803 KAR 2:070. Inspections.

RELATES TO: KRS 338.101

STATUTORY AUTHORITY: KRS 338.051, 338.061

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. This administrative regulation establishes the 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 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, investigation, or warrant or its equivalent.

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

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

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

Section 2. Authority for Inspections.

(1) Compliance safety and health officers shall be authorized to conduct inspections pursuant to KRS 338.101.

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

Section 3. Objection to Inspection.

(1) If an employer refuses to permit a compliance safety and health officer to enter without delay and at reasonable times any place of employment to inspect; review records; question any employer, owner, operator, agent, or employee; or permit a representative of employees to accompany the compliance safety and health officer during the physical inspection of any workplace, the compliance safety and health officer shall terminate the inspection or confine the inspection to 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 refusal and immediately report the refusal and reason to the commissioner.

(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 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:

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 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 compulsory process is relied upon.

Section 4. 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 KRS Chapter 338.

Section 5. Conduct of Inspections.

(1) Inspections shall take place at times and places as the commissioner or designee directs.

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

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

(b) Explain the nature and purpose of the inspection;

(c) Indicate generally the scope of the inspection and the records she or he wishes to review. The designation of records shall not preclude access to additional records;

(d) Have authority to take environmental samples, photographs, videos, oral recordings, and statements; and

(e) Employ other reasonable investigative techniques, such as 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 actions with flash, spark-producing, or other equipment shall not be hazardous.

(4) Compliance safety and health officers shall comply with employer safety and health rules and practices at the establishment or worksite and wear, as well as use, appropriate personal protective equipment.

(5) The conduct of an inspection shall preclude unreasonable disruption of operations at the employer's establishment or worksite.

(6)

(a) At the conclusion of an inspection, the compliance safety and health officer shall offer conference with the employer and informally advise her or him of apparent violations.

(b) 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 Ky.R. 210; eff. 11-7-1979; Am. 8 Ky.R. 1449; eff. 7-7-1982; 10 Ky.R. 308; eff. 9-7-1983; 652; eff. 12-2-1983; TAm eff. 8-9-2007; TAm eff. 9-8-2011; 47 Ky.R. 2660; 48 Ky.R. 806; eff. 11-30-2021.)