# FY 2024 Follow-up Federal Annual Monitoring Evaluation (FAME) Report

**Kentucky Education and Labor Cabinet**

**Department of Workplace Standards**

**Occupational Safety and Health Compliance**

**Occupational Safety and Health Training and Education**



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**Prepared by:**

**U. S. Department of Labor**

**Occupational Safety and Health Administration**

**Birmingham Regional Office**

**Birmingham, Alabama**

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## Executive Summary

The purpose of this report is to assess the activities of the Kentucky Occupational Safety and Health program (“KY OSH”) for Fiscal Year (FY) 2024 regarding activities mandated by the Occupational Safety and Health Administration (OSHA). In addition, this report gauges the State Plan’s progress in resolving any outstanding findings and observations from the previous FY 2023 Comprehensive Federal Annual Monitoring Evaluation (FAME) Report.

The State Plan had many successes and successful initiatives which occurred in FY 2024 to lower work related injuries and illnesses in Kentucky:

* KY OSH Consultation, also known as KYSAFE, identified 3,138 serious hazards that exposed 49,234 employees and saved employers up to $21,959,000 in potential penalties. KY OSH also identified 1,015 other than serious hazards that exposed 20,450 employees and saved employers $2,030,000 in potential penalties.
* The KYSAFE Partnership Branch maintained 19 VPP sites.
* KY OSH continued to focus on the construction industry by promoting their Construction Partnership Program (CPP). There were 29 active KYSAFE CPP sites in FY 2024 with a total project cost of approximately $12 billion. There were 61 site audits with CPP sites in FY 2024 affecting 9,023 employees.
* KYSAFE had 14 active SHARP sites in FY 2024.
* KYSAFE partnership staff conducted 12 excavation interventions in FY 2024.
* In a continuing effort to address staff recruitment and retention, a salary increase was implemented in FY 2024 for all OSH compliance officers and KY OSH consultants.
* In FY 2024, KYSAFE conducted 43 face-to-face training courses in response to employer specific requests that reached 1,494 attendees. Thirty-six training sessions were presented at five Population Center training seminars; 728 participants attended the training.

KY OSH continually worked to make progress on findings and observations from the FY23 Comprehensive FAME. Employee turnover rates, high volume of complaints and blocks in passing legislation to increase penalties were challenges the program continued to face in FY 2024.

The FY 2024 follow-up FAME report contains three findings (two continued, one new) and zero observations. Zero findings were completed, one observation was closed, and one observation was converted to a finding.

## State Plan Background

The KY OSH Program operates through the Kentucky Education and Labor Cabinet’s Department of Workplace Standards. The Kentucky State Plan received initial approval on July 31, 1973, and final approval on June 13, 1985.

The Secretary of the Education and Labor Cabinet, Jamie Link, is the State Plan designee. The Kentucky Occupational Safety and Health Program is administered by Kimberlee Perry, Commissioner and Chuck Stribling, Deputy Commissioner.

Kentucky OSH’s statutory authority is established in Kentucky Revised Statutes (KRS) Chapter 338. Under these statutes, KY OSH conducts workplace inspections, issues citations and penalties, and provides administrative and judicial review processes for employers seeking to contest citations and/or penalties. Kentucky law prohibits employers from retaliating against workers, who exercise their rights established by KY OSH’s statutes, and authorizes the investigation and prosecution of complaints of workplace retaliation. Kentucky OSH also investigates private, state and local government workplace retaliation cases under a provision analogous to Section 11(c). The primary components of the Kentucky Occupational Safety and Health Program include: the Division of Occupational Safety and Health Compliance; the Division of Occupational Safety and Health Education and Training, referred to as KYSAFE; the Federal-State Coordinator’s Office; the OSH Standards Board and the OSH Review Commission.

KY OSH program managers and OSH compliance supervisors are KY OSH’s first-line supervisors. At full staffing, KY OSH has 23 safety compliance officers, 14 health compliance officers and two OSH discrimination investigators. In FY 2024, KY OSH covered approximately 1,895,215 workers and 149,619 business establishments in the State.

The Kentucky State Plan applies to all employers, employees, and places of employment throughout the Commonwealth except the following: (a) Employees of the United States government; and (b) Employers, employees and places of employment over which federal agencies other than the Occupational Safety and Health Administration of the United States Department of Labor exercise statutory authority to prescribe or enforce standards or regulations affecting occupational safety and health.

In FY 2024, KY OSH’s initial federal funding was $4,138,900. Due to the fund reduction of all OSHA 23(g) programs, the federal award was decreased by $149,000 in July. KY OSH received a one-time only award of $44,815 in August, which resulted in the total federal portion to be $4,064,715. KY OSH matched the federal portion and added an additional $7,528,726 in 100% state funds. KY OSH reported final expenditures to be $10,438,517.06 ($4,064,715 federal, $4,064,715 match, and $2,309,087.06 overmatch – 100% state).

**New Issues**

None.

## Assessment of State Plan Progress and Performance

### Data and Methodology

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

* State Activity Mandated Measures (SAMM) Report
* State Information Report (SIR)
* Mandated Activities Report for Consultation (MARC)
* State OSHA Annual Report (SOAR)
* State Plan Annual Performance Plan (APP)
* State Plan Grant Application
* Quarterly monitoring meetings between OSHA and the State Plan

### Findings and Observations

**Finding FY 2024-01** (Formerly FY 2023-01, FY 2021-03, FY 2020-03 and FY 2019-03): In FY 2024, the average lapse time for safety inspections (SAMM 11a) was 76.56 days, which was above the FRL of 67.23 days.

**Recommendation:** KY OSH has researched the outliers and implemented an action plan to reduce the average lapse time for safety inspections. It will take time for this measure to decrease under the new action plan. OSHA will evaluate how the action plan is working during quarterly meetings with KY OSH and discuss new recommendations as appropriate.

**Finding FY 2024-02** (Formerly FY 2023-02, FY 2022-02 and FY 2021-04): The Kentucky State Plan has been unable to implement OSHA’s initial FY 2016 Federal Civil Penalties Inflation Adjustment Act Annual Adjustments, through 2024. Legislative action is required to amend the statute.

**Recommendation:** KY OSH should continue working with their State authorities to complete the legislative changes necessary to adopt the annual inflationary adjustments.

**Finding FY 2024-03** (Formerly observation FY 2023-OB-01, FY 2022-OB-02, FY 2021-OB-02, FY 2020-OB-01, FY 2019-OB-02): In FY 2024, the percent in-compliance rate for health inspections (SAMM 9b) was 68.12%, which was above the FRL of 53.01%.

**Recommendation:** KY OSH has researched the outliers and developed an action plan to reduce in-compliance rates for health inspections. OSHA will evaluate how the action plan is working during quarterly meetings with KY OSH and discuss new recommendations as appropriate.

#### Findings (Status of Previous and New Items)

The State Plan made progress to address the previous two findings and two observations from the FY 2023 Comprehensive FAME Report. This follow-up FAME report contains three findings (two continued, one converted from an observation) and zero observations (one closed, one converted to finding). Appendix A describes the new and continued findings and recommendations. Appendix B describes observations subject to continued monitoring and the related federal monitoring plan. Appendix C describes the status of each FY 2023 finding and recommendation in detail.

**Completed Findings**

There were zero completed findings for FY 2024.

**Continued Findings**

**Finding FY 2024-01** (Formerly FY 2023-01, FY 2021-03, FY 2020-03 and FY 2019-03): In FY 2024, the average lapse time for safety inspections (SAMM 11a) was 76.56 days which was above the FRL of 67.23 days.

**Status:** KY OSH is continually making progress on this Finding. In FY 2024, KY OSH reduced the lapse time for health inspections to within the FRL, thus health lapse time was removed from this finding. KY OSH has researched the outliers and implemented an action plan to reduce the average lapse time for safety inspections. It will take some time for this measure to decrease under the new action plan.

**Finding FY 2024-02** (Formerly FY 2023-02, FY 2022-02 and FY 2021-04): The Kentucky State Plan has been unable to implement OSHA’s initial FY 2016 Federal Civil Penalties Inflation Adjustment Act Annual Adjustments, through 2024. Legislative action is required to amend the statute.

**Status:**  In FY24, KY OSH worked with state authorities and legislation was proposed in the legislative General Session to annually adjust Kentucky’s occupational safety and health civil penalties. The legislation did not pass. Kentucky will continue to work with state authorities to amend Kentucky’s occupational safety and health civil penalties. Kentucky has a House Bill 778 currently in committee which will annually adjust the maximum civil penalties beginning in 2025 by the percentage increase, if any, in the United State Average Consumer Price Index for all Urban Customers (CPI-U). If passed, it will direct the Secretary to begin a three-year phase-in for penalty adjustments beginning August 1, 2025.

**New FY 2024 Finding**

**Finding FY 2024-03** (Formerly observation FY 2023-OB-01, FY 2022-OB-02, FY 2021-OB-02, FY 2020-OB-01, FY 2019-OB-02)**:** In FY 2024, the percent in-compliance rate for health inspections (SAMM 9b) was 68.12%, which was above the FRL of 53.01%. This was an observation for the past five years and was converted into a finding for FY 2024.

**Recommendation:** KY OSH has researched the outliers and developed an action plan to reduce in-compliance rates for health inspections. OSHA will evaluate how the action plan is working during quarterly meetings with KY OSH and discuss new recommendations as appropriate.

#### Observations

**Closed FY 2024 Observations**

**Observation FY 2023-OB-02:** In FY 2023, 18 out of 33 consultation files reviewed did not have copies of the OSHA 300 logs.

This observation was closed because the Consultation Policies and Procedures Manual states that OSHA 300 logs or injury and illness data must be collected. It was verified that the injury and illness data was collected.

**Continued FY 2024 Observation**

There were no continued observations for FY 2024.

**New FY 2024 Observations**

There were no new observations for FY 2024.

### State Activity Mandated Measures (SAMM) Highlights

Each SAMM has an agreed upon 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 2024 State Activity Mandated Measures (SAMM) Report and includes the FRLs for each measure.

The State Plan was outside the FRL on the following SAMMs:

**SAMM 6-** Percent of total inspections in state and local government workplaces

**Discussion of State Plan Data and FRL:** The further review level is based on a number negotiated by OSHA and the State Plan through the grant application. The FRL for percent of total inspections in state and local government workplaces is +/- 5% of the grant goal of 9.93%. The range of acceptable data not requiring further review is from 9.44% to 10.43%. Kentucky was at 5.40%, which is below the FRL. This is not a concern as KY OSH performed a sufficient number of state and local government inspections in FY 2024.

**SAMM 8d-** Average current serious penalty in private sector (greater than 250 workers)

**Discussion of State Plan Data and FRL:** The State Plan’s average serious penalty was $5,183.26 in FY 2024. The further review level is based on a three-year national average, which is +/- 25% of $7,533.58. The range of acceptable data not requiring further review is from $5,650.19 to $9,416.98. KY OSH’s penalties were within the FRLs except for this instance. This penalty amount was close to the FRL, so there are no concerns with this measure.

### Appendix A – New and Continued Findings and Recommendations

FY 2024 KYOSH Follow-up FAME Report

|  |  |  |  |
| --- | --- | --- | --- |
| **FY 2024-#** | **Finding** | **Recommendation** | **FY 20XX-# or** **FY 20XX-OB-#** |
| FY 2024-01 | In FY 2024, the average lapse time for safety inspections (SAMM 11a) was 76.56 days which was above the FRL of 67.23 days.  | KY OSH has researched the outliers and implemented an action plan to reduce the average lapse time for safety inspections. It will take time for this measure to decrease under the new action plan. OSHA will evaluate how the action plan is working during quarterly meetings with KY OSH and discuss new recommendations as appropriate. | FY 2023-01, FY 2021-03, FY 2020-03 FY 2019-03 |
|  FY 2024-02 | The Kentucky State Plan has been unable to implement OSHA’s initial FY 2016 Federal Civil Penalties Inflation Adjustment Act Annual Adjustments, through 2024. Legislative action is required to amend the statute. | KY OSH should continue working with their State authorities to complete the legislative changes necessary to adopt the annual inflationary adjustments.  | FY 2023-02, FY 2022-02 FY 2021-04 |
|  FY 2024-03 | In FY 2024, the percent in-compliance rate for health inspections (SAMM 9b) was 68.12%, which was above the FRL of 53.01%. | KY OSH has researched the outliers and developed an action plan to reduce in-compliance rates for health inspections. OSHA will evaluate how the action plan is working during quarterly meetings with KY OSH and discuss new recommendations as appropriate. | FY 2023-OB-01FY 2022-OB-02, FY 2021-OB-02, FY 2020-OB-01,FY 2019-OB-02 |

### Appendix B – Observations Subject to Continued Monitoring

FY 2024 KYOSH Follow-up FAME Report

| **Observation #****FY 2024-OB-#** | **Observation#****FY 20XX-OB-# *or* FY 20XX-#** | **Observation** | **Federal Monitoring Plan** | **Current Status** |
| --- | --- | --- | --- | --- |
| None |   |    |   |   |

### Appendix C - Status of FY 2023 Findings and Recommendations

FY 2024 KYOSH Follow-up FAME Report

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
| **FY 2023-#** | **Finding** | **Recommendation** | **State Plan Corrective Action** | **Completion Date** | **Current Status** **and Date** |
| FY 2023-01  | In FY 2023, KY OSH had a significantly high average citation issuance lapse time for safety and health inspections, 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 within the FRL range.  | Kentucky has developed and implemented a process to reduce average lapse time for safety and health inspections. However, a reduced lapse time not been achieved due to an extreme increase in complaints received, as well as staffing concerns. However, improved lapse time remains one of Kentucky’s top goals.  | Not Completed  | Open  |
| FY 2023-02  | The Kentucky State Plan has failed to adopt OSHA’s initial FY 2016 maximum and minimum penalty increase and subsequent annual penalty amount increases.  | KY OSH should 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’s penalty levels. | The Kentucky State Plan has no authority to increase any penalty or implement an annual penalty adjustment. Kentucky penalties are established by statute, specifically Kentucky Revised Statute 338.991. Adjustment to Kentucky penalties and/or annual adjustments requires legislative action. Kentucky will continue to work with state authorities to amend Kentucky’s occupational safety and health civil penalties.   | Not Completed  | Open  |

**Appendix D – FY 2024 State Activity Mandated Measures (SAMM) Report**

FY 2024 KYOSH Follow-Up FAME Report

| SAMM Number | SAMM Name | State Plan Data | Further Review Level | Notes |
| --- | --- | --- | --- | --- |
| 1a | Average number of work days to initiate complaint inspections (state formula) | 80.39 | 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) | 64.12 | 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) | 57.40 | 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) | 55.84 | 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. |
| 5a | Average number of violations per inspection with violations by violation type (SWRU) | 1.88 | +/- 20% of 1.74 | The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from 1.39 to 2.08 for SWRU.  |
| 5b | Average number of violations per inspection with violations by violation type (other) | 0.86 | +/- 20% of 0.94 | The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from 0.75 to 1.12 for OTS. |
| 6 | Percent of total inspections in state and local government workplaces | 5.40% | +/- 5% ofGrant 9.93% | 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 9.44% to 10.43%. |
| 7a | Planned v. actual inspections (safety) | 482 | +/- 5% of Grant 429 | 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 408 to 450 for safety. |
| 7b | Planned v. actual inspections (health) | 259 | +/- 5% of Grant 175 | 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 166 to 184 for health. |
| 8 | Average current serious penalty in private sector - total (1 to greater than 250 workers) | $3,745.65 | +/- 25% of $3,793.81 | The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from $2,845.36 to $4,742.27. |
| 8a | Average current serious penalty in private sector (1-25 workers) | $2,948.00 | +/- 25% of $2,498.51 | The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from $1,873.88 to $3,123.14. |
| 8b | Average current serious penalty in private sector (26-100 workers**)** | $3,367.73 | +/- 25% of $4,322.61 | The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from $3,241.96 to $5,403.26. |
| 8c | Average current serious penalty in private sector(101-250 workers) | $5,231.11 | +/- 25% of $6,114.84 | The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from $4,586.13 to $7,643.55. |
| 8d | Average current serious penalty in private sector(greater than 250 workers) | $5,183.26 | +/- 25% of $7,533.58 | The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from $5,650.19 to $9,416.98. |
| 9a | Percent in compliance (safety) | 30.37% | +/- 20% of32.83% | The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from 26.27% to 39.40% for safety. |
| 9b | Percent in compliance (health) | 68.12% | +/- 20% of44.18% | The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from 35.34% to 53.01% for health. |
| 10 | Percent of work-related fatalities responded to in one workday | 100% | 100% | The further review level is fixed for all State Plans. |
| 11a | Average lapse time (safety) | 76.56 | +/- 20% of 56.02 | The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from 44.82 to 67.23for safety. |
| 11b | Average lapse time (health) | 72.31 | +/- 20% of 67.21 | The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from 53.77 to 80.65 for health. |
| 12 | Percent penalty retained | 83.00% | +/- 15% of70.81% | The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from 60.19% to 81.44%. |
| 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 | N/A | N/ | This measure is not being reported for FY 2024 due to the transition to the new SAMM measures starting in FY 2025. |
| 15 | Percent of 11(c) complaints that are meritorious | N/A | N/A | This measure is not being reported for FY 2024 due to the transition to the new SAMM measures starting in FY 2025. |
| 16 | Average number of calendar days to complete an 11(c) investigation | N/A | N/A | This measure is not being reported for FY 2024 due to the transition to the new SAMM measures starting in FY 2025. |
| 17 | Percent of enforcement presence | 0.93% | +/- 25% of1.00% | The further review level is based on a three-year national average. The range of acceptable data not requiring further review is from 0.75% to 1.25%. |

NOTE: The national averages in this report are three-year rolling averages. Unless otherwise noted, the data contained in this Appendix D is pulled from the State Activity Mandated Measures (SAMM) Report in OIS and the State Plan WebIMIS report run on November 12, 2024, as part of OSHA’s official end-of-year data run.