



KENTUCKY
OCCUPATIONAL SAFETY AND HEALTH PROGRAM

STATE OFFICE ANNUAL REPORT

for

FEDERAL FISCAL YEAR 2022

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INTRODUCTION

The Kentucky Occupational Safety and Health (OSH) Program was established in 1972 by the Kentucky General Assembly. In July of 1973, the U.S. Department of Labor's Occupational Safety and Health Administration (OSHA) approved Kentucky's state plan.

Kentucky has experienced three (3) significant reorganizations. Executive Order 2004-731, issued by Governor Ernie Fletcher in 2004, abolished the Labor Cabinet with all duties, responsibilities, employees, and functions transferred to the Environmental and Public Protection Cabinet, Department of Labor. The executive order was ratified into law during the 2005 General Assembly by Senate Bill 41.

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

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

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

On March 25, 2010, Governor Beshear signed House Bill (HB) 393, an act relating to reorganization, into law. HB 393 amended and created various sections of the Kentucky Revised Statutes to abolish the Environmental and Public Protection Cabinet and created (re-established) the Labor Cabinet. Kentucky's OSH Program consists of the Division of OSH Compliance, headed by a Director; the Division of OSH Education and Training, headed by a Director; and the Office of the OSH Federal-State Coordinator. The OSH Federal-State Coordinator and the appointed directors of the Division of OSH Compliance and Division of OSH Education and Training report to the Commissioner of Workplace Standards who, in turn, reports to the Secretary of the Labor Cabinet. Supplementing the functions of these units directly is a standards promulgation unit, the OSH Standards Board, as well as an adjudicatory body, the OSH Review Commission. Administrative staff support the division directors, the commissioner's office of the Department of Workplace Standards, and the OSH Federal-State Coordinator's office.

On November 17, 2021, Governor Beshear and Secretary Link announced the merger of the Education and Workforce Development Cabinet with the Labor Cabinet to create the Education and Labor Cabinet, pending legislative approval. Senate Bill 180 of the 2022 Regular Session was introduced February 16, 2022, passed April 14, 2022, and signed April 20, 2022, by Governor Beshear. The merger was effective July 1, 2022. There were no significant changes to the Department of Workplace Standards or the KY OSH Program structure and/or duties.

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

The Kentucky OSH Program encompasses all areas, issues, and responsibilities that are covered by OSHA with the exception of private sector maritime activities, non-OSH related discrimination, temporary labor camps and field sanitation, federal employers and employees, private contractors on properties ceded to the Federal Government (including Job Corps Centers and Federal Correctional Institutions), Tennessee Valley Authority facilities, and federal military bases. Kentucky's jurisdiction also extends to all state and local public employers and employees. The state's effort, with the exception of state and local government, does not include enforcement in any area where OSHA does not exercise jurisdiction.

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

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

The Kentucky Education and Labor Cabinet remain fully committed to promoting the safety, health, and general welfare of the Commonwealth of Kentucky by preventing any detriment to the safety and health of all employees, both public and private, arising out of exposure to harmful conditions and practices at places of work. In addition, the Cabinet is fully involved in preserving our human resources by providing for education and training, inspection of workplaces, consultation services, research, reports, statistics, and other means of advancing progress in occupational safety and health.

The staffing benchmark for the Division of OSH Compliance is twenty-three (23) Compliance Safety and Health Officers (CSHO) and fourteen (14) Industrial Hygienists (IH). Another two (2) positions are devoted to investigating cases of alleged OSH discrimination. KYSAFE has three (3) main operational branches, safety, health, and partnership. In FFY 2022, there were five (5) consultants in the safety branch and six (6) IHs in the health branch. The Partnership Branch maintains a staff of six (6) safety consultants and IHs as well as a Voluntary Protection Partnership (VPP) Administrator, a Safety and Health Achievement Recognition Program (SHARP) Administrator, and a Construction Partnership Program (CPP) Administrator.

The Kentucky OSH Program implemented a five (5) year strategic plan for 2021-2025 that utilizes a combination of resources to address workplace hazards, including enforcement strategies, consultations, training and education, partnership programs, technical assistance, and standards development. The synergistic effect of these combined resources enables the OSH Program to significantly impact worker safety and health in the Commonwealth of Kentucky.

Significant Legislation

House Bill (HB) 749 of the 2022 Regular Session was introduced March 1, 2022. HB 749 sought to increase OSH civil penalties and require the Secretary to annually adjust the penalties based on the BLS Consumer Price Index for All Urban Customers. HB 749 did not advance.

The remainder of this report is presented in three (3) sections. Section I addresses Kentucky's success in achieving FFY 2022 Performance Plan goals. Section II addresses mandated activities during FFY 2022. Section III addresses noteworthy accomplishments achieved by the Kentucky OSH Program during FFY 2022.

Information presented reflects accurate data for the period sampled. Some enforcement casefiles have matured since preparation of this report while others are still developing. It is important to note that at the time of report submission, there were 400 FFY 2022 open enforcement inspections. Therefore, some data presented in this report is not fully mature and will vary if resampled. Some data presented in this report relates to inspection activity that initiated in FFY 2021 and matured in FFY 2022.

SECTION I

SUCCESS ACHIEVING PERFORMANCE GOALS

The first strategic goal of the 2021-2025 Strategic Plan is to improve workplace safety and health for all workers, particularly in high-risk industries, as evidenced by fewer hazards, reduced exposures, and fewer fatalities, injuries, and illnesses.

Performance Goal 1.1 addresses the aforementioned Strategic Plan goal. Goal 1.1 is to reduce total fatalities in general industry and construction.

In the FFY 2021 baseline year, 155 fatalities were reported to the Division of OSH Compliance and ninety-five (95) inspections were conducted. In FFY 2022, 113 fatalities were reported to the Division of OSH Compliance and fifty (50) inspections were conducted.

In the FFY 2021 baseline year, eighty (80) fatality inspections were conducted in general industry resulting in fifty-six (56) serious violations, fifty-eight (58) other than serious violations, three (3) willful serious violations, and two (2) repeat serious violations with penalties totaling \$692,500. Thirteen (13) construction industry fatality inspections were conducted resulting in ten (10) serious violations, and eleven (11) other than serious violations with penalties totaling \$63,125. In FFY 2022, thirty-eight (38) fatality inspections were conducted in general industry resulting in forty-nine (49) serious violations and twenty-six (26) other than serious violations with penalties totaling \$370,600. In FFY 2022, twelve (12) construction industry fatality inspections were conducted resulting in thirteen (13) serious violations, nine (9) other than serious violations, and one (1) willful serious violation with penalties totaling \$161,850.

Performance Goal 1.2 is to reduce the number of hazards associated with hospitalizations, amputations, injuries, and illnesses.

In the FFY 2021 baseline year, 457 hospitalizations were reported to the Division of OSH Compliance and 167 inspections were conducted with four (4) repeat serious violations, eighty-one (81) serious violations, and sixty-six (66) other than serious violations. Total penalties were \$519,210. Eighty-six (86) amputations were reported to the Division of OSH Compliance. Seventy-four (74) inspections were conducted with one (1) willful serious violation, eight (8) repeat serious violations, fifty-nine (59) serious violations, and thirty-one (31) other than serious violations. Total penalties were \$574,900. No loss of eye injuries were reported to the Division of OSH Compliance in the FFY 2021 baseline year.

In FFY 2022, 453 hospitalizations were reported to the Division of OSH Compliance and 233 inspections were conducted with two (2) repeat serious violations, 112 serious violations, and ninety-three (93) other than serious violations. Total penalties were \$751,500. Ninety-nine (99) amputations were reported to the Division of OSH Compliance. Eighty-seven (87) inspections were conducted with six (6) repeat serious violations, eighty-six (86) serious violations, and fifty-two (52) other than serious violations. Total penalties were \$725,200. Additional inspections are pending. One (1) loss of eye was reported to the Division of OSH Compliance in FFY 2022 resulting in an inspection. The inspection related to the eye loss is ongoing.

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

The Division of OSH Compliance's portion of this goal consists of the number of inspections in construction and general industry. In the FFY 2021 baseline year, the Division of OSH Compliance conducted 864 inspections, 685 in general industry, 179 in construction, and

none in maritime. In FFY 2022, the Division of OSH Compliance conducted 997 inspections, 791 in general industry, 206 in construction, and none in maritime.

The Division of OSH Education and Training's portion of this goal consists of surveys and training contact hours conducted in high hazard industries, as well as the total number of training courses, contact hours, surveys, and technical assistance visits in all industries.

Kentucky's injury and illness data are also an indicator for this goal.

During the FFY 2021 baseline year, KYSAFE conducted ninety-eight (98) health surveys of which all were considered high hazard. The division's safety branch conducted ninety-six (96) surveys; all were considered high hazard. Two (2) safety and health technical assistance visits and ten (10) face-to-face training sessions were conducted that impacted 277 persons. Two (2) of the face-to-face training courses were in response to employer specific requests and reached fifty-nine (59) attendees. Twelve (12) trainings were conducted on virtual platforms, impacting 1,028 persons. In FFY 2022, KYSAFE conducted 145 health surveys of which all were considered high hazard. The division's safety branch conducted 121 surveys, all were considered high hazard. Five (5) safety and health technical assistance visits and sixty-seven (67) face-to-face training sessions were conducted that impacted 1,846 persons. Additionally, fourteen (14) trainings were conducted on virtual platforms, impacting 358 persons.

Performance Goal 1.4 strives to ensure that employers are adhering to settlement provisions for fatality investigations through follow-up inspections.

In the FFY 2021 baseline year, the Division of OSH Compliance conducted six (6) follow-up inspections. However, there were no settlements that met Performance Goal 1.4 criteria in FFY 2022; therefore, no follow-up inspections were conducted to verify adherence to settlement provisions of fatality investigations.

Performance Goal 1.5 aims to reduce by two (2) percent the number of construction industry injuries caused by falls, struck-by, and crushed-by incidents through a five (5) part strategy that combines efforts by the Division of OSH Compliance and the Division of OSH Education and Training. In addition to the information presented immediately below, Performance Goals 1.2, 1.3, 1.8, and 1.9 also relate to this goal.

In the FFY 2021 baseline year, 179 compliance inspections were conducted in the construction industry and fourteen (14) other construction sites were enrolled in the CPP. KYSAFE conducted twenty-two (22) surveys, no technical assistance visits, and presented three (3) training courses totaling 336 contact hours in the construction industry. In FFY 2022, 206 compliance inspections were conducted in the construction industry and eighteen (18) other construction sites were enrolled in the CPP. KYSAFE conducted fifty-three (53) surveys, one (1) technical assistance visit, and presented twelve (12) training courses totaling 635 contact hours in the construction industry.

FFY 2021 baseline year data collected by the Bureau of Labor Statistics (BLS) Survey of Occupational Injuries and Illness in cooperation with the OSH Program's Statistical Services Branch, established the following Kentucky and National incident rates for 2020. This baseline data represents nonfatal occupational injuries and illnesses involving days away from work per 10,000 full-time workers in the construction industry.

2020	Falls	Struck-by	Crushed
Kentucky	11.7	10.2	5.0
National	15.7	19.9	3.9

Kentucky is unable to provide data due to a change in BLS reporting. BLS informed Kentucky that BLS now employs a multi-year estimation methodology and transitioned to biennial case and demographic estimates publication. The release of the case and demographic data for 2021-2022 is Fall 2023.

Performance Goal 1.6 aims to initiate all work-related fatality inspections as well as hospitalizations of three (3) or more employees within one (1) working day of notification. Kentucky conducted fifty (50) fatality inspections in FFY 2022 and one (1) appears as an outlier. On Friday, May 27, 2022 a complaint alleged the Sunday, December 26, 2021 death of a Union Petro Inc. employee. The division initiated efforts to contact the employer and an inspection opened Friday, June 3, 2022.

Performance Goal 1.7 aims to initiate Division of OSH Compliance inspections of all imminent danger reports within one (1) working day of notification.

The Division of OSH Compliance conducted nine-one (91) imminent danger (ID) inspections in FFY 2022 and two (2) appear as outliers. A brief summary of the outliers is provided below.

An ID was reported Tuesday, November 30, 2021, to the Division of OSH Compliance. The report advised the worksite was not active due to weather conditions. The Division of OSH Compliance contacted the individual Wednesday, December 1, 2021 who reported the ID was not active December 1, 2021, due to weather conditions. The worksite was active December 2, 2021, and an inspection opened same day. Response within one (1) workday of notification was not possible.

On Friday, December 3, 2021, an alleged ID was reported to the Division of OSH Compliance that occurred Thursday, December 2, 2021. The report advised the worksite was not

active; however, subsequent information provided after hours Friday, December 3, 2021, via email indicated the worksite was active. The division retrieved the email Monday, December 6, 2021. Response on Monday, December 6 and Tuesday, December 7 was not possible due to weather conditions. An investigator responded Wednesday, December 8 and confirmed an ID did not exist at the site.

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

The Kentucky FFY 2021 baseline total case rate for injuries and illness, established from CY 2020 BLS data, was 3.3. The FFY 2022 total case rate for injuries and illness, established from CY 2021 BLS data, was 3.2.

Performance Goal 1.9 aims to reduce the lost time case rate for injuries and illnesses. This performance goal combines efforts for both the Division of OSH Compliance and the Division of OSH Education and Training.

The Kentucky FFY 2021 baseline lost time case rate for injuries and illnesses, established from CY 2020 BLS data, was 2.0. The FFY 2022 lost time case rate for injuries and illnesses, established from CY 2021 BLS data, was 1.6. Kentucky met the goal.

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

Based on 2020 BLS data, Kentucky industries with the highest injury and illness total case incident rates are provided in the table below.

NAICS	DESCRIPTION	RATE
622	Hospitals (local government)	12.9
623	Nursing and Residential Care Facilities	12.4
62	Health Care and Social Assistance (local government)	10.4
311615	Poultry Processing	8.8
92	Public Administration (local government)	8.7
622	Hospitals	8.6
92214	Correctional Institutions (state government)	7.9
492	Courier and Messengers	7.2
3116	Animal Slaughtering and Processing	7.1
32192	Wood Container and Pallet Manufacturing	7.1

Many of the rates were elevated due to the novel severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2) and coronavirus disease 2019 (COVID-19). KYSAFE outreach in FFY 2022 to the industries identified in the table above was not timely due to the subsidence of SARS-CoV-2 and COVID-19.

KYSAFE continued outreach in FFY 2022 that began in FFY 2021. As reported in the 2021 SOAR, KYSAFE mailed 113 letters to NAICS code 32192, Wood container and pallet manufacturing and NAICS code 3326, Spring and wire product manufacturing. The outreach resulted in thirty-one (31) survey requests. During FFY 2022, KYSAFE continued the S.T.O.P. initiative in the aforementioned NAICS codes. The effort was extremely successful. NAICS 3326, Spring and wire product manufacturing, dropped out of the table. NAICS 32192, Wood container and pallet manufacturing, improved from 9.1, which was the second highest industry rate, to 7.1 which is the tenth position.

Another KYSAFE outreach initiative, the Targeted Outreach Program (T.O.P.), launched in FFY 2022. Based on Injury Tracking Application submissions, 441 letters were mailed to specific employers whose injury and illness rate was three (3) times higher than the state rate of 3.3 resulting in seventy-seven (77) survey requests.

Also reported in the FFY 2021 SOAR, KYSAFE launched S.T.O.P. outreach to specific industries with the highest number of fatalities in Kentucky, NAICS 238160, Roofing contractors and NAICS 561730, Landscaping services. Outreach to those industries continued in FFY 2022 (and into FFY 2023). 178 letters were mailed to employers in the aforementioned NAICS resulting in sixty-seven (67) survey requests.

Twenty-eight (28) KYSAFE training sessions were presented at three (3) Population (POP) Center training seminars; 606 participants attended the training. The training addressed subjects relevant to the targeted NAICS such as Basic Electrical Safety, Excavation and Trenching, Silica, Walking / Working Surfaces, Hazard Communication, Personal Protective Equipment, Fall Protection, and Confined Space Entry.

KYSAFE remains committed to working with employers and continues its focus on industries and employers with the worst injury and illness rates. The Division of OSH Compliance continues its programmed inspection focus in the industries with the highest injury and illness total case incident rates. The Division of OSH Compliance conducted twenty-seven (27) program planned inspections in FFY 2022.

Performance Goal 1.11 is to identify and assist industries with a total case incident rate three (3) times above the average Kentucky total case incident rate. According to the BLS data collected by OSH Program Statistical Services Branch, there was one (1) Kentucky industry with a total case incident rate equal to or greater than 12.8, which is four (4) times the reported Kentucky rate of 3.2.

The second goal of Kentucky's 2021-2025 Strategic Plan is to change workplace culture to increase employer and employee awareness of, commitment to, and involvement in occupational safety and health.

Performance Goal 2.1 addresses formal settlement agreements for a citation with a penalty more than \$14,000, or for citations with a combined penalty totaling more than \$14,000, which provide a reduction of thirty-five (35) percent or more must include documented employer implementation of OSHA's 2016 "Recommended Practices for Safety & Health Programs" if general industry; or OSHA's 2016 "Recommended Practices for Safety & Health Programs in Construction" if construction; or the ANSI/ASSE Z10-2012 (R2017) "Occupational Health and Safety Management Systems"; or engage the services of an outside BCSP or ABIH certified consultant.

During FFY 2022, the Division of OSH Compliance signed fifty-nine (59) settlement agreements including one (1) discrimination settlement agreement. Penalties were reduced in one (1) settlement agreement for a citation with a penalty more than \$14,000, or for citations with a combined penalty totaling more than \$14,000, which provide a reduction of thirty-five (35) percent or more that included documented implementation of OSHA's 2016 "Recommended Practices for Safety & Health Programs" if general industry; or OSHA's 2016 "Recommended Practices for Safety & Health Programs in Construction" if construction; or the ANSI/AIHA/ASSE Z10-2012 (R2017) "Occupational Health and Safety Management Systems"; or engaged the services of an outside BCSP or ABIH certified consultant.

The penalty in Cardinal Aluminum Co. was reduced from \$33,500 to \$14,000. The formal settlement agreement required implementation of OSHA's 2016 "Recommended Practices for Safety & Health Programs".

Performance Goal 2.2 is to ensure Division of OSH Compliance informal conference penalty reductions adhere to Chapter IV of the Kentucky Field Operations Manual (FOM). In

FFY 2022, all Division of OSH Compliance informal conference penalty reductions adhered to Chapter IV of the Kentucky FOM. Kentucky met the goal.

Performance Goal 2.3 is to incorporate evaluation of safety and health management systems in 100 percent of the full-service comprehensive surveys. All FFY 2022 KYSAFE comprehensive consultative surveys incorporated an evaluation of safety and health management systems. Kentucky met the goal.

Performance Goal 2.4 seeks to utilize the Safety and Health Program Assessment Worksheet in all full-service general industry consultation surveys. All FFY 2022 KYSAFE comprehensive general industry consultative surveys utilized the Safety and Health Program Assessment Worksheet. Kentucky met the goal.

Performance Goal 2.5 aims to provide safety and health program management training. KYSAFE provided employers and employees a cost-free online eLearning safety and health program management training module on the KYSAFE eLearning website, www.kysafe.ky.gov. The module was viewed fifty-two (52) times in FFY 2022. Kentucky met the goal.

Performance Goal 2.6 addresses the evaluations of worksites on a timely basis to certify and re-certify VPP sites, develop CPP agreements, and add new employers to the SHARP, as well as the maintenance and re-certification of current SHARP sites. The Partnership Program was very active in FFY 2022, with 187 VPP, CPP, and SHARP visits. The Partnership Branch continued reaching out and looking for new VPP, SHARP, and CPP participants.

There were eighteen (18) active CPP sites in FFY 2022 with a total project cost of approximately ten (10) billion dollars. The Partnership Branch had ninety-seven (97) contacts / visits with CPP sites of which sixty-one (61) were site visits affecting over 9,800 employees.

The most significant new CPP project in FFY 2022 was the new \$5.8 billion Blue Oval Battery Park in Glendale.

VPP continues to be successful and set the standard for program and participant quality. The Partnership Branch worked diligently with facilities in their quest to become VPP certified while maintaining twenty (20) very strong, successful VPP sites in FFY 2022.

SHARP started FFY 2022 with fourteen (14) active sites and ended the federal fiscal year with fourteen (14) active sites. SHARP continues to solicit new participants.

In FFY 2022, the Partnership Branch engaged 230 significant contacts. 187 were site visits affecting 27,051 employees that identified 1,288 hazards; 430 were serious and 858 were other than serious. Kentucky met the goal.

Performance Goal 2.7 addresses the implementation of a targeted outreach plan for 100 percent of new Kentucky OSH standards. There were no new OSH standards in FFY 2022 that necessitated outreach. Kentucky met the goal.

KYSAFE continues to offer free outreach training at POP Centers for employers and employees across the Commonwealth that addresses Kentucky OSH standards. The Kentucky OSH Program also posts updated and accurate information on the Cabinet's website. KYSAFE offers a universal serial bus (USB) with all state OSH regulations, federal OSH standards, Kentucky safety and health manuals, posters, conference information, and other resource links. KYSAFE provides the USB free of charge.

The third goal of Kentucky's 2021-2025 Strategic Plan is to maximize the efficient and effective use of human and technological resources.

Performance Goal 3.1 is to maintain a reliable data repository. The Kentucky OSH Program deployed comprehensive data management software in 2013 for both the Division of

OSH Compliance and KYSAFE that “replaced” OSHA’s NCR/IMIS and OIS system. In 2015, Kentucky deployed a customized interface that provides the state’s compliance and consultation data to OSHA’s OIS system.

In addition to the collection, retention, and transmission of Kentucky’s data to OSHA, Kentucky’s software provides advanced OSH Program capabilities including report writing, inspection and survey milestone tracking, time management, program performance reports, etc. Each division also has specific functionality and capabilities unique to their individual needs.

The Division of OSH Compliance employs one (1) individual dedicated to maintaining reliable data. The Division of OSH Education and Training employs one (1) individual dedicated to maintaining reliable data. The Office of the Federal-State Coordinator employs one (1) individual that performs database integrity work. Kentucky met the goal.

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

The Division of OSH Compliance hired one (1) supervisory staff in FFY 2022 and the individual completed leadership training. KYSAFE did not hire new supervisory staff in FFY 2022. Kentucky met the goal.

Performance Goal 3.3 encourages and aids attainment of professional certification. During FFY 2022, the Division of OSH Compliance maintained two (2) Certified Safety Professional (CSP) employees, three (3) Associate Safety Professional (ASP) employees, five (5) Graduate Safety Professional (GSP) employees, two (2) certified Construction Health and Safety Technician (CHST) employees, one (1) Occupational Health and Safety Technologist (OHST) employee, and one (1) dual Certified Industrial Hygienist (CIH)-CSP employee.

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

During FFY 2022, KYSAFE maintained one (1) CIH employee, seven (7) CIH-CSP employees, two (2) CSP employees, two (2) dual CSP-ASP employees, three (3) OHST certified employees, and one (1) CHST certified employee. One (1) employee maintained the Asbestos Inspector License which allows the individual to work as a licensed asbestos inspector in Kentucky.

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

Performance Goal 3.4 aims to develop and publish electronic learning products. KYSAFE added seventeen (17) cost-free interactive training products, four (4) modules, and thirteen (13) webinars to the KYSAFE online library at kysafe.ky.gov. The newly developed modules were Personal Protective Equipment (PPE) Module 1, Wages and Hour Overview, Scaffolding Hazards, and Scaffolding: Erecting, Dismantling and Access. The thirteen (13) webinars were Fire Prevention Plans, 803 Kentucky Administrative Regulation (KAR) 2:181E updates, Teen Worker Safety, Cold Stress Webinar, Injury and Illness Recordkeeping Overview, Trenching and Excavation, Eyewash Update, Injury and Illness Recordkeeping Overview, Mowing Safety and Noise Protection, Heat Stress NEP, Heat Stress NEP Spanish, Reclassing Permit Required Confined Spaces, and Skid Steer Hazard Alert. Kentucky met the goal.

Performance Goal 3.5 seeks to include photographs of actionable hazards in all consultation surveys. Photographs of actionable hazards were included in all consultation

surveys when feasible and monitored through the review of all consultation reports. Kentucky met the goal.

SECTION II MANDATED ACTIVITIES

The Occupational Safety and Health Act and 29 CFR 1902 establish a number of mandated activities or core elements for any state plan program. Kentucky's Annual Performance Plan, while involving many of these core elements, does not address every mandated activity. Mandated core elements of Kentucky's OSH program are addressed in this section.

Unannounced Inspections, Including Prohibition Against Advance Notice Thereof

During FFY 2022, the Division of OSH Compliance conducted 970 unannounced inspections of work sites pursuant to KRS 338.101. Advance notice of inspections is prohibited and punishable under KRS Chapter 338.991(9).

Employee Involvement in Inspection Process

803 KAR 2:110 establishes that an authorized representative of the employees is given an opportunity to accompany compliance officers during inspections. The Division of OSH Compliance contacts a representative(s) of employee-organized groups upon entry onto a site in order to afford employees' participation in the inspection process. Representatives of employee groups may participate in the inspection process by attending the opening conference, accompanying the inspector and employer on the walk-around, and attending the closing conference. Employee representatives are also allowed to observe employee interviews. If no employee-organized group exists at the facility, employee interviews are conducted.

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

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

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

The Division of OSH Compliance conducted 997 inspections in FFY 2022, 670 safety inspections and 327 health inspections. 970 inspections were un-programmed, breaking down as:

- 124 referrals;
- 252 employer referrals;
- 404 complaints;
- 139 un-programmed related;
- One (1) un-programmed follow-up; and
- Fifty (50) fatalities/catastrophes.

206 inspections were in the construction industry and 791 were in general industry. 926 private sector and seventy-one (71) public sector employers were inspected. The Division of OSH Compliance conducted 670 safety inspections, which constitutes 67.20% of total inspections while health conducted 327 inspections, representing 32.80% of total inspections.

Twenty-seven (27) ITA local emphasis program planned inspections were conducted. There were fourteen (14) violations with penalties totaling \$48,525. Nine (9) national emphasis program inspections were conducted. There were eighteen (18) violations with penalties totaling \$77,800.

Safety averaged 20.9 hours per case and health averaged 9.5 hours per case. Safety averaged eighty (80) days from opening conference to citation issuance and health averaged 100 days from opening conference to citation issuance. 1,034 citations were issued in FFY 2022 with penalties totaling \$3,966,400 and break down as:

Eight (8) willful violations with penalties issued totaling \$350,000;
Fifteen (15) repeat violations with penalties issued totaling \$329,450;
589 serious violations with penalties issued totaling \$2,474,800;
417 other than serious violations with penalties issued totaling \$608,150; and
Five (5) failure to abate (FTA) violations with penalties totaling \$204,000.

In FFY 2022, the total amount of penalties collected by the Division of OSH Compliance was \$1,198,0358.57. 120 of the 442 inspections in FFY 2022 with citations issued were contested representing 27.15% of inspections with citations.

The Division of OSH compliance inspected establishments employing 509,223 employees and the inspections covered 82,378 employees. The Division of OSH Compliance vacated ten (10) private sector violations pre-contest, which represents 1.33% of the violations issued. The Division of OSH Compliance vacated twenty-six (26) private sector violations post-contest, which represents 23.42% of the violations issued. The division reclassified three (3), or 0.41%, violations pre-contest. The division reclassified six (6), or 7.06%, violations post-contest.

The overall penalty retention in FFY 2022 was 85.03%.

Ensuring Abatement of Potentially Harmful or Fatal Conditions

Hazardous conditions identified by Kentucky compliance officers and consultants are required to be abated. In order to ensure the correction of violations, KRS 338.991(4) provides specific penalties for any employer who fails to correct a cited violation. In addition, 803 KAR 2:060 establishes that employers must certify that each cited violation has been abated. Follow-up inspections may be conducted to verify that potentially harmful conditions have been abated. The division conducts follow up inspections when necessary to ensure employers are complying with settlement provisions and abated hazards for fatality investigations. Also on the follow-up list are employers who fail to provide the Division of OSH Compliance with abatement

documentation. The Division of OSH Compliance conducted one (1) follow-up inspection in FFY 2022. However, there were no inspections conducted to verify adherence to settlement provisions of fatality investigations because there were no applicable FFY 2022 fatality settlement agreements.

Discrimination rights established in KRS 338.121 and 803 KAR 2:250 are explained to complainants when they contact the Division of OSH Compliance. Employees interviewed during OSH inspections are also informed of their rights. The Division of OSH Compliance prints discrimination rights on staff business cards which are given to employees during inspections.

The Division of OSH Compliance has the force of KRS 338.131(1) which gives the Commissioner of Workplace Standards the authority to issue an immediate abatement order in the event of “. . .an imminent danger which reasonably could be expected to cause death or serious physical harm.” This ensures prompt abatement or removal of employees from the hazard. If an employer fails to comply with an abatement order issued under KRS 338.131(1), the Division of OSH Compliance shall apply to the Franklin Circuit Court through its Office of General Counsel for an order to restrain such condition or practice.

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

Prompt, Effective Standard Adoption and Promulgation

HB 50 of the 2017 General Session established a sunset for all executive branch administrative regulations based on a seven (7) year cycle. In response to HB 50, Kentucky

undertook the significant task to update all OSH regulations. Regulations filed FFY 2021 and effective FFY 2022 were:

- 803 KAR 2:011, Repeal of 803 KAR 2:018;
- 803 KAR 2:041, Repeal of 803 KAR 2:040;
- 803 KAR 2:060 Employer responsibility to post notice;
- 803 KAR 2:062 Employer responsibility when employee is exposed to toxic substances or harmful physical agents;
- 803 KAR 2:070 Inspections;
- 803 KAR 2:110 Employer and employee representatives;
- 803 KAR 2:122 Abatement;
- 803 KAR 2:125 Posting of citation;
- 803 KAR 2:127 Failure to correct violation;
- 803 KAR 2:130 Informal conference;
- 803 KAR 2:140 Contest of citation;
- 803 KAR 2:170 Variance and interim order;
- 803 KAR 2:220 Refusal to work when dangerous condition exist;
- 803 KAR 2:230 Pay during inspection activity;
- 803 KAR 2:250 Discrimination;
- 803 KAR 2:306 Occupational health and environmental controls;
- 803 KAR 2:308 Personal protective equipment;
- 803 KAR 2:310 Medical services and first aid;
- 803 KAR 2:325 General industry standards;
- 803 KAR 2:423 Stairways and ladders;
- 803 KAR 2:435 Supply lines in excess of 600 volts; and
- 803 KAR 2:440 Cranes and derricks in construction.

Regulations filed during FFY 2022 and not effective in FFY 2022 were:

- 803 KAR 2:402, General safety and health provisions;
- 803 KAR 2:411, Scaffolds;
- 803 KAR 2:419, Demolition; and
- 803 KAR 2:445, Confined space in construction.

Allocation of Sufficient Resources

The Kentucky OSH Program continued to match federal funding at the required rate. The state provides significant additional dollars beyond the federal match to meet program needs. Kentucky's ratio of state to federal funds for FFY 2022 was 73.3:26.7.

Counteraction of Imminent Dangers

KRS 338.131 provides enforcement personnel with the authority to order that imminent danger conditions be immediately abated. Such authority includes the enforcement of necessary measures to avoid, correct, or remove the imminent danger and prohibit the presence of individuals where the imminent danger exists. Reports of imminent danger are given the highest priority for inspection by the Division of OSH Compliance.

The Division of OSH Compliance conducted ninety-one (91) imminent danger inspections in FFY 2022 and two (2) appear as outliers. A brief summary of the outliers is provided below.

1. An ID was reported Tuesday, November 30, 2021, to the Division of OSH Compliance. The report advised the worksite was not active due to weather conditions. The Division of OSH Compliance contacted the individual Wednesday, December 1, 2021 who reported the ID was not active December 1, 2021, due to weather conditions. The worksite was active December 2, 2021, and an inspection opened same day. Response within one (1) workday of notification was not possible.

2. On Friday, December 3, 2021, an alleged ID was reported to the Division of OSH Compliance that occurred Thursday, December 2, 2021. The report advised the worksite was not active; however, subsequent information provided after hours Friday, December 3, 2021 via email indicated the worksite was active. The division retrieved the email Monday, December 6, 2021. Response on Monday, December 6 and Tuesday, December 7 was not possible due to weather conditions. An investigator responded Wednesday, December 8 and confirmed an ID did not exist at the site.

Response to Complaints

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

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

Complaints received by the Division of OSH Compliance increased 55.23% in FFY 2022. In FFY 2022, formal complaints received by the division increased 34.76%.

The Complaint Audit Log Report indicates that the average response time to all complaints was 35.1 days for safety and 38.4 days for health. The division's overall average for serious complaints was 26.9 days from the date the complaint is received to the date the inspection is opened. The Complaint Audit Log indicates the average response time to complaints alleging other than serious hazards for safety was 38.0 days, and 47.1 days for health. The division's overall average was 41.5 days for other than serious hazards from the date the complaint was received to the date the inspection was opened.

Of the 1,515 complaints received in FFY 2022, 818 were processed as formal complaints resulting in 447 inspections and 697 were processed as informal complaints.

Response to Referrals

The Division of OSH Compliance responded to 376 referrals in FFY 2022, 252 were employer-referrals. The Referral Audit Log indicates the average response time to referrals alleging imminent dangers for safety was 0.1 days and 0.2 days for health. The overall average for all safety referrals was 21.6 days and 11.3 days for health from the date of all referrals received to the date the inspection opened.

Fatality / Catastrophe Investigations

Only imminent danger investigations are given a higher priority in the scheduling of inspections by the Division of OSH Compliance than fatality/catastrophe investigations. It is the policy of the Division of OSH Compliance to investigate all job-related fatalities and hospitalizations of three (3) or more employees as thoroughly and expeditiously as possible. There were forty-seven (47) work-related fatalities in FFY 2022. There was one (1) hospitalization of three (3) or more employees reported to the Division of OSH Compliance in FFY 2022.

Investigation of Discrimination and Employee Protection from Discrimination

KRS 338.121(3) offers protection to employees from reprisals which might result from the exercise of rights afforded by the OSH statutes. A system of citations, penalties, appeals to the OSH Review Commission, and reinstatement authority by the Commissioner while final determination is pending before the Review Commission distinguishes the Kentucky anti-discrimination effort. In addition, 803 KAR 2:240 allows any employee who believes he or she has been discriminated against, to file a complaint within 120 days of the alleged violation, as opposed to the thirty (30) days allowed by federal law. The Division of OSH Compliance is responsible for the enforcement of the state's anti-discrimination provisions.

During FFY 2022, the Division of OSH Compliance received 370 discrimination telephone inquiries and 100 formal complaints. Eleven (11) of the 100 formal complaints were COVID-19 related. Fifty-four (54) of the 100 formal complaints were administratively closed and forty-six (46) were docketed for investigation.

Thirteen (13) of the forty-six (46) discrimination cases docketed for investigation in FFY 2022 were resolved; four (4) cases were withdrawn, four (4) cases reached an agency facilitated settlement agreement, two (2) cases reached an outside settlement agreement, and three (3) cases were determined to have no merit. Eight (8) of the thirteen (13) cases resolved during FFY 2022 were COVID-19 related; four (4) were administratively closed, one (1) was determined to have no merit, two (2) were settled in agency facilitated settlements, and one (1) reached an outside settlement agreement.

During FFY 2022, three (3) FFY 2021 discrimination cases were administratively closed and nineteen (19) determinations for FFY 2021 cases were issued. Sixteen (16) cases were determined to have no merit, one (1) case reached a settlement during litigation after merit was determined, one (1) case reached an outside settlement agreement, three (3) cases reached an agency facilitated settlement agreement, and citations were issued for two (2) cases with penalties totaling \$7,500 with an additional \$29,571.70 back pay restitution. Four (4) FFY 2020 cases resulted in citations issued in FFY 2022, with penalties totaling \$92,000 with an additional \$31,890.89 back pay restitution. Three (3) of those cases are in contest. Two (2) FFY 2021 cases with citations recommended are in legal review.

During FFY 2022, the division reopened and closed two (2) discrimination cases from FFY 2019, both were found to have no merit.

During FFY 2022, the Division of OSH Compliance administratively closed five (5) FFY 2020 and FFY 2021 discrimination complaints and issued determinations for an additional forty (40) FFY 2020 and FFY 2021 investigations.

Thirty-five (35) FFY 2021 discrimination investigations are active, one case is COVID-19 related. Thirty-two (32) FFY 2021 and FFY 2022 investigations are active, three (3) cases are COVID-19 related. In summary, sixty-seven (67) FFY 2020, FFY2021, and FFY 2022 discrimination cases are active investigations, fourteen (14) are COVID-19 related.

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

Ensuring Employees Access to Health and Safety Information

Paragraph two (2) of KRS 338.161, Statistical Records -- Posting of Notices, and 803 KAR 2:060, Employer Responsibility to Post Notice, require employers to post notices informing employees of the protections and obligations provided for them in the law, including the proper contact for assistance and information. Kentucky regulations also provide for the availability of copies of the law and all regulations through the Cabinet. Employers who have obtained copies of these materials are required to make them available to employees or their authorized employee representatives. Failure to comply with posting requirements and information sharing provisions are citable offenses that may carry penalties. There were no citations issued in FFY 2022 for failure to ensure employee access to health and safety information.

Ensuring Employee Access to Information on Exposure to Toxic or Harmful Agents

Kentucky adopted 29 CFR 1910.1020, which assures employee access to information on exposure to toxic materials and medical records. Employers who fail to comply with these requirements are subject to citations and monetary penalties. In addition, 803 KAR 2:062, Employers' Responsibility Where Employees are Exposed to Toxic Substances or Harmful Physical Agents, requires employers to monitor areas of exposure to potentially toxic substances and to notify employees who have been or are being exposed to toxic materials. Monitoring records are to be maintained and made available to employees, former employees, or employee representatives.

In FFY 2022, the Division of OSH Compliance conducted 135 inspections relating to toxic material and harmful agents breaking down as:

- Twenty-four (24) inspections related to indoor air quality with six (6) violations and penalties totaling \$7,150;
- Seventy-three (73) inspections related to bloodborne pathogens with sixty-five (65) violations and penalties totaling \$136,500;
- Eight (8) inspections related to asbestos with one (1) violation and penalties totaling \$2,850;
- Five (5) inspections related to silica with two (2) violations and penalties totaling \$1,350;
- Two (2) inspections related to combustible dust with two (2) violations and penalties totaling \$11,750;
- One (1) inspection related to formaldehyde with no violations and no penalties;
- Five (5) inspections related to confined space with nineteen (19) violations and penalties totaling \$105,950;
- Fourteen (14) inspections related to mold with two (2) violations and penalties totaling \$3,750;
- Two (2) inspections related to lead with two (2) violations and penalties totaling \$3,750;
- One (1) inspection related to carbon monoxide with no violations and no penalties; and
- One (1) inspection related to hexavalent chromium with two (2) violations and penalties totaling \$4,250.

The breakdown of inspections exceeds the 136 number reported above due to the overlap of categories.

Coverage of Public Employees

KRS Chapter 338 “Occupational Safety and Health of Employees” establishes definitions for employer and employee which do not exclude public employers and public employees. The exclusions to KRS Chapter 338 cover only employees of the United States government and places of employment over which federal agencies other than OSHA have exercised statutory authority. In addition, written opinions of the Kentucky Office of the Attorney General support the Cabinet’s position that public employees are included in the Kentucky OSH Program’s jurisdiction. Therefore, Kentucky’s public employers and employees are subject to the same requirements, sanctions, and benefits as Kentucky’s private sector employers and employees. Consequently, Kentucky statutes, regulations, and policies make no distinction between public and private sector employers and employees. During FFY 2022, the Division of OSH Compliance conducted seventy-one (71) inspections of public sector work sites, which includes programmed inspections and responses to public employee complaints. This calculates to 7.1% of the total number of Division of OSH Compliance inspections.

Services offered by KYSAFE are available to state and local public agencies in the same manner and to the same degree as private sector employers. During FFY 2022, KYSAFE provided twenty-two (22) training sessions to public sector employers and employees totaling 698 participants. KYSAFE conducted twenty-four (24) safety and health consultative surveys in public sector facilities resulting in the identification of 194 serious and sixty-one (61) other than serious hazards.

Recordkeeping and Reporting

KRS Chapter 338.161 “Statistical records - Posting of notices” requires employers keep, preserve, and make available to the Kentucky OSH Program and the Secretary of the U.S. Department of Labor or the Secretary of the U.S. Department of Health and Human Resources, records relating to occupational safety and health as may be prescribed by regulation.

803 KAR 2:181 specifically addresses occupational injury and illness recordkeeping, as well as reporting fatalities, hospitalizations, and loss of an eye to the Division of OSH Compliance. Employers must report the death of an employee as a result of a work-related incident, including death resulting from a heart attack, within eight (8) hours from when the death is reported to the employer, the employer's agent, or another employee. Employers must also report the work-related amputation, loss of an eye, or hospitalization, including hospitalization resulting from a heart attack, within seventy-two (72) hours after the employer, the employer's agent, or another employee is informed of the incident.

The Division of OSH Compliance inspection scheduling system prioritizes reported hospitalizations, amputations, and loss of eye injuries. This allows compliance resources to be focused on serious hazards in the workplace. In FFY 2022, 453 hospitalizations were reported to the Division of OSH Compliance and 233 inspections were conducted with two (2) repeat serious violations, 112 serious violations, and ninety-three (93) other than serious violations. Total penalties were \$751,500.

In FFY 2022, ninety-nine (99) amputations were reported to the Division of OSH Compliance. Eighty-seven (87) inspections were conducted with six (6) repeat serious violations, eighty-six (86) serious violations, and fifty-two (52) other than serious violations. Total penalties were \$725,200. Additional inspections are pending.

In FFY 2022, the Division of OSH Compliance received one (1) report of loss of eye injury. The inspection related to the eye loss is ongoing.

Total penalties for violations related to amputation and hospitalization injuries in FFY 2022 were \$1,420,800.

The Division of OSH Compliance initiated an emphasis program in FFY 2022 addressing the electronic submission of employer identification number (EIN) and injury and illness records. Data submitted by employers to OSHA assists in identifying trends in workplace hazards, developing KYSAFE outreach programs, and evaluating the effectiveness of Kentucky enforcement activities. The Division of OSH Compliance inspected employers who failed to electronically submit their Employer Identification Numbers (EINs) and injury and illness data to OSHA. Twenty-seven (27) inspections were conducted with fourteen (14) citations issued; penalties totaled \$48,525.

Education, Training, and Consultation Services

The Kentucky General Assembly, in enacting the Commonwealth's occupational safety and health laws, clearly expressed in its Statement of Purpose and Policy, found at KRS 338.011, that the means of preventing workplace injuries and illnesses were to include education, training, and consultation services. The Legislature created a Division of OSH Education and Training for Occupational Safety and Health to help serve this purpose.

Since 1973, the Division of OSH Education and Training has offered a full range of services, including cost-free on-site consultation, technical assistance, training programs, and publications.

The division also has a full range of partnership and recognition programs including:

1. The VPP Program, which is similar to OSHA's VPP.

2. The Safety Partnership Program (SPP) offers long term assistance to smaller employers who have a history of high injury / illness rates and high workers' compensation costs.

3. The CPP focuses specifically on partnering with contractors and builders to address the unique issues of the construction industry.

4. The Kentucky SHARP mirrors the federal SHARP by encouraging small, high hazard employers to operate exemplary safety and health management systems.

5. The Governor's Safety and Health Award Program recognizes employers who have reached certain milestones without a lost work time injury or illness.

KYSAFE conducted 266 consultative surveys in FFY 2022 identifying and ensuring the abatement of 2,262 serious hazards. The division also conducted fifty-three (53) training courses and reached 1,598 attendees in response to training requests from employers. Division staff members provided five (5) on-site technical assistance visits and responded to hundreds of inquiries from public and private employers regarding OSH concerns.

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

SECTION III

NOTEWORTHY ACCOMPLISHMENTS

Many daily activities of the Kentucky OSH Program result in accomplishments that are not easily measured. The impact of OSH personnel onsite presence, the hazards identified and corrected through inspection or consultation, and the injuries, illnesses and fatalities that were prevented, while critically important, are ones that do not easily lend themselves to be singularly classified as outstanding accomplishments. Nevertheless, the day-to-day efforts of Kentucky OSH field and office personnel should not go unrecognized. During FFY 2022, there were events, activities, and results that merit attention as outstanding accomplishments.

Workplace Safety Savings

In FFY 2022, KYSAFE identified 2,262 serious hazards that exposed 57,312 employees and saved employers up to \$15,834,000 in potential penalties. KYSAFE also identified 668 other than serious hazards that exposed 24,125 employees and saved employers \$4,676,000 in potential penalties.

Voluntary Protection Partnership

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

The Kentucky VPP sites are:

- ABB, Louisville;
- Cintas, Grayson;
- Dow Corning Corporation, Carrollton;
- General Electric Aircraft Engines, Madisonville;
- General Electric Aviation Infrastructure, Erlanger;
- Kimberly-Clark, Owensboro;
- L’Oreal (USA) Florence Manufacturing, Florence;
- Marathon Big Sandy Asphalt Terminal, Catlettsburg;
- Marathon Pipeline LLC, Grayson;
- Marathon Pipeline, LLC, Lebanon Junction;
- Marathon Pipeline, Lexington;
- Marathon Pipeline, Louisville;
- Marathon Pipeline LLC, Owensboro Station;
- Marathon Refinery, Catlettsburg;
- Nucor Steel Gallatin, Ghent;
- Raytheon Corporation, Louisville;
- Southwire, Hawesville;
- Unifirst Distribution Center, Owensboro;
- Westlake chemical, Calvert City; and
- WestRock, Nicholasville.

VPP continues to be successful and sets the standard for program and participant quality.

The Partnership Branch maintains twenty (20) very strong, successful VPP sites, the highest number of active sites in the history of the program.

Construction Partnership Program

KYSAFE continues to focus on the construction industry by promoting CPP. There were eighteen (18) active CPP sites in FFY 2022 with a total project cost of over ten (10) billion dollars. There were sixty-one (61) site audits with CPP sites in FFY 2022 affecting 9,841 employees. The most significant CPP project in FFY 2022 was the new \$5.8 billion Blue Oval Park site in Glendale.

SHARP

SHARP started FFY 2022 with fourteen (14) active sites and ended FFY 2021 with fourteen (14) active sites.

Partnership staff also conducted twenty-eight (28) excavation activities in FFY 2022 as part of the national emphasis program.

Compliance Emphasis on Serious Hazards

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

In FFY 2022, the Division of OSH Compliance cited:

Eight (8) willful violations with penalties issued totaling \$350,000;
Fifteen (15) repeat violations with penalties issued totaling \$329,450;
589 serious violations with penalties issued totaling \$2,474,800;
417 other than serious violations with penalties issued totaling \$608,150; and
Five (5) FTA violations with penalties issued totaling \$204,000.

Information presented in this report reflects accurate data for the period sampled. Some casefiles have matured since preparation of this report while others are still working through the process. Subsequently, some of the aforementioned information may vary if resampled. It is important to note that at the time of report submission, there were 400 FFY 2022 open enforcement inspections. The data has not fully matured.

Citations issued in FFY 2022 with noteworthy penalties include:

- \$120,000 to a general industry employer for two (2) repeat serious violations and one (1) other than serious violation;
- \$115,000 to a general industry employer for one (1) willful violation, seven (7) serious violations, and two (2) other than serious violations;
- \$88,900 to a general industry employer for twenty-two (22) serious violations;
- \$81,000 to a construction employer for two (2) serious willful violations and four (4) serious violations;
- \$71,750 to a construction employer for two (2) serious willful violations and one (1) serious violation;

- \$63,000 to a general industry employer for eleven (11) serious violations;
- \$55,400 to a general industry employer for eleven (11) serious violations and two (2) other than serious violations;
- \$41,000 to a general industry employer for one (1) repeat serious violation and two (2) serious violations;
- \$40,600 to a construction employer for one (1) repeat serious violation, one (1) serious violation, and one (1) other than serious violation;
- \$42,000 to a construction employer for one (1) willful violation and one (1) serious violation; and
- \$40,000 to a general industry employer for seven (7) serious violations.

All of the aforementioned penalties were assessed using \$70,000 as the maximum penalty for a willful violation, \$70,000 as the maximum for a repeat serious violation, and \$7,000 as the maximum for a serious violation.

Emphasis Program

The Division of OSH Compliance initiated an emphasis program in FFY 2022 addressing the electronic submission of injury and illness records and the employer identification number (EIN). Data submitted by employers to OSHA assists in identifying trends in workplace hazards, developing KYSAFE outreach programs, and evaluating the effectiveness of Kentucky enforcement activities. The Division of OSH Compliance inspected employers who failed to electronically submit their injury and illness data and EIN to OSHA. The Division of OSH Compliance conducted twenty-seven (27) inspections in FFY 2022; fourteen (14) citations were issued with penalties totaling \$48,525.

Combustible Dust

The (then) Labor Cabinet entered into an Interagency Agreement in 2005 with the Office of Housing, Building and Construction, Division of Fire Prevention (State Fire Marshal). Under the agreement, during the inspection of industrial facilities by the State Fire Marshal in which the potential for combustible dust hazards may exist, the State Fire Marshal informs employer representatives of the availability of education and technical assistance services that are available from KYSAFE. If there are safety and health issues, the State Fire Marshal will make a referral to the Division of OSH Compliance.

If the Kentucky OSH program becomes aware of the existence of fire and safety issues, it will notify the State Fire Marshal. Both the State Fire Marshal and the Division of OSH Compliance will cooperate in the investigation of all fires and explosions involving combustible dust. The Education and Labor Cabinet and State Fire Marshal continue cooperation to identify facilities and conduct joint investigations, when necessary, where combustible dust hazards exist.

The Division of OSH Compliance conducted two (2) inspections in FFY 2022 related to combustible dust that identified two (2) violations with penalties totaling \$11,750.

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

The Division of OSH Compliance has an agreement with the Division of Air Quality (DAQ) in the Department for Environmental Protection of the Energy and Environment Cabinet in which the Division of OSH Compliance is alerted of asbestos removals conducted in the Commonwealth. Employers are required to notify the DAQ ten (10) days in advance of any job involving asbestos removal. The Division of OSH Compliance received 208 ten (10) day notices from DAQ in FFY 2022.

Occupational Poison Alerts

The Division of OSH Compliance receives notices of incidents involving occupational exposure to toxins and poisons from The Kentucky Regional Poison Center of Kosair Children's Hospital. The notices make the Division of OSH Compliance aware of events that may have otherwise been overlooked. Many have resulted in citations and penalties. This informal arrangement and notice provide a mechanism to protect employees from future exposures. During FFY 2022, the Division of OSH Compliance received eighteen (18) notices from the Poison Control Center.

Professional Development

During FFY 2022, KYSAFE maintained one (1) CIH employee, seven (7) CIH-CSP employees, two (2) CSP employees, two (2) dual CSP-ASP employees, three (3) OHST certified employees, and one (1) CHST certified employee. One (1) employee maintained the Asbestos Inspector License which allows the individual to work as a licensed asbestos inspector in Kentucky.

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

The Division of OSH Compliance followed OSHA's TED 01-00-019, Mandatory Training Program for OSHA Compliance Personnel during FFY 2022. The Division of OSH Education and Training utilized TED 01-00-018 as guidance for training newly hired employees.

The Division of OSH Compliance remains committed to developing and maintaining an experienced, diverse staff and continues to encourage professional development and professional certification, such as the CSP and CIH. During FFY 2022, the Division of OSH Compliance maintained two (2) CSP employees, three (3) ASP employees, five (5) GSP employees, two (2)

certified CHST employees, one (1) OHST employee, and one (1) dual CIH-CSP certified employee.

Focused OSH Public Speaking / Presentations

The Kentucky OSH Program continues to serve as a resource for associations, employers, organizations, etc. requesting specialized and insightful speakers addressing various OSH-related topics. KYSAFE conducted thirty-nine (39) face-to-face training courses in response to employer specific requests and reached 1,240 attendees. Twenty-eight (28) training sessions were presented at three (3) POP Center training seminars; 606 participants attended the training. The training addressed subjects relevant to the targeted NAICS such as Basic Electrical Safety, Excavation and Trenching, Silica, Walking/Working Surfaces, Hazard Communication, Personal Protective Equipment, Falls, and Confined Spaces.

Attendance and positive feedback demonstrate that Kentucky OSH Program staff participation at such events is beneficial for the Education and Labor Cabinet, employers, and employees.

Standards Interpretation and Development

The Office of the OSH Federal-State Coordinator provided 834 OSH interpretations during FFY 2022.

Annual Governor's Safety and Health Conference and Exposition

After a two (2) year hiatus due to the pandemic, the Annual Governor's Safety and Health Conference and Exposition returned in 2022. The event, co-sponsored by the Education and Labor Cabinet and the Kentucky Safety and Health Network, Inc., is the largest safety and health exposition in the Commonwealth. Scholastic Achievement for Education Awards, or

“SAFE” awards, totaling \$24,500 were presented to five (5) university students matriculating in the areas of occupational safety and health, industrial hygiene, or a closely related field.

Governor’s Safety and Health Award

The Governor’s Safety and Health Award is presented to employers and employees who together achieve a required number of hours worked without experiencing a lost time injury or illness. Thirty-seven (37) Kentucky employers received the award in FFY 2022. Education and Labor Cabinet leadership traditionally present the award at the employer’s facility or at the Annual Governor’s Safety and Health Conference and Exposition. Fifteen (15) companies received the Governor’s Safety and Health Award at their facility and another twenty-two (22) companies received the Award at the Annual Governor’s Safety and Health Conference and Exposition.

Collection of Delinquent OSH Penalties

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

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

The effort has proven successful; delinquent debts have been collected by Revenue and returned to the OSH Program. And, the OSH Program has seen an increase in employer's efforts to resolve debt payment to avoid being reported to the Department of Revenue. Since October 2013, the Division of OSH Compliance has submitted 286 cases to the Department of Revenue for collection totaling \$2,764,044.67. To date, \$733,469.47 has been collected.

Additional Efforts

The Education and Labor Cabinet recognized the need to make occupational safety and health training more accessible and economical for all of Kentucky's employers and employees and charged the OSH Program with achieving the goal. The Kentucky OSH Program applied for, and received, a one (1) time federal award in FFY 2011 to purchase web conferencing software, a video editing computer, and video equipment. After much planning and preparation, the Cabinet launched an online workplace safety and health training website, www.kysafe.ky.gov, the same year. Employers and employees have cost-free, 24/7 access to a variety of OSH webinars and training courses. The eLearning program has grown by leaps and bounds since its launch. To date, more than 210,000 participants have utilized the website resulting in over 620,000 page views.

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

KYSAFE added seventeen (17) cost-free interactive training products, four (4) modules and thirteen (13) webinars, to the KYSAFE online library at kysafe.ky.gov. The newly developed modules were PPE Module 1, Scaffolding: Erecting, Dismantling and Access, Wages and Hour Overview, and Scaffolding Hazards. The thirteen (13) webinars were Fire Prevention

Plans, 803 KAR 2:181E Updates, Teen Worker Safety, Cold Stress Webinar, Injury and Illness Recordkeeping 3 Hour Overview, Trenching and Excavation, Eyewash Update, Injury and Illness Recordkeeping 1 Hour Overview, Mowing Safety and Noise Protection, Heat Stress NEP, Heat Stress NEP Spanish, Reclassing Permit Required Confined Spaces, and Skid Steer Hazard Alert.

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

Heat Campaign

Since 2011, the Division of OSH Education and Training has participated in the heat awareness campaign and conducted concentrated state-wide efforts to educate the working public concerning the hazards of working in the summer heat. The efforts targeted construction as well as general industry.

Kentucky continued the outreach in FFY 2022. Heat stress education was promoted by KYSAFE in FFY 2022 through in person outreach and online training. Consultants reached 8,942 employees during heat stress targeted outreach efforts. A “Heat Stress NEP 2022 Webinar” was presented and recorded in English and Spanish and posted on the KYSAFE eLearning website at kysafe.ky.gov. KYSAFE also presented two (2) in person heat stress education classes and one (1) online training via ZOOM. The Cabinet’s eLearning website hosts the interactive Heat Stress Awareness for Construction and General Industry module as well as

the Occupational Heat Exposure and Occupational Heat Exposure-Masks and Heat Stress webinars. The module and webinars were viewed 1,107 times in FFY 2022.

Mobile App

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

Western Kentucky Tornado Outreach

On December 10-11, 2021, three (3) tornadoes ripped through western Kentucky resulting in catastrophic destruction and devastation. Tornado 1 was an Enhanced Fujita (EF) 4 long-track tornado that was on the ground for 165.7 miles with 1.13-mile maximum width affecting eleven (11) counties. The 165.7-mile path length is the longest for a tornado in United States history. Tornado 2 was EF-3 long-track tornado that was on the ground for over 122 miles. Tornado 3 was a short-lived EF-1 tornado that was on the ground for 2.75 miles. Seventy-six (76) persons died, 500+ others were injured, and 5,100+ structures were destroyed or damaged across eight (8) counties totaling up to \$3.5 billion.

KYSAFE mobilized division wide boots-on-the-ground outreach to prevent additional fatalities, injuries, and illnesses. Multiple KYSAFE two (2) person teams were deployed to eleven (11) affected counties spanning a landmass over 4,430 miles and reached over 1,300 individuals.

Companies that partner with KYSAFE donated PPE including gloves, hard hats, safety glasses, hearing protection, as well as hi-visibility coats and vests. KYSAFE staff distributed the PPE to response workers with educational materials such as Fact Sheets and Quick Cards emphasizing how to work safe during recovery, clean up, and rebuilding. KYSAFE printed and distributed hundreds of business cards with QR codes to give workers quick access to additional safety and health resources from the KYSAFE and OSHA websites.

To date, 780+ hours were logged by KYSAFE staff in the effort. Outreach efforts continue as rebuilding continues.

Eastern Kentucky Flood Outreach

During the night of July 27 and morning of July 28, 2022, over eight (8) inches of rain fell in eastern Kentucky causing massive flash flooding. And the rainfall continued; fourteen (14) to sixteen (16) inches of rain fell between July 25-30, 2022. Rainfall rates exceeded four (4) inches per hour.

Located in the Appalachian Mountains, many residents lived in valleys next to small streams and rivers which exacerbated the devastation. Subsequent river flooding instigated a second round of destruction for communities in the region; specifically, flooding in downstream areas that did not receive as much rainfall. Forty-three (43) persons across six (6) counties died with one (1) individual unaccounted for. 10,000+ homes were destroyed or damaged leaving thousands of people homeless. 100+ bridges in at least three (3) counties were destroyed or damaged. Families and entire communities lost everything. Many roads remained impassable six (6) weeks after the flooding. Damage assessments are not complete, but damage is anticipated to reach \$1 billion, or more.

Once again, KYSAFE mobilized division wide boots-on-the-ground outreach to prevent additional fatalities, injuries, and illnesses. Multiple KYSAFE two (2) person teams were deployed to six (6) affected counties spanning a landmass over 2,700 miles and reached over 1,300 individuals.

KYSAFE staff distributed 350 PPE packs that included safety glasses, gloves, Tyvek suits, dust masks, rubber overalls, and hard hats. KYSAFE staff distributed educational materials such as Fact Sheets and Quick Cards emphasizing how to work safe during recovery, clean up, and rebuilding. KYSAFE printed and distributed hundreds of business cards with QR codes to give workers quick access to additional safety and health resources from the KYSAFE and OSHA websites. KYSAFE also participated in a community survivor resource meeting in Whitesburg.

To date, 150+ hours were logged by KYSAFE staff in the effort. Outreach efforts continue as rebuilding continues.