

## CHAPTER II COMPLIANCE PROGRAMMING

### I. Program Planning.

- A) **Purpose.** This chapter provides general operation guidelines, related activities, and instructions.
- B) **Primary Consideration.** The primary consideration is to ensure maximum effective inspection coverage is provided to the working men and women of the Commonwealth. The guidelines in this chapter are generally used for scheduling inspections to achieve this goal.

### II. Inspection / Investigation Types.

- A) **Un-programmed.** Inspections scheduled in response to alleged hazardous working conditions that are identified at a specific worksite are un-programmed. This type of inspection includes imminent dangers, fatalities, complaints, hospitalizations, amputations, loss of eye, and referrals. It also includes follow-up and monitoring inspections.

**NOTE.** This category is generally limited to employers who are directly affected by the subject of the un-programmed activity.

- B) **Un-programmed Related.** Inspections at the same worksite as an employer directly identified in the complaint, accident, or referral, but are not directly identified in the complaint, accident, or referral.

**EXAMPLE:** A trenching inspection conducted with an employer at the un-programmed worksite where the trenching hazard or the employer was not identified in the complaint, accident report, or referral.

**EXAMPLE:** A machine guarding inspection conducted with a host employer (un-programmed), which utilizes employees from a temporary service (un-programmed related) at the un-programmed worksite where the machine guarding hazard was identified in the complaint against the host employer.

- C) **Programmed.** Inspections of worksites that are scheduled based upon objective or neutral selection criteria.
- D) **Programmed Related.** Inspections of employers at worksites whose activities are not included in the programmed assignment.

### III. Inspection Scope. Inspections, either programmed or un-programmed, may fall into one (1) of two (2) categories.

- A) **Comprehensive.** A substantially complete inspection of the worksite.
- B) **Partial.** An inspection generally focused on certain potentially hazardous areas, operations, conditions, or practices at the worksite.

- i) A partial inspection, whether programmed or un-programmed, may include, in addition to its principle focus, a review of injury and illness records, an assessment of the employer's written programs, an evaluation of the employer's safety and health management program, and a walkaround.
- ii) Information gathered during the review and walkaround may be utilized to determine if the inspection scope should be expanded.

#### IV. Inspection Selection Criteria.

##### A) **General Requirements.**

- i) Scheduling. The Director or designee must ensure inspections are scheduled in accordance with this chapter, are consistent with the objectives of the agency, and maintain appropriate documentation of scheduling practices.
- ii) Effect of Contest. The following guidelines apply when an employer contests a citation and/or penalty received as a result of a previous inspection and the case is pending before the Kentucky Occupational Safety and Health Review Commission (Review Commission):
  - (a) When the employer contested the penalty only, the inspection is scheduled in accordance with the guidelines in this chapter; that is, it is scheduled as though there were no contest.
  - (b) When the employer contested the Citation and Notification of Penalty or any items therein, then:
    - (1) Un-programmed inspections are scheduled in accordance with the guidelines in this chapter. The scope of such an inspection is normally partial. All items under contest must be excluded from the inspection unless an imminent danger is involved.
    - (2) Programmed inspections may be carried over to the next cycle. If conducted, the inspection must exclude all items under contest unless a potential imminent danger is involved.
    - (3) On rare occasions, when warranted by the particular circumstances involved, programmed safety inspections may be carried over to the next cycle when the employer contested a previously issued health citation. The same is true for programmed health inspections when the employer contested a previously issued safety citation. The decision to carry over such an inspection is made only after consultation with the Director.

- B) **Employer Contacts.** Contacts for information initiated by employers or their representative(s) do not generally trigger an inspection or protect them against inspections conducted pursuant to guidelines established by the agency. When an employer or employer representative indicates an imminent danger exists or a fatality occurred, the supervisor must act accordingly.

#### V. Inspection Priorities.

**A) Order of Priority.**

<u>Priority</u>	<u>Category</u>
First	Imminent Danger
Second	Fatality Investigation
Third	Investigation of Complaint/Referral
Fourth	Programmed Inspection

**B) Efficient Use of Resources.** Un-programmed inspections are normally scheduled and conducted prior to programmed inspections. For efficient use of resources, or when agency objectives dictate, programmed inspections may occasionally receive a higher priority than un-programmed inspections.

**VI. Inspection Scheduling.**

**A) Un-programmed Inspections.** Inspections conducted in response to specific evidence of hazardous conditions at a worksite are considered un-programmed inspections.

- i) Priorities. Un-programmed inspections, excluding follow-ups and monitoring, are normally scheduled with the following priorities:
  - (a) Reports of alleged imminent danger situations from any source, including referrals and complaints regardless of formality;
  - (b) Fatalities;
  - (c) Formal complaints, CSHO referrals, re-inspection referrals, and referrals from other agencies, classified as serious;
  - (d) Media and employer reports of accidents involving serious injuries or hazards;
  - (e) Discrimination non-formal complaint referrals;
  - (f) Formal other-than-serious complaints; and
  - (g) Non-formal complaints requiring an inspection.
- ii) Scope. Un-programmed inspections of a worksite are normally partial inspections limited to the specific working condition(s) or practice(s) forming the basis of the un-programmed inspection. The scope may be expanded under any of the following circumstances and must be documented in the casefile.
  - (a) The establishment is on the current inspection list and the deletion criteria in this chapter do not apply.
  - (b) A substantially complete inspection of a construction or a covered maritime establishment has not been conducted within the preceding three (3) months.

- (c) A substantially complete inspection of a manufacturing establishment has not been conducted within the preceding three (3) years.
  - (d) KY OSH inspection records for the worksite or the employer indicate a history of significant violations.
  - (e) The allegation(s) indicates the existence of potential hazards which can be identified by expanding the inspection.
  - (f) Any other documented reason as determined by the Director or designee.
- iii) Follow-up Inspections. Follow-up inspections are conducted as promptly as resources permit.
- (a) *Follow-up Inspection Priority*. Except in unusual circumstances, follow-up inspections are generally conducted no later than 30 working days after the latest violation abatement date and generally take priority over all programmed inspections and all un-programmed inspection with other-than-serious hazards. The seriousness of the hazard(s) requiring abatement determines the priority among follow-up inspections.
  - (b) *Follow-up Inspection*. Follow-up inspections may be conducted in the following circumstances:
    - (1) Willful, repeated, and high gravity serious violations;
    - (2) Failure to abate notifications;
    - (3) Citations related to an imminent danger situation;
    - (4) The employer fails to respond to a request for notification of abatement action; and
    - (5) The supervisor believes particular circumstances indicate the need for a follow-up inspection.

**EXAMPLE:** The number and/or the type of violations, past history of the employer, complex engineering controls, etc.
  - (c) *Exceptions to Follow-up Inspections*. It is not necessary to conduct a follow-up inspection when:
    - (1) Clear Proof of Abatement. A follow-up inspection is not necessary when clear proof of abatement is presented.

**EXAMPLE:** The CSHO observes and documents the correction of the cited condition during the inspection.
    - (2) Determination. The supervisor or Program Manager may determine a follow-up inspection is not required and documents the reason documented in the casefile.
    - (3) Casefile Closing. All closed casefiles must contain abatement verification.

(d) *Multiple Abatement Dates.*

- (1) If a follow-up inspection is to be conducted when an employer was cited for a number of violations with varying abatement dates, the follow-up inspection is not scheduled until most, if not all, of the established abatement dates for the more serious violation(s) in the citation(s) have passed.
- (2) When satisfactory corrective action is taken by the employer, additional follow-up activity is not scheduled unless the supervisor or Program Manager believe complex engineering controls or other special factors involved in the case warrant a follow-up.

(e) *Notice of Contest Not Filed.* Follow-up inspections may be conducted during the 15-day notice of contest period provided the date set for abatement has passed and the employer has not filed a notice. Normally, only conditions considered high gravity serious subject an employer to being scheduled for follow-up during the contest period. When a follow-up inspection reveals a failure to abate, a Notification of Failure to Abate Alleged Violation may be issued immediately without regard to the contest period.

(f) *Notice of Contest Filed.* When a citation is under contest, a follow-up inspection is not scheduled regarding the contested item.

- (1) When the employer contests the proposed penalty but not the underlying citation, a follow-up inspection may be conducted.
- (2) When a follow-up inspection is conducted at a worksite(s) involved in proceedings before the Review Commission, the CSHO must explain in the opening conference the inspection will not involve matters before the Review Commission.

iv) Monitoring Inspections. Monitoring inspections are conducted to ensure hazards are being corrected and employees are protected whenever a long period of time is necessary for abatement. Inspections may be scheduled for reasons including, but not limited to, a request for extension of abatement, a settlement agreement, or to ensure terms of a variance or interim order are carried out.

(a) Monitoring visits evaluate progress made on long-term or multi-step abatement plans whenever abatement dates extend beyond one (1) year from the citation issuance date.

- (1) These inspections are conducted every six (6) months, counted from the citation issuance date until final abatement is achieved for all cited violations. If the case is contested, the final order date must be used as a starting point instead of the citation issuance date. A settlement agreement may specify an alternative monitoring schedule.
- (2) If the employer is submitting satisfactory quarterly progress reports and the Director or designee agrees the reports reflect adequate progress and protection for employees, a monitoring inspection may be conducted every 12 months.

- (3) Such inspections have priority equal to serious formal complaints. The seriousness of the hazards requiring abatement determines priority.
- (b) The Director or designee may authorize a monitoring inspection for other reasons that must be documented in the casefile.
- v) Reinspection Referrals. When citations are withdrawn or not issued because of incomplete or erroneous inspection information, administrative error which cannot be corrected through an amendment to the citation, or for other good cause, and there is reason to believe the violative condition(s) continues, the Program Manager, after consulting with the Director or designee, processes the reinspection as a CSHO referral.
- B) Programmed Inspections.** A programmed inspection is a comprehensive inspection of a worksite but may be limited in scope. Low hazard areas such as office space may be excluded from inspection without affecting comprehensiveness of the inspection.
- i) General. The KY OSH Program conducts programmed inspections primarily in “high hazard” employment sectors.
- (a) A “high hazard industry” is one in a North American Industry Classification System (NAICS) code having an occupational injury incidence rate equal to, or higher than, Kentucky’s average rate for private sector industry as a whole, as most recently published by the Bureau of Labor Statistics. High hazard industries are also referred to as high-rate industries.
- (b) Construction and maritime are considered high hazard employment.
- (c) An industry(s) may be scheduled for inspection as emphasis programs.
- ii) Description. Programmed inspections are scheduled as follows.
- (a) Construction worksite lists may be provided through the DODGE Dataline service using pre-specified criteria.
- (b) The Division of OSH Compliance may select employers for general industry programmed inspections referred from consultation outreach programs.
- (c) OSHA’s Site Specific Targeting and Injury Tracking Application programs may serve as a basis for programmed inspections.
- iii) Guidelines and Procedures. Programmed inspections may be conducted jointly by safety and health personnel whenever resources permit. If an inspection begins as safety only or health only, but the CSHO determines during the course of the inspection that it should be expanded, the CSHO must contact her / his supervisor. KY OSH makes a decision on the basis of available information. A decision may also be made to handle the information as a CSHO referral for inspection at a later time.

- (a) *Inspection List*. Inspection lists are compiled by determining which establishment are to be scheduled for inspection. Inspection lists are maintained for three (3) years following their completion.
- (b) *Inspection Scheduling*.
- (1) General Industry Inspection Scheduling. Establishments may be scheduled and inspected in any order that makes efficient use of resources.
- a. The Director or designee may terminate the use of any inspection list containing uninspected establishments after considering the age of the list, and/or availability of lists based on more current data, and/or resources.
  - b. Unopened inspections not appearing on the new list are rescinded.
  - c. If after arrival the CSHO learns the establishment is classified in an incorrect NAICS code, the inspection is classified as no-inspection.
- (2) Construction Inspection Scheduling. Due to the mobility of the construction industry, the transitory nature of construction worksites, and the fact that construction worksites frequently involve more than one (1) employer, inspections are normally scheduled from a list of worksites rather than employers.
- a. Inspection List. Inspection lists may be based on:
    1. Counties located in the state;
    2. Estimated number of worksites to be inspected during the scheduling period and number of employers expected to be covered by the inspection;
    3. The Director or designee determines the selection criteria. The selection criteria may be designed to include any class of worksite(s) within the selection process. Some examples are:
      - (A) Dollar value of the project;
      - (B) Size of the project;
      - (C) Start date;
      - (D) Length of time the project is likely to last;
      - (E) Specific stage(s) of the project; and
      - (F) Specific type(s) of project.
- (3) Health Construction Inspections. No separate scheduling method is utilized for programmed construction health inspections. The Director or designee determines

which construction inspections are to be conducted as a joint inspection where serious health hazards may exist.

VII. **Exemptions and Limitations.** The CSHO and Supervisor must inform the Program Manger if the employer is identified in OSHA's CPL 02-00-051, Enforcement Exemptions and Limitations under the Appropriations Act. The Program Manager consults with the Director regarding inspection status.