



Kentucky Labor Cabinet Occupational Safety and Health Program

RESPONSE

to

FEDERAL ANNUAL MONITORING EVALUATION

for

FEDERAL FISCAL YEAR 2014

I. POINTS REGARDING FAME REPORT

A. General Reply

OSHA's FY 2014 Federal Annual Monitoring Evaluation (FAME) identified eight (8) "New and Continued Findings and Recommendations" in Appendix A. In fact, there is only one (1) new finding and recommendation for FY 2014; the remaining seven (7) issues are merely re-statements of FY 2013 findings and recommendations that are completed and await OSHA's verification.

B. Data

Kentucky is aware of differences and inconsistencies in several of the State Activity Mandated Measures (SAMM) utilized by OSHA to calculate and compare state performance data. Kentucky identified several incorrect SAMM results in Appendix D as well as incorrect data in other portions of the FAME. Kentucky presented each point to OSHA with a request for an explanation or correction and awaits OSHA's response.

Kentucky appreciates the value of measuring state plan performance and is not adverse to doing so. Accurate measures aid the state in many areas, such as review of its performance, allocation of resources, goal establishment, and several other areas. However, OSHA's continued reliance on measures that do not provide for uniform comparison as well as data that presents incorrect or inaccurate results is counterproductive. Kentucky requests OSHA engage in a collaborative effort to resolve the issue.

II. OSHA's FINDINGS, RECOMMENDATIONS and KENTUCKY RESPONSES

OSHA Finding FY 2014-01

Kentucky's state specific regulation 803 KAR 2:412, which addresses residential construction fall protection, differs significantly from OSHA's policies and standards.

OSHA Recommendation

KYOSH should take appropriate action to revise 803 KAR 2:412 - residential construction fall protection to ensure that it is in line with the federal regulation.

State Response

Kentucky proudly acknowledges that 803 KAR 2:412 differs from 29 CFR 1926.501(b)(13) and respectfully submits that Kentucky's regulation has proven to be as effective as OSHA's enforcement. OSHA however believes that Kentucky's regulation and enforcement program is not as effective as OSHA's requirement. Kentucky's state specific regulation, enforcement, and outreach have proven to be exceptionally successful and effective. 803 KAR 2:412 is not only as effective as, but in fact, it is more effective than OSHA's standard in providing safe and healthful protection to employees in residential construction that are exposed to fall hazards. Kentucky's state specific regulation is a shining example of what Sections 2 and 18 of the OSH Act of 1970 encourage and provide for. This is a perceived problem by OSHA that does not exist in Kentucky.

Kentucky has repeatedly asked OSHA to provide data that demonstrates Kentucky's regulation and enforcement program are not as effective as OSHAs and to date, OSHA has been unable to provide any data. On the contrary, correspondence and data provided by Kentucky to OSHA confirms that in accordance with the OSH Act, Kentucky's residential construction enforcement program is as effective as OSHAs. OSHA perceives a problem that does not exist in Kentucky.

Nevertheless, as noted on page ten (10) of the FAME, Kentucky is engaged with OSHA and the state's regulated community to fashion a solution that resolves OSHA's concerns.

OSHA Finding FY 2014-02

A significant number of the 603 open cases in IMIS, that are not in contest or currently active, including 149 cases with open abatements can be closed.

OSHA FY 2014-02 Recommendation

KYOSH should implement a process to determine which cases in the IMIS have completed litigation and/or have the abatement and penalty satisfied. *“Corrective action complete, awaiting verification”*

State Response

As OSHA states in its recommendation, the corrective action is complete. Kentucky considers this finding closed and encourages OSHA to complete its verification.

OSHA Finding FY 2014-03

Complainants are not provided the findings regarding each complaint item and they are not afforded a way of disputing or appealing the findings of a complaint inspection.

OSHA FY 2014-03 Recommendation

KYOSH should fully implement the augmented procedure addressed in former Commissioner Dixon's response following the FY 2011 FAME which states "Kentucky indicated in the 2010 follow-up report that it augmented its procedure by addressing each complaint item individually and advising the complainant's appeal rights in the letter to complainants". Appropriate personnel should be trained in the augmented procedure and supervisors should review case files more carefully to ensure this procedure is fully implemented and this information is included all case files. *“Corrective action complete, awaiting verification”*

State Response

As OSHA states in its recommendation, the corrective action is complete. Kentucky considers this finding closed and encourages OSHA to complete its verification.

OSHA Finding FY 2014-04

More than half of the fatality files reviewed did not provide evidence that one or more of the required calls were made and/or letters sent to the next-of-kin.

OSHA FY 2014-04 Recommendation

Implement a process to ensure full implementation of CPL 02-00-153 - Communicating OSHA Fatality Inspection Procedures to a Victim's Family to ensure that all communications with the NOK are completed. "Corrective action complete, awaiting verification"

State Response

As OSHA states in its recommendation, the corrective action is complete. Kentucky considers this finding closed and encourages OSHA to complete its verification.

OSHA Finding FY 2014-05

KYOSH conducted a total of 15 programmed planned health inspections during this evaluation period.

OSHA FY 2014-05 Recommendation

KYOSH should develop and implement a strategy to ensure a more representative number of programmed planned health inspections are conducted to adequately address the scope and seriousness of the hazards found in high hazard health industries. "Corrective action complete, awaiting verification"

State Response

As OSHA states in its recommendation, the corrective action is complete. Kentucky considers this finding closed and encourages OSHA to complete its verification.

OSHA Finding FY 2014-06

KYOSH has significantly high average citation issuance lapse times for safety and health.

OSHA FY 2014-06 Recommendation

KYOSH should develop and implement a process to reduce the average lapse time for non-compliance safety and health inspections to the national average.

State Response

Kentucky is aware of differences and inconsistencies in several of the State Activity Mandated Measures (SAMM) utilized by OSHA to calculate and compare state performance data. Kentucky can take no further action until OSHA can resolve the issue.

OSHA Finding FY 2014-07

Compliance officers are not provided progressive training opportunities as outlined by the KYOSH training guidelines.

OSHA FY 2014-08 Recommendation

KYOSH should implement a process to ensure compliance officer training is compliant with TED 01-00-018 "Training Program for OSHA Compliance Personnel," as adopted by KYOSH. "Corrective action complete, awaiting verification"

State Response

As OSHA states in its recommendation, the corrective action is complete. Kentucky considers this finding closed and encourages OSHA to complete its verification.

Kentucky takes exception to OSHA's assertion in the finding that "compliance officers are not provided progressive training opportunities." That is totally incorrect. Page forty (40) of the FY 2013 FAME, OSHA stated:

"Additionally, the KYOSH Program remains supportive of the career development and advancement of compliance and consultation personnel. The State pays for employees to take the certification preparation course and reimburses employees that successfully complete the certification exam. Employees that achieve professional certifications also receive a salary increase, range from 10 to 15 percent. In FY 2013, a total of 33 employees had certifications. These certifications include the following: Associate Safety Professional (ASP); Certified Safety Professional (CSP); Certified Industrial Hygienist (CIH); Occupational Health Safety Technologist (OHST); and Construction Certified Health Safety Technician (CCHST). The State also rewards employees that obtain advance degrees. During this period, KYOSH employed a total of two employees with masters or advance degrees however one is no longer with KYOSH. Additionally, the State promotes the Certified Fundamentals Manager, as well as the Certified Public Manager (CPM) degree, which is offered by Kentucky State University in Frankfort, Kentucky. During this period, there were five employees with the CPM certification. Employees that successfully complete the two-year CPM Program receive a five percent pay incentive."

On page forty-eight (48) of the FY 2013 FAME, OSHA stated:

"Goal 3.4: Encourage and aid advanced degrees for OSH Program employees.

During this period, two (2) staff members obtained master's degrees and two (2) other staffs members enrolled in the program. Since 209 [sic], the Division of OSH Compliance has supported seven (7) compliance officers in attaining Masters of Science degrees. This goal was effectively accomplished during FY 2013."

Page fifteen (15) of the FY 2014 FAME states:

"Goal 3.3: Encourage and aid in the staff's professional certification.

This goal was effectively accomplished during FY 2014.

Goal 3.4: Encourage and aid advanced degrees for occupational safety and health program workers.

During this period, two staff members obtained Master of Science degrees in Safety, Security, and Emergency Management. Additionally, nine compliance officers also obtained Master of Science degrees. This goal was effectively accomplished during FY 2014."

Kentucky clearly supports progressive training opportunities for compliance officers. Finding

FY 2014-08 should be reworded to reflect specificity to TED 01-00-019, not progressive training.

OSHA Finding FY 2014-08

KYOSH's Division of OSH Compliance does not have an internal self-evaluation program as required by the State Plan-Policies and Procedures Manual.

OSHA FY 2014-09 Recommendation

KYOSH should implement a process to ensure that an internal self-evaluation program possessing integrity and independence is developed and implemented. Kentucky should ensure that periodic evaluations of all areas of the program are evaluated and documentation of the evaluations is made available to federal OSHA.

State Response

The Division of OSH Compliance has always approached and conducted internal evaluations on several fronts, such as internal fiscal checks and balances, employee on the job evaluations, review of employee work product, and a host of other internal policies and procedures. Kentucky's internal evaluation process had been in place for decades.

For some time now, the Division of OSH Compliance has worked toward consolidation of its internal self-evaluation practices into a single written document. That task was completed in the third quarter of FY 2015 and includes additional auditing processes.