

CHAPTER II COMPLIANCE PROGRAMMING

I. Program Planning.

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

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/catastrophes, complaints, hospitalizations, amputations, loss of eye, and referrals. It also includes follow-up and monitoring inspections.

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

- B) **Un-programmed Related.** Inspections of employers at the same worksite as an employer who is directly identified in the complaint, accident, or referral, but who are not themselves 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 multi-employer worksites whose activities are not included in the programmed assignment.

III. Inspection Scope. Inspections, either programmed or un-programmed, may fall into one of two (2) categories depending on the scope of the inspection:

- A) **Comprehensive.** A substantially complete inspection of the establishment.
- B) **Partial.** An inspection whose focus is limited to certain potentially hazardous areas, operations, conditions or practices at the establishment.

- 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. Follow-up inspections may be exempted from this requirement.
- ii) The information gathered during a review and walkaround is used to determine whether the inspection scope should be expanded.

IV. **Inspection Selection Criteria.**

A) **General Requirements.**

- i) **Scheduling.** The director must ensure inspections are scheduled within the framework of the priorities outlined in this chapter, are consistent with the objectives of the agency, and that appropriate documentation of scheduling practices is maintained. *See* OSHA Instruction CPL 02-00-051 for current congressional exemptions and limitations on inspection activity.
- ii) **Effect of Contest.** When an employer scheduled for inspection, either programmed or un-programmed, contests a citation and/or a 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), the following guidelines apply:
 - (a) When the employer contested the penalty only, the inspection must be scheduled in accordance with the guidelines in this chapter; that is, it must be 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 must be 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 has contested a previously issued health citation. The same is true for programmed health inspections when the employer has contested a previously issued safety citation. The decision to carry such an inspection over must be made only after consultation with the director.

- B) **Employer Contacts.** Contacts for information initiated by employers or their representatives must not trigger an inspection or protect them against regular inspections conducted pursuant to guidelines established by the agency. When an employer or his representative indicates an

imminent danger exists or a fatality or catastrophe has occurred, the supervisor must act in accordance with established inspection procedures.

V. Inspection Priorities.

A) **Order of Priority.** Unless otherwise noted in particular cases, priority of accomplishment and assignment of resources for inspection categories are:

<u>Priority</u>	<u>Category</u>
First	Imminent Danger
Second	Fatality/Catastrophe Investigations
Third	Investigation of Complaints/Referrals
Fourth	Programmed Inspections

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 so 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 / Catastrophes;
- (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 of a serious nature;
- (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 an establishment are normally partial inspections limited to the specific working conditions or practices forming the basis of the un-programmed inspection. Depending upon available resources, 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 safety and health inspection list and the deletion criteria given 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 establishment or for the employer indicate a history of significant violations.
 - (e) The allegations providing the basis for the un-programmed inspection indicate 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 must be 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 hazards evaluated as other-than-serious. The seriousness of the hazards requiring abatement determine the priority among follow-up inspections.
 - (b) *Required Follow-up Inspection*. Follow-up inspections are normally required 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) When the employer fails to respond to a request for notification of abatement action;
and
 - (5) When the supervisor believes that 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 Required 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 it must be documented in the casefile.
- (3) Administrative Closing of Casefile. When a required follow-up inspection has not been conducted within six (6) months of the final correction date and the case has become a final order of the Review Commission, the casefile is administratively closed after consultation with the director or designee. All administratively closed casefiles must contain verification of abatement as well as documentation showing why the follow-up inspection was not conducted.

(d) *Multiple Abatement Dates*.

- (1) If a follow-up inspection is to be conducted when an employer has been 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 violations 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 believes 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 such a notice. Normally, only those 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 of the initial citation.

(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 establishments involved in proceedings before the Review Commission, the CSHO must explain in the opening conference that the inspection will not involve matters before the Review Commission.

iv) Monitoring Inspections. Monitoring inspections are conducted to ensure that 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 that terms of a variance or interim order are being 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 issuance date of the citation.

(1) These inspections must be conducted every six (6) months, counted from the citation date until final abatement has been achieved for all cited violations. If the case has been contested, the final order date must be used as a starting point instead of the citation 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 on implementation of control measures and adequate interim 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 among monitoring inspections.

(b) The director or designee may authorize a monitoring inspection for other reasons. Reasons for the monitoring inspection 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 that the violative conditions continue to exist; the Program Manager, after consulting with the Director, shall handle the reinspection of such cases as CSHO referrals.

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 the comprehensiveness of the inspection.

i) General. The KY OSH Program conducts programmed inspections primarily in the “high hazard” sectors of employment.

(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 (BLS). High hazard industries are also referred to as high rate industries.

(b) Construction and maritime are considered high hazard employment.

(c) Other industries may be scheduled for inspection as special emphasis programs.

ii) Description. Programmed inspections are scheduled as follows.

- (a) Construction worksites lists are 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. Consultation provides lists that may include employers generated from databases such as Target Outreach Program (TOP) and Safety Tops Our Priority (STOP).
 - (c) OSHA's Site Specific Targeting (SST) and Injury Tracking Application (ITA) programs may serve as a basis for Kentucky's TOP.
- iii) Guidelines and Procedures. Programmed inspections may be conducted jointly by both safety and health personnel whenever resources are available. If an inspection begins as safety only or as health only, but the CSHO determines during the course of the inspection that it should be expanded, the CSHO must contact a supervisor. A decision is made by the supervisor, program manager, or director on the basis of the information available. 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 made by determining which establishments on the several establishment lists are to be scheduled for inspection during the current federal fiscal year. The inspection lists are maintained in the office for three (3) years following their completion.
 - (b) *Inspection Scheduling*.
 - (1) Inspection Scheduling for General Industry. Establishments may be scheduled and inspected in any order that makes efficient use of available resources.
 - a. The director or designee may terminate the use of any inspection list containing uninspected establishments after considering the age of the list, availability of lists based on more current data, and resources.
 - b. Unopened inspections not appearing on the new list will be rescinded.
 - c. If the CSHO learns after arrival that the establishment is classified in an incorrect NAICS code, the inspection is classified as a no-inspection.
 - (2) Inspection Scheduling for Construction. 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) construction employer, inspections are scheduled from a list of worksites rather than employers.
 - a. *Inspection List*. The KY OSH Program uses the Construction Inspection Targeting Application to provide computer-generated inspection lists based on:
 - 1. Counties located in the state;

2. Estimated number of worksites to be inspected during the scheduling period and the number of employers expected to be covered by the inspection at each site;
3. The director or designee determines the selection criteria based on local conditions. These selection criteria may be designed to include any class of worksites within the computerized selection process. Some examples are:
 - (A) Minimum dollar value of the project;
 - (B) Minimum size of the project;
 - (C) Project start date;
 - (D) Length of time the project is likely to last;
 - (E) Specific stages of the project; and
 - (F) Specific types of projects.

- (3) Health Construction Inspections. No separate scheduling method is applied for programmed construction health inspections. Rather, the director or designee determines which construction inspections are to be conducted as a joint inspection where serious health hazards are likely to exist.

VII. **Exemptions and Limitations.** Congress may place exemptions and limitations on enforcement activities through the annual appropriations act. Refer to current guidance on how to apply current exemptions and limitations to compliance programming. (See OSHA Instruction CPL 02-00-051.)