

# **FY 2021 Comprehensive Federal Annual Monitoring Evaluation (FAME) Report**

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



**Evaluation Period: October 1, 2020 – September 30, 2021**

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## I. Executive Summary

The purpose of this report is to assess the Kentucky State Plan's performance for Fiscal Year (FY) 2021. The FY 2021 FAME report is a comprehensive FAME report. This report is focused on the State Plan's overall enforcement program and its compliance assistance activities. This report is also based on the results of quarterly onsite monitoring visits, the State Office Annual Report (SOAR) for FY 2021, the State Activity Mandated Measures (SAMM) Report, as well as the State Indicator Report (SIR) reports ending September 30, 2021. A review of the SAMM data for FY 2021 indicated the Division of Occupational Safety and Health Compliance, within the Kentucky Labor Cabinet's Department of Workplace Standards, generally met or exceeded federal activity results. The State Plan continued to meet all criteria for an effective State Plan. These SAMM measures are identified and discussed in detail throughout the FAME report.

The Kentucky Occupational Safety and Health (KY OSH) Strategic Management Plan for FY 2021 to FY 2025 established three strategic goals: Goal 1, Reduce to reduce total fatalities in general industry and construction; Goal 2, change workplace culture to increase employer and employee awareness of, commitment to, and involvement in occupational safety and health; and Goal 3, Maximize the efficient and effective use of human and technological resources. FY 2021 is the first year of the 2021-2025 strategic plan and is a baseline year. KY OSH establishes the framework in an annual performance plan to accomplish the goals in its Strategic Management Plan. Workplace fatalities increased in FY 2021. A total of 158 fatalities were reported to KY OSH in FY 2021, up from 72 the previous year. In FY 2021, there were 15 fatalities in the construction industry, ten more than the same period last year. There were 32 fatalities in manufacturing, compared to 18 for the same period last year.

On June 21, 2021, OSHA issued an emergency temporary standard (ETS) to protect healthcare and healthcare support service workers from occupational exposure to COVID-19 in settings, where people with COVID-19 are reasonably expected to be present. KYSAFE presented, and subsequently posted on the KYSAFE website, a "COVID-19 Emergency Standard for Healthcare" webinar, as well as a "COVID-19 in Healthcare FAQ (Frequently Asked Questions)," specific to questions posed by Kentucky constituents. The Kentucky OSH Program staff also partnered in a statewide outreach with the Kentucky Department of Public Health. Both outreach efforts were extremely successful, over 850 participants attended the training on the first day it was presented. KYSAFE and the OSH Federal-State Coordinator's office also conducted a question-and-answer session via ZOOM with the Kentucky Association of Hospice and Palliative Care. Kentucky adopted verbatim OSHA's Emergency Temporary Standard for Healthcare with an effective date of July 20, 2021. While the federal standard expired on December 21, 2021, Kentucky's standard remains in effect, and it expires in June 2022.

The FY 2020 Follow-up FAME report included four findings and six observations. In FY 2021, one finding was completed and five observations from FY 2020 were closed. Four findings were continued in the FY 2021 report, and there was one new finding. As a result, there are a total of six findings, one new observation and one continued observation in FY 2021. In general, the findings address an extremely low number of programmed safety and health inspections; the significantly high average citation issuance lapse time for safety and health inspections; the failure to adopt OSHA's initial FY 2016 maximum and minimum penalty increase and subsequent annual increases; and the difficulty in maintaining correct case file documentation in retaliation files. Appendix A describes the new and continued findings and recommendations. Appendix B describes the observations and the related federal monitoring plans. Appendix C describes the status of previous findings with associated completed corrective actions.

Kentucky's Total Recordable Case (TRC) rate for all industries including state and local government for 2020 was 3.3, slightly higher than the 2019 rate of 3.2. These rates are 12% and 10% higher, respectively, than the national rates. The private sector TRC rate was 3.2 and the Days Away, Restricted, or Transferred (DART) rate was 2.0. The private sector national TRC rate was 2.7 and the DART rate was 1.7. These rates are 16% and 15% higher, respectively, than the national average.

## **II. State Plan Background**

### **A. Background**

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

KY OSH has the mission to prevent any detriment to the safety and health of all private sector and state and local government workers, arising out of exposure to harmful conditions or practices, at their places of work. KY OSH is comprised of three sections: The Division of Occupational Safety and Health (OSH) Compliance, the Division of Education and Training, and the OSH federal-state coordinator. The central office is in Frankfort, Kentucky with CSHOs working in Frankfort and from their homes throughout the State. A total of 115 positions were funded, under the 23(g) grant. At the end of September 2021, there were a total of 21 safety and 15 health compliance personnel on staff, with nine safety and two health vacancies. The approved benchmark for KY OSH is 37 compliance safety and health officers (CSHOs), of which 23 are safety and 14 are health. The worker population in Kentucky consists of approximately 1,822,251 workers, and nearly 120,103 employers.

Worker protection from retaliation related to occupational safety and health [KRS 338.121] is administered by KY OSH through the central office in Frankfort. There are two investigators, who report to the director, and/or assistant director of OSH Compliance. Worker retaliation cases found to be meritorious are prosecuted by the Office of General Counsel in the Kentucky Labor Cabinet.

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

The table below shows KY OSH's funding levels from FY 2017 through FY 2021.

FY 2017-2021 Funding History					
Fiscal Year	Federal Award (\$)	State Plan Match (\$)	100% State Funds (\$)	Total Funding (\$)	% State Plan Contribution
2021	3,707,800	3,707,800	6,158,210	13,753,810	73
2020	3,460,200	3,460,200	6,322,292	13,242,692	74
2019	3,393,300	3,393,300	5,054,127	11,832,727	71
2018	3,393,300	3,393,300	4,247,900	11,034,500	69
2017	3,393,300	3,393,300	4,028,200	10,814,800	69

[Reference: State Plan Grant]

## B. New Issues

House Bill (HB) 475 established that after July 1, 2021, neither the Kentucky OSH Standards Board, nor the Secretary of the Labor Cabinet shall adopt or promulgate any OSH regulation that is more stringent than the corresponding federal rule. HB 475 was delivered to Governor Beshear on March 16, 2021 and vetoed by the Governor on March 23, 2021. The legislators overrode the Governor's veto on March 29, 2021, and HB 475 became effective June 29, 2021. State specific OSH standards that were effective, prior to July 1, 2021, remain in effect; however, the future of those state-specific regulations is in jeopardy.

The KY OSH Program continued to experience and deal with the impact of the novel severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2) virus and coronavirus disease 2019 (COVID-19) in FY 2021. In fact, several FY 2021 data points, such as the number of fatalities, hospitalizations, and other metrics utilized by OSHA and the KY OSH Program were skewed, due to the pandemic. For example, there were ninety-three (93) fatality inspections in FY 2021, forty-four (44) were COVID-19 related fatality inspections. Additionally, the KYSAFE Program's outreach efforts were also significantly impacted by the pandemic.

## III. Assessment of State Plan Progress and Performance

### A. Data and Methodology

OSHA established a two-year cycle for the FAME process. FY 2021 is a comprehensive year and as such, OSHA conducted an on-site evaluation and case file review. A nine-person OSHA team, which included two whistleblower investigators, was assembled to conduct a full on-site case file review. The case file review was conducted at the Kentucky State Plan office during the timeframe of January 10-14, 2022. A total of 114 safety, health, and whistleblower inspection case files were reviewed. The safety and health inspection files were randomly selected from closed inspections conducted during the evaluation period October 1, 2020, through September 30, 2021. The Regional on-site review of the Consultation Program included an overall review of program management operations, a review of 40 (20 safety files, 20 health files) randomly selected consultation case files, and a review of the FY 2021 operations. The selected population included:

- Twenty (20) fatality case files;

- Ten Health Construction files;
- Ten Safety Construction files;
- Ten Health General Industry files;
- Ten Safety General Industry files;
- Fifteen COVID-19 files;
- Five Public Sector files;
- Ten Unprogrammed Activity complaint case files;
- Ten Unprogrammed Activity complaint case files;
- Fourteen (14) closed whistleblower case files;
- Twenty Health Consultation files; and
- Twenty Safety Consultation files.

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

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

Each State Activity Mandated Measures (SAMM) Report has an agreed-upon Further Review Level (FRL), which can be either a single number, or a range of numbers above and below the national average. State Plan SAMM data that falls outside the FRL triggers a closer look at the underlying performance of the mandatory activity. Appendix D presents the State Plan's FY 2021 State Activity Mandated Measures Report and includes the FRL for each measure.

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

### **1. PROGRAM ADMINISTRATION**

#### **a) Training**

The State Plan continues to operate a training and education program, which is identical to the federal training and education directive, TED 01-00-019, "Training Program for OSHA Compliance Personnel." The State Plan's training and development program for new hires starts with a daylong in-house orientation, which is focused on the Kentucky Labor Cabinet. Next, new hires register in Blackboard, to ensure their eligibility for OTI courses. The trainees are then assigned to work with senior compliance staff members, to obtain on-the-job training. Both Compliance Managers, in the safety and health divisions, oversee the training process, and they ensure that OTI training is scheduled in a timely manner and that trainees remain on track. Interviews with the managers revealed that the Kentucky continues to schedule OTI training, based on the priority established in the directive. The State's whistleblower manager and the two investigators receive the same training through OTI as the federal whistleblowers, except for the 1460 course, which addresses federal statutes not enforced by the State Plan. The Health

Compliance Manager monitors the training for the whistleblower staff, and it is currently progressing on schedule.

The pursuit of professional certifications, by its staff members, is also supported by Kentucky. As a result, several members of the KY OSH's compliance and consultation staff have professional certifications and advanced degrees. The State Plan continues to pay employees to take the certification preparation course, and reimburses employees that successfully complete the certification exams, KY OSH also fully funds the maintenance of courses, which eliminate various barriers associated with retention of the certifications. Additional details regarding this program are provided in the State Office Annual Report (SOAR) for FY2021.

KY OSH also continued to effectively conduct outreach training, by responding to employer's request for safety and health training. Safety and health training addressed several relevant topics, such as falls, heat illness prevention, trenching and excavation, as well as the COVID-19 Emergency Temporary Standard (ETS). During the National Trenching Stand-Down Week, the State worked cooperatively with Marathon Refinery, one of the State Plan's VPP sites, to conduct a comprehensive outreach event. The event featured examples of proper and improper trenching, simulated rescues performed by emergency medical personnel, and an unmanned aircraft system demonstration by the State.

#### **Statistical Training Information FY 2021**

Total number of training sessions	22
Total number of workers that received training	1,305

#### **b) OSHA Information System**

In FY 2013, KY OSH contracted with Assured Consulting Services, Inc. to develop an NCR replacement system. KY OSH began utilizing OSHA Express for consultation and compliance during FY 2013. In FY 2015, KY OSH deployed a customized interface that provides the State Plan's compliance and consultation data to OSHA's OIS system. KY OSH is currently transmitting data to OSHA. According to the State Plan, its system continues to offer several advanced capabilities, including report writing, time management, and program performance reports. Each division also has a specific functionality, and capabilities unique to their individual needs. KY OSH uses various OSHA Express reports to manage and track compliance, and consultation activities.

#### **c) State Internal Evaluation Program Report**

The KY OSH Division of Compliance, as well as the Division of Education and Training, have now developed and implemented an Internal Quality Assurance Program. The Internal Quality Assurance Program was modeled after OSHA's auditing program, with minor changes, due to state-specific issues. The internal self-evaluation program ensures that all aspects of the State Plan's safety and health program operate effectively. In FY 2019, the State Plan suspended the evaluations, due to a legal concern regarding Kentucky's Open Record Act that does not protect information contained in audits from release. The State Plan changed their process for conducting the evaluation to include having an attorney conduct the reviews and issuing a report to compliance. Chapter 6.III.B.1.c of the SPPM requires that State Plans must maintain documentation of their internal evaluations and make it available for review by federal

monitors. If OSHA receives requests for materials (i.e., Freedom of Information Act (FOIA) requests) that are not federal records, OSHA will refer the requester to the individual state.

**FY 2021-Observation-1:** KY OSH’s Division of OSH Compliance did not make available for review their FY 2022 State Internal Evaluation Program (SIEP) Audit as required by the State Plan Policies and Procedures Manual.

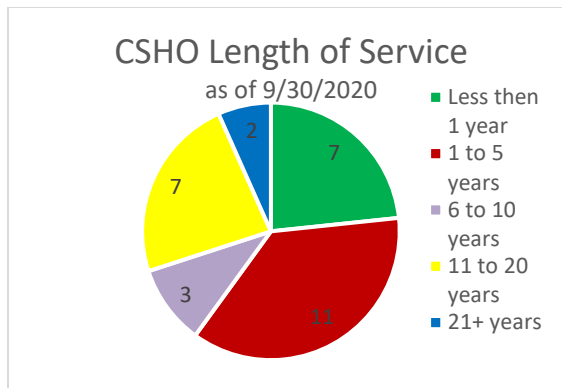
**Federal Monitoring Plan:** The OSHA Area Office will closely monitor and review the State Internal Evaluation Program to ensure KY OSH is performing audits of their internal operation, as required by the SPPM.

d) Staffing

During most of FY 2021, KY OSH operated below the staffing benchmark. KY OSH's safety staff was below the benchmark during all 12 months of this period, and the health was below for the benchmark level for 10 months. At the time of this review, KY OSH’s compliance staffing included 18 safety compliance officers and 13 health compliance officers. In September 2021, there were nine vacant safety compliance positions and two vacant health compliance positions. At the time of this evaluation, 23% of the compliance safety and health officers (CSHOs) have less than one year of experience and 87.5% of the supervisors have less than five years of experience.

		FY 2017	FY2019	FY2021
Safety	Benchmark	23	23	23
	Positions Allocated	27	27	27
	Positions Filled	21	17	18
	Vacancies	2	6	5
	Percent of Benchmarks Filled	91%	74%	78%
Health	Benchmark	14	14	14
	Positions Allocated	16	16	16
	Positions Filled	16	11	13
	Vacancies	(-2)	3	1
	Percent of Benchmarks Filled	113%	79%	93%

The Division of OSH Compliance has experienced difficulties recruiting and retaining safety and health professionals, primarily due to salary. The Commissioner of Workplace Standards remains committed to staffing its program at the appropriate level. Additionally, the Commissioner is currently working towards increasing salaries; however, these efforts may not be sufficient, due to State’s personnel class specifications and salary constraints. Nevertheless, the State Plan has worked aggressively to get to hire and retain staff.



## 2. ENFORCEMENT

### a) Complaints

Due to COVID-19, the OSH Program continued to process almost twice the normal number of complaints and referrals that usually came into the office. The Division of OSH Compliance processed 976 complaints in FY 2021, of which 607 were formal and 369 were informal. KY OSH received 543 reports of injuries involving hospitalizations and amputations that resulted in 241 inspections. According to the SAMM report, KY OSH responds timely to complaints. The average number of days to initiate a complaint inspection in FY 2021 was 27.61, which is below the negotiated standard of 30 days for serious hazards and 120 days for other-than-serious hazards. The average number of days to initiate a complaint investigation was 16.12, the negotiated goal is to be determined (TBD).

KY OSH's procedures for handling complaints and referrals alleging unsafe or unhealthful working conditions are very similar to those of OSHA. These procedures are covered in the KY OSH Compliance Field Operations Manual – Complaint and Referral Policies and Procedures. KRS 338.121 provides, "Any employee, or representative of employees, who believes that a violation of an occupational safety and health standard exists that threatens physical harm, or that an imminent danger exists, may request an inspection by giving notice to the commissioner of such violation or danger. Any such notice shall be reduced to writing, shall set forth with reasonable particularity the grounds for the notice, and shall be signed by employees or representative of employees. Any written and signed complaint received from a current employee is required to be inspected.

OSHA selected 10 complaint investigations, and 24 complaint inspections for review, during this evaluation of the KY OSH program. Approximately 66% of complaint inspections were found to be in compliance of the total inspections. [Reference: OIS Inspection Summary]

KY OSH has a centralized complaint and referral intake procedure, where complaints are transferred to an available safety or health compliance program manager or supervisor, depending on the nature of the complaint. The State Plan places emphasis on ensuring that each formal complaint is given attention, consistent with the complaint directive and the classification and severity/gravity of the alleged hazards. Current workers are always provided the opportunity to formalize their complaint. The source of the complaint, with those from current workers having priority, and the severity of the alleged hazards are primary considerations for program managers / supervisors, when they determine the appropriate action,

whether to handle the complaint with a letter to the employer, or by conducting an inspection. KY OSH considers electronic complaints obtained through the federal complaint system as formal complaints. After the receipt of an electronic complaint, a follow-up call to the complainant is usually made to clarify the complaint items or obtain more relevant information.

In FY 2021, 304 referrals, including 210 employer reported referrals, were processed by the State Plan, all of which were inspected. Referrals that are not employer reports of hospitalization, amputation, or loss of an eye, include referrals that are alleged hazards or violations of the OSH Act, which are typically received from other federal, state, or local agencies, the media, CSHOs, or an employer reporting an injury or illness. KY OSH evaluates the employer-reported referrals and determines, whether to conduct an inspection.

#### b) Fatalities

Workplace fatalities increased in FY 2021. A total of 158 fatalities were reported to KY OSH in FY 2021, up from 72 the previous year. SAMM 10 indicates that the State Plan responded to 89.66% of the reported events within one workday; however, State Plan data supports that the nine that appear as outliers were responded to timely.

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

According to fatality figures for FY 2021, the State Plan inspected 12 fatalities in the construction industry, which are nine more than the same period last year. The State Plan inspected 14 fatalities in the manufacturing industry, as compared with eight for the same period. KY OSH uses all available resources, including the Bureau of Labor Statistics rates to assess trending and appropriate targeting of resources, as well as their statistics and trends to focus their targeting and resources to prevent workplace fatalities. KY OSH has taken a proactive approach to help prevent injuries, illnesses, and fatalities in Kentucky's workplaces by establishing multiple performance goals with focused activities aimed at reducing injuries, illnesses, and fatalities in high-hazard industries.

The tables below detail the industries, where fatalities (investigated) occurred in FY 2020 and FY 2021.

<b>Fatalities By Industry</b>	<b>FY 2020</b>	<b>FY 2021</b>
Construction	3	12
Manufacturing	8	14

Transportation & Public Utilities	8	7
Retail Trade	3	4
Services	6	6
Agriculture, Forestry, Fishing	4	4
Government	1	8
Finance: Insurance & Real Est.	0	0
Other	8	38
<b>Total</b>	<b>41</b>	<b>93</b>

KY OSH's average penalty per inspection for fatality cases issued in FY 2021 was \$7,088.94.

KY OSH's procedures for investigation of occupational fatalities are effectively the same as OSHA's. The established KY OSH procedure for fatality investigations: KY OSH Compliance Field Operations Manual – Chapter VI, Fatality/Catastrophe Investigation (Updated 01/01/2020) is designed to ensure the quality of the fatality investigations. Investigations are normally initiated within one day of notification of the fatality. An attorney is assigned to each fatality to work closely with the supervisor and CSHO, when the case file is being prepared to ensure that the case documentation is legally sufficient. Fatality investigations are reviewed by at least three levels of management, including the supervisor, compliance program manager, and the Director of OSH Compliance to ensure that the causes of the accidents are identified, and a thorough investigation was completed. The Director of OSH Compliance signs all fatality related citations. Informal settlement agreements related to fatality cases also receive a higher level of review and approval.

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

#### c) Targeting and Programmed Inspection

According to inspection statistics reviewed, KY OSH conducted 864 inspections in FY 2021, of which only 36 were programmed (4.2%). Thirty-four (34) inspections were conducted in response to employers who failed to electronically submit their employer identification numbers (EINs) and injury and illness data, of which twenty-eight (28) were safety (3.2%) and six (6) (0.74%) were health. No programmed inspections were conducted in the construction industry (0.0%), which is considered a high hazard industry. Inspections conducted are associated with the State Plan's strategic goal to reduce construction fatalities. According to the SIR, 64.29% of private sector programmed safety inspections and 100% of private sector programmed health inspections had violations, and of those, 11% of safety inspections and 25% of health inspections had a serious, repeat, and/or willful violation (SRW) [Reference SIR Measure 2c].

The six (6) programmed health and 30 programmed safety inspections conducted during this period equates to 1.9% of the total health and 5.46% of the total safety inspections that were programmed. The low number of programmed health inspections conducted by Kentucky has

been an observation (a repeat issue) for four years, dating back to FY 2015. The State Plan attributes this to the number of formal complaints, which they are required to inspect, as well as the significant number of referrals, including employer reports of significant injuries.

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

Kentucky also participates in the federal NEP's, including Hexavalent Chromium, Lead and Trenching and Excavating. KY OSH is also working with several organizations to address combustible dust, health hazards associated with asbestos, and poisonings from chemical exposures.

The FRL for percent in-compliance for safety inspections (SAMM 9a) is +/- 20% of the three-year national average of 31.65% which equals a range of 25.32% to 37.98%. The Kentucky State Plan's percent in-compliance for safety is 48.03% which is substantially higher than the FRL. The FRL for percent in-compliance for health inspections is +/- 20% of the three-year national average of 40.64% which equals a range of 32.51% to 48.77%. The percent in-compliance for health is 67.35%, which also exceeded the FRL and warranted a closer look at the situation.

Explanation: The Kentucky State Plan's high in-compliance rates for both safety and health are attributed to five factors. First, the State Plan had a high staff turnover and a low number of experienced staff. Secondly, the State Plan is required to inspect any formal written complaint from a current employee resulting in a high in-compliance rate for complaints. Third, KY-OSH does not follow the focused inspection guidance for construction. Comprehensive inspections were conducted for all the contractors performing work at the site, resulting in a high number of in-compliance construction inspections. Given the combination of outreach activities conducted by the Division of OSH Education and Training with employers across the State, it is believed that many of the employers inspected had a history of consultation and training, as well as previous enforcement inspections, which resulted in a higher number of in-compliance inspections. Finally, the State Plan provided that the volume of COVID-19 inspections had an impact on the in-compliance rates.

**Finding FY 2021-1:** (formerly FY 2020-01, FY 2019-01, FY 2018-03, FY 2017-06, FY 2016-03, FY 2015-06, FY 2014-05, FY 2013-05, and FY 2011-06) KY OSH conducted a total of six programmed health inspections, during this period.

**Recommendation:** KY OSH should work with OSHA to negotiate a benchmark for programmed inspections and develop and implement a strategy to ensure a more representative number of programmed (planned) health inspections are conducted.

**Finding FY 2021-2:** (formerly FY 2020-01, FY 2019-02) KY OSH conducted a total of 30 programmed safety inspections, during this period.

**Recommendation:** KY OSH should work with OSHA to negotiate a benchmark for programmed inspections and develop and implement a strategy to ensure a more representative number of programmed (planned) safety inspections are conducted.

**FY 2021-OB-02:** (formerly FY 2020-OB-1 and FY 2019-OB-2) In FY 2021, the total in-compliance rate (SAMM 9) for all safety inspections was 48.03% and 67.35% for health inspections. The percentages for safety and health were well above the FRLs.

**Federal Monitoring Plan:** 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 in-compliance rates are within the acceptable FRL range.

#### d) Citations and Penalties

In FY 2021, the 864 inspections conducted resulted in an average of 1.34 serious, willful, repeat, and unclassified (SWRU) violations per inspection and 0.92 non-serious violations per inspection. KY OSH is slightly below the three-year national average and the FRL for SWRU, which is 1.42 to 2.14 (SAMM 5a), and is within the FRL for non-serious, which is 0.73 to 1.09. Serious violations are categorized as high, medium, or low severity serious, for penalty calculation purposes. In FY 2021, KY OSH issued 449 serious violations. Additionally, 25 repeat violations and 10 willful violations were issued. In addition, KY OSH was within the FRL, with regard to having a higher enforcement presence in the workplace at 1.18% and exceeded the three-year national average of 0.99% (SAMM 17). KY OSH conducted 550 safety and 314 health inspections, a total of 864, which was 166% of the planned inspection goal of 520 inspections, as compared to 762 inspections conducted in FY 2020. In FY 2021, safety inspections exceeded the KY OSH goal by 166, and health inspections exceeded the goal by 178.

There has been a 17.15% decrease in safety average lapse time and 7.04% decrease in health average lapse time from the prior onsite FAME review (FY 2019) to this review period. However, KY OSH has a significantly higher average lapse time from opening conference to citation issuance date than the FRL (SAMM 11) as referenced below:

Average Lapse Time	KY OSH	FRL
Safety	77.5 days	41.94 – 62.90
Health	93.87 days	52.88 – 79.32

The case files that were reviewed were adequately documented, with detailed narratives. The total in-compliance rate (SAMM 9) for all safety inspections in FY 2021 was 48.03% and 67.35% for health inspections. The percentages for safety and health were significantly higher than the three

year national average of 31.11% and 45.06%, as well as the FRL. The FRL is 25.32% to 37.98% for safety and 32.51% to 48.77% for health. KY OSH's average current penalty per serious violation in the private sector (SAMM 8: 1 -250+ workers) was \$3,892.85 in FY 2021. The Further Review Level (FRL) is  $\pm 25\%$  of the three-year national average (\$3,100.37). The FRL ranges from \$2,325.28 to \$3,875.46.

KY OSH's average current penalty for serious violations in the private sector (SAMM 8: 1-25 workers) was \$2,672.00 in FY 21. The Further Review Level (FRL) is  $\pm 25\%$  of the three-year national average (\$2,030.66). The FRL ranges from \$1,523.00 to \$2,538.33.

**Finding FY 2021-3:** (formerly FY 2020-03 and FY 2019-03) In FY 2021, KY OSH had a significantly high average citation issuance lapse time for safety and health inspections, which were outside the FRLs.

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

e) Abatement

Available procedures and inspection data indicate that KY OSH obtains adequate and timely abatement information and has processes in place to track employers, who are late in providing abatement information. Program managers use OSHA Express reports to identify files with abatements that are due and have not been received. The program managers discuss the files with the supervisors and determine if they are going to send an abatement Dunning letter or conduct a follow-up inspection. If a Dunning letter is sent and the employer fails to respond, a follow-up inspection is conducted.

KY OSH conducted six follow-up inspections, which accounted for .69% of the total inspections in Kentucky for FY 2021. Follow-up inspections are useful to ensure abatement if there is a problem with abatement verification. There is no established number or percentage for follow-up inspections, and the State Plan is following their FOM for follow-up inspections. According to the State Indicator Report (SIR) for FY 2021, the number of private sector inspections that have unabated violations greater than 60 calendar days for safety, and 90 calendar days for health, past the issuance date, was 16 for safety and six for health, respectively. The number of open, non-contested cases with abatement incomplete, in excess of 60 calendar days is 43. In addition, there were two valid unprogrammed activities handled as inspections, which have been open more than 60 days, and there were 22 valid complaints handled as an investigation (phone/fax), which were open more than 30 days.

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

f) Worker and Union Involvement

KY OSH's procedures for employee and union involvement are identical to OSHA's. Case file review disclosed that employees were included in 100% of fatality investigations, and other inspections. This determination was supported by SAMM measure 13.

### **3. REVIEW PROCEDURES**

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

KY OSH has procedures in place for conducting informal conferences, and proposing informal settlement agreements, and these procedures are followed by the managers and supervisors. According to the State Indicator Report (SIR), 0.87% of violations were vacated, and 0.44% of violations were reclassified, as a result of informal settlement agreements. The percent of penalty retained was 87.93%, which exceeds the national average of 70.04%. Case files reviewed had similar results, with very few violations noted as being vacated or reclassified, and some cases were resolved with some penalty reduction. Supervisors are required to prepare an informal conference memo documenting the meeting with the employer and their recommendations for settlement. Supervisors are also required to discuss all changes, and penalty reductions with the compliance program managers and get their approval for the settlement. The program managers sign the settlement memo that is provided to the employer. It was also noted that the case files contain a copy of the settlement document and that the affected parties were being informed of the changes resulting from the informal conference. Manager and supervisor interviews confirmed that employer commitments are being included in settlement documents and required for certain cases involving larger penalty reductions. No negative trends or problems with citation documentation have been noted.

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

In FY 2021, 26.05% of inspections with citations were contested. KY OSH is represented by the Labor Cabinet's Office of General Counsel. Attorneys in the Office of General Counsel represent the entire Labor Cabinet including KY OSH. The Office of General Counsel participates in organizations, such as the State OSHA Litigators Organization (SOLO), where state and federal high-profile cases, and cases with special legal issues, are shared and discussed. The attorneys work closely with compliance staff, during the preparation of fatality inspections and other high-profile inspections. No negative trends or problems with citation documentation have been identified.

The Kentucky Occupational Safety and Health Review Commission holds hearings and issues decisions on contested citations. The Review Commission is administratively attached to the Labor Cabinet. First-level contests are heard and ruled upon by hearing officers employed by the Kentucky Attorney General's Office.

During FY 2021, the State Plan did not receive any negative decisions by the Kentucky Occupational Safety and Health Review Commission. All decisions are reviewed by the Commissioner of Labor and senior management staff to determine if changes in policies and procedures need to be made.

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

In accordance with 29 CFR 1902, State Plans are required to adopt standards and federal program changes (FPCs) within a six-month timeframe. State Plans that do not adopt identical standards and procedures must establish requirements that are ALAE as the federal rules. State Plans also have the option to promulgate standards covering hazards not addressed by federal standards. During this period, with a few exceptions, KY OSH adopted all OSHA-initiated standards, which required action in a timely manner. One exception was the adoption of the

maximum penalty increase, which is still pending action by the State. Additionally, the Emergency Temporary Standard (ETS) for COVID-19 was adopted by Kentucky in a timely manner. The tables below provide a complete list of the federal directives and standards, which required action during this period.

**Table A**  
**Status of FY 2021 Federal Standards Adoption**

Standard	Response Due Date	State Plan Response Date	Intent to Adopt	Adopt Identical	Adoption Due Date	State Plan Adoption Date
<i>Adoption Required</i>						
Final Rule on the Implementation of the 2020 Annual Adjustment to Civil Penalties for Inflation 29 CFR 1903 (1/15/2020)	3/15/2020		Yes		7/15/2020	
Final Rule on the Beryllium Standard for General Industry 29 CFR 1910 (7/14/2020)	9/14/2020		Yes	Yes	1/14/2021	1/03/2021
Final Rule on the Beryllium Standard for Construction and Shipyards 29 CFR 1915, 1926 (8/31/2020)	10/30/2020		Yes	Yes	2/27/2021	9/29/2020
Final Rule on the Implementation of the 2021 Annual Adjustment to Civil Penalties for Inflation (1/15/2021)	3/16/2021		Yes			
Occupational Exposure to COVID-19; Healthcare Emergency Temporary Standard 29 CFR 1910 (6/21/2021)	7/6/2021	7/15/2021	Yes	No	07/06/2021	07/20/2021
<i>Adoption Encouraged</i>						
Final Rule on the Rules for Agency Practice and Procedures	9/28/2020		No	No	N/A	Kentucky has equivalent policies and

Standard	Response Due Date	State Plan Response Date	Intent to Adopt	Adopt Identical	Adoption Due Date	State Plan Adoption Date
Concerning OSHA Access to Employee Medical Records 29 CFR 1913 (7/30/2020)						procedures. Kentucky Revised Statutes 33.8.161
Final Rule on Cranes and Derricks in Construction: Railroad Roadway Work 29 CFR 1926 (9/15/2020)	11/14/2020		Yes	Yes	N/A	11/30/2021

**Table B**  
**Status of FY 2021 Federal Program Change (FPC) Adoption**  
*(May include any delinquent FPCs from earlier fiscal years)*

FPC Directive/Subject	Response Due Date	State Plan Response Date	Intent to Adopt	Adopt Identical	Adoption Due Date	State Plan Adoption Date
<b><i>Adoption Required</i></b>						
Amputations in Manufacturing Industries NEP CPL 03-00-022 (12/10/2019)	2/10/2020		No	N/A	N/A	N/A
Respirable Crystalline Silica NEP CPL 03-00-023 (2/4/2020)	4/4/2020		Yes	Yes		8/1/2020
<b><i>Equivalency Required</i></b>						
Field Operations Manual CPL 02-00-164 (4/14/2020)	6/14/2020		No	N/A	N/A	N/A
Inspection Procedures for the Respirable Crystalline Silica Standards CPL 02-02-080 (6/25/2020)	8/24/2020		Yes	Yes		8/24/2020
Site-Specific Targeting (SST) CPL 02-01-062 (12/14/2020)	2/12/2021	02/12/2021	No	N/A	N/A	N/A

FPC Directive/Subject	Response Due Date	State Plan Response Date	Intent to Adopt	Adopt Identical	Adoption Due Date	State Plan Adoption Date
Consultation Policies and Procedures Manual CSP 02-00-004 (3/19/2021)	5/19/2021	05/21/2021	Yes	No	N/A	10/01/2021
Inspection Procedures for the COVID-19 Emergency Temporary Standard CPL DIR 2021-02 (CPL 02) (6/28/2021)	7/13/2021	7/6/2021	Yes	No	N/A	7/6/2021
Compliance Directive for the Excavation Standard 29 CFR 1926, Subpart P CPL 02-00-165 (7/1/2021)	8/30/2021	1/21/2022	N/A	N/A	N/A	
Revised National Emphasis Program - Coronavirus Disease 2019 (COVID-19) CPL DIR 2021-03 (CPL 03) (7/7/2021)	7/22/2021	9/24/2021	No	No	N/A	N/A
<b><i>Adoption Encouraged</i></b>						
Voluntary Protection Programs Policies and Procedures Manual CSP 03-01-005 (1/30/2020)	3/30/2020		No	N/A	N/A	N/A
Electronic Case File System Procedures for the Whistleblower Protection Program CPL 02-03-009 (6/18/2020)	8/18/2020		No	N/A	N/A	N/A
National Emphasis Program - Coronavirus Disease 2019 (COVID-19) CPL DIR 2021-01 (CPL-03) (3/12/2021)	5/12/2021	5/12/2021	No	N/A	N/A	N/A

FPC Directive/Subject	Response Due Date	State Plan Response Date	Intent to Adopt	Adopt Identical	Adoption Due Date	State Plan Adoption Date
Communicating OSHA Fatality Inspection Procedures to a Victim's Family CPL 02-00-166 (7/7/2021)	09/7/2021	01/21/2022	No	N/A	N/A	N/A

#### \*Adoption of Maximum and Minimum Penalty Increases

In accordance with the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended by the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 on November 2, 2015, OSHA published a rule on July 1, 2016, raising its maximum and minimum penalties. See [81 FR 43429](#). As required by law, OSHA then increased penalties annually, most recently on January 14, 2022, according to the Consumer Price Index (CPI). See 2022 Annual Adjustments to OSHA Civil Penalties, available at <https://www.osha.gov/memos/2022-01-13/2022-annual-adjustments-osh-civil-penalties>; [87 FR 2328](#) (Jan. 14, 2022).

OSHA-approved State Plans must have penalty levels that are at least as effective (ALAE) as OSAs per Section 18(c)(2) of the Occupational Safety and Health Act; 29 CFR 1902.37(b)(12). State Plans were required to adopt the initial maximum penalty level increase and the subsequent annual increases. State Plans were required to submit their initial intent to adopt by September 1, 2016. The first deadline for adoption of an annual increase was January 1, 2017.

KY OSH is required to adopt maximum and minimum penalty increases that are ALAE as OSHA's most recent increase issued in January 2022, without further delay. OSHA recognizes that the State has needed to implement legislative changes before this adoption can be completed. However, we are now five years past the initial adoption deadline. A letter to KY OSH informing that failure to adopt these increases would very likely result in a FAME finding and requesting that the State Plan respond with an action plan for completing the necessary legislative changes, was sent on September 2, 2021. KY OSH responded on September 30, 2021.

This response included the following action plan, the Cabinet will seek reasonable State legislative amendments in the 2022 Kentucky General Assembly to amend Kentucky's OSH penalties. On March 1, 2022, House Bill 749 (HB 749) was introduced into the Kentucky legislature which would increase the maximum and minimum penalties and beginning August 1, 2022, adjust the maximum civil penalties by the percentage increase, if any, in the United States Average Consumer Price Index for All Urban Customers (CPI-U) as published by the Bureau of Labor Statistics of the United States Department of Labor, from its monthly average for the previous calendar year. Ultimately, the Bill did not pass.

**Finding FY 2021-4:** The Kentucky State Plan has failed to adopt OSHA's initial FY 2016 maximum and minimum penalty increase and subsequent annual penalty amount increases.

**Recommendation:** The Kentucky State Plan should continue to work with their state authorities to complete the legislative changes necessary to adopt the maximum and minimum penalty increase and subsequent annual increases to be ALAE as OSHA penalty levels.

## 5. VARIANCES

Kentucky currently has four permanent variances, and there are no temporary variances. All variances are properly documented and tracked by KY OSH. The State Plan did not receive request for any additional permanent or temporary variances in FY 2021.

## 6. STATE AND LOCAL GOVERNMENT WORKER PROGRAM

Kentucky State law [KRS 338 “Occupational Safety and Health of Employees”] establishes definitions for employer and worker, which do not exclude public employers and state and local government workers. Kentucky’s public employers and workers are subject to the same requirements, sanctions, and benefits as Kentucky’s private sector employers and workers. Consequently, Kentucky statutes, regulations, and policies make no distinction between state and local government and private sector employers and workers.

KY OSH conducted 74 state and local government sector inspections in FY 2021, which accounted for 8.10% of all inspections. [Reference: SAMM 6] The average citation lapse time for state and local government sector enforcement files is 84 days. [Reference OIS Scan Summary Report] The 2018 TCIR for the state and local government sector in Kentucky is 4.1, slightly above the national average of 3.9.

## 7. WHISTLEBLOWER PROGRAM

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

A comprehensive review of KY OSH’s workplace retaliation program was conducted during the FY 2021 FAME. There are two investigators for KY OSH located in the central office in Frankfort. The program is supervised and managed by the Assistant Director, Division of OSH Compliance.

The following chart reflects KY OSH’s percent meritorious and merit cases settle for retaliation complaints in FY 2017 through 2021:

Meritorious Complaints		Cases Settled	
FY 2021	20%	FY 2021	16%
FY 2020	3%	FY 2020	<1%
FY 2019	0	FY 2019	0
FY 2018	0	FY 2018	0
FY 2017	0	FY 2017	0

<b>FY 2021 Status</b>	<b>Number of Cases</b>	<b>Percentage</b>
<b>Merit</b>	4	4%
<b>Dismissed</b>	20	21%
<b>Settlement</b>	15	16%
<b>Withdrawal</b>	6	6%
<b>Administratively Closed</b>	51	53%

Based on the data provided, KY OSH received a total of 97 complaints, 54 of which were docketed for investigation and 43 administratively closed. Of the 54 complaints, (46) were docketed, ten (10) cases docketed for investigation in FY 2021 were resolved; one (1) case was withdrawn, one (1) case reached an agency facilitated settlement agreement, three (3) cases reached an outside settlement agreement, five (5) cases were determined to have no merit, and six were withdrawn by the complainant.

According to the SAMM, the average time to complete investigations was 297 days. KY OSH investigators conduct investigations, according to KY OSH Discrimination Field Operations Manual. This manual has many similarities to the federal Whistleblower Investigations Manual, but the following differences are noted:

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

Based upon the case file review, deficiencies were identified and are addressed in the finding below. Of the 14 files reviewed, one file contained a complete activity log and more than half did not have a log. The files reviewed did not have documentation such as but not limited to an activity log or memo to file of contact with the complainant to screen the complaint. Finally, the dates entered into IMIS were not consistent with the dates on the letters of correspondence.

**Finding FY 2021-5:** The case file review identified eight cases, where KY OSH failed to acquire and/or maintain correct retaliation case file documentation: to wit, (1) no case activity logs or incomplete logs, (2) insufficient/inaccurate correspondence tracking information (Specifically screening documentation between complainant and Investigator was not present), and (3) erroneous IMIS entries.

**Recommendation:** KY OSH should ensure all required documentation of the investigation is complete and included in the file to ensure the accuracy of IMIS data entries.

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

During this evaluation period, the Region received one CASPA, regarding the Division of OSH Compliance. This CASPA is not considered a significant CASPA and is currently under investigation.

## **9. VOLUNTARY COMPLIANCE PROGRAM**

KY OSH's and its Construction Partnership Program (CPP) differ from OSHA's Strategic Partnership Program; however, it is effectively managed. In FY 2021, the State Plan had 14 site-based Construction Partnership sites. These sites are frequently visited and receive an audit, on at least a quarterly basis. KY OSH has developed written procedures, which address the operation of the program; however, the OSH Partnership Program Manager has the discretion to deviate from the policy in appropriate situations. In addition to site-based Construction Partnerships, the State Plan is also in two training-based partnerships with Eastern Kentucky University (EKU) and the State chapter of National Electrical Contractors Association (NECA). These agreements are like OSHA's Alliances; however, KY OSH does not have an official Alliance Program.

KY OSH has 20 Volunteer Star Program (VPP) sites, including five (5) approved for participation in FY 2021. The program is like the federal VPP; however, KY OSH's program is limited to participation at the Star level. KY OSH continues to effectively manage the growth of its program by primarily limiting participation to employers in the manufacturing sectors. The State Plan has also established appropriate guidelines, which are equivalent to the OSHA VPP directive, CSP 03-01-003. The directive effectively addresses enforcement activities at VPP sites, such as fatality investigations. Additionally, incentive programs are fully assessed, during the onsite evaluations conducted by KY OSH, and it is documented on the VPP worksite. Interviews with the program managers responsible for the CPP and VPP revealed that the programs are closely monitored, and sites that experience enforcement action are thoroughly evaluated to determine if continued participation in a cooperative program is appropriate.

## **10. PRIVATE SECTOR 23(g) ON-SITE CONSULTATION PROGRAM**

The Kentucky Consultation Program is administered by the Kentucky Labor Cabinet, Department of Workplace Standards, Division of Occupational Safety and Health Education and Training. The Region must conduct an onsite review, at least every two years, to assess the effectiveness of the Program's system for the delivery of consultative services, particularly in relation to mandated program elements not covered by the Mandated Activities Report for Consultation (MARC). KYOSH has adopted OSHA's Consultation Policies and Procedures Manual (CPPM), and therefore their program was reviewed for compliance with the CPPM. The Regional on-site review included an overall review of program management operations, a review of 40 (20 safety files, 20 health files) randomly selected consultation case files, and a review of the FY 2021 operations.

### **Program Management**

#### **Visits**

During FY 2021, the Program conducted 204 initial visits, 0 training and assistance visits, and 0 follow-up visits. Hazards identified and eliminated, as a result of consultative visits totaled 1,875. Of these 1,380 were serious hazards and 495 were other-than-serious hazards.

### **Mandated Activities Report for Consultation (MARC) - FY 2021 Summary**

<b>Measure</b>		<b>Reference Std.</b>
1. Percent of Initial Visits in High-Hazard Establishments	99.02%	Not < 90%
2. Percent of Initial Visits to Smaller Businesses	97.55%	Not < 90%
3. Visits Where Consultants Conferred with Employees	100%	Not < 90%
4(a) Percent of Serious Hazards Verified Corrected in a Timely Manner	100%	100%
4(b) Percent of Serious Hazards Not Verified in a Timely Manner	0%	0%
4(c) Percent of Serious Hazards Referred to Enforcement	0%	0%
5. Number of Uncorrected Serious Hazards with Correction Date > 90 Days Past Due	5%**	0%

\*\*The 5% was attributed to a visit that was placed on hold to accommodate a Compliance visit that took precedence.

### **Hiring and Vacancies**

Kentucky's 23(g) grant application articulates the following Division of OSH Education and Training positions: one (1) director; one (1) assistant director; one (1) safety program manager; one (1) health program manager; one (1) partnership program manager; one (1) VPP administrator; one (1) CPP administrator; one SHARP administrator; nine (9) safety consultants; nine (9) industrial hygienist consultants; five (5) partnership consultants, and six (6) support staff.

Based on a personnel snapshot taken September 30, 2021, there was one (1) Assistant Director, one (1) safety program manager, five (5) safety consultants, and three (3) industrial hygienists allotted positions vacant. The positions were not necessarily vacant throughout the entire review period. The division maintained ample staffing throughout the review period with minimal vacancies.

There were no issues found with this category.

### **Training**

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

There were no issues found in this category.

### **Accompanied Visits**

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

There were no issues found in this category.

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

For this category (request to delivery of service), there is not an established required period. During this review period, the time from the request until the delivery of services averaged 247 days.

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

There were no issues found in this category.

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

As per the Directive Number CSP 02-00-02 "Consultation Policies and Procedures Manual" (CPPM), Chapter 6. I. A requires that the written reports must be sent to the employer, as soon as possible, but not longer than 20 calendar days after the closing conference. During this review period, the time between the closing and the issuance of the reports to the employers averaged 11 calendar days.

There were no issues found with this category.

### **Management Reports Utilized**

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

The Assistant Director runs weekly reports related to open abatements, open requests, and open reports. These reports are reviewed and shared with the safety and health managers and their respective consultants for tracking purposes.

The Assistant Director submitted quarterly progress reports as required and discussed accomplishments in each of the Annual Performance Goals with the Regional Consultation Program Manager.

There were no issues found with this category.

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

The Program has succeeded in maintaining a Safety and Health Achievement Recognition Program (SHARP). At the end of the review period, KY SHARP has 14 participants. The Program identifies potential candidates through various means. The Safety and Health Consultants report back to the SHARP Administrator, when they find a company that appears to be a viable candidate. The SHARP Administrator recruits companies for the SHARP program by contacting these identified companies, explaining the program, and promoting it.

There were no issues found with this category.

### **Marketing**

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

- Bulk emails to all past training participants;
- Bulk emails to all Governor's Safety and Health Conference participants;
- Annual Governor's Safety and Health Conference;
- Labor Cabinet Website;
- Face to Face Heat Stress Campaign;
- Partnership brochures; and
- KYSAFE mobile app.

There were no issues found with this category.

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

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

### **File Selection**

A total of 40 files (20 safety files, 20 health files) were randomly selected for review by both federal monitors. The files represented surveys, related to OSHA's initiatives, OSHA's Strategic Plan, and employers participating in SHARP.

### **File Review**

#### **SAFETY:**

Hazards listed in the consultant's reports were consistent with those expected for the industries they visited. The consultants did a good job at capturing the hazards in photos, and

no hazards were observed in the photos that were not addressed. Most case files were found to contain field notes of some sort. Most of the notes were written in shorthand, and in some cases, they were unable to be interpreted by the reviewer. There was little information about the actual hazard. Most notes appeared to be written as a reminder to the consultant, and there was little information captured that would support the basis for the hazard being addressed. However, detailed information was provided to the employer in the written report, which allowed the employer to properly identify and abate the hazards.

All files had diary sheets. Most of the diary sheets were in the form of a print screen of the communication tab. The print screen caused information not to be included in the printout. Overall, the diary sheet or communications tab could be used to capture more information than is currently being captured.

All the files reviewed were found to have the evaluation of the employer's safety and health program using the OSHA Form 33. The OSHA Form 33 was found to have comments for all evaluations resulting in a 2 or less. Although it is understood that the consultants provide information and assistance to the employers verbally onsite, the comments documented on the Form 33 were generic and failed to give specific information to the employer, when recommendations were made to implement a specific program or policy. Because the OSHA Form 33 is given to the employer to use in improving their program, the form would be more effective, if the comments were more specific as to what programs, policies, or procedures need to be improved or implemented and reiterates what was discussed onsite.

Files were well maintained and included reports to the employer and abatement information. Most of the files listed the "Source of Request" as "Other" and there was no indication in the file as to how the employer came to make the request. It is suggested that the "Coverage Text" box be used to explain in cases where the source of request is "other."

Although reports to the employers were generic and in the form of a letter, they were thorough and included appendices with specific information, such as hazards found, program recommendations, a brief description of the workplace and working conditions, and contact information for the consultant but did not mention interim measures. However, interim measures were covered in the closing conference and during the walk-around. Time periods for abatement of hazards were appropriate. Tracking of abatement was conducted, and documentation of abatement was contained in the files. Adequate feedback such as abatement reports and emails were included in the case files. A couple of files reviewed were granted abatement extensions. Neither of the two (2) listed the steps taken to ensure employee safety during the extended abatement period in their requests and nothing was found in the file to indicate that the recommended interim abatement would be used to keep the employees safe while correcting the hazard. Another file was found to have abatement that was accepted when it was stated by the employer that it had not been abated. The employer was notified of a hazardous condition of the standard for compressed gas cylinders that were not provided with valve protection caps. The Employer's Report of Action Taken states, "the tanks don't have protective caps, but have been chained to the wall", and "Had meeting with employees involved". There is no indication in the field notes that the abatement was not accepted, however, there is an email between the consultant and KY OSH management that stated the abatement was accepted. This was an isolated occurrence that was not seen in other files. The program has shown improvement in the handling of abatement from previous years, and suggestions have been provided to the program for further improvement.

Industries visited, included Road and Bridge safety, device manufacturing, construction, sawmills, tire sales and installation shop, fabrication facilities, food packaging facilities, building materials sales and delivery, and machine shops.

During this review period, the program identified a variety of hazards related to lockout/tagout; electrical; fall protection; permit required confined space; PPE written assessment; compressed air; compressed gas; means of egress and exit signs; fire protection; powered industrial trucks; machine guarding; and housekeeping. In the cases of required programs, companies needed to either improve the current program or develop one.

## **HEALTH:**

The health portion of the Kentucky Consultation program review included a review of twenty health consultation files. The reviewed files demonstrated consultation services were offered to and utilized by a variety of different facilities across the State. Several hazardous conditions were identified and addressed in the health files, which demonstrates that the health consultants have a high level of hazard recognition.

As the consultation program has transitioned into a digital filing system, it was noted that files and the corresponding data were properly managed. The electronic files were easily accessible and presented in a manner that was easy to review.

There was consistent use of the communication log (diary sheet) in all files reviewed. The log included details on the type of communication that took place (phone, email, etc.) which was helpful. Several files included very detailed information about the visits and phone calls on the log, while others were more abbreviated.

A review of industrial hygiene sampling techniques, sampling equipment used, and sampling results showed that proper sampling equipment and sampling techniques are being utilized. Equipment is calibrated properly before and after use and the calibration is documented as required on the appropriate sampling forms. Consultants visited numerous industries and sampling reflected proper hazard identification, through the variety of sampling conducted, including but not limited to noise, formaldehyde, lead, and mold. All sampling was documented on the appropriate sampling forms and included in each file. Sampling strategies were also documented in the field notes of some files, which added a better description of the potentially hazardous conditions. Sampling was full-shift sampling and spot checks were annotated. Overall, the health program has demonstrated excellent sampling techniques and reporting of those hazards to the employers.

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

An OSHA Form 33 was found in all files requiring a review of the employer's Safety and Health program. In five of the files reviewed Form 33 comments were not provided for the elements scored as three (3); however, comments were provided for elements scored at a two (2) or below. In those files, the employer was provided very detailed comments that correlated those elements to the hazards found during the visit.

Abatement extensions were requested in writing, with the employer documenting the interim protections that were in place. Most of the files included the documentation in the notes, Written Report to Employer (WRE), and photographs that showed the abated hazards. The program is identifying hazards and getting appropriate abatement from the employers; thereby effectively removing employees from hazardous conditions.

The written reports used by consultants provided detailed information. Information including, but not limited to, the identity of the consultants who performed the visit, TCRC/DART rate calculations that compared the facility's data to the industry average, sampling data, and appropriate actions the employer needed to take were all documented in each written report. Of the 20 files reviewed, all written reports to the employers were processed timely, within 20 days. Overall, the reports sent were informative and useful to the employer.

There were no findings or recommendations.

### **Overall Effectiveness**

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

## Appendix A – New and Continued Findings and Recommendations

### Kentucky FY 2021 Comprehensive FAME Report

FY 2021-#	Finding	Recommendation	FY 20XX-# or FY 20XX-OB-#
FY 2021-1	KY OSH conducted a total of six (0.69%) out of 864 programmed health inspections during this period.	KY OSH should work with OSHA to negotiate a benchmark for programmed inspections and develop and implement a strategy to ensure a more representative number of programmed (planned) health inspections are conducted.	FY 2020-01, FY 2019-01, FY 2018-03, FY 2017-06, FY 2016-03, FY 2015-06, FY 2014-05, FY 2013-05, and FY 2011-06
FY 2021-2	KY OSH conducted a total of 30 (3.4%) out of 864 programmed safety inspections during this period.	KY OSH should work with OSHA to negotiate a benchmark for programmed inspections and develop and implement a strategy to ensure a more representative number of programmed (planned) safety inspections are conducted.	FY 2020-02 and FY 2019-02
FY 2021-3	In FY 2019 and FY 2020, KY OSH had significantly high average citation issuance lapse times for safety and health inspections (SAMM 11a and 11b), which were outside the FRLs.	KY OSH should develop and implement a process to reduce the average lapse time for safety and health inspections to be within the acceptable FRL range.	FY 2020-03 and FY 2019-03
FY 2021-4	The Kentucky State Plan has failed to adopt OSHA's initial FY 2016 maximum and minimum penalty increase and subsequent annual penalty amount increases.	The Kentucky State Plan should continue to work with their state authorities to complete the legislative changes necessary to adopt the maximum and minimum penalty increase and subsequent annual increases to be at least as effective as OSHA penalty levels.	
FY 2021-5	The case file review identified eight 8 out of 14 (57%) cases, where KY OSH failed to acquire and/or maintain correct retaliation case file documentation: to wit, (1) no case activity logs or incomplete logs, (2) insufficient/inaccurate correspondence tracking information (Specifically screening documentation between CP and Investigator was not present in the majority of files reviewed), and (3) erroneous IMIS entries.	KY OSH should ensure all required documentation of the investigation is complete and included in the file to ensure the accuracy of IMIS data entries.	FY 2020-04 and FY 2019-04

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

### Kentucky FY 2021 Comprehensive FAME Report

Observation # FY 2021-OB-#	Observation# FY 202XX-OB- # or FY 20XX-#	Observation	Federal Monitoring Plan	Current Status
	FY 2019-OB-01	KY OSH conducted 725 inspections, which was 89.5% of the planned inspection goal of 810 inspections.	The OSHA Area Office will closely monitor and review the SAMM and other available data with the State on a quarterly basis to ensure KY OSH is on target to meet the inspection goals established in the Grant.	Closed
	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 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.	Closed
	FY 2020-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 findings without input/approval from a supervisor.	During next year's FAME, OSHA will review a sample of KY OSH's retaliation investigation case files to determine if this issue has been resolved	Closed
	FY 2020-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.	Closed
	FY 2020-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	The OSHA Area Office will closely monitor incoming complaints to ensure proper referrals to OSHA.	Closed

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

### Kentucky FY 2021 Comprehensive FAME Report

		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.		
	FY 2020-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 KY OSH's consultation files to ensure employer request for abatement extensions contain interim measures for all hazards listed in the request.	Closed
FY 2021-OB-1		KY OSH's Division of OSH Compliance did not make available for review their FY 2022 State Internal Evaluation Program (SIEP) Audit as required by the State Plan Policies and Procedures Manual.	Federal Monitoring Plan: The OSHA Area Office will closely monitor and review the Internal Evaluation Program (SIEP) Audit State to ensure KY OSH is performing audits of their internal operation as required by the SPPM.	New
FY 2021-OB-2	FY 2020-OB-1 and FY 2019-OB-2	In FY 2021, the total in-compliance rate (SAMM 9) for all safety inspections was 48.03% and 67.35% for health inspections. The in-compliance percentage for safety and health was well above the FRL. This observation is being continued.	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 in-compliance rates are within the acceptable FRL range.	Continued

## Appendix C - Status of FY 2020 Findings and Recommendations

### FY 2021 Kentucky Comprehensive FAME Report

FY 2021-#	Finding	Recommendation	State Plan Corrective Action	Completion Date (if Applicable)	Current Status (and Date if Item is Not Completed)
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.	Kentucky has a strategy in place to ensure programmed inspections are conducted. However, the SARS-CoV-2 pandemic had a profound effect on the Kentucky OSH Program during the October 1, 2019-September 30, 2021, FAME review period. Due to the pandemic, all programmed inspection activity was halted for six (6) months of the review period. An increase in FY 2021 is not likely due to the ongoing pandemic; however, Kentucky will attempt to perform more programmed inspections.	Not Applicable	Open
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.	Kentucky has a strategy in place to ensure programmed inspections are conducted. However, the SARS-CoV-2 pandemic had a profound effect on the Kentucky OSH Program during the October 1, 2019-September 30, 2021, FAME review period. Due to the pandemic, all programmed inspection activity was halted for six (6) months of the review period. An increase in FY 2021 is not likely due to the ongoing pandemic; however, Kentucky will attempt to perform more programmed inspections.	Not Applicable	Open

## Appendix C - Status of FY 2020 Findings and Recommendations

### FY 2021 Kentucky Comprehensive FAME Report

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 reduce lapse times to the national average.	Once again, the SARS-CoV-2 pandemic had a profound effect on the Kentucky OSH Program during the October 1, 2019-September 30, 2021, FAME review period. During the pandemic, an overwhelming portion of all inspection activity was conducted virtually. Virtual inspection activities were not efficient, and in fact contributed to lapse time issues. Decreasing lapse time is one (1) of the State's top priorities and Kentucky will continue working to achieve this goal.	Not Applicable	Open
FY 2020-04	In FY 2019, the case file review identified a number of whistleblower protection cases, where KY OSH failed to acquire and/or maintain correct case file documentation in retaliation files: to wit, (1) lack of determination letters or unsigned determination letters, (2) no case activity logs, (3) insufficient/inaccurate correspondence tracking information, (4) erroneous IMIS entries.	KY OSH should establish procedures by which the Retaliation manager routinely reviews case files and online systems to ensure a thorough investigation was conducted, ensure that case file documentation is being retained in accordance with established retention policy, and ensure the accuracy of IMIS data entries.	During the FY 2019 FAME, Kentucky provided OSHA with information and examples of implemented discrimination program changes that implemented OSHA's suggestions.	Not Applicable	Open

## Appendix D - FY 2021 State Activity Mandated Measures (SAMM) Report

Kentucky FY 2021 Comprehensive FAME Report

### U.S. Department of Labor

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

State Plan: SAMM Number	State Plan: SAMM Name	State Plan: Data	FY 2021 Further Review Level	FY 2021 Notes
1a	Average number of work days to initiate complaint inspections (state formula)	42.78	30 days for serious hazards; 120 days for other-than-serious hazards	The further review level is negotiated by OSHA and the State Plan.
1b	Average number of work days to initiate complaint inspections (federal formula)	27.61	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)	16.40	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)	16.12	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)	98.61%	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.
5a	Average number of violations per inspection with violations by violation type	1.34	+/- 20% of 1.78	The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from 1.42 to 2.14 for SWRU.
5b	Average number of violations per	0.92	+/- 20% of 0.91	The further review level is based on a three-year

## Appendix D - FY 2021 State Activity Mandated Measures (SAMM) Report

Kentucky FY 2021 Comprehensive FAME Report

### U.S. Department of Labor

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

State Plan: SAMM Number	State Plan: SAMM Name	State Plan: Data	FY 2021 Further Review Level	FY 2021 Notes
	inspection with violations by violation type (other)			national average. The range of acceptable data not requiring further review is from 0.73 to 1.09 for OTS.
6	Percent of total inspections in state and local government workplaces	8.10%	+/- 5% of 6.03%	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 5.72% to 6.33%.
7a	Planned v. actual inspections (health)	315	+/- 5% of 142	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 134.90 to 149.10 for health.
7b	Planned v. actual inspections (health)	315	+/- 5% of 142	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 134.90 to 149.10 for health.
8	Average current serious penalty in private sector - total (1 to greater than 250 workers)	\$3,892.85	+/- 25% of \$3,100.37	The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from \$2,325.28 to \$3,875.46.
	a. Average current serious penalty in private sector (1-25 workers)	\$2,672.00	+/- 25% of \$2,030.66	The further review level is based on a three-year national average. The range of acceptable data not

## Appendix D - FY 2021 State Activity Mandated Measures (SAMM) Report

Kentucky FY 2021 Comprehensive FAME Report

### U.S. Department of Labor

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

State Plan: SAMM Number	State Plan: SAMM Name	State Plan: Data	FY 2021 Further Review Level	FY 2021 Notes
				requiring further review is from \$1,523.00 to \$2,538.33.
	<b>b.</b> Average current serious penalty in private sector (26-100 workers)	\$4,081.09	+/- 25% of \$3,632.26	The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from \$2,724.20 to \$4,540.33.
	<b>c.</b> Average current serious penalty in private sector (101-250 workers)	\$4,171.82	+/- 25% of \$5,320.16	The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from \$3,990.12 to \$6,650.20.
	<b>d.</b> Average current serious penalty in private sector (greater than 250 workers)	\$5,208.39	+/- 25% of \$6,575.70	The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from \$4,931.78 to \$8,219.63.
9a	Percent in-compliance (safety)	48.03%	+/- 20% of 31.65%	The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from 25.32% to 37.98% for safety.
9b	Percent in compliance (health)	67.35%	+/- 20% of 40.64%	The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from 32.51% to 48.77% for health.
10	Percent of work-related fatalities responded to in one workday	89.66%	100%	The further review level is fixed for all State Plans.
11a	Average lapse time	77.50	+/- 20% of	The further review level is

## Appendix D - FY 2021 State Activity Mandated Measures (SAMM) Report

Kentucky FY 2021 Comprehensive FAME Report

### U.S. Department of Labor

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

State Plan: SAMM Number	State Plan: SAMM Name	State Plan: Data	FY 2021 Further Review Level	FY 2021 Notes
	(safety)		52.42	based on a three-year national average. The range of acceptable data not requiring further review is from 41.94 to 62.90 for safety.
11b	Average lapse time (health)	93.87	+/- 20% of 66.10	The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from 52.88 to 79.32 for health.
12	Percent penalty retained	90.78%	+/- 15% of 69.08%	The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from 58.72% to 79.44%.
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	9%	100%	The further review level is fixed for all State Plans.
15	Percent of 11(c) complaints that are meritorious	44%	+/- 20% of 20%	The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from 16% to 24%.
16	Average number of calendar days to complete an 11(c) investigation	304	90	The further review level is fixed for all State Plans.

## Appendix D - FY 2021 State Activity Mandated Measures (SAMM) Report

### Kentucky FY 2021 Comprehensive FAME Report

#### U.S. Department of Labor

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

State Plan: SAMM Number	State Plan: SAMM Name	State Plan: Data	FY 2021 Further Review Level	FY 2021 Notes
17	Percent of enforcement presence	1.18%	+/- 25% of 0.99%	The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from 0.74% to 1.24%.

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 8, 2021, as part of OSHA's official end-of-year data run.