from serious to other than serious.
- The penalty in Complete Demolition Services, LLC was reduced from \$34,300 to \$18,600. Construction activities are not addressed in OSHA's 1989 Safety and Health Program Management Guidelines because they are covered 29 CFR Part 1926, Subpart C.

The penalty in Curtis Maruyasu America was reduced from \$41,800 to \$20,900 due to their ready abatement of violation during the inspection, clear demonstration of good faith, and implementation of a corporate wide Cross-Function Review Team.

- The penalty in Montebello Packaging, Inc. was reduced from \$70,000 to \$35,000 due to the deletion of Citation 1, Item 1. The employer established and confirmed an affirmative defense during an informal conference.

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 2017 Division of OSH Education and Training comprehensive consultative

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surveys incorporated an evaluation of safety and health management systems.

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 2017 Division of OSH Education and Training comprehensive general industry consultative surveys utilized the Safety and Health Program Assessment Worksheet.

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 the Division of OSH Education and Training 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.laborcabinetetrain.ky.gov](http://www.laborcabinetetrain.ky.gov). During FY 2017, 167 individuals viewed the module. Over 165 employees were trained in Auditor I hazard recognition by KYSAFE's Partnership Branch staff in nine (9) separate training classes, affecting over 1,200 employees.

Performance Goal 2.6 addresses the evaluations of worksites on a timely basis to certify and re-certify Voluntary Protection Program (VPP) sites, develop Construction Partnership Program (CPP) agreements, and add new employers to the Safety and Health Achievement Recognition Program (SHARP) as well as the maintenance and re-certification of current SHARP sites.

The Kentucky OSH Partnership Program was very active working with current participants, adding new participants as well as reaching out and looking for new participants for VPP, SHARP and the CPP.

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There were fifteen (15) active CPP sites in FY 2017 with a total project cost of \$811.5 million dollars. The Partnership Branch had fifty-one (51) contacts/visits with CPP sites in FY 2017 affecting over 5,000 employees. The most significant CPP project in FY 2017 continued to be with Brasfield and Gorrie for the construction of the Omni Hotel, an upscale mixed use business and residential facility situated in the heart of downtown Louisville with a project cost of \$270+ million dollars. The project has so far been very successful with Brasfield and Gorrie being a very active partner. Some new CPP projects of note that began in FY 2017 include:

- Construction of a twenty-two (22) million dollar residence hall project at Western Kentucky University in Bowling Green with S.E. Engineering, Inc.;
- An eighteen (18) million dollar restoration of the historic Fayette County Courthouse in Lexington with Messer Construction; and
- Construction of a thirty-three (33) million dollar baseball stadium at the University of Kentucky in Lexington with Congleton-Haker.

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 thirteen (13) very strong, successful sites for most of the year.

Unfortunately, two (2) VPP sites were terminated in FY 2017, both in the spring. One (1) facility's termination was due to new ownership and a complete management turnover. The facility decided to voluntarily withdraw before all the changes occurred. The other site was placed on conditional status at the end of FY 2016 and subsequently, and voluntarily, withdrew before their FY 2017 recertification due date.

One facility, Southwire in Hawesville, was added to the VPP family in FY 2017. Work continued in FY 2017 with two (2) very large PSM facilities with the goal of reaching VPP

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status, as well as a large steel mill.

SHARP held steady in FY 2017 with eighteen (18) active sites. No new facilities were added in FY 2017. A new SHARP Administrator began in FY 2017 with the Partnership Branch.

The Partnership Branch conducted a grand total of 199 visits/contacts in FY 2017 affecting 19,275 employees.

Kentucky met the goal.

Performance Goal 2.7 addresses the implementation of a targeted outreach plan for 100 percent of new Kentucky OSH standards. Two (2) trainings were presented on the new Walking-Working Surfaces final rule at population center training in Somerset and Bowling Green. Outreach efforts on the new Beryllium final rule included a webinar that was presented in July. The webinar is archived and available to view at [kysafe.ky.gov](http://kysafe.ky.gov). Kentucky met the goal. 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, conference information, and other resource links. The compact disc offers employers a mechanism to register and receive notices regarding new or amended regulations. The Kentucky 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

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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 the Division of OSH Education and Training 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) individual dedicated to maintaining reliable data. Both divisions continue to maintain a reliable data repository.

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

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Two (2) Division of OSH Compliance directors did not complete formal leadership training or complete certification in FY 2017. The leadership training was not completed in light of the extensive leadership training both individuals received during their service in the U.S. Army. Both individuals retired from a full career of service and both achieved the rank of Lieutenant Colonel.

KYSAFE did not hire new supervisory staff during FY 2017.

Performance Goal 3.3 encourages and aids attainment of professional certification. During FY 2017, the Division of OSH Compliance maintained three (3) certified Construction Health and Safety Technician (CHST) employees and one (1) Occupational Health and Safety Technologist (OHST). The Division of OSH Compliance maintained four (4) 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. One (1) employee successfully attained a professional certification but was not promoted in FY 2017.

One (1) Division of OSH Compliance safety supervisor is a Certified Public Manager (CPM) and the Health Program Manager holds a Certificate of Management Fundamentals.

During FY 2017, KYSAFE maintained four (4) CIH-CSP certified employees, three (3) CSP-CHST certified employees, two (2) CSP-OHST certified employees, one (1) CSP certified employee, six (6) CIH certified employees, five (5) OHST certified employees, and two (2) CHST certified employees. Four (4) division employees have completed the CPM Program through Kentucky State University's Governmental Services Center. The division has one (1)

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employee who is a Certified Government Meeting Planner. Two (2) KYSAFE staff members earned their doctorate degrees (EdD) in FY 2017. The dissertations for the degrees addressed ergonomics in nursing homes and the effectiveness of the fall prevention stand-down campaigns.

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

Performance Goal 3.4 encourages and aids completion of continuing education. In FY 2017, no staff members in the Division of OSH Compliance completed continuing education. However, 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. The Division of OSH Education and Training added or updated eight (8) cost-free interactive training products to the [www.laborcabinetetrain.ky.gov](http://www.laborcabinetetrain.ky.gov) library. Five (5) module updates include Fall Protection Update 2017, Safety for Compressed Gas Cylinders, Overview of Partnerships, Indoor Air Quality, and Bloodborne Pathogens.

Three (3) new webinars were conducted, recorded, and published to the website for instant viewing. They are Hand and Power Tool Safety, Emergency Action Plans, and Beryllium.

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 surveys when feasible. This continues to be monitored through the review of all consultation reports.

Kentucky met the goal.



**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 2017, the Division of OSH Compliance conducted 787 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 walkaround, 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 KAR 50:010 Section 14 allows the employee organization, or any interested employee, to intervene in any subsequent contest.

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#### 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 787 inspections in FY 2017, 663 safety inspections and 124 health inspections. 641 inspections were un-programmed, breaking down as:

- 317 referrals;
- 177 complaints;
- 110 un-programmed related;
- Seventeen (17) follow-ups; and
- Twenty (20) fatalities/catastrophes.

146 programmed inspections break down as:

- Sixty (60) planned; and
- Eighty-six (86) programmed related.

312 inspections were in the construction industry and 475 were in manufacturing. 753 private sector and thirty-four (34) public sector employers were inspected. The Division of OSH Compliance conducted 663 safety inspections, which constitutes 84.2 percent of total inspections while health conducted 124 inspections, representing 15.8 percent of total inspections. Sixteen (16) inspections were conducted under national emphasis programs. Eleven (11) of these were safety and five (5) were health related.

Safety averaged 37.8 hours per case with ninety-six (96) average days from opening conference to citation issuance. Health averaged seventy-eight (78) hours per inspection with 119 average days from opening conference to citation issuance. A total of 923 citations were issued in FY 2017 with penalties totaling \$2,807,850 and break down as:

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538 violations classified as serious with penalties of \$1,733,150;  
Twenty-five (25) repeat with penalties of \$315,300;  
357 violations classified as other-than-serious with penalties of \$92,625;  
Three (3) violations classified as willful with penalties of \$117,000; and  
Eleven (11) violations classified as failure-to-abate with a penalty of \$816,800

In FY 2017, the total amount of penalties collected by the Division of OSH Compliance was \$1,726,393.97. Eighty-nine (89) cases were contested representing 20.9 percent of total inspections.

The Division of OSH compliance inspected establishments employing a total of 250,594 employees and the inspections covered 54,531 employees. The Division of OSH Compliance vacated nineteen (19) private sector violations pre-contest which represents 2.4 percent of the violations issued. The Division of OSH Compliance vacated forty-six (46) private sector violations post-contest which represents 14.29 percent of the violations issued. Additionally, the division reclassified six (6), or 0.8 percent, violations pre-contest. The division reclassified eighteen (18), or 6.52 percent, violations post-contest.

The penalty retention in FY 2017 was 72.06%.

#### 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 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 within ten

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(10) working days of signed settlement agreement. 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 performed seventeen (17) follow-up inspections in FY 2017, representing 2.2 percent of all safety and health inspections.

Eleven (11) failure-to-abate citations were issued in FY 2017.

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

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

Prompt, Effective Standard Adoption and Promulgation

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Pursuant Kentucky Revised Statute 338.051, the Chair of the Kentucky OSH Standards Board adopted two (2) OSHA final rules to meet Kentucky’s six (6) month mandate. The first final rule was “Walking-Working Surface and Personal Protective Equipment (Fall Protection Systems)”, published in the *Federal Register* on November 18, 2016. The final rule affected six (6) Kentucky Administrative Regulations (KAR), 803 KAR 2:300, 2:303, 2:305, 2:308, 2:313, and 2:317. The amendments were effective in Kentucky on March 31, 2017.

The second final rule was “Occupational Exposure to Beryllium”, published in the January 11, 2017 *Federal Register*. The final rule affected four (4) KARs, 803 KAR 2:320, 2:403, 2:425, and 2:500. The amendments were effective in Kentucky on June 2, 2017.

On June 26, 2017, the Chair of OSH Standards Board filed an emergency amendment to 803 KAR 2:425, Toxic and Hazardous substances. The amendment establishes that 29 CFR 1926.1153, the silica standard for construction, shall not be in effect in Kentucky until OSHA begins enforcement of the standard. The amendment requires the construction industry to comply with the mineral dusts table for silica exposure in Appendix A to 29 CFR 1926.55 until OSHA begins enforcement of 29 C.F.R. 1926.1153. The amendment was immediately effective upon filing.

#### 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 2017 was 69:31.

#### 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

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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 109 reports of imminent danger in FY 2017 and responded to all within one (1) working day.

#### 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 complaints was 8.5 days for safety and 16.1 days for health. The division's overall average for serious complaints was 11.8 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 5.5 days, and 20.2 days for health. The division's overall average was 12.6 days for other than serious hazards from the date the complaint was received to the date the inspection was opened.

Of the 758 complaints received in FY 2017, 213 were processed as formal complaints

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resulting in 163 inspections and 545 were processed as informal complaints.

#### Response to Referrals

The Division of OSH Compliance responded to 391 referrals in FY 2017. Kentucky places the same level of importance to referrals as it does complaints. As provided in Chapter 9 of Kentucky's FOM, serious complaints must be opened within thirty (30) working days and non-serious complaints within 120 working days. Referrals have the same importance as complaints and the Division of OSH Compliance utilizes the same timeline in responding to referrals while stressing a five (5) day response. Utilizing this criteria, the Division of OSH Compliance did not meet the referral response requirement for six (6) inspections of serious and non-serious hazards.

A brief summary is provided below for each outlier.

1. A referral for Kentucky Powder Company was received Monday, March 20, 2017. An inspection opened Tuesday, May 30, 2017. The delay was due to coordination of limited staff with both branches, health and safety .
2. A referral for Metalsa Structural Products Inc. referral was received Thursday, April 6, 2017. An inspection opened Wednesday, May 24, 2017. The delay was due to limited staff.
3. A referral for Florida Tile Inc. was received Wednesday, August 2, 2017. An inspection opened Wednesday, October 11, 2017. The delay was due to limited staff.
4. A referral for On Time Fab Inc. was received Friday, August 11, 2017. An inspection opened Tuesday, September 26, 2017. The delay was due to limited staff.
5. referral for Sisters of Charity of Nazareth Inc. was received Wednesday, August 16, 2017. An inspection opened Thursday, October 12, 2017. The delay in opening was due

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to limited staff.

6. A referral for Monticello Tool & Die referral was received Tuesday, September 5, 2017. An inspection opened Thursday, October 26, 2017. The delay in opening was due to limited staff.

The Referral Audit Log indicates the average response time to referrals alleging imminent dangers for safety was 0.2 days and 0.0 days for health. The overall average for safety was 5.4 days and 5.7 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 scheduling 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 twenty-one (21) work-related fatalities in FY 2017. There were no hospitalizations of three (3) or more employees reported to the Division of OSH Compliance in FY 2017.

#### 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 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



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responsible for the enforcement of the state's anti-discrimination provisions.

During FY 2017, the Division of OSH Compliance received seventeen (17) discrimination complaints. Five (5) cases were determined to have no merit, five (5) cases were administratively closed, and four (4) cases were withdrawn. The average lapse time for discrimination cases was seventy-seven (77) days per case.

When complainants call, they are informed of their discrimination rights, as are employees when interviewed during 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. There were no citations issued in FY 2017 for failure to ensure employee access to health and safety information.

#### 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

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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 2017, the Division of OSH Compliance conducted nine (9) inspections relating to toxic material and harmful agents breaking down as:

- Two (2) inspections relating to lead with penalties totaling \$3,500 for two (2) serious citations;
- Two (2) inspections related to dust explosion with penalties totaling \$18,250 for three (3) serious citations;
- One (1) inspection related to silica with no citations or penalties; and
- Four (4) inspections specifically related to bloodborne pathogens resulting in six (6) serious citations and three (3) other than serious citations with penalties totaling \$20,800.

#### Coverage of Public Employees

KRS 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 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 2017, the Division of OSH Compliance conducted thirty-four (34) inspections of public sector work sites, which

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includes programmed inspections and responses to public employee complaints. This calculates to 4.3 percent of the total number of Division of OSH Compliance inspections.

Services offered by the Division of OSH Education and Training are available to state and local public agencies in the same manner and to the same degree as private employers.

During FY 2017, forty (40) training sessions were provided to public sector employers and employees totaling 1,836 participants. Thirty-five (35) safety and health consultative surveys were conducted in public sector facilities resulting in the identification of 236 serious and 115 other-than-serious hazards.

#### Consultation Services Accentuated

The Labor Cabinet renewed its focus in FY 2017 on the Division of OSH Education and Training with the launching of KYSAFE. KYSAFE is a re-branding of the cost-free consultative services offered the Division of OSH Education and Training to all employees and employers in Kentucky. The Division of OSH Education and Training now markets itself as KYSAFE and includes a new website, [www.kysafe.ky.gov](http://www.kysafe.ky.gov), promotional materials, and web-based training.

#### 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 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

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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 has an inspection scheduling system that prioritizes reported hospitalizations, amputations, and loss of eye injuries. This allows compliance resources to be focused on serious hazards in the workplace. In addition, the Division of OSH Compliance conducts analysis of reported accidents to identify systemic trends for type of accident and industry sector. In FY 2017, the Division of OSH Compliance received 291 hospitalization reports. 119 inspections were conducted resulting in eighty-four (84) serious violations, and thirty-four (34) other than serious violations. Total penalties were \$449,300.

In FY 2017, the Division of OSH Compliance received ninety-six (96) reported amputations. Ninety-six (96) inspections were conducted with seven (7) repeat serious violations, seventy-five (75) serious violations, and forty-four (44) other than serious violations. Total penalties were \$625,200.

In FY 2017, the Division of OSH Compliance received no reports of loss of eye injuries.

Total penalties for violations related to amputation and hospitalization injuries in FY 2017 was \$1,074,500.

#### Education, Training, and Consultation Services

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.

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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 272 consultative surveys in FY 2017 identifying and ensuring the abatement of 2,067 serious hazards. The division also conducted 142 training courses and reached over 4,300 attendees in response to training requests from employers. Division staff members provided six (6) 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 2016, there were events, activities, and results that merit attention as outstanding accomplishments.

#### Significant Decrease in Fatalities

Kentucky has a state specific requirement that requires all employee fatalities to be reported to the Division of OSH Compliance. The requirement ensures that all employee fatalities are known and can be addressed.

Kentucky thankfully experienced a significant twenty-seven (27) percent decrease in fatalities in FY 2017. The total number of fatalities reported to the Division of Occupational Safety and Health Compliance in FY 2016 was eighty-five (85). Sixty-two (62) fatalities were reported in FY 2017.

2016			2017		
Work Related	Non-Work Related	Motor Vehicle	Work Related	Non-Work Related	Motor Vehicle
31	47	7	21	36	5
Total: 85			Total: 62		

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For comparison, sixty-nine (69) fatalities were reported to the Division of OSH Compliance in FY 2015.

The number of fatalities reported in FY 2016 was alarming. Although the sixty-two (62) fatalities reported in FY 2017 is improvement from FY 2016 and FY 2015, it is too many. Kentucky will continue efforts with employers and employees to reduce fatalities in Kentucky.

#### Lowest Injury and Illness Rate in Kentucky History

For the second year in a row, the total recordable incidence rate for all industries in Kentucky was the lowest rate in Kentucky since the U.S. Bureau of Labor Statistics (BLS) began recording the data in 1996. The FY 2017 rate, based on 2015 BLS data, was 3.4, down .3 from the then record low FY 2016 rate of 3.7. It is worth noting that Kentucky's rate in 1996, when BLS began recording the data was 8.4. Kentucky's FY 2017 incidence rate is slightly higher than the national average of 2.9; however, Kentucky is closing the gap, going from 4.2 in 2012 to 4.1 in 2013, 4.5 in FY 2014, 3.8 in 2015, 3.7 in 2016 and now to 3.4. Kentucky remains committed to further reducing the state's total case rate.

#### Workplace Safety Report

In March 2017, the Labor Cabinet launched a "Monthly Workplace Safety Report" to highlight the total amount of on-site surveys KYSAFE conducted for employers across the Commonwealth in the previous month and the savings to employers from those surveys. The monthly report is very popular.

"For years, employers across Kentucky viewed the issuance of penalties and citations as the cornerstone of the Cabinet's workplace safety efforts," Labor Secretary Derrick Ramsey said. "My goal is to change this perception by increasing the ease of access that employers and employees have to the expert workplace safety education and training that we provide and

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hopefully prevent a serious injury or illness from occurring. Staying safe and healthy on the job each day begins with a strategic initiative to ‘Plan, Prevent, and Protect’ Kentucky’s two million workers – and my hope is that this monthly report reminds everyone that the Labor Cabinet is ready to partner with our employers to accomplish this task.”

In 2016, KYSAFE identified 3,156 serious hazards that exposed over 100,100 employees and saved employers \$22,092,000 in potential fines. In 2017, KYSAFE also identified 1,525 other than serious hazards that exposed over 41,500 employees and saved employers \$3,050,000 in potential fines.

In 2017, KYSAFE identified 1,947 serious hazards that exposed over 50,600 employees and saved employers over \$13,625,000 in potential fines. In 2017, KYSAFE also identified 845 other than serious hazards that exposed 30,845 employees and saved employers \$1,690,000 in potential fines.

#### 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 that have a strong commitment to workplace safety and health and institutionalized safety and health management systems in place, as well as proven success maintaining a safe and healthful workplace, qualify for Kentucky’s highest achievement recognition.

The eleven (11) Kentucky VPP sites are:

- Cintas, Grayson;
- Dow Corning Corporation, Carrollton;
- General Electric Aircraft Engines, Madisonville;
- General Electric Aviation Infrastructure, Erlanger;



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- General Electric Energy Service and Repair Center, Louisville;
- International Paper Corporation, Bowling Green;
- Kimberly-Clark, Owensboro;
- L’Oreal (USA) Florence Manufacturing, Florence;
- 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 eleven (11) very strong, successful sites.

One facility, Southwire in Hawesville, was added to the VPP family in FY 2017. Work is underway with two (2) very large PSM facilities with the goal of reaching status, as well as a large steel manufacturer.

#### Construction Partnership Program

KYSAFE continues to focus on the construction industry by promoting CPP. There were fifteen (15) active CPP sites in FY 2017 with a total project cost of \$811.5 million dollars. The Partnership Branch had fifty-one (51) contacts/visits with CPP sites in FY 2017, forty-eight (48) of those being audits, affecting over 5,000 employees. The most significant CPP project in FY 2017 continued to be with Brasfield and Gorrie for the construction of the Omni Hotel, an upscale mixed use business and residential facility situated in the heart of downtown Louisville with a project cost of \$270+ million dollars. The project has so far been very successful with Brasfield and Gorrie being a very active partner. Some new CPP projects of note that began in FY 2017 include:

- Construction of a twenty-two (22) million dollar residence hall project at Western Kentucky University in Bowling Green with S.E. Engineering, Inc.;

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- An eighteen (18) million dollar restoration of the historic Fayette County Courthouse in Lexington with Messer Construction; and
- Construction of a thirty-three (33) million dollar baseball stadium at the University of Kentucky in Lexington with Congleton-Haker.

#### SHARP

SHARP held steady in FY 2017 with eighteen (18) active sites, no new facilities were added in FY 2017. A new SHARP Administrator began in FY 2017 with the Partnership Branch. Work is underway with several facilities that hope to become SHARP certified in the near future.

#### TRACK Partnership

Tech Ready Apprentices for Careers in Kentucky (TRACK) is a partnership between the Kentucky Department of Education's Office of Career and Technical Education and the Labor Cabinet. The goal of this partnership is to prepare students for the workforce, help create and retain local jobs for students and upon successful completion will result in acceptance in a Registered Apprenticeship Program. The partnership between the Office of Career and Technical Education (OCTE) and the Labor Cabinet provides pre-apprenticeship opportunities to high school students through existing programs offered at secondary tech centers across the state.

Employers may design secondary vocational training programs that best suit their needs. A minimum of four (4) courses are required, with one (1) of the courses being a cooperative education placement. In addition to the four (4) courses, students complete eight (8) safety and health modules developed by the Division of OSH Education and Training. The OCTE has specific training modules for students enrolled in the electrical, welding, or carpentry tracks, and

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is currently developing requirements for students in information technology and health sciences concentrations.

The modules are provided through the Labor Cabinet's e-learning website, [www.laborcabinetetrain.com](http://www.laborcabinetetrain.com). Upon completing each module with quiz, students receive a certificate from the Division of OSH Education and Training that must be turned in to their instructor and employer. The Division of OSH Education and Training believes this is a great opportunity to educate the young workforce regarding the importance of occupational safety and health. The division's participation in TRACK began January 1, 2015 and there were 1,290 visits to the modules. There were 2,246 visits to the modules in FY 2017.

#### Construction Compliance Inspections

During FY 2017, Kentucky conducted a total of 301 construction inspections. The Division of OSH Compliance conducted sixty-nine (69) construction inspections in SICs starting with fifteen (15); sixteen (16) in SICs starting with sixteen (16); and 216 in SICs starting with seventeen (17). Kentucky issued 273 citations for construction hazards including thirty-five (35) other-than-serious violations, 226 serious violations, ten (10) repeat serious violations, and two (2) willful violations with penalties totaling \$975,800.

Kentucky's state specific regulation 803 KAR 2:412 specifically addresses residential construction fall protection. The regulation, which became effective on January 6, 2006, defines residential construction in Kentucky as construction work on a stand alone single family dwelling, duplex, three-plex, or four-plex structure. In FY 2017, the Division of Compliance conducted twenty-three (23) inspections in residential construction. Kentucky issued thirty-three (33) citations for residential construction hazards including one (1) repeat serious violation,

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thirty-one (31) serious violations, and one (1) other than serious violation with penalties totaling \$109,800.

#### Compliance Emphasis on Serious Hazards

The Division of OSH Compliance maintains an emphasis on addressing serious hazards.

In FY 2017, the Division of OSH Compliance issued:

- 538 serious citations with penalties totaling \$1,733,150;
- Twenty-five (25) serious repeat citations with penalties totaling \$315,300;
- 357 other than serious citations with penalties totaling \$92,625;
- Three (3) willful citations with penalties totaling \$117,000; and
- Eleven (11) failure to abate citation totaling \$816,800.

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 import to note that at the time of this report, there were 154 FY 2017 open enforcement inspections. The data has not fully matured.

Citations issued in FY 2017 with noteworthy penalties include:

- \$77,000 to a general industry employer for two (2) repeat serious lockout-tagout violations and one (1) serious lockout-tagout violation related to an amputation.
- Over \$70,000 to a general industry employer for one (1) willful serious walking-working surfaces violation and one (1) serious walking-working surfaces violation related to a complaint investigation.
- \$70,000 penalty to a general industry employer for a repeat serious lockout-tagout violation and a repeat serious machine guarding violation related to a referral inspection.
- Over \$50,000 to a construction industry employer for a willful serious fall protection violation, a repeat serious violation for a portable ladder violation, and an other-than-

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serious repeat violation for a fall protection training violation related to a referral inspection.

- \$42,000 to a general industry employer for one (1) repeat serious machine guarding violation, three (3) serious materials handling and storage violations, and one (1) other-than-serious bloodborne pathogens violation related to an amputation.
- \$41,800 to a general industry employer for one (1) repeat serious machine guarding violation, two (2) serious abrasive wheel machinery and portable powered tool guarding violations, and one (1) other-than-serious electrical violation related to a complaint.

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 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

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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 two (2) combustible dust inspections in FY 2017 resulting in three (3) serious citations with penalties totaling \$18,250.

#### 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 any or all 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 2017. However, the Division of OSH Compliance conducted five (5) inspections relating to asbestos in FY 2017 resulting in two (2) serious citations and one (1) other than serious citation with penalties totaling \$6,500.

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

During FY 2017, the Division of OSH Compliance received seven (7) notices from the Poison Control Center that involved occupational exposure to toxins or poisons. Nine (9) inspections were conducted resulting in six (6) serious citations and four (4) other than serious

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citations with penalties totaling \$22,800.

#### Professional Development

During FY 2017, KYSAFE maintained four (4) CIH-CSP certified employees, three (3) CSP-CHST certified employees, two (2) CSP-OHST certified employees, one (1) CSP certified employee, six (6) CIH certified employees, five (5) OHST certified employees, and two (2) CHST certified employees. Four (4) division employees have completed the CPM Program through Kentucky State University's Governmental Services Center. The division has one (1) employee who is a Certified Government Meeting Planner. Two (2) KYSAFE staff members earned their doctorate degrees (EdD) in FY 2017. The dissertations for the degrees addressed ergonomics in nursing homes and the effectiveness of the fall prevention stand-down campaigns.

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

The Division of OSH Compliance followed OSHA's TED 01-00-019, Mandatory Training Program for OSHA Compliance Personnel during FY 2017. 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 2017, the Division of OSH Compliance maintained three (3) board certified CHST employees. The Division of OSH Compliance maintained four (4) board certified CSP employees. The Division of OSH Compliance continues to encourage and promote additional

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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. One (1) Division of OSH Compliance safety supervisor is a Certified Public Manager and the Health Program Manager holds a Certificate of Management Fundamentals.

During FY 2017, the Division of OSH Compliance supported employees' professional certification preparation as well as OSHA Training Institute attendance. One (1) employee earned OHST board certification.

Since 2009, the Division of OSH Compliance has paid for ten (10) compliance officers to attain 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 142 face-to-face training courses and reached over 4,300 attendees in response to training requests from employers.

Forty-eight (48) training sessions were presented at six (6) Population (POP) Center Training seminars throughout the Commonwealth; over 1,200 participants attended the training. The training addressed subjects relevant to the targeted NAICS such as Injury and Illness Recordkeeping, Fall Protection, Confined Space, Hazard Communication, Hearing Conservation, Basic Electrical Safety, Welding Safety, Bloodborne Pathogens, Personal Protective Equipment, Spray Finishing, Lockout-Tagout, Fire Protection and Egress, Walking and Working Surfaces,



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Electrical Safe Work Practices, Powered Industrial Trucks, Silica, Crane Standard for Construction and Confined Space in Construction.

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 received an OSHA OTI certificate. In FY 2017, 303 participants received the 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 nearly 1,213 OSH interpretations during FY 2017; and; on behalf of the Kentucky OSH Standards Board as well as the Labor Cabinet, completed promulgation of several regulations that affected twenty-three (23) Kentucky Administrative Regulations. An emergency amendment, accompanied with an ordinary amendment, to 803 KAR 2:425 was promulgated by Secretary Ramsey in FY 2017.

#### National Conference and Exposition Support

At the request of OSHA, the Kentucky OSH Program represented OSHA at the October 2017 National Planet GIE+EXPO and Hardscape North America Conference and Exposition in Louisville. The event, sponsored by the National Association of Landscape Professionals, Outdoor Power Equipment Institute, and Professional Grounds Management Society, is the largest industry showcase for the lawn and garden, outdoor power equipment, and landscaping industries attracting over 19,000 attendees. According to conference organizers, the event is the ninth (9<sup>th</sup>) largest trade show in the United States. There were approximately 19,500 participants

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and approximately 750 exhibitors. Two (2) OSH Standards Specialists staffed an exhibit booth over a two (2) day period where they responded to participants' questions and distributed outreach material provided by OSHA. The OSH Federal-State Coordinator participated as an instructor in a conference session entitled "OSHA Compliance-Based Safety Workshop."

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

The Labor Cabinet, in conjunction with the Kentucky Safety and Health Network, Inc., presented the 33<sup>rd</sup> Annual Governor's Safety and Health Conference and Exposition in Covington on May 8-12, 2017. This year's very successful event, the largest safety and health exposition in the Commonwealth, featured pre-conference courses, facility tours, technical training, thirty-one (31) concurrent workshops, and outstanding keynote speakers.

Additionally, Scholastic Achievement for Education Awards, or "SAFE" awards, totaling nearly \$40,000 were presented at the conference to thirteen (13) university students matriculating in the areas of occupational safety and health, industrial hygiene, or a closely related field. Kids Chance of Kentucky also presented scholarships to children of Kentucky workers killed or seriously injured in work-related incidents.

Twenty-one (21) Kentucky employers were presented with 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 twenty-seven (27) companies received the Governor's Safety and Health Award at their facilities in FY 2017.

#### 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 Revenue Cabinet in FY 2013 to collect delinquent debts.

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Employers who have outstanding OSH debts are reported to the Revenue Cabinet 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.

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 Revenue Cabinet. Since October 2013, the Division of OSH Compliance has submitted 136 cases to the Revenue Cabinet for collection totaling \$1,071,973.34. To date, \$184,437.23 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.laborcabinetetrain.ky.gov](http://www.laborcabinetetrain.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 100,000 participants have utilized the website.

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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 or updated eight (8) cost-free interactive training products to the [www.laborcabinetetrain.ky.gov](http://www.laborcabinetetrain.ky.gov) library including *Fall Protection Update 2017*, *Safety for Compressed Gas Cylinders*, *Overview of Partnerships*, *Indoor Air Quality*, and *Bloodborne Pathogens*.

Three (3) new webinars were conducted, recorded, and published to the website for instant viewing. They are *Hand and Power Tool Safety*, *Emergency Action Plans*, and *Beryllium*.

Kentucky is particularly proud of the fact that [www.laborcabinetetrain.org](http://www.laborcabinetetrain.org) 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, fifteen (15) Stand-Down billboards appeared



in cities across the Commonwealth covering four (4) markets. The billboards ran prior to, and during, the Stand-Down and received over 3,047,000 impressions during the campaign!

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#### 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 2017, reaching out to educate Kentucky's workforce regarding the hazards of heat stress. The outreach was conducted through distance learning as well as direct, face-to-face jobsite contacts. KYSAFE partnered with Good Agriculture Practice Connections to present Heat Stress training to over 280 participants. The information was presented in English and Spanish. Additionally, 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 750 times in FY 2017.