

FY 2020
Follow-up 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

This primary purpose of this report is to assess the Kentucky State Plan's (KY OSH) progress in Fiscal Year (FY) 2020 in resolving outstanding findings and observations from the FY 2019 Comprehensive FAME Report. In addition, this report assesses KY OSH's performance and is based on the results of quarterly onsite monitoring visits, the FY 2020 State Office Annual Report (SOAR), and the FY 2020 State Activity Mandated Measures (SAMM) Report. The COVID-19 pandemic had a significant effect on the activities conducted by KY OSH in FY 2020. To help reduce the transmission of SARS-CoV-2, all state government buildings were closed to in-person services and all KY OSH Program in-person activities were halted, with the exception of fatality investigations, response to imminent danger complaints, as well as response to reports of hospitalizations and amputations. Compliance officers on telephones conducted all other inspection activities virtually. KY OSH plans to continue this process into FY 2021. Additionally, KY OSH personnel staffed the KYSAFE and PPE hotlines. The KY OSH staff have also responded, as agents of public health, to complaints of non-compliance to the Governor's Executive Orders. Additional details regarding KY OSH's response to the COVID-19 pandemic are provided in Section II of this report. Although the COVID-19 pandemic was the primary reason for the decrease in activities, difficulties in hiring and retaining members of the compliance staff has also played a role.

KYOSH made progress in addressing the five findings and seven observations previously noted in the FY 2019 Comprehensive FAME Report, and no new findings or observations were identified in the FY follow-up 2020 FAME. The five findings from the FY 2019 comprehensive FAME, include programmed safety and health inspections, citation issuance lapse times, and retaliation case file documentation. Of those, one finding concerning on-the-spot corrections documentation was closed. On the four remaining findings, three will be continued and one finding on retaliation WebIMIS data entry is complete and awaiting verification. The seven observations, which carried over from the FY 2019 comprehensive FAME, include planned vs. actual inspections, in-compliance rates, consultation and retaliation case file documentation, retaliation case file identification on federal whistleblower statutes, follow-up inspections, and consultation abatement verification. One of the seven observations was closed. The remaining six observations will be continued.

II. State Plan 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 laws in the Commonwealth of Kentucky is vested in the Labor Cabinet and assigned to the Department of Workplace Standards, headed by a Commissioner, who is appointed by the Secretary with the approval of the governor. The KY

OSH program covers all private sector and state and local government workers in the state, with the exception of federal workers, railroad workers, maritime workers (long shoring, shipbuilding, shipbreaking, and marine terminals operations), private contractors working at government-owned/contractor-operated facilities, Tennessee Valley Authority (TVA) workers and contractors operating on TVA sites, as well as U.S. Postal Service workers. In Kentucky, state and local government agencies and workers are afforded the same rights, responsibilities, and coverage as those in the private sector.

The General Assembly enacted legislation giving KY OSH the mission to prevent any detriment to the safety and health of all private sector and state and local government workers arising out of exposure to harmful conditions or practices at their workplaces. 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 Kentucky Labor Cabinet, Department of Workplace Standards, Division of Occupational Safety and Health Education and Training administer the Kentucky 23(g) Consultation Program. 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 governmental agencies on the state and federal level. These agencies include the U.S. Department of Labor, Occupational Safety and Health Administration (OSHA), the Bureau of Labor Statistics (BLS) and others.

Through the Frankfort office, KYOSH administers worker protection from workplace retaliation related to occupational safety and health claims [KRS 338.121]. There are two investigators, and they report to the Director of OSH Compliance. Retaliation cases that are determined to be meritorious are prosecuted by the Kentucky Labor Cabinet's Office of General Counsel.

The initial federal base award was \$3,460,200. The State Plan matched the funding and supplemented it with \$9,832,492, which brings the total program funding to \$13,292,692. An amendment raised the federal funding by \$247,600 and increased the federal final base award to \$3,707,800. The State Plan applied the increase to its overmatch, which increased the final FY 2020 total to \$13,479,123. The grant funded 112 full-time staff, 108.45 full-time equivalent (FTE). The 108.45 FTE consisted of seven (7) managers, nine (9) supervisors, twenty-six (26) safety compliance officers and fifteen (15) health compliance officers, aka CSHOs, twenty-three (23)

safety and health consultants, two (2) discrimination investigators, thirteen (13) administrative clerical staff members, and 13.45 other positions.

The Division of OSH Education and Training outreach activities affected more than 16,000 participants. There were 18 active Construction Partnership Program (CCP) sites in FY 2020. The Partnership Branch conducted twenty-nine (29) site audits with CPP sites in FY 2020, which affected 2,392 employees. The Partnership Branch maintained 15 sites that included one new facility in FY 2020, Marathon Pipeline LLC in Owensboro Station. Additionally, five new VPP sites are well into the certification process. The Safety Health Achievement Recognition Program (SHARP) started FY 2020 with 15 active sites and concluded the fiscal year with the same number of sites. Overall, the pandemic halted all on-site activities for a significant amount of time.

However, the Partnership Branch conducted 232 significant contacts in FY 2020, including 119 site visits affecting 14,189 employees. The program also identified 2,824 hazards, which included 400 serious and 2,424 other-than-serious (OTS) violations. KYSAFE added eight cost-free interactive training products to the KYSAFE online library including the following: Aerial & Scissor Lift Safety; Protecting Workers from COVID-19; Voluntary Use of Respirators; Portable Fire Extinguisher Safety; Step Bolts and Manhole Steps; Laboratory Safety; Occupational Heat Exposure-Masks; and Recordkeeping 2020 Update. KYSAFE conducted 234 consultative surveys in FY 2020, which resulted in the identification and abatement of 2,009 serious hazards. The division also conducted forty-five (45) training courses and reached 1,886 attendees in response to training requests from employers. Division staff members provided three (3) on-site technical assistance visits. Five training sessions were presented at one POP (Population) Center Training seminar, in which 281 participants attended the training. The training addressed subjects relevant to the targeted NAICS, such as the following: Injury and Illness Recordkeeping; Basic Electrical Safety; Bloodborne Pathogens; as well as Safety Hazard Recognition and Health Hazard Recognition. In FY 2020, KY OSH continued its outreach for the Heat Illness Prevention Campaign; however, due to the COVID-19 pandemic, the outreach was conducted through distance learning. Additionally, the Labor Cabinet's eLearning website hosts the following interactive modules: Heat Stress Awareness for Construction and General Industries; Occupational Heat Exposure; and Occupational Heat Exposure-Masks webinars. The modules and webinars were viewed over 1,000 times in FY 2020.

David Dickerson served as Labor Cabinet Secretary and Dwayne Depp served as Commissioner of the Department of Workplace Standards during the first quarter of FY 2020 (from October 1, 2019 until December 9, 2019 and December 11, 2019, respectively.) Larry Roberts began service as Labor Cabinet Secretary on December 10, 2019 and Kimberlee Perry was appointed Commissioner for the Department of Workplace Standards on December 16, 2019. On the week of November 4, 2019, the KY OSH Program was relocated to the newly constructed Mayo-Underwood Building, at 500 Mero Street in downtown Frankfort, Kentucky.

New Issues

In accordance with the Bipartisan Budget Bill passed on November 2, 2015, OSHA published a rule on July 1, 2016, raising its maximum penalties. As required by law, OSHA then increased maximum penalties annually, most recently on January 8, 2021, according to the Consumer Price Index (CPI). State Plans are required to adopt both the initial increase and subsequent annual increases within the corresponding six-month timeframe set by regulation. December 2020 marked four years since the first deadline passed for adoption and the Kentucky State Plan has not yet completed the legislative changes to increase maximum penalties.

On March 6, 2020, Governor Beshear, by Executive Order (EO), declared a State of Emergency and ordered the issuance of appropriate state resources for an immediate response to the COVID-19 emergency in Kentucky. On March 17, 2020, the Governor issued EO 2020-215. The EO required all public-facing businesses that encourage public congregation or that by the nature of their service to the public cannot comply with the CDC guidelines concerning social distancing, to cease operations. The Governor closed all state government buildings to in-person services and all Kentucky OSH Program in-person activity halted except for fatality investigations, response to imminent danger complaints, and response to reports of hospitalizations and amputations. Compliance officers conducted all other inspection activity was conducted virtually by telephone and continued into FY 2021.

On March 23, 2020, all in-person retail businesses that were not life-sustaining were closed and on March 24, 2020, all non-life-sustaining businesses were closed to in-person traffic. On March 23, 2020, the Governor implemented the KYSAFER Hotline and website where citizens and business could seek compliance assistance with the directives to limit COVID-19 and citizens could report non-compliance with the Governor's Executive Orders. Kentucky OSH Program personnel staffed the KYSAFER hotline seven (7) days a week from 7:30 a.m. - 9:00 p.m. In FY 2020, the Kentucky Safer Hotline received 54,897 online submissions, 33,817 calls, and 5,782 voicemail messages. On April 3, 2020, an additional hotline and website was established for the donation of personal protective equipment (PPE). Labor Cabinet personnel staffed the PPE Hotline until it was terminated June 2020. The PPE Hotline received 748 calls, 147 voicemails, and 1,200 online submissions. Reports of non-compliance to the KYSAFER Hotline or through the online report form were reviewed by Labor Cabinet attorneys who made appropriate referrals to the Department of Workplace Standards for action. Division of OSH Compliance officers, serving as agents of Public Health, were sent to the establishments in teams of two to investigate. Establishments observed not complying with the Minimum Requirements criteria and the applicable sector specific requirements were served an Order to Cease Operations and could not reopen until documented abatement was provided to the Commissioner and the establishment was re-inspected. During FY 2020, 82 Orders to Cease Operations and 55 Notices of Deficiencies were served. The State conducted an additional 173 referrals where an Order to Cease Operation or a Notice of Deficiency was not issued. Healthy at Work Kentucky (HAWK) Assist Teams consisting of one KYSAFE consultant and one Division of OSH Compliance

officer, both serving as agents of Public Health, were established to address referrals that did not warrant an order to cease operation. A Notice of Deficiency was issued when warranted based on deficiencies observed. A Notice of Deficiency required the establishment to submit abatement documentation to the Commissioner and were subject to re-inspection. The compliance officer would serve an Order to Cease Operations rather than a Notice of Deficiency if the observed deficiency is warranted.

On April 21, 2020, the Governor announced the “Healthy at Work,” initiative, a phased approach to safely reopen the State’s economy based on criteria established by public health experts as well as information from industry experts. On May 11, 2020, the Governor began reopening sectors of the economy that were closed due to COVID-19. Each entity reopening was required to meet minimum requirements for all entities in addition to industry specific criteria. Any entity in a sector being reopened that could not comply with the minimum requirements criteria or industry-specific requirements, could not open until they were able to do so or until some, or all, restrictions were lifted. All entities, including those deemed life sustaining, were required to meet the Minimum Requirements criteria. Phase 1 was a state-readiness evaluation which closely followed the White House’s Guidelines for Reopening America; phase 2 was an individual business-readiness evaluation by the Department of Public Health. Each phase was rolled out in steps to ensure the State’s citizens safely returned to work.

III. Assessment of State Plan Progress and Performance

A. Data and Methodology

OSHA established a two-year cycle for the FAME process. This was a follow-up year, and as such, OSHA did not perform an onsite case file review associated with a comprehensive FAME. This strategy allowed the State Plan to focus on correcting deficiencies identified in the most recent comprehensive FAME. The analyses and conclusions described in this report were based on information obtained from a variety of monitoring sources, including:

- State Activity Mandated Measures Report (SAMM, Appendix D, dated 11/9/2020)
- State Information Report (SIR, dated 11/9/2020)
- Web Integrated Management Information System (WebIMIS)
- State OSHA Annual Report (SOAR, Appendix E)
- KY OSH Annual Performance Plan
- State Plan Grant Application
- Quarterly monitoring meetings between OSHA and the State Plan

B. Findings and Observations

FINDINGS (STATUS OF PREVIOUS AND NEW ITEMS)

The State Plan made progress in addressing the five findings and five of the seven observations reflected in the FY 2019 Comprehensive FAME Report. This follow-up FAME report contains four continued findings and six continued observations. One finding is closed and one finding has been addressed and is awaiting verification through an onsite case file review during the next comprehensive FAME. One observation was closed, and six observations are continued from the FY 2019 FAME. Of those, four completed observations were completed and awaiting verification and two were continued. No observations from the previous FAME were converted to findings. Appendix A describes the continued findings and recommendations. Appendix B describes observations subject to continued monitoring and the related federal monitoring plan. Appendix C describes the status of each FY 2019 recommendation in detail.

Closed Findings

Finding FY 2019-05: In FY 2019, in six of the 40 (15%) consultation case files, on-the-spot corrections observed by the consultant were not correctly documented in the field notes as required by the CPPM, Chapter 4 III.C.2.

Status: The State Plan concurs and acknowledges that in six of the consultation files reviewed by OSHA, on-the spot corrections observed by the consultant were not documented in the field notes; however, on-the-spot correction information in those six case files was documented in another section of the consultation casefile. Although the State Plan rejected this finding, it was addressed by the Assistant Director through a written instruction referencing CPPM Chapter 4 III.C.2 (page 33) on February 4, 2020, instructing all staff that if the employer corrects a hazard during the survey, the corrective action must be documented in the field notes. This finding is closed.

Continued Findings

Finding FY 2020-01 (FY 2019-01): In FY 2019, KY OSH only conducted seven programmed health inspections during this period.

Status: During FY 2020, KY OSH conducted a total of two programmed health inspections. KY OSH's response for this finding stated that they have a strategy in place to ensure programmed inspections are conducted; however, significant challenges remain. Staff turnover remains an issue. The State Plan is filling vacancies as expeditiously as possible, but training, coupled with the lag time before a compliance officer can perform solo inspections, make meeting this performance

measure problematic. Other inspection priorities, such as imminent dangers, hospitalizations, as well as electronic and written complaints, are a major factor affecting resources and the ability to conduct programmed inspections. The COVID-19 public health crisis has considerably affected KY OSH's ability to conduct programmed inspections. In March 2020, the Governor ordered all State government buildings closed to in-person services and all KY OSH Program in-person activity halted except for fatality investigations, response to imminent danger complaints, and response to reports of hospitalizations and amputations. KY OSH did not conduct programmed inspections for six months during this FAME period. This finding is continued.

Finding FY 2020-02 (FY 2019-02): In FY 2019, KY OSH only conducted 15 programmed safety inspections during this period.

Status: During FY 2020, KY OSH conducted five programmed safety inspections (see FY 2020-01 on COVID-19 restrictions). This finding will be continued.

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

Status: In FY 2020, KY OSH's lapse time for safety inspections was 85.97 days and 103.82 for health inspections. The lapse times remain significantly higher than the National Average (55.24 days) and the average for all state plans (55.24). KY OSH is placing much attention and emphasis on decreasing lapse times. The Director of OSH Compliance has identified and is working to reduce areas of redundancy. Management has detailed individuals to act as an additional Program Director to assist in expediting the processing of inspections files. The COVID-19 pandemic has affected efforts to reduce lapse time. Lapse time has also been impacted by the time needed to contact employers and acquire documentation, as well as interviewing workers and management officials during virtual inspections. Even the virtual portions of in-person inspections have affected lapse time. Additionally, the time to transfer files from the CSHO to the supervisor, as well as from the supervisor to the program manager during the pandemic has affected lapse time. This finding will be continued.

Finding FY 2020-04 (FY 2019-04): In FY 2019, the case file review identified a number of discrimination cases, where KYOSH failed to acquire and/or maintain correct case file documentation in retaliation files: to wit, (1) lack of determination letters or unsigned determination letters, (2) no case activity logs, (3) insufficient/inaccurate correspondence tracking information, due to four erroneous WebIMIS entries.

Status: In September 2019, OSHA provided discrimination training at the Kentucky office. During the training, OSHA conducted a review of Kentucky's discrimination casefiles. In FY 2020 the State has hired an investigator and Assistant Director. As a result, the majority of the case files reviewed did not represent the work-product of the new staff. Additionally, as of

January 1, 2020, KY OSH has adopted a new Compliance Field Operations Manual with Chapter X establishing the Discrimination program. This finding is complete, awaiting verification.

OBSERVATIONS (STATUS OF PREVIOUS AND NEW ITEMS)

Closed Observation

Observation FY 2019-OB-01 (FY 2018-OB-03): KY OSH conducted 725 inspections, which was 89.5% of the planned inspection goal of 810 inspections.

Status: Due to the impact of the COVID-19 pandemic, KY OSH amended the projections in the base award amendment, and OSHA approved the amendments. The amended projections for inspections were 332 inspections. KY OSH greatly exceeded this number. In FY 2020, KY OSH conducted 760 inspections, which was 142.4% of the amended planned inspection goal of 322 inspections. This observation is closed.

Continued Observations

Observation FY 2020-OB-01 (FY 2019-OB-02): In FY 2020, the total in-compliance rate (SAMM 9) for all safety inspections was 51.42% and 75.19% for health inspections. The percentage for safety and health was well above the FRL range of 24.82% to 37.24% for safety and from 29.72% to 44.58% for health.

Status: This is attributed to several factors. First, all activity with the exception of fatality investigations, response to imminent danger complaints, and response to reports of hospitalizations and amputations were conducted virtually by phone and electronic means. This limited the CSHO to the photographic and physical evidence provided by the employer and eliminated in plain-view hazards resulting in an increase in in-compliance cases. Additionally, the significant increase in the in-compliance rate for health cases is attributed to the high number of COVID-19 fatality, hospitalization, and complaint inspections and investigations that were conducted. The majority of these cases were in-compliance cases. This observation will be continued.

Observation FY 2020-OB-02 (FY 2019-OB-03): In FY 2020, follow-up inspections accounted for 0% of the total inspections in Kentucky. The number of open, non-contested cases with abatement not completed in excess of 60 calendar days is 40 (Ref. SIR Report).

Status: As stated in FY 2020-OB-01, the impact of the COVID-19 pandemic limited the State's activities to fatality investigations, response to imminent danger complaints, and response to reports of hospitalizations and amputations. Additionally, KY OSH provided that the cause of the 40 non-contested cases with abatement not completed in excess of 60 calendar days was identified as a box in OSHA Express that was not being checked. The State further provided that after this was corrected, the number of non-contested cases with abatement not completed in excess of 60

calendar days is zero. There is a discrepancy in the OSHA Express Report and the OIS SIR Report. An updated SIR report shows that there are currently 40 non-contested cases with abatement not completed in excess of 40 calendar days. This observation will be continued.

Observation FY 2020-OB-03 (FY 2019-OB-04): In FY 2019, there was insufficient supervisory review of retaliation investigations. Specifically, only the investigator was conducting investigations, making findings and recommendations, and finalizing the findings without input/approval from a supervisor.

Status: KY OSH claims that they provided OSHA with information and examples of implemented retaliation program changes that reflected OSHA's suggestions. OSHA does not dispute that examples were provided; however OSHA does not have documentation regarding the changes to confirm the correction. This observation will be continued.

Observation FY 2020-OB-04 (FY 2019-OB-05): Retaliation complaints are being closed for a lack of cooperation, when a complainant fails to return a follow-up questionnaire or elects not to provide a rebuttal to the position statement.

Status: KY OSH claims that they provided OSHA with information and examples of implemented program changes that reflected OSHA's suggestions. OSHA does not dispute that examples were provided; however, OSHA does not have documentation regarding the changes to confirm the correction. This observation will be continued.

Observation FY 2020-OB-05 (FY 2019-OB-06): In FY 2019, in one case, the program failed to identify a retaliation complaint, which implicated a Federal statute, and thus the matter was not referred to OSHA for investigation. Additionally, another retaliation case was improperly dismissed, based upon an incorrect understanding of protected activity. Specifically, it appears that the investigator failed to apply the reasonable belief standard, when assessing the retaliation complainant's engagement in protected activity, thereby dismissing a complaint because no specific standard exists addressing the complainant's concern.

Status: KY OSH claims that it provided OSHA with information and examples of implemented retaliation program changes that reflected OSHA's suggestions. OSHA does not dispute that examples were provided; however, OSHA does not have documentation regarding the changes to confirm the correction. This observation will be continued.

Observation FY 2020-OB-06 (FY 2019-OB-07): In 9 out of 40 (23%) consultation case files reviewed, abatement extensions were granted, without properly verifying the reason for the extensions and confirming that interim measures were in place to protect employees while the hazards were being corrected.

Status: A case file review is necessary to gather the facts needed to evaluate performance in relation to this observation. This observation will be a focus of next year's on-site case file review during the FY 2021 comprehensive FAME. This observation will be continued.

C. State Activity Mandated Measures (SAMM) Highlights

Each SAMM has an agreed upon further review level (FRL) that can be either a single number or a range of numbers above and below the national average. SAMM data that falls outside the FRL triggers a closer look at the underlying performance of the mandatory activity. Appendix D presents the State Plan's FY 2020 State Activity Mandated Measures (SAMM) Report and includes the FRLs for each measure. The State Plan's performance in the following SAMMs was outside the FRLs:

SAMM 1a – Average number of workdays to initiate complaint inspections

Discussion of State Plan data and FRL: The FRL for the average number of workdays to initiate complaint inspections was 30 days for serious hazards and 120 days for other-than-serious hazards. The KY OSH average number of workdays to initiate complaint inspections in FY 2020 was 43.41 days and warranted a closer look.

Explanation: The Division of OSH Compliance received 788 complaints resulting in 264 complaint inspections that were conducted. It should be noted that in previous years, KY OSH has consistently been well below the negotiated complaint inspection response goal of 30 days for serious hazards and 120 days for OTS hazards (See Finding FY 2020-01 on COVID-19 restrictions). KY OSH considers the complaint to be received once it is reviewed, regardless of whether the complaint was perfected, and it considers responding to the complaint once the State Plan contacts and conducts an opening conference with the employer. During the COVID-19 pandemic, contacting and opening virtual inspections was difficult and resulted in extended response times. Due to the circumstances, this result does not rise to the level of an observation, but it will continue to be discussed at quarterly meetings.

SAMM 7 - Planned v. Actual inspections – safety/health

Discussion of State Plan data and FRL: The FRL for the Planned v. actual inspections is based on a number negotiated by OSHA and the State Plan, through the grant application. The FRL for safety inspections was +/-5% of 645. The range of acceptable data for safety inspections was from 612.75 to 677.25. The number of safety inspections conducted by KY OSH was 556 and warranted a closer look.

Explanation: KY OSH conducted 725 inspections, which was 89.5% of the planned inspection goal of 810 inspections. The State Plan was significantly impacted by the COVID-19 pandemic and fell short of the goal. See Finding FY 2020-01 on COVID-19 restrictions. KYOSH amended

the projection in the base award and OSHA approved the amendments. The amended projection for inspections was 332. The Kentucky State Plan greatly exceeded this number Observation FY 2019-OB-1 related to this issue is closed.

SAMM 9 - Percent in-compliance

Discussion of State Plan data and FRL: The FRL for safety was +/-20% of 31.03%, and the range of acceptable data was from 24.82% to 37.24% for safety. The FRL for health was +/- 20% of 37.15%, and the range of acceptable data not requiring further review was from 29.72 to 44.58% for health. KY OSH's in-compliance rate is 51.42% for safety inspections and 75.19% for health inspections and warranted a closer look.

Explanation: This is attributed to several factors. First, all activity, with the exception of fatality investigations, response to imminent danger complaints, and response to reports of hospitalizations and amputations, was conducted virtually by phone and electronic means. This limited CSHOs to photographic and physical evidence provided by the employer and eliminated in plain-view hazards resulting in an increase in in-compliance cases. Secondly, the significant increase in the in-compliance rate for health cases is attributed to the high number of COVID-19 fatality, hospitalization, and complaint inspections and investigations that were conducted. The majority of these cases were in-compliance. The high rate of in-compliance is being continued as Observation FY 2020-OB-1.

SAMM 11 – Average lapse time

Discussion of State Plan data and FRL: The further review level is based on a three-year national average. The FRL for safety inspections was +/-20% of 50.58 days and the FRL for health inspections was +/-20% of 60.39 days.

The range of acceptable data not requiring further review is from 40.46 days to 60.70 days for safety inspections, and from 48.31 days to 72.47 days for health inspections. The Kentucky State Plan's average lapse time for safety is 85.97, which was substantially higher than the FRL. KY OSH's average lapse time for health is 103.82, which was substantially higher than the FRL. The significantly high safety and health lapse times were a cause for concern and warranted a closer look.

Explanation: As discussed in Finding FY 2020-03, KY OSH is placing much attention and emphasis on decreasing lapse time. The Director of OSH Compliance has identified and is working to reduce areas of redundancy. Management has detailed individuals to act as an additional program director to assist in expediting the processing of inspections files. The COVID-19 pandemic has affected efforts to reduce lapse times. Contacting employers and getting needed documentation, and contacting and interviewing management officials and workers during virtual inspections and virtual portions of in-person inspections affected lapse times. Additionally, the time to transfer files from the CSHO to the supervisor, as well as from the supervisor to the

program manager during the pandemic affected lapse times. The related Finding FY 2020-03 is continued.

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

Discussion of State Plan data and FRL: The FRL for percent of 11(c) investigations completed within 90 days was 100%. KY OSH completed 29% of 11(c) investigations within 90 days and warranted a closer look.

Explanation: KY OSH places emphasis on completing 11(c) investigations within 90 days. Although the FRL was not met, the State Plan's data is not significantly different from the national data.

SAMM 16 - Average number of calendar days to complete an 11(c) investigation

Discussion of State Plan data and FRL: The FRL for the average number of calendar days to complete an 11(c) investigation was 90. KY OSH's average number of calendar days to complete 11(c) investigations was 253 days and warranted a closer look.

Explanation: Although the FRL was not met, the State Plan's data is not significantly different from the national data.

Appendix A – New and Continued Findings and Recommendations

KY 2020 KY OSH Follow-up FAME Report

FY 2020-#	Finding	Recommendation	FY 2019-# or FY 2019-OB-#
FY 2020-01	Finding FY 2020-01 (FY 2019-01): In FY 2019, KY OSH only conducted seven programmed health inspections during this period.	KY OSH should develop and implement a strategy to ensure a more representative number of programmed (planned) health inspections are conducted to adequately address the scope and seriousness of the hazards found in high-hazard health industries.	FY 2019-01 FY 2018-03 FY 2017-06 FY 2016-03 FY 2015-06 FY 2014-05 FY 2013-05 FY 2011-06
FY 2020-02	In FY 2019, KY OSH only conducted 15 programmed safety inspections during this period.	KY OSH should develop and implement a strategy to ensure a more representative number of programmed (planned) safety inspections are conducted to adequately address the scope and seriousness of the hazards found in high-hazard health industries.	FY 2019-02
FY 2020-03	In FY 2019, KY OSH had a significantly high average citation issuance lapse time for safety and health inspections, which was outside the FRLs.	KY OSH should develop and implement a process to reduce the average lapse time for safety and health inspections to meet the FRL ranges.	FY 2019-03 FY 2018-04 FY 2017-07 FY 2015-08 FY 2014-06 FY 2013-06 FY 2011-07 FY-2009-11
FY 2020-04	In FY 2019, the case file review identified a number of whistleblower protection cases, where KYOSH failed to acquire and/or maintain correct case file documentation in retaliation files: to wit, (1) lack of determination letters or unsigned determination letters, (2) no case activity logs, (3) insufficient/inaccurate correspondence tracking information, (4) erroneous IMIS entries.	KYOSH should establish procedures by which the retaliation manager routinely reviews case files and online systems to ensure a thorough investigation was conducted, ensure that case file documentation is being retained in accordance with established retention policy, and ensure the accuracy of WebIMIS data entries.	FY 2019-04

Appendix B– Observations Subject to Continued Monitoring

FY 2020 KY OSH Follow-up Fame Report

Observation # FY 2020-OB-#	Observation# FY 2019-OB-# or FY 20XX-#	Observation	Federal Monitoring Plan	Current Status
	FY 2019-OB-01 FY 2018-OB-03	KY OSH conducted 725 inspections, which was 89.5% of the 810 planned inspection goal.	The OSHA Area Office will closely monitor and review the SAMM and other available data with the State Plan on a quarterly basis to ensure KY OSH is on target to meet the inspection goals established in the Grant.	Closed
FY 2020-OB-01	FY 2019-OB-02	In FY 2020, the total in-compliance rate (SAMM 9) for all safety inspections was 51.42% and 75.19% for health inspections. The percentage for safety and health was well above the FRL.	The OSHA Area Office will closely monitor and review the SAMM, SIR, and other available data with the State Plan on a quarterly basis to ensure KY OSH is within the FRL for in-compliance rate.	Continued
FY 2020-OB-02	FY 2019-OB-03	In FY 2020, follow-up inspections accounted for 0% of the total inspections in Kentucky. The number of open, non-contested cases with abatement not complete in excess of 60 calendar days is 40. This observation is being continued.	During next year’s FAME, OSHA will review a sample of KY OSH’s non-contested case files with abatement not completed in excess of 60 calendar days to determine if this issue has been resolved.	Continued
FY 2020-OB-03	FY 2019-OB-04	In FY 2019, there was insufficient supervisory review of the retaliation investigations. Specifically, the investigator is conducting the investigation, making a findings recommendation, and finalizing the	During next year’s FAME, OSHA will review a sample of KY OSH’s retaliation investigation case files to determine if	Continued

Appendix B– Observations Subject to Continued Monitoring

FY 2020 KY OSH Follow-up Fame Report

Observation # FY 2020-OB-#	Observation# FY 2019-OB-# or FY 20XX-#	Observation	Federal Monitoring Plan	Current Status
		findings without input/approval from a supervisor.	this issue has been resolved.	
FY 2020-OB-04	FY 2019-OB-05	Retaliation complaints are being closed for a lack of cooperation, when a Complainant fails to return a follow-up questionnaire or elects not to provide a rebuttal to the position statement.	During next year’s FAME, OSHA will review a sample of KY OSH’s retaliation investigation case files to determine if this issue has been resolved.	Continued
FY 2020-OB-05	FY 2019-OB-06	In FY 2019, in one case, the program failed to identify a retaliation complaint, which implicated a Federal statute and thus the matter was not referred to OSHA for investigation. Additionally, another retaliation case was improperly dismissed based upon an incorrect understanding of protected activity. Specifically, it appears that the investigator failed to apply the reasonable belief standard when assessing retaliation complainant’s engagement in protected activity, dismissing a complaint because no specific standard exists addressing Complainant’s concern.	The OSHA Area Office will closely monitor incoming complaints to ensure proper referrals to OSHA.	Continued
FY 2020-OB-06	FY 2019-OB-07	In 9 out of 40 (23%) consultation case files reviewed, abatement extensions were granted without properly verifying the reason for the extension and confirming that interim measures were in place to protect employees while the hazard was being corrected.	During next year’s FAME, OSHA will review a sample of KYOSH’s consultation files to ensure employer request for abatement extensions contain interim measures	Continued

Appendix B– Observations Subject to Continued Monitoring

FY 2020 KY OSH Follow-up Fame Report

Observation # FY 2020-OB-#	Observation# FY 2019-OB-# <i>or</i> FY 20XX-#	Observation	Federal Monitoring Plan	Current Status
			for all hazards listed in the request.	

Appendix C – Status of FY Findings and Recommendations

FY 2020 KY OSH Follow-up Fame Report

FY-2019	Findings	Recommendation	State Plan Corrective Actions	Completion Date	Current Status and Date
FY 2019-01	KY OSH only conducted seven programmed health inspections during this period.	KY OSH should develop and implement a strategy to ensure a more representative number of programmed health inspections are conducted to adequately address the scope and seriousness of the hazards found in high-hazard health industries.	KY OSH has a strategy in place to ensure programmed inspections are conducted; however, significant challenges remain. Staff turnover remains an issue and impacts the number of programmed inspections conducted. Vacancies are filled as expeditiously as possible, but compliance officer training, coupled with the lag time before a compliance officer can perform solo inspections, make this issue problematic. Equally important, other inspection priorities, such as imminent dangers, amputations, hospitalizations, as well as electronic and written complaints, are a major factor impacting resources and the ability to conduct programmed inspections. An increase in FY 2020 is not likely due to the current public health crisis, which has considerably affected KY OSH's ability to conduct programmed inspections. Nonetheless, KY OSH will attempt to perform more programmed inspections.		Open 7/13/2020
FY 2019-02	KY OSH only conducted 15 programmed safety inspections during this period.	KY OSH should develop and implement a strategy to ensure a more representative number of programmed planned safety inspections are conducted to adequately address the scope and seriousness of the hazards found in high-hazard safety industries.	KY OSH has a strategy in place to ensure programmed inspections are conducted; however, significant challenges remain. Staff turnover remains an issue and impacts the number of programmed inspections conducted. Vacancies are filled as expeditiously as possible but compliance officer training, coupled with the lag time before a compliance officer can perform solo inspections, make this issue problematic. Equally important, other inspection priorities, such as imminent dangers, amputations, hospitalizations, as well as electronic and written complaints, are a major factor impacting resources and the ability to		Open 7/13/2020

Appendix C – Status of FY Findings and Recommendations

FY 2020 KY OSH Follow-up Fame Report

FY-2019	Findings	Recommendation	State Plan Corrective Actions	Completion Date	Current Status and Date
			conduct programmed inspections. An increase in FY 2020 is not likely due to the current public health crisis, which has considerably affected KY-OSH's ability to conduct programmed inspections. Nonetheless, KY OSH will attempt to perform more programmed inspections.		
FY 2019-03	KY OSH has a significantly high average citation issuance lapse time for safety and health inspections, which are outside the FRLs.	KY OSH should develop and implement a process to reduce the average lapse time for safety and health inspections to the national average.	KY OSH implemented organizational and process changes that have decreased lapse times for safety and health inspections. However, the current public health crisis has considerably affected KY OSH's inspection activity and lapse times.		Open 7/13/2020
FY 2019-04	The case file review identified a number of cases where KYOSH failed to acquire and/or maintain correct case file documentation in retaliation files: to wit, (1) lack of determination letters or unsigned determination letters, (2) no case activity logs, (3) insufficient/inaccurate correspondence tracking information,	KY OSH should establish procedures by which the whistleblower manager routinely reviews case files and online systems to ensure a thorough investigation was conducted, ensure that case file documentation is being retained, in accordance with established retention policy, and ensure the accuracy of WebIMIS data entries.			Awaiting verification 7/13/2020

Appendix C – Status of FY Findings and Recommendations

FY 2020 KY OSH Follow-up Fame Report

FY-2019	Findings	Recommendation	State Plan Corrective Actions	Completion Date	Current Status and Date
	(4) erroneous WebIMIS entries.				
FY 2019-05	In six of the 40 (15%) of the consultation case files, “on the spot corrections” observed by the consultant were not correctly documented in the field notes as required by the CPPM, Chapter 4 III.C.2.	KYOSH should closely monitor consultation file documentation to ensure on the spot corrections are properly documented in the field notes, including the correction method used to abate the hazardous condition.	On-the-spot corrections information in those six (6) casefiles were documented in another section of the consultation casefile. The Assistant Director addressed this finding through written instruction referencing CPPM Chapter 4 III.C.2 (page 33) on February 4, 2020 instructing all staff that if the employer corrects a hazard during the survey, the corrective action must be documented in the field notes.	2/4/2020	Closed 4/21/2021

Appendix D – FY 2020 State Activity Mandated Measures (SAMM) Report

FY 2020 KY OSH Follow-up FAME Report

U.S. Department of Labor				
Occupational Safety and Health Administration State Plan Activity Mandated Measures (SAMMs)				
State Plan: Kentucky – KYOSH			FY 2020	
SAMM Number	SAMM Name	State Plan Data	Further Review Level	Notes
1a	Average number of work days to initiate complaint inspections (state formula)	43.41	30 days for serious hazards; 120 days for	The further review level is negotiated by OSHA and the State Plan.
1b	Average number of work days to initiate complaint inspections (federal formula)	25.73	N/A	This measure is for informational purposes only and is not a mandated measure.
2a	Average number of work days to initiate complaint investigations (state formula)	31.39	TBD	The further review level is negotiated by OSHA and the State Plan.
2b	Average number of work days to initiate complaint investigations (federal formula)	30.20	N/A	This measure is for informational purposes only and is not a mandated measure.
3	Percent of complaints and referrals responded to within one workday (imminent danger)	100%	100%	The further review level is fixed for all State Plans.
4	Number of denials where entry not obtained	0	0	The further review level is fixed for all State Plans.

Appendix D – FY 2020 State Activity Mandated Measures (SAMM) Report

FY 2020 KY OSH Follow-up FAME Report

U.S. Department of Labor				
5	Average number of violations per inspection with violations by violation type	SWRU: 1.54	+/- 20% of SWRU: 1.79	The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from 1.43 to 2.15 for SWRU and from 0.76 to 1.14 for OTS.
		Other: 0.73	+/- 20% of Other: 0.95	
6	Percent of total inspections in state and local government workplaces	5.28%	+/- 5% of 5.72%	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 5.43% to 6%.
7	Planned v. actual inspections – safety/health	S: 556	+/- 5% of S: 645	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 612.75 to 677.25 for safety and from 168.15 to 185.85 for health.
		H: 182	+/- 5% of H: 177	
8	Average current serious penalty in private sector - total (1 to greater than 250 workers)	\$3,793.38	+/- 25% of \$2,964.86	The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from \$2,223.65 to \$3,706.08.
	a. Average current serious penalty in private sector (1-25 workers)	\$3,159.00	+/- 25% of \$1,967.64	The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from \$1,475.73 to \$2,459.55.
	b. Average current serious penalty in private sector (26-100 workers)	\$3,785.73	+/- 25% of \$3,513.45	The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from \$2,635.09 to \$4,391.81.

Appendix D – FY 2020 State Activity Mandated Measures (SAMM) Report

FY 2020 KY OSH Follow-up FAME Report

U.S. Department of Labor				
	c. Average current serious penalty in private sector (101-250 workers)	\$4,641.14	+/- 25% of \$5,027.02	The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from \$3,770.27 to \$6,283.78.
	d. Average current serious penalty in private sector (greater than 250 workers)	\$5,028.27	+/- 25% of \$6,190.91	The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from \$4,643.18 to \$7,738.64.
9	Percent in compliance	S: 51.42%	+/- 20% of S: 31.03%	The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from 24.82% to 37.24% for safety and from 29.72% to 44.58%
		H: 75.19%	+/- 20% of H: 37.15%	
10	Percent of work-related fatalities responded to in one workday	84.34%	100%	The further review level is fixed for all State Plans.
11	Average lapse time	S: 85.97	+/- 20% of S: 50.58	The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from 40.46 to 60.70 for safety and from 48.31 to 72.47 for health.
		H: 103.82	+/- 20% of H: 60.39	
12	Percent penalty retained	91.10%	+/- 15% of 67.51%	The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from 57.38% to 77.64%.

Appendix D – FY 2020 State Activity Mandated Measures (SAMM) Report

FY 2020 KY OSH Follow-up FAME Report

U.S. Department of Labor				
13	Percent of initial inspections with worker walk around representation or worker interview	100%	100%	The further review level is fixed for all State Plans.
14	Percent of 11(c) investigations completed within 90 days	29%	100%	The further review level is fixed for all State Plans.
15	Percent of 11(c) complaints that are meritorious	20%	+/- 20% of 18%	The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from 14.40% to 21.60%.
16	Average number of calendar days to complete an 11(c) investigation	253	90	The further review level is fixed for all State Plans.
17	Percent of enforcement presence	1.01%	+/- 25% of 1.09%	The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from 0.82% to 1.36%.

NOTE: The national averages in this report are three-year rolling averages. Unless otherwise noted, the data contained in this Appendix D is pulled from the State Activity Mandated Measures (SAMM) Report in OIS and the State Plan WebIMIS report run on November 9, 2020, as part of OSHA’s official end-of-year data run.

Appendix E – FY 2020 State OSHA Annual Report (SOAR)



**KENTUCKY
OCCUPATIONAL SAFETY AND HEALTH
PROGRAM**

STATE OFFICE ANNUAL REPORT

for

FEDERAL FISCAL YEAR 2020

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

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. Executive Order 2004-731, issued by Governor Ernie Fletcher in 2004, abolished the Labor Cabinet with all duties, responsibilities, employees, and functions transferred to the Environmental and Public Protection Cabinet, Department of Labor. The executive order was ratified into law during the 2005 General Assembly by Senate Bill 41.

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

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

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

On March 25, 2010, Governor Beshear signed into law House Bill 393, an act relating to reorganization. House Bill 393 amended and created various sections of the Kentucky Revised Statutes to abolish the Environmental and Public Protection Cabinet and created (re-established) the Labor Cabinet. Kentucky's OSH Program now consists of the Division of OSH Compliance, headed by a Director; the Division of OSH Education and Training, headed by a Director; and the OSH Federal-State Coordinator. The OSH Federal-State Coordinator and the appointed directors of the Division of OSH Compliance and Division of OSH Education and Training report to the Commissioner of Workplace Standards who, in turn, reports to the Secretary of the Labor Cabinet.

Supplementing the functions of these units directly is a standards promulgation unit, the OSH Standards Board, as well as an adjudicatory body, the OSH Review Commission. Administrative staffs support the division directors, the commissioner's office of the Department of Workplace Standards, and the OSH Federal-State Coordinator's office.

Executive Order (EO) 2018-586, issued by Governor Matthew Bevin and effective July 16, 2018, abolished the OSH Standards Board. The Board establishes, modifies, and repeals OSH standards. All duties of the Board were transferred to the Office of the Secretary; however, the EO was not codified. EO 2020-014, issued by Governor Andy Beshear and effective January 8, 2020, reconstituted and appointed members to the Board.

The Kentucky OSH Program experienced two (2) significant relocations in a little over one (1) year. On October 1, 2018, the OSH Program moved from their home on US Highway 127 of over thirty (30) years to 657 Chamberlin Avenue. Then, during the week of November 4, 2019, the OSH Program moved to the newly constructed Mayo-Underwood Building at 500 Mero Street in downtown Frankfort.

The Kentucky OSH Program encompasses all areas, issues, and responsibilities that are covered by OSHA with the exception of private sector maritime activities, non-OSH related discrimination, temporary labor camps and field sanitation, federal employers and employees, private contractors on properties ceded to the Federal Government (including Job

Corps Centers and Federal Correctional Institutions), Tennessee Valley Authority facilities, and federal military bases. Kentucky's jurisdiction also extends to all state and local public employers and employees. The state's effort, with the exception of state and local government, does not include enforcement in any area over which OSHA does not exercise jurisdiction.

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

The Division of OSH Education and Training, also known as KYSAFE, and the Division of OSH Compliance have an effective and comprehensive effort to promote the safety, health, and general welfare of the people of the Commonwealth. This effort focuses on preventing hazardous working conditions and practices at places of work. The Kentucky OSH Program provides voluntary compliance services, education and training, enforcement through inspections of workplaces, onsite consultation services, research, statistics, and other functions that meet the mandate of the Title XXVII – Labor and Human Rights, KRS Chapter 338, Occupational Safety and Health of Employees.

The Kentucky Labor Cabinet remains fully committed to promoting the safety, health, and general welfare of the Commonwealth of Kentucky by preventing any detriment to the safety and health of all

employees, both public and private, arising out of exposure to harmful conditions and practices at places of work. In addition, the Cabinet is fully involved in preserving our human resources by providing for education and training, inspection of workplaces, consultation services, research, reports, statistics, and other means of advancing progress in occupational safety and health.

David Dickerson served as Labor Cabinet Secretary and Dwayne Depp served as Commissioner of the Department of Workplace Standards during Federal Fiscal Year (FFY) 2020 from October 1, 2019 until December 9, 2019 for Mr. Dickerson and December 11, 2019 for Mr. Depp. Larry Roberts began service as Labor Cabinet Secretary December 10, 2019 and Kimberlee Perry's service as Commissioner for the Department of Workplace Standards began December 16, 2019.

Kentucky's Division of OSH Compliance staffing benchmark is twenty-three (23) Compliance Safety and Health Officers (CSHO) and fourteen (14) Industrial Hygienists (IH). Another two (2) positions are devoted to investigating cases of alleged OSH discrimination. The Division of OSH Education and Training, also known as KYSAFE, maintains three (3) main operational branches, safety, health, and partnership. In FFY 2020, there were six (6) consultants in the safety branch and six (6) 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 2016-2020 that utilizes a combination of resources to address workplace hazards, including enforcement strategies, consultations, training and education, partnership programs, technical assistance, and standards development. The synergistic effect of these combined

resources enables the OSH Program to significantly impact worker safety and health in the Commonwealth of Kentucky.

SARS-CoV-2

The impact of the novel severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2) virus and coronavirus disease 2019 (COVID-19) on the operations of the KY OSH Program in FFY 2020 cannot be overstated. Every aspect of the program was profoundly affected in FFY 2020 and continues in FFY 2021. The information below is a brief narrative of the action taken by the KY OSH Program in response to the virus. Most of the measures presented below continue and at the time of report submission, COVID-19 cases are escalating statewide at a record rate.

On March 6, 2020, Governor Beshear, by Executive Order (EO), declared a State of Emergency and ordered the issuance of appropriate state resources for an immediate response to the COVID-19 emergency in Kentucky.

Over the next few weeks, positive cases rose which resulted in the closure of many businesses and facilities throughout the Commonwealth. Public events were cancelled. Businesses were urged to allow employees to telecommute and provide paid sick leave. All citizens were asked to socially distance. By the end of March, all school districts were closed, state office buildings were closed to in person services, hospitals were not allowed to perform elective surgeries, and non-life-sustaining businesses were ordered to close. A series of EOs were issued by Governor Beshear to protect the citizens of Kentucky. Some of the significant EOs and dates issued are presented below.

On March 17, 2020, Governor Beshear issued EO 2020-215. The EO required all public-facing businesses that encourage public congregation or that by the nature of their service to the public cannot comply with the CDC guidelines concerning social distancing, to cease operations. Those businesses included entertainment and recreational

facilities, community and recreation centers, gyms and exercise facilities, hair salons, nail salons, spas, concert venues, theaters, and sporting event facilities. Some businesses such as food providers, food processors, agriculture, industrial manufacturing, feed mills, construction, trash collection, retail, groceries, consumer goods, home repair, hardware, auto repair, pharmacies, other medical facilities, biomedical, health care, post offices, insurance, banks, gas stations, laundromats, veterinary clinics and pet stores, warehousing, storage, distribution, public transportation, and hotel and commercial lodging, were exempt and could remain open but were required to follow CDC guidelines for social distancing.

On March 17, 2020, Governor Beshear also closed all state government buildings to in-person services. In accordance with the Governor's action to contain the spread of COVID-19, all Kentucky OSH Program in-person activity halted except for Division of OSH Compliance fatality, imminent danger, hospitalization, and amputation activity. Compliance officers conducted all other inspection activity by telephone.

Division of OSH Education and Training in-person activity also halted March 17, 2020. Consultation staff continued working with employers on abatements for open surveys and producing training material for the program's eLearning website at kysafe.ky.gov and mobile app.

On March 23, 2020, all in-person retail businesses that were not life-sustaining were closed. On March 24, 2020, all non-life-sustaining businesses were closed to in-person traffic.

Also on March 23, 2020, Governor Beshear announced the creation of the KYSAFER Hotline and website. Citizens and business could seek compliance assistance with the directives to limit COVID-19. Citizens also reported non-compliance with the Governor's EOs to the hotline or through the online report form. Kentucky OSH Program personnel staffed the KYSAFER hotline seven (7) days a week from 7:30

a.m. - 9:00 p.m. Specific KYSAFER data is presented at the conclusion of this narrative.

Kentucky OSH Program staff demonstrated outstanding teamwork, assisting each other with different situations as KYSAFER submissions arrived. Additionally, many COVID-19 guidelines were developed that changed due to the newness, and learning curve, associated with SARS-CoV-2. There was an enormous amount of information to learn and provide to hotline callers.

On April 3, 2020, an additional hotline and website were established for the donation of personal protective equipment (PPE). Labor Cabinet personnel staffed the PPE Hotline which terminated June 2020.

All of the measures highlighted above were taken to “flatten the curve” and were successful doing so. Because of that, on April 21, 2020, Governor Beshear announced the “Healthy at Work,” initiative to help Kentucky businesses reopen safely during the fight against SAR-CoV-2. Healthy at Work offered a phased approach to reopening Kentucky's economy based on criteria established by public health experts and advice from industry experts. Phase 1 was a state-readiness evaluation; phase 2 was an individual business-readiness evaluation. During Phase 1 of Healthy at Work, the Kentucky Department for Public Health determined whether Kentucky met certain public health benchmarks for reopening Kentucky's economy. Those benchmarks closely followed the White House's Guidelines for Reopening America. During Phase 2 of Healthy at Work, the Department for Public Health evaluated individual businesses' ability to safely reopen. Each phase was rolled out in steps to ensure the Commonwealth's citizens safely returned to work.

On May 11, 2020, Governor Beshear began reopening sectors of the economy that were closed due to COVID-19. Each entity reopening was required to meet “Minimum Requirements for All Entities”, hereinafter referred to as Minimum Requirements, criteria in addition to

Industry-specific criteria. The Labor Cabinet participated extensively in the establishment of the Minimum Requirements criteria, the criteria document for Construction, and the criteria document for Manufacturing and Distribution. If any entity in a sector being reopened could not comply with the Minimum Requirements criteria or industry-specific requirements, they could not open until they were able to do so or until some, or all, restrictions were lifted. All entities, including those deemed life sustaining, were required to meet the Minimum Requirements criteria.

As previously stated, citizens report non-compliance with the Governor's EOs to the KYSAFER Hotline or through the online report form. Labor Cabinet attorneys reviewed all KYSAFER entries and Labor Cabinet General Counsel made appropriate referrals to the Commissioner for the Department of Workplace Standards for action. Division of OSH Compliance officers, serving as agents of Public Health, were dispatched in teams of two (2). Establishments observed not complying with the Minimum Requirements criteria and the applicable sector specific requirements were served an Order to Cease Operations (OCO). Establishments issued an OCO could not reopen until documented abatement was provided to the Commissioner and re-inspected.

Healthy at Work Kentucky (HAWK) Assist Teams were created to address referrals that did not warrant OCO service team activity. HAWK Assist Teams consisted of one (1) KYSAFE consultant paired with one (1) Division of OSH Compliance officer, both serving as agents of Public Health. A Notice of Deficiency (NOD) was issued when warranted based on deficiencies observed. Establishments issued a NOD were required to submit abatement documentation to the Commissioner

and were subject to re-inspection. The compliance officer served an OCO if the level of observed deficiency warranted. A NOD was not issued if an OCO was served.

652 of the 1052 OSH discrimination complaints received in FY 2020 were related to SARS-CoV-2. For comparison, Kentucky received 276 OSH discrimination complaints in FFY 2019.

The Division of OSH Compliance had twenty-one (21) “traditional” inspections in FFY 2020 related to COVID-19 employer reported fatalities or hospitalizations.

The numbers reported above do not reflect the hundreds, if not thousands, of hours expended by Department of Workplace Standards staff, including leadership staff, addressing external and internal SARS-CoV-2 issues.

Finally, a central source for all Kentucky related COVID-19 information was established at <https://govstatus.egov.com/kycovid19>.

Specific FFY 2020 COVID-19 data

Positive Kentucky COVID-19 cases: 67,856

Kentucky COVID-19 Fatalities: 1,170

KYSAFER online submissions: 54,897

KYSAFER logged entries: 31,260

Compliance: 1,366

E&T: 7,100

Stats: 40

KYSAFER Hotline calls: 33,817

Compliance: 489

E&T: 7,091

KYSAFER Hotline voicemails: 5,782

82 OCOs and 55 NODs served

173 referrals with OCO or NOD not served

11 abated onsite

39 observed in compliance

123 unsubstantiated

KYSAFER OSH Compliance submitted: 405

3 NODs served

4 OCO served

PPE incoming calls: 748

PPE voicemails: 147

PPE online submissions: 1,200

The remainder of this report is presented in three (3) sections.

Section I addresses Kentucky's success in achieving FFY 2020 Performance Plan goals. Section II addresses mandated activities during FFY 2020. Section III addresses noteworthy accomplishments achieved by the Kentucky OSH Program during FFY 2020.

Information presented reflects accurate data for the period sampled. Some case files have matured since preparation of this report while others are still working through the process. Subsequently, some of the information may vary if resampled. It is important to note that at the time of report submission, there were 355 FFY 2020 open enforcement inspections. Therefore, some data presented in this report is not fully mature.

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.

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

In the FFY 2016 baseline year, the Division of OSH Compliance received 101 reported amputations. Eighty-three (83) inspections were conducted with four (4) repeat serious violations, seventy (70) serious violations, and sixteen (16) other than serious violations with penalties totaling \$347,300. In FFY 2020, eighty-seven (87) amputations were reported to the Division of OSH Compliance. Eighty (80) inspections were conducted with two (2) repeat serious violations, sixty-five (65) serious violations, and thirty-four (34) other than serious violations. Total penalties were \$378,000.

In the FFY 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 FFY 2020, 324 hospitalizations were reported to the Division of OSH Compliance and 167 inspections were conducted with two (2) repeat serious violations, eighty-two (82) serious violations, and forty-eight (48) other than serious violations. Total penalties were \$448,590.

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

The Division of OSH Compliance's portion of this goal consists of the number of inspections in construction and general industry. In the FFY 2016 baseline year, the Division of OSH Compliance conducted 990 inspections, 544 were in general industry and 446 were in construction. In FFY 2020, the Division of OSH Compliance conducted 760 inspections, 528 in general industry, 232 in construction, and none in maritime.

The Division of OSH Education and Training's portion of this goal consists of surveys and training contact hours conducted in high hazard industries, as well as the total number of training courses, contact hours, surveys, and technical assistance visits in all industries. Kentucky's injury and illness data is also an indicator for this goal.

During the FFY 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 FFY 2020, KYSAFE conducted 123 health surveys of which all were considered high hazard. The division's safety branch conducted 111 surveys, all were considered high hazard. Three (3) safety and health technical assistance visits and forty-five (45) face-to-face training sessions were conducted that impacted 2,219 persons. Additionally, six (6) trainings were conducted on virtual platforms, impacting 109 persons.

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

In the FFY 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. There were no investigations that met Performance Goal 1.3 criteria in FFY 2020; therefore, there were no follow-up inspections conducted.

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

In the FFY 2016 baseline year, 444 inspections were conducted in the construction industry. In FFY 2020, 232 inspections were conducted in the construction industry.

In the FFY 2016 baseline year, twenty (20) sites were enrolled in the CPP. In FFY 2020, there were eighteen (18) sites enrolled in the CPP.

In the FFY 2016 baseline year, KYSAFE conducted seventeen (17) surveys, and presented nineteen (19) training courses totaling 2,175 contact hours in the construction industry. In FFY 2020, KYSAFE conducted sixteen (16) surveys, one (1) technical assistance visit, and presented eleven (11) training courses totaling 520 contact hours in the construction industry.

FFY 2016 baseline year data collected by the Bureau of Labor Statistics (BLS) Survey of Occupational Injuries and Illness in cooperation with the OSH Program's Statistical Services Branch, established the following Kentucky and National incident rates for 2015. This baseline data represents nonfatal occupational injuries and illnesses involving days away from work per 10,000 full-time workers in the construction industry.

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

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

Data collected by the BLS Survey of Occupational Injuries and Illness in cooperation with the OSH Programs' Statistical Services Branch, established the following Kentucky and National incident rates for 2019. This data represents nonfatal occupational injuries and illnesses involving days away from work per 10,000 full-time workers in the construction industry.

2019	Falls	Struck-by	Crushed
Kentucky	3.6	13.2	2.6
National	4.7	13.2	3.3

Two (2) of Kentucky's rates, Falls and Crushed, were below the national rates; Struck-by matched the national rate. All of Kentucky's rates declined over fifty (50) percent from rates reported in the FY 2019 SOAR representing a significant improvement.

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

Performance Goal 1.5 aims to initiate all fatality inspections as well as hospitalizations of three (3) or more employees within one (1) working day of notification. Kentucky conducted forty-one (41) fatality

inspections in FFY 2020 and four (4) appear as outliers. A brief summary is provided below for each outlier.

1. On Monday, December 30, 2019, the employer reported the Wednesday, December 25, 2019 death of a TNT Sawing Inc. employee. Tuesday, December 31, 2019 and Wednesday, January 1, 2020 were state holidays. An inspection opened Thursday, January 2, 2020. Kentucky responded within one (1) working day of notification.

2. On Tuesday, December 31, 2019, the employer reported the death of Louisville Jefferson County Metro Government employee. Tuesday, December 31, 2019 and Wednesday, January 1, 2020 were state holidays. An inspection opened Thursday, January 2, 2020. Kentucky responded within one (1) working day of notification.

3. On Saturday, February 1, 2020 the employer reported the death of a Columbus Steel Erectors Inc. employee. An inspection opened same day with the worksite general contractor. The subcontractor, Columbus Steel Erectors Inc., was not onsite and did not return until Tuesday, February 4, 2020. An inspection opened February 4, 2020 with the subcontractor. Kentucky responded within one (1) working day of notification.

4. On Friday, August 7, 2020, the next of kin reported the Saturday, July 25 construction industry fatality of a family member. An inspection opened Monday, August 10 with a controlling employer. The employer of the deceased employee was not onsite. On August 11, 2020, an inspection opened with a second controlling employer. Again, the employer of the deceased employee was not onsite. On August 12, 2020, an inspection opened with the employer of the deceased employee. Kentucky responded within one (1) working day of notification.

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

The Division of OSH Compliance conducted 115 imminent danger inspections in FFY 2020 and one (1) appears as an outlier. A brief summary of the outlier is provided below.

On September 8, 2020, an allegation lacking detail was received regarding rumors of explosions at a food processing facility. Attempts were made to verify the allegation with the local fire department and employees at the facility. The allegation was verified Thursday, September 10 and an inspection opened same day. Kentucky responded within one (1) day of verification and met the goal.

Performance Goal 1.7 strives to reduce Kentucky's total case incident rate for injuries and illnesses. This performance goal combines efforts for both the Division of OSH Compliance and KYSAFE.

The FFY 2016 baseline total case rate for injuries and illness, established from FFY 2015 BLS data, was 3.7. The FFY 2020 total case rate for injuries and illness, established from FFY 2019 BLS data, was 3.2.

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

The FFY 2016 baseline lost time case rate for injuries and illnesses, established from FFY 2015 BLS data, was 1.9. The FFY 2020 lost time case rate for injuries and illnesses, established from FFY 2019 BLS data, was 1.6.

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

In the FFY 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. Seventy-two (72) fatalities were reported to the Division of OSH Compliance in FFY 2020 and forty-one (41) inspections were conducted. Thirty-eight (38) fatality inspections were conducted in general industry resulting in thirty-one (31) serious, twenty-nine (29) other than serious, one (1) willful, and one (1) repeat violations with penalties totaling \$378,550. Three (3) construction industry fatality inspections were conducted resulting in one (1) willful, three (3) serious, and one (1) other than serious violations with penalties totaling \$95,900.

Performance Goal 1.10 aims to reduce the total case rate in two (2) of the top ten (10) industries, identified by NAICS, in Kentucky with the highest injury and illness total case incident rates. The effort, known as “Safety Tops Our Priority” (S.T.O.P) combines efforts for both the Division of OSH Compliance and KYSAFE.

Based on 2018 BLS data, the industries in Kentucky with the highest injury and illness total case incident rates and the total case rate for each industry were:

NAICS	Description	Rate
92212	Police protection (state government)	15.1
622	Hospitals (state government)	10.8
32192	Wood container and pallet manufacturing	8.9
623	Nursing and residential care facilities (local government)	8.8

115	Support activities for agriculture and forestry	8.0
62	Health Care and Social Assistance (state government)	7.8
623	Nursing and Residential Care Facilities (state government)	7.2
211	Oil and Gas Extraction (private industry)	7.1
2389	Other Specialty Trade Contractors (private industry)	7.0
3321	Forging and Stamping (private industry)	6.9

Two (2) of the aforementioned NAICS were identified for KYSAFE S.T.O.P. outreach in FY 2020. Employers in the selected NAICS normally receive two (2) or three (3) S.T.O.P. outreach mailings from KYSAFE. The outreach offers KYSAFE cost-free assistance and advises employers they are subject to a Division of OSH Compliance inspection if they do not respond. Unfortunately, the S.T.O.P. initiative was halted in FFY 2020 due to COVID-19.

In FFY 2020, before the COVID-19 based cessation of KYSAFE activity, KYSAFE continued the 2019 S.T.O.P. initiative with employers in NAICS 71, Arts, Entertainment, and Recreation, that began in FY 2019. The injury and illness total case incident rates for the industry was 10.2 based upon 2017 BLS data. S.T.O.P. outreach mailings went to 108 employers and thirty-six (36) employers subsequently requested a comprehensive KYSAFE survey. 416 serious violations and 137 other than serious violations were identified potentially exposing 1,791 employees. Seventy-three (73) non-responders were referred to the Division of OSH Compliance. Kentucky's efforts were successful. The injury and illness total case rate dropped from 10.2 to 4.0.

A targeted outreach of high rate industries was implemented in FFY 2020 by KYSAFE through a direct mail campaign. The Targeted Outreach Program (TOP) reviewed 2018 employer reported Injury Tracking Application data to identify specific establishments with a high Total Case Rates (TCR). One (1) mailing was conducted based on TCR and number of employees; unfortunately, additional TOP outreach mailings did not occur due to COVID-19. The mailing went to employers with ten (10) to 250 employees and a TRC greater than fifteen (15). Fifty-six (56) letters were mailed and seventeen (17) employers requested comprehensive KYSAFE surveys. Surveys continue and to date, 145 serious and fifty-seven (57) other than serious hazards were identified. Non-responders were not referred to the Division of OSH Compliance in FFY 2020 due to COVID-19.

Additionally, five (5) training sessions were presented at one (1) Population (POP) Center Training seminar; 281 participants attended the training. The training addressed subjects relevant to the targeted NAICS such as Injury and Illness Recordkeeping, Basic Electrical Safety, Bloodborne Pathogens, Health Hazard Recognition, and Safety Hazard Recognition. Additional POP Center Training seminars were not conducted due to COVID-19.

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

KYSAFE remains committed to working with employers and continues its focus on industries and employers with the worst injury and illness rates. The Division of OSH Compliance continues its programmed inspection focus in the industries with the highest injury and illness total case incident rates.

The Division of OSH Compliance conducted seven (7) general schedule inspections in FFY 2020; all were program planned. Six (6) of

those general schedule inspections came from 2020 KYSAFE referrals. One (1) additional KYSAFE referral inspection was attempted but not conducted since the employer was utilizing KYSAFE services.

Performance Goal 1.11 is to identify and assist industries with a total case incident rate four (4) times above the average Kentucky total case incident rate. According to the BLS data collected by OSH Program Statistical Services Branch, there were no Kentucky industries with a total case incident rate equal to or greater than 13.6, which is 4 times the 2019 reported Kentucky rate of 3.4. Kentucky met the goal.

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

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

During FFY 2020, the Division of OSH Compliance signed twenty-one (21) settlement agreements. Penalties were reduced \$15,000 or more in two (2) settlement agreements that included documented implementation of OSHA's 2016 "Recommended Practices for Safety & Health Programs" if general industry; or OSHA's 2016 "Recommended Practices for Safety & Health Programs in Construction" if construction; or the ANSI/AIHA/ASSE Z10 "Occupational Health and Safety Management Systems"; or engaged the services of an outside safety / health consultant. Penalties were reduced \$15,000 or more in two (2) agreements that did not include documented implementation of OSHA's 2016 "Recommended Practices for Safety & Health Programs" if general

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

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

A brief synopsis of the aforementioned two (2) agreements follows.

1. The penalty in American Howa Kentucky Inc. was reduced from \$37,500 to \$14,750 due to Citation 1 Item 1 remaining classified as a repeat serious with a penalty reduction, and Citation 2 Item 1 was reclassified to other than serious and Citation 2 Item 2 remained serious with a penalty reduction.
2. The penalty in Stephens Pipe & Steel LLC was reduced from \$56,000 to \$28,500 as Citation 1 Item 1 was dismissed and Citation 1 Item 7 was reduced from a serious to other than serious citation.

Performance Goal 2.2 is to incorporate evaluation of safety and health management systems in 100 percent of the full-service comprehensive surveys. All FFY 2020 KYSAFE comprehensive consultative surveys incorporated an evaluation of safety and health management systems. Kentucky met the goal.

Performance Goal 2.3 seeks to utilize the Safety and Health Program Assessment Worksheet in 100 percent of the general industry full-service surveys. All FFY 2020 KYSAFE comprehensive general industry consultative surveys utilized the Safety and Health Program Assessment Worksheet. Kentucky met the goal.

Performance Goal 2.4 aims to include a narrative safety and health program evaluation in 100 percent of the full-service consultation surveys. All general industry full-service surveys conducted by KYSAFE in FFY 2020 included a narrative safety and health program evaluation. Kentucky met the goal.

Performance Goal 2.5 aims to provide safety and health program management training. KYSAFE provided employers and employees a cost-free online eLearning safety and health program management training module on the Labor Cabinet's eLearning website, www.kysafe.ky.gov. During FFY 2020, 955 individuals viewed the module. Eighteen (18) employees were trained in Auditor I hazard recognition by KYSAFE's Partnership Branch staff in two (2) separate training classes. Kentucky met the goal.

Performance Goal 2.6 addresses the evaluations of worksites on a timely basis to certify and re-certify VPP sites, develop CPP agreements, and add new employers to the SHARP, as well as the maintenance and re-certification of current SHARP sites. The Partnership Program was very active in FFY 2020, working with current participants, adding new participants, as well as reaching out and looking for new VPP, SHARP, and CPP participants.

There were eighteen (18) active CPP sites in FFY 2020 with a total project cost over three (3) billion dollars. The Partnership Branch had fifty (50) contacts / visits with CPP sites in FFY 2020 affecting over 2,392 employees. The most significant new CPP project in FFY 2020 was the new \$1.7 billion plate mill at Nucor Steel Brandenburg.

Other significant CPP projects that began in FFY 2020 were:

- The \$44.4 million 3rd Floor renovation of the chemistry/physics building at the University of Kentucky.
- The \$200 million Churchill Downs Turn 1 project with Calhoun Construction.

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VPP continues to be successful and sets the standard for program and participant quality. The Partnership Branch is working diligently with other facilities in their quest to become VPP certified while maintaining fifteen (15) very strong, successful sites that included one (1) new facility in FFY 2020, Marathon Pipeline LLC, Owensboro Station. Five (5) other new VPP sites were well into the certification process in FFY 2020 when the pandemic halted all onsite activity for a significant amount of time. Nonetheless, the partnership branch maintained close contact with the sites during the period and all of the potential sites are on schedule to achieve VPP certification before the end of 2020. The Partnership Branch is also actively working with other sites pursuing VPP that include a pharmaceutical production facility and a uniform distribution center.

SHARP started FFY 2020 with fifteen (15) active sites and ended the fiscal year with fifteen (15) active sites. The pandemic halted all SHARP activity for a significant portion of FFY 2020; however, SHARP partnerships recovered. All SHARP recertification's, except one (1), were completed in FFY 2020 or are on schedule to complete.

In FFY 2020, the Partnership Branch experienced 232 significant contacts. 119 were site visits affecting 14,189 employees that identified 2,824 hazards, 400 were serious and 2,424 were other than serious. Kentucky met the goal.

Performance Goal 2.7 addresses the implementation of a targeted outreach plan for 100 percent of new Kentucky OSH standards. In FFY 2020, there was one (1) amendment to a Kentucky specific regulation that necessitated outreach. It was 803 Kentucky Administrative Regulation (KAR) 2:180, Recordkeeping, Reporting, Statistics effective September 29, 2020. KYSAFE presented "Short Webinar Series - Recordkeeping Update 2020" which is posted on the KYSAFE eLearning website at kysafe.ky.gov. KYSAFE also presented a three (3) hour Recordkeeping and Reporting training class over two (2) days via ZOOM. The training

covered 29 CFR 1904, Recording and reporting Occupational Injuries and Illnesses, as well as 803 KAR 2:180.

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 Kentucky OSH Program provides the compact disc free of charge.

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 2013 for both the Division of OSH Compliance and KYSAFE that "replaced" OSHA's NCR/IMIS and OIS system. In 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. Kentucky met the goal.

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

The Division of OSH Compliance did not hire supervisory staff in FFY 2020. KYSAFE hired one (1) supervisory staff in FFY 2020 and the individual completed leadership training. Kentucky met the goal.

Performance Goal 3.3 encourages and aids attainment of professional certification. During FFY 2020, the Division of OSH Compliance maintained four (4) Certified Safety Professional (CSP) employees, two (2) Associate Safety Professional employees, one (1) Graduate Safety Professional employee, one (1) Certified Industrial Hygienist employee, two (2) certified Construction Health and Safety Technician (CHST) employees, and three (3) Occupational Health and Safety Technologist (OHST) employees. The Health Program Manager is dual certified CIH and CSP.

The Division of OSH Compliance and KYSAFER encourage and promote professional certification, maintaining dedicated position descriptions with increased salaries for the level of certification attained, paying for certification preparatory courses, and paying for the certification examination after successful completion.

During FFY 2020, KYSAFE maintained one (1) CIH employee, six (6) CIH-CSP employees, two (2) CSP employees, one dual CSP-ASP employee, four (4) OHST certified employees, and one (1) CHST certified employees. Two (2) division employees completed the Certified Public Manager (CPM) Program through Kentucky State University's Governmental Services Center.

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

Performance Goal 3.4 encourages and aids completion of continuing education. In FFY 2020, KYSAFE and Division of OSH

Compliance staff completed over 3,170 hours of continuing education. Training included Evaluation of Safety and Health Management Systems, Hazardous Materials, Lockout-Tagout, Recordkeeping, Accident Investigation, Machine Guarding, Combustible Dust, Electrical Hazards, Whistleblower Investigations, Investigative Report Writing, Investigative Interviewing, Excavations and Trenching, Process Safety, Fall Arrest Systems, Residential Construction Fall Protection, Scaffolding, Concrete Forms and Shoring, Permit Required Confined Space, as well as the Incident Command System. Staff also attended the Gray Construction Safety Summit and a wide variety of OSH and/or OSH-related webinars.

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

Performance Goal 3.5 aims to develop and publish electronic learning products. KYSAFE added eight (8) cost-free interactive training products to the KYSAFE online library at kysafe.ky.gov, *Aerial & Scissor Lift Safety*, *Protecting Workers from COVID-19*, *Voluntary Use of Respirators*, *Portable Fire Extinguisher Safety*, *Step Bolts and Manhole Steps*, *Laboratory Safety*, *Occupational Heat Exposure-Masks*, and *Recordkeeping 2020 Update*. Kentucky met the goal.

Performance Goal 3.6 seeks to include photographs of actionable hazards in 100 percent of surveys. Photographs of actionable hazards were included in all consultation surveys when feasible and is 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 FFY 2020, the Division of OSH Compliance conducted 753 unannounced inspections of work sites under the authority of KRS 338.101. Advance notice of inspections is prohibited and punishable under KRS Chapter 338.991(9).

Employee Involvement in Inspection Process

803 KAR 2:110 establishes that an authorized representative of the employees is given an opportunity to accompany compliance officers during inspections. The Division of OSH Compliance contacts a representative(s) of employee-organized groups upon entry onto a site in order to afford employees' participation in the inspection process. Representatives of employee groups may participate in the inspection process by attending the opening conference, accompanying the inspector and employer on the walk-around, and attending the closing conference.

Employee representatives are also allowed to observe employee interviews. If no employee-organized group exists at the facility, employee interviews are conducted.

Following the inspection, 803 KAR 2:130 requires that employee representative(s) be afforded the opportunity to observe any informal conference requested by the employer. 803 KAR 50:010 Section 14 allows the employee organization, or any interested employee, to intervene in any subsequent contest.

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

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

The Division of OSH Compliance conducted a total of 760 inspections in FFY 2020, 577 safety inspections and 183 health inspections. 753 inspections were un-programmed, breaking down as:

- 146 referrals;
- 177 employer referrals;
- 264 complaints;
- 125 un-programmed related; and
- Forty-one (41) fatalities/catastrophes.

Seven (7) programmed inspections were conducted and all were planned.

232 inspections were in the construction industry and 528 were in manufacturing. 721 private sector and thirty-nine (39) public sector employers were inspected. The Division of OSH Compliance conducted 577 safety inspections, which constitutes 75.9% of total inspections while health conducted 183 inspections, representing 24.1% of total inspections. Eleven (11) inspections were conducted under the national emphasis programs. Nine (9) of these were safety and two (2) were health related.

Safety averaged 22.9 hours per case with 126 average days from opening conference to citation issuance. Health averaged 9.5 hours per case with 153 average days from opening conference to citation issuance. 635 citations were issued in FFY 2020 with penalties totaling \$2,350,825 and break down as:

Five (5) willful violations with penalties issued totaling \$280,000;

Thirteen (13) repeat violations with penalties issued totaling \$212,200;

396 violations classified as serious with penalties issued totaling \$1,511,385; and

222 violations classified as other than serious with penalties issued totaling \$209,418.75.

In FFY 2020, the total amount of penalties collected by the Division of OSH Compliance was \$1,872,751.09. Thirty-eight (38) cases were contested representing five (5) percent of total inspections.

The Division of OSH compliance inspected establishments employing 287,450 employees and the inspections covered 69,885

employees. The Division of OSH Compliance vacated ten (10) private sector violations pre-contest, which represents 1.48% of the violations issued. The Division of OSH Compliance vacated fourteen (14) private sector violations post-contest, which represents 20% of the violations issued. Additionally, the division reclassified six (6), or 0.9%, violations pre-contest. The division reclassified five (5), or 8.93%, violations post-contest.

The overall penalty retention in FFY 2020 was 67.87%.

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 may be conducted to verify that potentially harmful conditions have been abated. The division conducts follow up inspections when necessary to ensure employers are complying with settlement provisions and abated hazards for fatality investigations. Also on the follow-up list are employers who fail to provide the Division of OSH Compliance with abatement documentation. The Division of OSH Compliance conducted no follow-up inspections in FFY 2020; there were no inspections conducted to verify adherence to settlement provisions of fatality investigations because there were no applicable FFY 2020 fatality settlement agreements.

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

Prompt, Effective Standard Adoption and Promulgation

Amendment to 803 Kentucky Administrative Regulation (KAR) 2:180, Recordkeeping, Reporting, Statistics, was effective September 29, 2020. The amendment established a definition for hospitalization that means formal admission to a hospital or clinic for care, treatment, observation, or diagnostic testing. The amendment also clarified that any death or hospitalization, including any death or hospitalization resulting from a heart attack that occurs in the work environment, or is caused or contributed to by an event in the work environment, must be reported to the Division of OSH Compliance.

On September 29, 2020, Kentucky adopted eleven (11) administrative regulations pursuant to OSHA’s Standards Improvement Project-Phase IV final rule published in the May 14, 2019 Federal Register. The regulations were 803 KAR 2:300, General, which adopts 29 Code of Federal Regulations (CFR) 1910.3-7 and 29 CFR 1910.9; 803 KAR 2:320, Toxic and Hazardous Substances; 803 KAR 2:400, Adoption

of 29 CFR Part 1926 Subpart A; 803 KAR 2:403, Occupational Health and Environmental Controls; 803 KAR 2:404, Personal Protective and Lifesaving Equipment; 803 KAR 2:406, Signs, Signals, and Barricades; 803 KAR 2:407, Materials Handling, Storage, Use, and Disposal; 803 KAR 2:418, Underground Construction, Caissons, Cofferdams, and Compressed Air; 803 KAR 2:422, Rollover Protective Structures; Overhead Protection; 803 KAR 2:425, Toxic and Hazardous Substances; and 803 KAR 2:500, Maritime Employment.

House Bill (HB) 50 of the 2017 General Session established a sunset for all executive branch administrative regulations based on a seven (7) year cycle. In response to HB 50, Kentucky undertook the significant task to update all OSH regulations. To date, regulations in promulgation are 803 KAR 2:301, Adoption and Extension of Federal Standards; 803 KAR 2:304, Exit Routes and Emergency Planning; 803 KAR 2:311, Fire Protection; 803 KAR 2:312, Compressed Gas and Compressed Air Equipment; 803 KAR 2:315, Hand and Portable Power Tool and Other Hand-Held Equipment; 803 KAR 2:316, Welding, Cutting, and Brazing; and 803 KAR 2:319, Commercial Diving Operations.

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 FFY 2020 was 72.5:27.5.

Counteraction of Imminent Dangers

KRS 338.131 provides enforcement personnel with the authority to order that imminent danger conditions be immediately abated. Such authority includes the enforcement of necessary measures to avoid, correct, or remove the imminent danger and prohibit the presence of individuals where the imminent danger exists. Reports of imminent

danger are given the highest priority for inspection by the Division of OSH Compliance.

The Division of OSH Compliance conducted 115 imminent danger inspections in FFY 2020 and one (1) appears as an outlier. A brief summary of the outlier is provided below.

On September 8, 2020, an allegation lacking detail was received regarding rumors of explosions at a food processing facility.

Attempts were made to verify the allegation with the local fire department and employees at the facility. The allegation was verified Thursday, September 10 and an inspection opened same day.

Kentucky responded within one (1) day of verification and met the goal.

Response to Complaints

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

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

The Complaint Audit Log Report indicates that the average response time to all complaints was thirty-six (36) days for safety and thirty-three (33) days for health. The division's overall average for serious complaints was 29.6 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 36.5 days, and 34 days for health. The division's overall average was 35.5 days for other than serious hazards from the date the complaint was received to the date the inspection was opened.

Of the 788 complaints received in FFY 2020, 375 were processed as formal complaints resulting in 192 inspections and 413 were processed as informal complaints.

Response to Referrals

The Division of OSH Compliance responded to 323 referrals in FFY 2020, 178 were employer-referrals. The Referral Audit Log indicates the average response time to referrals alleging imminent dangers for safety was 0.1 days and 0.1 days for health. The overall average for all safety referrals was 16.8 days and 2.4 days for health from the date of all referrals received to the date the inspection opened.

Fatality/Catastrophe Investigations

Only imminent danger investigations are given a higher priority in the scheduling of inspections by the Division of OSH Compliance than fatality/catastrophe investigations. It is the policy of the Division of OSH Compliance to investigate all job-related fatalities and hospitalizations of three (3) or more employees as thoroughly and expeditiously as possible. There were twenty-eight (28) work-related fatalities in FFY 2020. There were no hospitalizations of three (3) or more employees reported to the Division of OSH Compliance in FFY 2020.

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

During FFY 2020, the Division of OSH Compliance received 1,052 discrimination complaints. 940 were referred to other agencies or addressed by telephone screening. Twenty-four (24) complaints were administratively closed and eighty-eight (88) cases were docketed for full investigation. Of the eighty-eight (88) cases docketed for full investigation, two (2) were withdrawn, one (1) reached an outside settlement agreement, seven (7) were determined to have no merit, and one (1) \$3,000 citation was issued for a SARS-CoV-2 related investigation. The remaining seventy-seven (77) investigations are active, thirty-nine (39) of which are non COVID-19 related representing 50.65% of current active investigations.

652 of the 1,052 OSH discrimination complaints received in FY 2020 were related to SARS-CoV-2. 606 of the 652 were referred to other agencies or addressed by telephone screening. Of the remaining forty-six (46) complaints, four (4) were administratively closed and forty-two (42) were docketed for full investigation. Of the forty-two (42) cases docketed for full investigation, two (2) were withdrawn, seven (7) were determined to have no merit, and one (1) citation was issued. The remaining thirty-eight (38) COVID-19 related active cases make up 49.35% of current investigations.

During FY 2020, determinations were also issued for FY 2019 cases. That resulted in two (2) citations being issued, five (5) cases were determined to have no merit, and the remaining were administratively closed. The citations totaled \$3,100 with an additional \$18,000 back pay restitution for one (1) case. The amount of back pay restitution for another case is still in negotiation.

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

Ensuring Employees Access to Health and Safety Information

KRS 338.161(2) and 803 KAR 2:060 require employers to post notices informing employees of the protections and obligations provided for them in the law, including the proper contact for assistance and information. Kentucky regulations also provide for the availability of copies of the law and all regulations through the Kentucky Labor Cabinet. Employers who have obtained copies of these materials are required to make them available to employees or their authorized employee representatives. Failure to comply with posting requirements and information sharing provisions are citable offenses that may carry penalties. There were no citations issued in FFY 2020 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 regulation, 803 KAR 2:062, 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 FFY 2020, the Division of OSH Compliance conducted thirty-six (36) inspections relating to toxic material and harmful agents breaking down as:

- Sixteen (16) inspections related to indoor air quality with no citations or penalties;
- Thirteen (13) inspections related to bloodborne pathogens with sixteen (16) violations and penalties totaling \$27,850;
- Seven (7) inspections related to asbestos with one (2) violations and penalties totaling \$2,250;
- Two (2) inspections related to silica with thirteen (13) violations and penalties totaling \$2,750;
- Two (2) inspections related to combustible dust with no citations or penalties; and
- No inspections related to 29 CFR 1910.1020 or 803 KAR 2:062.

The breakdown of inspections slightly exceeds the total number of thirty-six (36) inspections due to the overlap of categories.

Coverage of Public Employees

KRS Chapter 338 “Occupational Safety and Health of Employees” establishes definitions for employer and employee which do not exclude public employers and public employees. The exclusions to KRS Chapter 338 cover only employees of the United States 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 FFY 2020, the Division

of OSH Compliance conducted thirty-nine (39) inspections of public sector work sites, which includes programmed inspections and responses to public employee complaints. This calculates to 5.13% of the total number of Division of OSH Compliance inspections.

Services offered by KYSAFE are available to state and local public agencies in the same manner and to the same degree as private sector employers. During FFY 2020, seventeen (17) training sessions were provided to public sector employers and employees totaling 415 participants. Thirty-six (36) safety and health consultative surveys were conducted in public sector facilities resulting in the identification of 339 serious and 118 other than serious hazards.

Recordkeeping and Reporting

KRS Chapter 338.161 “Statistical records – Posting of notices” requires that employers keep, preserve, and make available to the Kentucky OSH Program and the Secretary of the U.S. Department of Labor or the Secretary of the U.S. Department of Health and Human Resources, records relating to occupational safety and health as may be prescribed by regulation. Kentucky promulgated a regulation, 803 KAR 2:180, which specifically addresses occupational injury and illness recordkeeping, as well as reporting of fatalities, hospitalizations, and loss of an eye. The reporting requirement is limited to hospitalizations that occur within seventy-two (72) hours of the incident. Employers are also required to report any amputation or loss of an eye suffered by an employee from any work-related incident. Hospitalizations of one (1) or two (2) employees, as well as amputations and loss of eye injuries, must be reported to the Kentucky OSH Program within seventy-two (72) hours after the employer, his agent, or another employee is informed of such a condition.

The Division of OSH Compliance inspection scheduling system prioritizes reported hospitalizations, amputations, and loss of eye injuries. This allows compliance resources to be focused on serious hazards in the

workplace. In FFY 2020, 324 hospitalizations were reported to the Division of OSH Compliance and 167 inspections were conducted with two (2) repeat serious violations, eighty-two (82) serious violations, and forty-eight (48) other than serious violations. Total penalties were \$448,590.

In FFY 2020, eighty-seven (87) amputations were reported to the Division of OSH Compliance. Eight (80) inspections were conducted with two (2) repeat serious violations, sixty-five (65) serious violations, and thirty-four (34) other than serious violations. Total penalties were \$378,800.

In FFY 2020, the Division of OSH Compliance received no reports of loss of eye injury.

Total penalties for violations related to amputation and hospitalization injuries in FFY 2020 were \$813,175.

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.

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 234 consultative surveys in FFY 2020 identifying and ensuring the abatement of 2,009 serious hazards. The division also conducted forty-five (45) training courses and reached 1,886 attendees in response to training requests from employers. Division staff members provided three (3) on-site technical assistance visits and responded to hundreds of inquiries from public and private employers regarding OSH concerns.

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

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 FFY 2020, there were events, activities, and results that merit attention as outstanding accomplishments.

Lowest Injury and Illness Incident Rate in Kentucky History

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 FFY 2020 rate, based on 2019 BLS data, was 3.2. Kentucky's rate in 1996, when BLS began recording the data was 8.4. Kentucky's FFY 2020 3.2 incidence rate is slightly higher than the national average of 3.0; however, Kentucky continues to close the gap, going from 4.2 in 2012 to 4.1 in 2013, 4.5 in FFY 2014, 3.8 in 2015, 3.7 in 2016, 3.4 in 2017, 3.3 in 2018, 3.4 in 2019 and now to 3.2. Kentucky remains committed to further reducing the state's total case rate.

Record Low Lost Time Injury and Illness Case Rate

The FFY 2020 lost time case rate for injuries and illnesses, established from FFY 2019 BLS data, was 1.6, matching the 2018 record low rate of 1.6.

Workplace Safety Savings

In FFY 2020, KYSAFE identified 2,009 serious hazards that exposed 60,292 employees and saved employers over \$14,000,000 in

potential penalties. KYSAFE also identified 796 other than serious hazards that exposed 39,443 employees and saved employers \$1,592,000 in potential penalties.

Voluntary Protection Partnership

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

The fifteen (15) Kentucky VPP sites are:

1. ABB, Louisville;
2. Cintas, Grayson;
3. Dow Corning Corporation, Carrollton;
4. General Electric Aircraft Engines, Madisonville;
5. General Electric Aviation Infrastructure, Erlanger;
6. International Paper Corporation, Bowling Green;
7. Kimberly-Clark, Owensboro;
8. L'Oreal (USA) Florence Manufacturing, Florence;
9. Marathon Big Sandy Asphalt Terminal, Catlettsburg;
10. Marathon Pipeline LLC, Owensboro Station
11. Marathon Refinery, Catlettsburg;
12. Nucor Steel Gallatin, Ghent;
13. Raytheon Corporation, Louisville;
14. Southwire, Hawesville; and
15. WestRock, Nicholasville.

VPP continues to be successful and sets the standard for program and participant quality. The Partnership Branch is working diligently with

several facilities in their quest to become VPP certified while maintaining fifteen (15) very strong, successful sites, the highest number of active sites in the history of the program.

One (1) facility joined the VPP family in FFY 2020, Marathon Pipeline LLC, Owensboro Station. Five (5) other new VPP sites were well into the certification process during FFY 2020 when the pandemic halted all onsite activity for a significant amount of time. Nonetheless, the partnership branch maintained close contact with the sites during the period and all of the sites are on schedule to be VPP certified before the end of 2020.

The Partnership Branch is also actively working with other sites pursuing VPP that include a pharmaceutical production facility and a uniform distribution center.

Construction Partnership Program

KYSAFE continues to focus on the construction industry by promoting CPP. There were eighteen (18) active CPP sites in FFY 2020 with a total project cost of over \$3 billion. There were twenty-nine (29) site audits with CPP sites in FFY 2020 affecting 2,392 employees. The most significant new CPP project in FFY 2020 was the new \$1.7 billion plate mill at Nucor Steel Brandenburg.

Other significant CPP projects that began in FFY 2020 were:

1. The \$44.4 million 3rd Floor renovation of the chemistry/physics building at the University of Kentucky.
2. The \$200 million Churchill Downs Turn 1 project with Calhoun Construction.

SHARP

SHARP started FFY 2020 with fifteen (15) active sites and ended FFY 2020 with fifteen (15) active sites. The pandemic halted all SHARP activity for a significant portion of FFY 2020. However, SHARP activity resumed and all partnership recertification's, except one (1), were completed in FFY 2020 or scheduled for FFY 2021.

Partnership staff also conducted several excavation activities as part of the national emphasis program.

Compliance Emphasis on Serious Hazards

The Division of OSH Compliance maintains an emphasis on addressing serious hazards. In FFY 2020, the Division of OSH Compliance cited:

Five (5) willful violations with penalties issued totaling \$280,000;

Thirteen (13) repeat violations with penalties issued totaling \$212,200;

396 violations classified as serious with penalties issued totaling \$1,511,385; and

222 violations classified as other than serious with penalties issued totaling \$209,418.75.

Information presented in this report reflects accurate data for the period sampled. Some case files have matured since preparation of this report while others are still working through the process. Subsequently, some of the aforementioned information may vary if resampled. It is important to note that at the time of report submission, there were 355 FFY 2020 open enforcement inspections. The data has not fully matured.

Citations issued in FFY 2020 with noteworthy penalties include:

- \$145,000.00 to a construction employer for two (2) serious willful violations for the lack of fall protection and the lack of fall protection training, as well as two (2) other than serious violations for the failure to report an employee fatality.
- \$120,250.00 to a construction employer for three (3) repeat violations for failure to ensure employees were protected by protective helmets, failure to protect employees from excavated, materials, or equipment that could fall or roll into an excavation,

- failure to protect employees from excavation cave-in by an adequate protective system, and one (1) serious violation for failure to provide employees exposed to vehicular traffic with high-visibility material.
- \$88,900.00 to a construction employer for one (1) willful violation for failure to provide copies of OSHA 300 and OSHA 300A logs and three (3) serious violations for the failure to ensure steel erection employees were not working under a suspended load, failing to ensure a crane shift inspection was performed, and failing to ensure a crane monthly inspection was performed.
- \$77,000.00 to a construction employer for one (1) serious willful violation for the lack of fall protection on low-slope roofs, one (1) serious violation for improper portable ladder use, and one (1) other than serious violation for the failure to provide certification of fall protection training.
- \$70,000 to a general industry employer for two (2) repeat serious violations for the failure to utilize lockout/tagout procedures and failure to provide adequate machine guarding.
- \$70,000 to a general industry employer for eleven (11) serious violations and two (2) other than serious violations related to permit required confined spaces, lack of fall protection on a walking-working surface with an unprotected side or edge four (4) feet or more above a lower level, and failure to maintain injury and illness records.
- \$61,600.00 to a construction employer for eleven (11) serious violations for the failure to fully plank or deck the platform of scaffold, the lack of base plates and mudsills on a scaffold, failure to provide a means of access for scaffolds, failure to ensure scaffold was inspected by a competent person, failure to ensure a scaffold was erected, moved, dismantled or altered under supervision of a competent person, failure to install guardrails on a

- scaffold, lack of a toeboard along the edge of scaffold platforms, missing cross braces on a scaffold, failure to ensure a scaffold was joined by coupling or stacking pins, and failure to properly train employees on scaffold hazards.
- \$56,400.00 to a construction employer for one (1) repeat serious violation for the failure to ensure employees used adequate fall protection and one (1) repeat other than serious violation for the failure to certify fall protection training.
- \$48,800.00 to a construction employer for four (4) repeat serious violations for lack of head protection, lack of fall protection, and failure to provide fall protection training, as well as four (4) serious violations for lack of eye and face protection, the lack of a table saw guard, the lack of fall protection for employees working in an aerial lift, and improper use of a portable ladder.

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 Kentucky Labor Cabinet and State Fire Marshal are cooperating to identify facilities and conduct joint investigations, when possible, where combustible dust hazards exist.

The Division of OSH Compliance conducted three (3) inspections in FFY 2020 related to combustible dust; no citations or penalties were issued.

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

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

The Division of OSH Compliance did not receive any referrals from DAQ in FFY 2020.

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 FFY 2020, the Division of OSH Compliance received forty-six (46) notices from the Poison Control Center.

Professional Development

During FFY 2020, KYSAFE maintained one (1) CIH employee, six (6) CIH-CSP employees, two (2) CSP employees, one dual CSP-ASP

employee, four (4) OHST certified employees, and one (1) CHST certified employees. Two (2) division employees completed the CPM Program through Kentucky State University's Governmental Services Center.

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

The Division of OSH Compliance followed OSHA's TED 01-00-019, Mandatory Training Program for OSHA Compliance Personnel during FFY 2020. 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 FFY 2020, the Division of OSH Compliance maintained four (4) Certified Safety Professional (CSP) employees, two (2) Associate Safety Professional employees, one (1) Graduate Safety Professional employee, one (1) Certified Industrial Hygienist employee, two (2) certified Construction Health and Safety Technician (CHST) employees, and three (3) Occupational Health and Safety Technologist (OHST) employees. The Health Program Manager is dual certified CIH and CSP. The Division of OSH Compliance continues to encourage and promote additional personnel to achieve certification in the safety and health field by maintaining two (2) safety certified position descriptions, paying for certification preparatory courses, and paying for the certification examination upon successful completion of the examination.

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

Focused OSH Public Speaking / Presentations

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

The Division of OSH Education and Training conducted forty-four (44) face-to-face training courses and reached over 1,866 attendees in response to training requests from employers.

Five (5) training sessions were presented at one (1) POP Center Training seminar; 281 participants attended the training. The training addressed subjects relevant to the targeted NAICS such as Injury and Illness Recordkeeping, Basic Electrical Safety, Bloodborne Pathogens, Safety Hazard Recognition and Health Hazard Recognition.

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 899 OSH interpretations during FFY 2020.

Governor's Safety and Health Conference and Exposition



The 36th Annual Governor’s Safety and Health Conference and Exposition, scheduled for May 4-7, 2020 in Louisville at the Galt House, was cancelled due to SARS-CoV-2. The event, co-sponsored by the Labor Cabinet and the Kentucky Safety and Health Network, Inc., is the largest safety and health exposition in the Commonwealth. The Labor Cabinet and the Network looks forward to the return of the Governor's Safety and Health Conference and Exposition in 2021!

Despite the cancellation, Scholastic Achievement for Education Awards, or “SAFE” awards, totaling \$15,000 were presented to eight (8) university students matriculating in the areas of occupational safety and health, industrial hygiene, or a closely related field.

Governor’s Safety and Health Award

The Governor’s Safety and Health Award is presented to employers and employees who together achieve a required number of hours worked without experiencing a lost time injury or illness. Forty-four (44) Kentucky employers received the award in FFY 2020. Labor Cabinet leadership traditionally presents the award at the employer’s facility or at the Annual Governor’s Safety and Health Conference and Exposition; but SARS-CoV-2 changed that in FFY 2020. Four (4) companies received the Governor’s Safety and Health Award at their facilities in FFY 2020 before COVID-19 ended in-person presentations. Another forty (40) companies received the Governor’s Safety and Health Award in FFY 2020 without in-person presentation. The Labor Cabinet intends to publically present the awards and properly acknowledge those employers and employees achievement when possible.

Collection of Delinquent OSH Penalties

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

- Adding a 25% collection fee to the total debt to defray the cost of collection.
- Filing a notice of State Lien. The filing of a lien is reflected in credit reports maintained by various credit bureaus.
- Seizing all property rights, both real and personal. This includes, but is not limited to, the attachments of any funds held by a bank, any wages paid to the employer, and the seizure and sale of any real estate.
- Using any tax refund or other monies that may become due to the employer from the Commonwealth of Kentucky to offset the outstanding debt.

The effort has proven successful; delinquent debts have been collected by Revenue and returned to the OSH Program. And, the OSH Program has seen an increase in employer's efforts to resolve debt payment to avoid being reported to the Department of Revenue. Since October 2013, the Division of OSH Compliance has submitted 188 cases to the Department of Revenue for collection totaling \$1,878,808. To date, \$293,167.64 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 FFY 2011 to purchase web conferencing software, a video editing computer, and video equipment. After much planning and preparation, the Cabinet launched an online workplace safety and health training website, www.kysafe.ky.gov, 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 200,000 participants have utilized the website.

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

KYSAFE added eight (8) cost-free interactive training products to the www.kysafe.ky.gov library, *Aerial Lift & Scissor Lift Safety*, *Protecting Workers from COVID-19*, *Voluntary Use of Respirators*, *Portable Fire Extinguisher Safety*, *Step Bolts and Manhole Steps*, *Laboratory Safety*, *Occupational Heat Exposure-Masks*, and *Recordkeeping 2020 Update*.

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

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 FFY 2020. Due to SARS-CoV-2, outreach was conducted through distance learning. The Labor Cabinet's eLearning website hosts the interactive *Heat Stress Awareness for Construction and General Industry* module as well as the *Occupational Heat Exposure* and *Occupational Heat Exposure-Masks*

webinars. The module and webinars were viewed over 1,000 times in FFY 2020.

Mobile App

In late September 2019, the Labor Cabinet launched the KYSAFE mobile app! The app is a cost-free resource that can be downloaded from the Google Play Store as well as the Apple App Store. Users can watch videos, view a calendar of free training events in Kentucky, see a directory of all consultation managers, and connect to the KYSAFE website. The app also features a messaging function to report a hazard(s) or violation(s) with a photograph and provides the OSH Program with a drop pin location.

Fatality Task Force

In response to an alarming increase of fatalities in FFY 2019, the Labor Cabinet created a Fatality Prevention Task Force with leading industries and associations to create collaboration, build partnerships, and leverage resources. The Task Force is a result of the Labor Cabinet's effort to create ways to prevent fatalities and build partnerships in industries, associations, and communities. The task force met to discuss fatality rates, solutions, and opportunities. The work of the task force was well received and made a positive impact.

Field Operations Manual

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

and in subsequent years. The effective date for the revised FOM was January 1, 2020.