

**LABOR CABINET**  
**Department of Workplace Standards**  
**Division of Occupational Safety and Health Compliance**  
**Division of Occupational Safety and Health Education and Training**  
**(As Amended at ARRS, August 10, 2021)**

**803 KAR 2:070. Inspections~~[Inspection; procedure]~~.**

RELATES TO: KRS 338.101

STATUTORY AUTHORITY: KRS 338.051, 338.061 [~~KRS Chapter 13A~~]

NECESSITY, FUNCTION, AND CONFORMITY: KRS 338.051(3) requires the Kentucky Occupational Safety and Health Standards Board to promulgate occupational safety and health administrative regulations and authorizes the chairman to reference federal standards without board approval if necessary to meet federal time requirements. KRS 338.061 authorizes the board to establish, modify, or repeal standards and reference standards. [~~Pursuant to the authority granted the Commissioner of the Department of Workplace Standards by KRS 338.121, the following rules and administrative regulations are adopted, governing the authority to conduct inspections. The function of the]~~ This administrative regulation establishes the [~~is to identify this]~~ authority for conducting occupational safety and health inspections and the procedure to be followed by the compliance officers during the conduct of the inspections.

Section 1. Definitions. (1) "Commissioner" is defined by/in] KRS 338.015.

(2) "Compliance safety and health officer" means a person authorized by the commissioner to conduct occupational safety and health inspections and investigations.

(3) "Compulsory process" means the institution of any appropriate action, including ex parte application for an inspection, ~~for]~~ investigation, or warrant or its equivalent.

(4) "Director" means Director, Division of Occupational Safety and Health Compliance.

(5) "Employee" is defined by/in] KRS 338.015(2).

(6) "Employer" is defined by/in] KRS 338.015(1).

Section 2. Authority for Inspections. (1) Compliance safety and health officers [~~Safety and Health Officers of the Division of Occupational Safety and Health Compliance]~~ shall be [~~are]~~ authorized to conduct inspections pursuant to KRS 338.101 [~~enter without delay and at reasonable times any factory, plant, establishment, construction site, or other area, workplace or environment where work is performed by an employee of an employer; to inspect and investigate during regular working hours and at other reasonable times, and within reasonable limits and in a reasonable manner, any such place of employment, and all pertinent conditions, structures, machines, apparatus, devices, equipment and materials therein; to question privately any employer, owner, operator, agent or employee; and to review records required by KRS Chapter 338 and administrative regulations issued pursuant thereto, and other records which are directly related to the purpose of the inspection].~~

(2) Prior to inspecting areas containing information [~~which is]~~ classified by an agency of the United States Government [,] in the interest of national security, compliance safety and health officers shall obtain [~~have obtained]~~ the appropriate security clearance.

Section 3 [2]. Objection to Inspection. (1) If an employer refuses [~~Upon a refusal]~~ to permit a compliance safety and health officer [,] in the exercise of his official duties, [~~]~~ to enter without delay and at reasonable times any place of employment [~~or any place therein,~~] to inspect;[,] [~~to~~] review records;[,] [~~or to~~] question any employer, owner, operator, agent, or employee;[,] [~~in~~

~~accordance with this administrative regulation,~~ or [to] permit a representative of employees to accompany the compliance safety and health officer during the physical inspection of any workplace [~~in accordance with 803 KAR 2:110~~], the compliance safety and health officer shall terminate the inspection or confine the inspection to [~~other~~] areas, conditions, structures, machines, apparatus, devices, equipment, materials, records, or interviews concerning which no objection is raised.

(2) The compliance safety and health officer shall endeavor to ascertain the reason for the [~~such~~] refusal and [~~and he shall~~] immediately report the refusal and [~~the~~] reason [~~therefore~~] to the commissioner [~~Commissioner of the Department of Workplace Standards~~].

(3) The commissioner shall promptly take appropriate action including compulsory process [~~;~~] if necessary.

(4)(a) Compulsory process may be sought in advance of an inspection if, in the judgment of the commissioner, circumstances exist **that make a[which make such]** pre-inspection process desirable or necessary.

(b) It may be desirable or necessary to seek compulsory process in advance of an attempt to inspect **if[when]**:

1. The employer's past practice implicitly or explicitly puts the commissioner on notice that a warrantless inspection will not be allowed;

2. Procuring a warrant prior to conducting the inspection would avoid, in case of refusal, the expenditure of significant time and resources to obtain a warrant and return to the establishment or worksite; or

3. An inspection includes the use of special equipment or the presence of an expert, or experts, is needed to conduct the inspection and procuring a warrant prior an inspection would alleviate the difficulties or costs encountered in coordinating the availability of **[such]** equipment or **an** expert.

(5) With the approval of the commissioner **as established in this section**, the director or other designee may obtain compulsory process.

(6) Ex parte inspection warrants shall be the preferred form of compulsory process **if[when]** compulsory process is relied upon.

Section 4 [3]. Entry not a Waiver. Any permission to enter, inspect, review records, or question any person, shall not imply or be conditioned upon a waiver of any cause of action, citation, or penalty pursuant to [~~under~~] KRS Chapter 338 [~~Compliance safety and health officers are not authorized to grant any such waiver~~].

Section 5 [4]. Conduct of Inspections. (1) Inspections [~~Subject to the provisions herein, inspections~~] shall take place at [~~such~~] times and [~~in such~~] places [~~of employment~~] as the commissioner or designee [~~Commissioner of the Department of Workplace Standards or the compliance safety and health officer~~] **directs[~~may direct~~]**.

(2) At the beginning of an inspection, or as soon as practical, [~~;~~] the compliance safety and health officer shall:[~~officers shall~~]

(a) Present [~~present~~] her or his [~~their~~] credentials to the owner, operator, or agent in charge at the establishment or worksite;~~;~~]

(b) Explain [~~explain~~] the nature and purpose of the inspection;~~;~~ [~~and~~]

(c) Indicate [~~indicate~~] generally the scope of the inspection and the records she or he wishes [~~specified herein which they wish~~] to review. **The[Such]** [~~However, such~~] designation of records shall not preclude access to additional records;~~;~~ [~~specified herein~~];

(2) ~~Compliance safety and health officers shall~~

(d) Have [~~have~~] authority to take environmental samples, [~~and to take or obtain~~] photo-

graphs, videos, oral recordings, and statements; ~~and,~~ ~~related to the purpose of the inspection,~~

(e) Employ ~~employ~~ other reasonable investigative techniques, such as ~~[, and question privately any employer, owner, operator, agent or employee of an establishment. As used herein, the term "employ other reasonable investigative techniques" includes, but is not limited to,~~] the use of devices to measure employee exposures and the attachment of personal sampling equipment such as dosimeters, pumps, badges, and other similar devices to employees in order to monitor their exposures.

(3) In taking photographs and samples, compliance safety and health officers shall take reasonable precautions to ensure that ~~[such]~~ actions with flash, spark-producing, or other equipment shall not be ~~is not~~ ~~would not be~~ hazardous.

(4) Compliance safety and health officers shall comply with ~~[all]~~ employer safety and health rules and practices at the establishment or worksite ~~[being inspected,]~~ and ~~[they shall]~~ wear, as well as use, appropriate personal protective equipment ~~[and use appropriate protective clothing and equipment].~~

(5) ~~[(4)]~~ The conduct of an inspection shall ~~[be such as to]~~ preclude unreasonable disruption of ~~[the]~~ operations at ~~[of]~~ the employer's establishment or worksite.

(6)(a) ~~[(5)]~~ At the conclusion of an inspection, the compliance safety and health officer shall offer conference ~~[confer]~~ with the employer ~~[or his representative]~~ and informally advise her or him of ~~[any]~~ apparent ~~[safety and health]~~ violations ~~[disclosed by the inspection].~~

(b) The ~~[During such conference, the]~~ employer shall be afforded an opportunity to bring to the attention of the compliance safety and health officer any pertinent information regarding conditions in the workplace.[

~~(6) Inspection shall be conducted in accordance with the requirements of this section.]~~

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