



Kentucky Labor Cabinet Occupational Safety and Health Program

RESPONSE

to

FEDERAL ANNUAL MONITORING EVALUATION

for

FEDERAL FISCAL YEAR 2017

I. COMMENT REGARDING FAME REPORT

OSHA's FY 2017 Federal Annual Monitoring Evaluation (FAME) identified twelve (12) findings and six (6) observations. This response is limited to OSHA's findings and does not address OSHA's observations.

II. OSHA FINDINGS, RECOMMENDATIONS and KENTUCKY RESPONSES

OSHA Finding FY 2017-01

"Safety compliance officers are not provided with progressive training opportunities, as outlined in TED 01-00-019 and adopted by KY OSH."

OSHA Recommendation

"KY OSH should implement a process to ensure safety compliance officer training is compliant with TED 01-00-019 "Training Program for OSHA Compliance Personnel," as adopted by KY OSH."

State Response

Kentucky follows TED 01-00-019. An in-depth analysis of safety compliance officer training reveals slight deviation from TED 01-00-019. The cause of the issue has been identified and addressed, and is now abated. All deviations have been corrected or are in the process of correction.

OSHA Finding FY 2017-02

"KY OSH has elected to not acknowledge complaints with electronic signatures as being valid signed complaints, even though state law KRS 369 – Information Technology allows agencies to recognize electronic signatures as being acceptable forms of signature. Electronic complaints that are forwarded to KY OSH are not being properly addressed. This policy is not at least as effective as OSHA's policy of accepting electronic signatures as valid signatures."

OSHA Recommendation

"KY OSH should accept electronic complaints with electronic signatures as valid formal complaints, and process these complaints in accordance with their policies and procedures for processing complaints."

State Response

Kentucky recently initiated change in its complaint intake procedures and as a result of that change, electronic complaints with electronic signatures are accepted as valid complaints. Kentucky has a process in place to address every complaint, electronic or written, and is "as effective as" OSHA.

OSHA Finding FY 2017-03 (formerly FY 2015-04 and FY 2016-02)

"KY OSH interprets their state law as prohibiting inspection or investigation of a non-formal (non-employee) complaint. As a result, six of the 10 non-formal complaints reviewed were classified as invalid, even though they contained allegations of serious hazards and/or serious injuries."

OSHA Recommendation

“KY OSH and its attorneys should work with OSHA to change their current interpretation of the state law and start handling non-formal complaints alleging serious hazards either with an inspection or, at a minimum, by letter (phone/fax investigation).”

State Response

KRS 338.121 requires an inspection be conducted when an employee or employee representative provides notice to Kentucky alleging:

- (1) A violation exists which threatens physical harm; or
- (2) An imminent danger exists.

Kentucky will continue to review formal complaints and conduct inspections in accordance with its FOM and KRS 338.121. Kentucky will also review non-formal complaints which allege serious hazards and conduct inspections and/or investigations in accordance with its FOM and applicable law.

OSHA Finding FY 2017-04

“In most fatality files, the interviews that were conducted during the investigations were inadequate and statements were essentially non-existent.”

OSHA Recommendation

“KY OSH should develop and implement a strategy to ensure adequate and thorough interviews are conducted, and statements are developed for all witnesses, workers, supervisors, and managers with knowledge of the incident, hazards, conditions, policies and procedures, and any other pertinent information.”

State Response

Kentucky believes adequate, thorough information is gathered during interviews. Nevertheless, Kentucky is working towards a solution to better memorialize interviews and collect statements.

OSHA Finding FY 2017-05

“A review of the fatality inspection files found that fatalities are not being completely and thoroughly investigated to identify the cause of the accident. The cause of the accident was not identified in 19 of the 44 fatality files that were reviewed.”

OSHA Recommendation

“KY OSH should develop and implement a strategy to ensure all fatalities are completely and thoroughly investigated; identifying and documenting the cause.”

State Response

As stated in Kentucky’s FOM, Chapter 8, *Fatality/Catastrophe Investigation*, “Every reasonable effort shall be made to **determine** the cause of the accident.” [Emphasis added.] Kentucky in fact makes every reasonable effort to determine the cause of the accident. Kentucky acknowledges that some fatality inspection files did not have a statement explicitly identifying the cause of the accident for three (3) primary reasons. They are:

1. Documenting the cause of the accident is not required;
2. Documenting the cause of the accident may not have been memorialized when the cause was plainly obvious or apparent; and
3. The cause of the accident did not relate to a violative condition.

Nonetheless, Kentucky will memorialize the cause of the accident to the extent feasible.

OSHA Finding FY 2017-06 (formerly FY 2015-10, FY 2014-05, FY 2013-05, and FY 2011-06)
“KY OSH conducted a total of four programmed health inspections during this period.”

OSHA Recommendation

“KY OSH should develop and implement a strategy to ensure a more representative number of programmed planned health inspections are conducted to adequately address the scope and seriousness of the hazards found in high-hazard health industries.”

State Response

Kentucky acknowledges a lack of programmed planned health inspections. Kentucky stated before, and states again, a strategy is in place to ensure a representative number of programmed health inspections are conducted. However, staff turnover remains the issue, compounded by experienced staff who are temporarily prevented from conducting inspections due to health issues. Vacancies are filled as expeditiously as possible but compliance officer training, coupled with the “lag time” before a compliance officer can perform solo inspections, make this issue a slow fix. Other inspection priorities also come into play, such as imminent dangers, hospitalizations, complaints, etc. Nonetheless, Kentucky will strive to perform a more representative number of programmed planned health inspections in FY 2019.

OSHA Finding FY 2017-07 (formerly FY 2015-08, FY 2014-06, FY 2013-06, FY 2011-07, and FY-2009-11)

“KY OSH has significantly high average citation issuance lapse time for safety and health inspections, which are outside the FRLs.”

OSHA Recommendation

“KY OSH should develop and implement a process to reduce the average lapse time for non-in-compliance safety and health inspections to reduce lapse times to the national average.”

State Response

Delayed casefile review as well as delayed casefile processing accounted for higher lapse time. Kentucky is evaluating organizational and process changes that will address the issue.

OSHA Finding FY 2017-08

“In a majority of both complaint and general case files, there is little to no documentation of the interviews conducted. In cases where employees were interviewed, the interviews were minimally documented with short bullet notes in fragmented sentences.”

OSHA Recommendation

“KY OSH should develop and implement a strategy to ensure adequate and thorough interviews are conducted and adequately documented for workers, supervisors, and managers with knowledge of the hazards, work practices, policies and procedures, and any other pertinent information.”

State Response

Kentucky believes adequate, thorough information is gathered during interviews. Nevertheless, Kentucky is working towards a solution to better memorialize interviews.

OSHA Finding FY 2017-09

“In most safety and health consultation case files, the OSHA Form 33 was used with scores between one and two, and the required comments for improvement were not included as required by the CPPM, Chapter 4, II, F.”

OSHA Recommendation

“KY OSH should provide additional training to consultants to ensure that all the required improvement comments are entered in the OSHA Form 33.”

State Response

Kentucky will ensure comments are entered when scores are between one (1) and two (2).

OSHA Finding FY 2017-10

“Consultation case file documentation (field notes) was lacking the following: hazard description; processes; locations; measurements; the number of workers exposed; the duration of exposure; pictures; and abatement recommendations.”

OSHA Recommendation

“The Kentucky Consultation Program should closely monitor consultation file documentation to ensure the appropriate information is included in the files.”

State Response

All consultation case file written reports list all hazard descriptions, processes, locations, measurements, the number exposed, the duration of exposure, pictures, and abatement recommendations as required by Chapter 6, *Documenting Consultation Services*, of the Consultation Policies and Procedures Manual (CPPM). The CPPM does not establish specific requirements for what is to be included in field notes. “Field Notes” are referenced in Appendix H of the CPPM, page H-3, Section V, *Filing Arrangement - Visit Case File Contents, A, Forms and Related Documentation*, 10. *Field Notes*. There is no language other than “Field Notes.” OSHA’s finding has no basis; this is a finding for something that is not required. Kentucky rejects this finding.

OSHA Finding FY 2017-11

“In most cases, the employer’s request date were not accurately reflected on the request form, and the scheduled site visit date was incorrectly entered as the employer’s request date, with the

majority of delays existing for three to six months. Therefore, delays in KY OSH conducting visits were not tracked due to incorrect data entry.”

OSHA Recommendation

“The Kentucky Consultation Program should provide additional training to consultants to ensure they are correctly entering the employer’s request date in OSHA express.”

State Response

OSHA’s finding is incorrect. Kentucky does not enter the scheduled site visit date as the employer’s request date. Kentucky rejects this finding.

OSHA Finding FY 2017-12

“In 9 of 18 (50%) of consultation case visits recorded as comprehensive visits, there were potential (or likely) health hazards present and yet there was no health sampling done to evaluate the potential and there was no documentation in the file to explain why this sampling was not conducted.”

OSHA Recommendation

“The Kentucky Consultation Program should provide additional training to consultants to ensure they are conducting sufficient sampling, and/or evaluations of health hazard specific to the type of industries visited. Ensure consultants provide an adequate explanation, when sampling is not conducted.”

State Response

Kentucky is confident that consultants conduct sufficient sampling. The CPPM neither defines “sufficient sampling” nor requires sampling if it is not requested by the employer. Kentucky provides the consultative services that an employer requests. Kentucky cannot, and will not, compel or “strong arm” an employer into a service the employer does not want. Kentucky rejects this finding.