

Kentucky Education and Labor Cabinet

Occupational Safety and Health Program

RESPONSE

to

FOLLOW-UP FEDERAL ANNUAL MONITORING EVALUATION REPORT

for

FEDERAL FISCAL YEAR 2024



**I. COMMENT REGARDING FOLLOW-UP FAME REPORT**

The Occupational Safety and Health Administration (“OSHA”) has a two (2) year cycle for the Federal Annual Monitoring Evaluation (FAME) process. FFY 2024 was a follow-up year; therefore, OSHA did not review any Kentucky casefiles.

OSHA’s FFY 2024 Follow-up FAME Report acknowledges Kentucky had many successful initiatives in FFY 2024 to lower work-related injuries and illnesses in the Commonwealth. OSHA recognized Kentucky continually worked to make progress on findings and observation from the FFY 2023 comprehensive FAME Report. The FFY 2024 Follow-up FAME Report contains three (3) findings (two (2) continued and one (1) new) and no observations. OSHA states no findings were completed; however, Kentucky notes that in fact, one (1) finding was in fact partly completed and is discussed below. OSHA also states one (1) observation was closed, one (1) observation was converted to a finding, and no new issues were identified.

**II. OSHA FINDINGS, OBSERVATIONS, and KENTUCKY RESPONSES**

**OSHA Finding FY 2024-01**

“In FY 2024, the average lapse time for safety inspections (SAMM 11a) was 76.56 days, which was above the FRL of 67.23 days.

**OSHA Recommendation**

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

**State Response**

OSHA acknowledges on page six (6) of the Follow-up FAME Report that Kentucky reduced the lapse time for health inspection to within the further review level, “thus health lapse time was removed from this finding.” OSHA’s assertion that no findings were completed for FFY 2024 is not wholly accurate in light of the removal of health inspection lapse time from OSHA’s finding.

Improved lapse time is one (1) of Kentucky’s top goals and as noted above, was achieved in the health branch. Kentucky previously acknowledged to OSHA that decreased enforcement staffing had a direct, negative impact on lapse time and the trend would most likely continue until newly hired compliance officers were trained to conduct independent inspections.

OSHA is aware that Kentucky developed and implemented a process to reduce average lapse time for safety inspections. Unfortunately, the reduction was not fully achieved in the safety branch due to the tremendous increase in complaints received coupled with decreased staffing. Nonetheless, Kentucky will continue emphasis to reduce lapse time.

**OSHA Finding FY 2024-02**

**“**The Kentucky State Plan has been unable to implement OSHA’s initial FY 2016 Federal Civil Penalties Inflation Adjustment Act Annual Adjustments, through 2024. Legislative action is required to amend the statute.”

**OSHA Recommendation**

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

**State Response**

As OSHA states in the finding, “Legislative action is required to amend the statute.” OSHA is aware that Kentucky worked with state authorities and legislation was proposed in the 2024 General Session to increase and annually adjust Kentucky’s occupational safety and health (OSH) penalties. The legislation did not pass. OSHA was regularly informed and briefed during the process.

Chapter 7, “Federal Annual Monitoring Evaluation and Annual Reports”, Section II. Annual Reports., B. FAME Report., 5. FAME Report Findings, Recommendations, and Observations, of OSHA’s *State Plan Policies and Procedures Manual* (SPPPM), page seventy-four (74), states:

“Report findings shall be limited to those issues that warrant corrective action by the State Plan to ensure it is ALAE.”

Note: ALAE is at least as effective; meaning, at least as effective as OSHA.

Pursuant to Chapter 7 of the SPPM, Kentucky notes that OSHA has neither demonstrated nor articulated how Kentucky’s current penalties are not at least as effective as OSHA’s penalties. Therefore, Kentucky rejects Finding FY 2024-02. Nonetheless, Kentucky will continue to work with state authorities to amend Kentucky’s OSH penalties. OSHA was informed such during, and subsequent, the FFY 2024 Follow-up FAME review period.

**OSHA Finding FY 2024-03**

“In FY 2024, the percent in-compliance rate for health inspections (SAMM 9b) was 68.12%, which was above the FRL of 53.01%. This was an observation for the past five years and was converted into a finding for FY 2024.”

**OSHA Recommendation**

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

**State Response**

Pursuant to Chapter 7 of the SPPM, OSHA has neither demonstrated nor articulated how Kentucky’s health inspection in-compliance rate is not as effective as OSHA. OSHA provides no basis for the finding other than it “was an observation for the past five years and was converted into a finding for FY 2024.” Kentucky asserts it was likely an observation and not a finding for the past five (5) years because OSHA could not establish the in-compliance rate negatively impacted the effectiveness of the state plan. Kentucky rejects Finding FY 2024-03.