

CHAPTER IV GENERAL INSPECTION PROCEDURES

I) **CSHO Responsibilities.**

- A) The primary responsibility of the Compliance Safety and Health Officer (CSHO) is to carry out the mandate given to the secretary, namely, to promote the safety, health, and general welfare of the Commonwealth by ensuring employers, both public and private, provide the safest and healthiest practices and working conditions within the workplace. To accomplish this mandate, the Kentucky Occupational Safety and Health Program employs a wide variety of programs and initiatives, one of which is enforcement of standards through the conduct of effective inspections to determine whether employers are:
- i) Furnishing places of employment free from recognized hazards that are causing or are likely to cause death or serious physical harm to their employees, and
 - ii) Complying with safety and health standards and regulations promulgated under KRS 338.
- B) The conduct of effective inspections requires identification, professional evaluation and accurate reporting of safety and health conditions and practices. Inspections may vary considerably in scope and detail, depending upon the circumstances in each case.

II) **Preparation.**

- A) **General Planning.** It is important the CSHO spend an adequate amount of time preparing for an inspection.
- i) CSHOs must plan individual work schedules in coordination with their supervisor reflecting the priorities in Chapter II.
 - ii) The CSHO may not have the time to research an establishment fully upon assignment. In that case, the CSHO must conduct the establishment research as soon as possible upon returning to the workstation.
- B) **Pre-Inspection Planning.** Due to the wide variety of industries and associated hazards likely for the CSHO to encounter, pre-inspection preparation is often helpful to conduct a quality inspection. The CSHO, together with the supervisor if appropriate, must carefully review:
- i) Previous inspection casefiles, documenting prior citations and their abatement status.
 - ii) Data available at the office for information relevant to the establishments scheduled for inspection. These may include inspection files, other establishment files and reference materials. The CSHO must consult his or her supervisor when the CSHO needs additional information concerning the type of industry he or she will inspect.

- iii) The SIC and NAICS for the establishment in order to familiarize himself or herself with the possible hazards he or she may encounter. The CSHO must identify the personal protective equipment necessary for protection against these anticipated hazards.
 - iv) Appropriate standards and sampling methods, based on available information for the establishment, as well as the instruments and equipment that are needed for the inspection and prepare them according to the standard methods of sampling and calibration.
- C) **Inspection Materials and Equipment.** The CSHO must have all report forms in sufficient quantity to conduct the inspection, all assigned personal protective equipment available for use and in serviceable condition, and appropriate handouts, if available.
- i) Unless the supervisor authorizes an exception because of the nature of the worksite, the CSHO must wear approved hard hats, approved safety glasses with permanently or rigidly attached side shields, and approved safety shoes during the walkaround phase of all inspections.
 - ii) If, based on the pre-inspection review or upon facts discovered at the worksite, the CSHO identifies a need for unassigned personal protective equipment, the supervisor must provide any required equipment. Prior to inspection, the supervisor must ensure the CSHO received training in the uses and limitations of such equipment. The supervisor must review the CSHO, at least once a year, in the use of all equipment given to the CSHO by the supervisor.
 - iii) If required, CSHOs must use respiratory protection in accordance with the KY OSH Respiratory Protection Program.
- D) **Expert Assistance.** When the CSHO or supervisor identifies a need for an expert, the program manager must arrange through the director for a specialist from within OSHA to assist in an inspection or investigation. If OSHA specialists are not available, or when otherwise desirable, the program manager must arrange for the procurement of the services of qualified consultants.
- i) Expert assistance may be necessary during inspections for the implementation of engineering or administrative controls involving, but not limited to: noise, air contaminants, complicated machine guarding, and construction.
 - ii) OSHA specialists may accompany the CSHO or perform their tasks separately. A CSHO must accompany outside consultants. The CSHO must brief OSHA specialists and outside consultants on the purpose of the inspection and the personal protective equipment.
 - iii) CSHOs must include all data, conclusions and recommendations from the assigned specialists in the inspection report, including information on any resultant actions.
- E) **Safety and Health Rules of the Employer.** 803 KAR 2:070 Section 3(3) requires the CSHO comply with all safety and health rules and practices at the establishment and wear or use the safety clothing or protective equipment required by KY OSH standards or by the employer for the protection of employees.

- F) **Immunization and Other Special Entrance Requirements.** Many pharmaceutical firms, medical research laboratories, and hospitals have areas that have special entrance requirements. These requirements may include proof of up-to-date immunization, the use of respirators, special clothing, or other protective devices or equipment.
- i) The CSHO enters any area where special entrance restrictions apply only after taking the required precautions. The CSHO should ascertain prior to inspection, if possible, if an establishment has areas with immunization or other special entrance requirements. If the supervisor and CSHO cannot make a determination through consultation, the program manager or supervisor may telephone the establishment using the following procedures. Communication to determine special entrance requirements is not advance notice. The program manager or supervisor should:
 - (a) Telephone as far in advance of the proposed inspection date as possible so the employer cannot determine a time relationship between the communication and a possible future inspection.
 - (b) State the purpose of the inquiry and the possibility of a future inspection. **DO NOT GIVE A SPECIFIC DATE.**
 - (c) Determine the type of immunization(s) and/or special precautions required and the building or area which has restricted access.
 - ii) When immunization is required, the supervisor must ensure the inspecting CSHO has the proper immunization and has met any required incubation or waiting period prior to the inspection. The office provides the immunizations necessary to complete inspections.
- G) **Personal Security Clearance.** The U.S. Government has classified material and/or processes of some establishments in the interest of national security. When an inspection of such a location is scheduled, the supervisor must assign a CSHO who has the appropriate security clearances. If unavailable, the director must contact the OSH Federal-State Coordinator.
- i) Clearance Procedures. All clearance procedures are addressed on a case-by-case basis.
 - ii) Employer Resistance. For worksites with limited areas subject to security regulations, where the CSHO does not have the necessary clearance requirements, the supervisor or CSHO must ask the employer to contact the cognizant Department of Defense Regional Industrial Security Office immediately and must make arrangements, which allow the CSHO to complete the investigation or inspection without breaching security requirements. Resistance to CSHOs with the proper clearances, that the employer can telephonically check, must constitute an unwarranted resistance and must be immediately brought to the attention of the supervisor.
 - iii) Classified Information and Trade Secrets. KY OSH personnel with any classified information and/or personal knowledge of such information must follow the regulations of the responsible

agency. The collection of such information and the number of exposed personnel must be limited to the minimum necessary for the conduct of such compliance activities.

III) **Advance Notice of Inspections.**

A) **Policy.** KRS 338.991(9) and 803 KAR 2:080 contain a general prohibition against the giving of advance notice of inspections, except as authorized by the commissioner. Advance notice exists whenever the commissioner establishes a specific date or time with the employer for the CSHO to begin an inspection.

- i) KRS Chapter 338 regulates many conditions that are subject to speedy alteration and disguise by employers. To forestall such changes in worksite conditions, KRS 338.101(a) prohibits advance notice and authorizes the commissioner or his authorized representative to enter worksites "without delay" to inspect.
- ii) There may be occasions when advance notice is necessary to conduct an effective investigation. These occasions are narrow exceptions to the statutory prohibition against advance notice. 803 KAR 2:080 Section 1 contains the exceptions to the advance notice prohibition. Advance notice of inspections may be given only in the following situations:
 - (a) In cases of apparent imminent danger to enable the employer to correct the danger as quickly as possible;
 - (b) When the inspection can most effectively be conducted after regular business hours or when special preparations are necessary;
 - (c) To ensure the presence of employer and employee representatives or other appropriate personnel who, as determined by the Program Manager, are needed to aid in the inspection; and
 - (d) When the commissioner determines that giving advance notice would enhance the probability of an effective and thorough inspection; e.g., in complex fatality investigations.

B) **Delay of inspection.**

- i) Although advance notice normally does not exist after the CSHO has arrived at the worksite, presented credentials and announced the inspection, many causes can serve to delay or interrupt the continued conduct of the inspection.

EXAMPLE: The employer representative on site requests a delay of entry pending the return of the president or some other higher-ranking official.

- ii) Such delays must be short as possible. If an employer's or an employee representative's request for delay appears reasonable, the CSHO may delay or interrupt the inspection for up to an hour.

- iii) The supervisor must be contacted if the delay lasts, or is anticipated to last longer than, one (1) hour. The supervisor must decide whether the circumstances justify a delay of more than one (1) hour and, if so, for how long.
- iv) In cases where screening sampling is performed and laboratory analysis of the samples is required, there must be no more than five (5) working days between receipt of screening results and the onset of full-shift sampling, unless circumstances dictate otherwise.
- v) The CSHO resumes the inspection as soon as reasonably possible.
- vi) Delays or interruptions of less than five (5) working days do not require implementation of advance notice procedures.
- vii) When the employer or the employee representative requests a delay which the supervisor believes is unreasonable or without sufficient justification (e.g., too long, not in good faith) or if the delay requested is for more than five (5) working days, the CSHO must inform the requester that agency policy does not allow for such a delay. If the employer representative continues to insist on the delay, the CSHO must treat the situation as a refusal of entry and must handle in accordance with the procedures in this chapter.
- viii) In unusual circumstances, the program manager may decide that a delay of more than five (5) working days is necessary. Any situation involving a delay of more than five (5) working days, whatever the justification, must be handled as advance notice and must be approved by the director or program manager. In such cases, the procedures in this chapter will be observed in addition to the following:
 - (a) The CSHO must determine whether employees at the worksite are represented by a labor organization or a safety committee and, if so, who the name of the authorized employee representative.
 - (b) The CSHO must notify the employee representative of the delay as promptly as possible and must keep the representative informed of future appointments or other arrangements for resuming the inspection.
 - (c) If more than one employer is at the worksite, the CSHO must notify all authorized employee representatives of the delay as promptly as possible and kept informed of arrangements for resuming the inspection.
 - (d) The CSHO may request the employer(s) inform the employee representatives of the delay and to notify them promptly when the CSHO has arranged to resume the inspection.

EXAMPLE: A delay of more than five (5) working days may be necessary if the process to be sampled is not be activated within that time or compliance personnel is not available in the office because of higher priority demands

- C) **Procedures.** The supervisor may give advance notice only after authorization by the director or designee. In cases of apparent imminent danger, the supervisor may give advance notice without authorization when the director or designee is not immediately available. The supervisor must notify the director or designee as soon as possible.
- i) The supervisor must provide advance notice by telephone or other appropriate contact not more than 24 hours prior to the inspection. Documentation of the conditions requiring advance notice and the procedures followed must be included in the casefile.
 - ii) When a supervisor gives advance notice to a construction or other multi-employer site, the supervisor must contact the general contractor. If there are two (2) or more general contractors, the supervisor must contact all general contractors. The supervisor must inform the general contractor(s) of the responsibility of advising all subcontractors on the site of the inspection.
 - iii) During telephone contact with the employer, the supervisor must identify himself/herself, explain the purpose of the inspection, state when the CSHO expects to begin the inspection, ascertain the employer's normal business hours, and if special protective equipment or precautions are required. When security clearances or immunizations are necessary, the supervisor must notify the program manager.
 - iv) One purpose of advance notice is to make arrangements for the presence of employer and employee representatives to aid in the conduct of an effective and thorough inspection. The CSHO must request a responsible management official to assist in the inspection. The supervisor must advise the employer that KRS 338.111 and 803 KAR 2:110 require the CSHO give an employee representative the opportunity to participate in the inspection.
 - v) The supervisor must advise the employer of their responsibility to notify the authorized employee representative(s) promptly of the inspection.
 - vi) When the supervisor contacts a general contractor, he/she must inform the contractor of its responsibility to instruct each subcontractor of the obligation to notify promptly employee representatives of the inspection.
 - vii) When the employer requests and furnishes the identity of the representative, the supervisor must promptly inform the employee representative of the inspection and must provide any other information necessary in accordance with 803 KAR 2:080.
 - viii) When there is no authorized employee representative or if it cannot be determined with reasonable certainty who the representative is, the CSHO must consult with a reasonable number of employees to determine the impact or possible adverse effects of the advance notice.

IV) **Conduct of the Inspection.**

A) **Entry of the Workplace.**

- i) Time of Inspection. The CSHO must conduct inspections during regular working hours of the establishment except when special circumstances indicate otherwise. The CSHO must contact the supervisor before entry during other-than-normal working hours.
- ii) Severe Weather Conditions. If severe weather conditions encountered during an inspection cause workplace activities to shut down, the CSHO must continue the inspection at a later time, as soon as weather permits.
 - (a) If work continues during adverse weather conditions but the CSHO decides that the weather interferes with the effectiveness of the inspection, the CSHO must terminate the inspection and continue when conditions improve.
 - (b) If work continues and the CSHO decides to continue the inspection in spite of bad weather, the CSHO must note hazardous conditions created by the weather since they may be the subject of later citation.
- iii) Presenting Credentials. At the beginning of the inspection, the CSHO must attempt to locate the owner, operator or agent in charge at the workplace and present credentials. On construction sites, this will most often be the representative of the general contractor. In the following circumstances, the CSHO must:
 - (a) Identify the top management official at the beginning of the inspection when the person in charge is not present. This person may be the foreman, leadman, gang boss or senior member of the crew.
 - (b) When neither the person in charge nor a management official is present, contact the employer by telephone and request the presence of the owner, operator or management official. The CSHO must not delay the inspection unreasonably to await the arrival of the employer representative. This delay must not normally exceed one hour.
 - (c) If the CSHO cannot determine the person in charge at the workplace, record the extent of the inquiry in the casefile and proceed with the physical inspection after contacting the supervisor. If the person in charge arrives during the inspection, the CSHO must hold an abbreviated opening conference and inform the person of the status of the inspection and include she/he in the continued walkaround.
 - (d) On multi-employer sites, ask the superintendent, project manager, or other representative of the general or prime contractor to identify the subcontractors or other contractors on the site together with the names of the individuals in charge of their operations.
 - (1) The CSHO must request management contact subcontractors or other contractors and ask to assemble in the general contractor's office or other suitable location, together with their employee representatives, if any.

- (2) The CSHO must not postpone or unreasonably delay the inspection because of unavailability of one or more representatives.
- iv) Refusal to Permit Inspection. See Chapter XI.
- v) Forcible Interference with Conduct of Inspection or Other Official Duties.
- (a) *KRS 338.991(10)*. "Any employer or individual who willfully causes bodily harm to any authorized representative of the Secretary while attempting to conduct an investigation or inspection under the provisions of KRS Chapter 338 must, upon conviction, be punished by a fine of not more than ten thousand dollars (\$10,000.00), or by imprisonment of no more than one year or by both."
- (b) *Employer Interference*. When the employer permits entry by the CSHO but the employer interferes with or limits any important aspect of the inspection, the CSHO must immediately contact the supervisor for instructions on whether or not to consider this action as a refusal.
- (c) *Agency Response*. Whenever a KY OSH official or employee encounters forcible resistance, opposition, interference, etc., or is assaulted or threatened with assault while engaged in the performance of official duties, all investigative activity must cease.
- (1) The CSHO must advise the supervisor by the most expeditious means.
- (2) Upon receiving a report of such forcible interference, the director or designee must immediately notify the Secretary.
- (d) *Types of Interference*. Although the employer is legally entitled to refuse permission to conduct an inspection without a warrant, the law does not permit forcible conduct against the CSHO. The following illustrates the type of forcible conduct which must be immediately reported to the supervisor:
- (1) Anyone physically holding, grabbing, pushing, shoving, or in any way limiting the official or employee's freedom of action or choice of action. The threat of any action that limits freedom of action or choice of action is included.
- (2) Anyone striking, kicking, or in any way inflicting or attempting to inflict injury, pain or shock on the official or employee. The threat of such actions is included as is oral abuse that menaces or causes concern for the officials or employee's safety.
- (3) Anyone assaulting or threatening the official or employee with a weapon of any kind. The handling or display of weapons in a menacing manner is included.
- vi) Release for Entry. The CSHO must not sign any form or release or agree to any waiver. This includes any employer forms concerned with trade secret information.

- (a) If the employer requires that the CSHO sign a release before entering the establishment, the CSHO informs the employer of the commissioner's authority under KRS 338.101(1)(a). If the employer still insists on the signing of a release, the CSHO must suspend the inspection and report the matter promptly to the supervisor who must decide if the CSHO should treat the situation as a refusal of entry.
 - (b) The CSHO may sign a visitors register, plant pass, or any other book or form used by the establishment to control the entry and movement of persons upon its premises such signature must not constitute any form of a release or waiver of liability under KRS Chapter 338.
 - (c) In case of any doubt, the CSHO must consult with the supervisor before signing any document.
- vii) Bankruptcy. In the event a company is in bankruptcy, the CSHO must inform his or her supervisor and may need to consult with the OGC. The CSHO continues the inspection unless advised otherwise by his or her supervisor.
- viii) Out of Business. When the establishment scheduled for inspection has ceased business and there is no known successor, the CSHO must report the facts to his or her supervisor. The CSHO continues the inspection unless advised otherwise by his or her supervisor.
- ix) Strike or Labor Dispute.
- (a) *Work stoppage and Necessity of Inspection*. The CSHO does not initiate inspection activities at a plant or workplace while the establishment, plant, or workplace is involved in a strike or a labor dispute involving work stoppage or picketing, without approval of the secretary. Under some circumstances, it may be appropriate for the CSHO to inspect such establishment. The CSHO must immediately advise the director or designee before any such inspection begins.
 - (b) *Recommendation for Inspection*. In compiling this information, the CSHO must recommend whether the CSHO should conduct the scheduled inspection until the strike, labor dispute, or picketing concludes. The CSHO may only conduct an inspection on the specific authorization of the secretary. The CSHO must inform the appropriate union official of the reason for the inspection prior to initiating the inspection.
- x) No Inspection. If the CSHO cannot conduct a scheduled inspection, the CSHO must document the reasons for not conducting the inspection, and must include the names of persons contacted on the OSHA-1AC form to be included in the case file.

B) Employee Participation.

- i) CSHOs determine, as soon as possible after arrival, whether the employees at the worksite have representation and, if so, must ensure the employee representatives have the opportunity

to participate in all phases of the workplace inspection. If an employer resists or interferes with participation by employee representatives in an inspection and this cannot be resolved by the CSHO, the employer must be informed of the right of the employee representative to participate. Continued resistance by the employer must be construed as a refusal to permit the inspection and the supervisor must be contacted.

NOTE. For the purpose of this chapter, the term "employee representative" refers to (1) a representative of the certified or recognized bargaining agent, or, if none, (2) an employee member of a safety and health committee who has been chosen by the employees (employee committee members or employees at large) as their KY OSH representative, or (3) an individual employee who has been selected as the walkaround representative by the employees of the establishment. 803 KAR 2:110 Section 1(3) requires the representative to be an employee(s) of the inspected employer.

- ii) 803 KAR 2:110 Section 1(2) authorizes the CSHO to resolve any dispute regarding the employer and employee representatives on the inspection.

C) Opening Conference.

- i) Overview. Pursuant to 803 KAR 2:110, the CSHO must inform the employer and the employee representatives of the opportunity to participate in the inspection. The CSHO must inform the employer of the purpose of the inspection. The CSHO notes the conditions of the worksite upon arrival, the time the CSHO arrives, and any changes that may occur during the opening conference.

NOTE. An abbreviated opening conference may be conducted whenever the CSHO believes that the circumstances at the worksite dictate that the walkaround begin as promptly as possible. In such cases the opening conference must be limited to the essentials; namely, identification, purpose of the visit, and a request for employer and employee representatives. The CSHO must address the other elements of an opening conference in the closing conference.

- ii) Purpose of the Inspection. The employer must be informed as to the reason for the inspection as follows:
 - (a) *Imminent Danger Situations.* When responding to an alleged imminent danger situation, the CSHO is required to get to the location of the alleged hazard(s) as quickly as possible. Under these circumstances, the CSHO may conduct an expedited opening conference by limiting activities to presenting credentials and explaining the nature, scope, and purpose of the inspection.
 - (1) The CSHO must identify potential safety and health hazards the CSHO may encounter during the inspection and the appropriate steps taken to provide for personal protection.
 - (2) The CSHO must request the presence of employer and employee representatives; however, the CSHO must not delay the inspection unreasonably to await their arrival.

- (3) The CSHO must advise the employer, because of the abbreviated nature of the opening conference, there will be a more extensive discussion at the closing conference.
 - (4) The CSHO must report unreasonable delays immediately to the supervisor.
 - (b) *Fatality/Catastrophe Investigations.* The CSHO must inform the employer that the CSHO will be conducting an investigation and extensive interviews with ***ALL*** witnesses will be necessary. The purpose of an accident investigation must be explained; namely, to determine:
 - (1) The cause of the accident;
 - (2) Whether a violation of KY OSH safety and health standards related to the accident occurred;
 - (3) What effect the standard violation had on the occurrence of the accident; and
 - (4) If KY OSH standards should be revised to correct the hazardous working condition that led to the accident.
 - (c) *Complaint Investigations.* For a complaint investigation, the CSHO must provide a copy of the complaint(s) to the employer and the employee representatives during the opening conference.
 - (d) *Referral Investigations.* During the opening conference of a referral investigation, the CSHO must inform the employer that the investigation is a result of a referral (such as, from another agency, from a previous KY OSH inspection, or in response to specific evidence of probable violations at a worksite).
 - (e) *Follow-up Inspections.* The CSHO must explain that the CSHO evaluates any previously cited item for complete abatement of the hazard.
 - (f) *Monitoring Inspections.* The CSHO must review the cited items with the employer to determine the progress of abatement and explain to the employer the reason for the monitoring visit.
- iii) **Health Inspections.** During a health inspection or, as appropriate during a safety inspection, when evaluating potential health hazards, the CSHO must include in the opening conference the following additional procedures:
- (a) Request process flow charts and plant layouts relevant to the inspection. If the plant layout and process flow charts are not available, sketch a plant layout as necessary during the course of the initial walkaround, identifying the operations and the relative dimensions of the work area. Distribution of major process equipment, including engineering controls in use, must also be included on the sketch.
 - (b) Make a brief examination of all workplace records and programs pertinent to the inspection.

- (1) The CSHO examines required and other records to ensure a more effective inspection. The CSHO must not forgo such an examination.
 - (2) If a detailed review is necessary, the CSHO may wish to proceed with the initial walkaround and return later to examine the records more thoroughly.
 - (3) In some plants, the CSHO can initiate sampling for obvious health hazards soon after the opening conference. The CSHO conducts details of the walkaround while collecting the samples.
- iv) Attendance at Opening Conference. The CSHO must conduct a joint opening conference or separate conferences as follows:
- (a) *Joint Conference*. Whenever practicable, CSHO conducts a joint opening conference with the employer and the employee representatives.
 - (b) *Separate Conferences*. Where either party chooses not to have a joint conference, the CSHO conducts separate conferences for the employer and the employee representatives. The CSHO must attach a written summary of each conference to the case file. Where it is determined that separate conferences will unacceptably delay observation or evaluation of the workplace safety or health hazards, each conference must be brief, and if appropriate, reconvened after the inspection of the alleged hazards.
- v) Scope. The CSHO outlines in general terms the scope of the inspection, including private employee interviews, physical inspection of the workplace, and records and programs review as well as possible referrals, discrimination complaints, and the closing conference(s). When conducting partial inspections, the CSHO informs each employer that the CSHO addresses any hazards observed during the walkaround or brought to the CSHO's attention during employee interviews.
- vi) Additional Items. During the opening conference of every inspection, the CSHO provides the employer representatives with the KY OSH poster, and OSHA-300, 301, 300A forms, if necessary. The CSHO must also inform the employer and employee representatives of procedures for obtaining additional copies. The CSHO gives employee representatives an opportunity to read the material(s) before the inspection begins.
- vii) Forms Completion. The CSHO must obtain available information for the OSHA-1 and other appropriate forms, completing applicable sections, during the opening conference.
- viii) Employees of other Employers. During the opening conference, the CSHO must determine whether employees of any other employers are working at the establishment.
- (a) When there are such employees and questions arise as to whether their employers should be included in the inspection, the CSHO must contact the supervisor to ascertain whether the CSHO conducts additional inspections and what limitations there may be to such inspection activity. All high hazard employers potentially present at any scheduled worksite will normally be included within the scope of the inspection.

- (b) If additional inspections are authorized, both employer and employee representatives of the other employers must be invited to the opening conference. The CSHO does not delay the inspection to wait for these employer or employee representatives longer than would be reasonably necessary for to arrive.
- (c) If the site is a multi-employer site, the CSHO must determine during the opening conference who is responsible for providing common services available to all employees on site (such as, but not limited to: sanitation, first aid, and handrails).
 - (1) The CSHO must point out to all contractors that, apart from any contractual arrangements, each employer remains responsible for his or her own employees.
 - (2) If it cannot be established which contractor is responsible for common services, the CSHO determines which employer(s) is the exposing, creating, controlling, or correcting employer(s) whenever violations are noted.
- ix) KYSafe Consultation Activities and Partnership Programs. Employers who participate in KYSafe Consultation Activities and Partnership Programs may be exempted from programmed inspections. The CSHO must determine whether the employer falls under such an exemption during the opening conference.
 - (a) *OSHA On-Site Consultation Activity*. If the employer has requested consultation activity or activity is in progress, the consultation activity takes priority over programmed inspections. However, imminent danger inspections, fatality/catastrophe inspections, complaint inspections, and referral inspections have priority over consultation visits.
 - (b) *KYSafe Partnership Sites*.
 - (1) Upon discovering and verifying that the employer is a current participant in the Voluntary Protection Partnership (VPP), Safety and Health Achievement Recognition Program (SHARP), Construction Partnership Program (CPP), or Safety Partnership Program (SPP), the CSHO notifies the supervisor. The supervisor makes the appropriate notation removing the company from the general programmed inspection schedule for the duration of the employer's KY OSH Partnership status.
 - (2) For inspections at a partnership site, the CSHO must notify the supervisor, who notifies the Director of Education & Training, of the compliance activity at a partnership site.
- x) Other Opening Conference Topics. The CSHO must determine at the beginning of the opening conference:
 - (a) *Legislative Limitations*. Whether or not the employer is covered by any of the exemptions or limitations noted in the current Appropriations Act or in Chapter II. (See OSHA Instruction CPL 02-00-051).
 - (b) *Employer Name*. The correct legal name of the employer, the type of legal entity it is, and if it is a subsidiary of any other business entity. The CSHO consults the Secretary of State's website to verify the employer's name. If, after consultation with the supervisor has any

doubt about the employer's correct legal name, the CSHO and/or supervisor seeks the Office of General Counsel (OGC) for consultation.

- (c) *Coverage*. The facts showing the employer is covered under KRS Chapter 338.

NOTE. Employers are covered if they are not employees of the United States Government and are not employers, employees or places of employment over which federal agencies other than the Occupational Safety and Health Administration of the United States Department of Labor exercise statutory authority to prescribe or enforce standards or regulations affecting occupational safety and health.

- (d) *Trade Secrets*. Whether the employer wishes to identify areas in the establishment that contain or might reveal trade secrets. If trade secrets are identified, the CSHO explains that KY OSH Program is required by law to preserve the confidentiality of all information which might reveal a trade secret in accordance with 803 KAR 2:095. (See Chapter IX for further instructions).
- (e) *Photographs, Videos, and Recordings*. Whether the employer has any objection to taking photographs and/or recordings as permitted by 803 KAR 2:070. When the employer does object, the CSHO must immediately notify the supervisor.
- (f) *Potential Hazards*. Whether there are any safety and health hazards to which the walkaround party may be exposed during the inspection. The CSHO must advise all members of the inspection party as to appropriate personal protective equipment that is required based on this information.

D) Injury and Illness Records Review. The CSHO reviews the injury and illness records and document the findings in the inspection report. The CSHO must carefully examine these documents to ensure the employer properly records all work-related injuries and illnesses on the OSHA-300. Access to first aid and/or medical records may require a subpoena or medical release form from each employee with a medical record.

- i) Workers' compensation first reports of injury or the OSHA-301 and first aid records may be reviewed to determine if:
- (a) Treatment was given that could qualify as medical treatment;
 - (b) There were any lost time injuries or illnesses;
 - (c) Injuries or illnesses resulted in restricted work activities or transfer to another job;
 - (d) Any injuries or illnesses resulted in loss of consciousness;
 - (e) Any injuries or illnesses were diagnosed; or
 - (f) Anything else indicates that a recordable injury or illness occurred.
- ii) If not all reports can be examined, a representative sample must be extracted for closer review as indicated in the preceding subsection.

- (a) If any injuries or illnesses noted under (a) are found, the CSHO checks the OSHA-300 to ensure that the employer has properly recorded the cases.
 - (b) The CSHO interviews the company representative responsible for maintaining injury and illness records to determine the company's recording policy. The CSHO identifies this interview and documents it in the case file.
 - (c) The CSHO may review injury and illness records and verify with employee representatives or other informed employees.
 - (d) If the verification process indicates that the OSHA-300 does not accurately reflect the lost workday injury or illness at the establishment or that the employer is not properly recording injuries or illnesses, the CSHO documents this in the case file. The CSHO must advise the employer of the problem and proceed with the inspection.
- iii) Injuries and Illness Referrals. The CSHO conducting an inspection notes any significant recorded cases that relate to the opposite discipline and submit a referral, if appropriate. The CSHO advises the employer and the employee representatives of the possibility of a referral inspection.
- E) **Walkaround Representatives**. Those representatives designated to accompany the CSHO during the walkaround are considered walkaround representatives.
- i) Employer Representatives. Anyone designated by the employer as a representative is acceptable. In cases of isolated or remote locations, the senior supervisor, foreman, gang boss, or head technician on site at the time of inspection is the employer representative. The CSHO must make every reasonable effort to afford general walkaround rights to every employer representative on a multi-employer worksite.
 - ii) Employee Representatives. The CSHO must give one or more employee representatives an opportunity to accompany the CSHO during the walkaround phase of the inspection, to provide appropriate involvement of employees in the physical inspection of their own places of employment, and to give them an opportunity to point out hazardous conditions. 803 KAR 2:110 gives the CSHO authority to resolve disputes as to who represents the employees for walkaround purposes.
 - (a) The following guidelines must be utilized for determining employee representatives:
 - (1) Employees Represented by a Certified or Recognized Bargaining Agent. During the opening conference, the highest-ranking union official or union employee representative must designate who will participate in the walkaround.
 - (2) Safety committee. The employee members of an established plant safety committee or the employees at large may have designated an employee representative for KY OSH inspection purposes or agreed to accept as their representative the employee designated by the committee to accompany the CSHO during a KY OSH inspection.

- (3) No certified or Recognized Bargaining Agent. Where an authorized representative does not represent employees, where there is no established safety committee, or where employees have not chosen or agreed to an employee representative for KY OSH inspection purposes, whether or not there is a safety committee, the CSHO determines if any other employees would suitably represent the interests of employees on the walkaround.
- (b) If selection of such employee representatives is impractical, the CSHO conducts the inspection without an accompanying employee representative. The CSHO must consult with a reasonable number of employees during the walkaround.
 - (1) The CSHO selects employees for interviewing who have knowledge about the inspected area or process.
- (c) 803 KAR 2:110 requires the representative(s) authorized by employees to be an employee(s) of the inspected employer.

F) Special Situations.

- i) Preemption by Another Agency. KRS 338.012(1)(a) states that KY OSH does not apply to working conditions over which other federal agencies exercise statutory responsibility. If preemption or jurisdictional issues arise during the inspection, the CSHO must contact the supervisor who in turn contacts the director.
- ii) Labor Relations Disputes. The CSHO does not involve himself or herself in labor relations disputes. When an unrecognized union is seeking recognition, they will not have a representative during the walkaround.
- iii) Expired Collective Bargaining Agreement. When a union contract has expired, the CSHO must assume that the incumbent union remains as the bargaining agent unless that union is decertified, officially replaced, or has abandoned bargaining agent status.
- iv) Employee Representatives Not Employees of the Employer. 803 KAR 2:110 Section 1(3) gives the CSHO the authority, with good cause, to allow a nonemployee of the employer, such as a union official who represents employees of the employer, industrial hygienist, safety engineer, or other experienced safety or health person, to accompany the CSHO on the walkaround portion of the inspection. The CSHO must refer questionable circumstances, including delays of more than one hour, to the supervisor.
- v) More Than One Representative. At establishments where more than one employer is present or in situations where groups of employees have different representatives, it is acceptable to have a different employer/employee representative for different phases of the inspection. More than one employer and/or employee representative may accompany the CSHO throughout or during any phase of an inspection if the CSHO determines that such additional representatives will aid and not interfere with the inspection in accordance with 803 KAR 2:110.
 - (a) Whenever appropriate to avoid a large group, the CSHO must encourage multiple employers to agree upon and choose a limited number of representatives for walkaround

accompaniment purposes. If necessary, during the inspection, the CSHO must contact employer representatives not on the walkaround to participate in particular phases of the inspection.

- (b) As an alternative, the CSHO must divide a multi-employer inspection into separate phases and encourage different employer representatives to participate in different phases, as appropriate.
- (c) The same principles must govern the selection of employee representatives when several are involved.
- vi) Disruptive Conduct. The CSHO may deny the right of accompaniment to any person whose conduct interferes with a full and orderly inspection. If disruption or interference occurs, the CSHO must use professional judgment as to whether to suspend the walkaround or take other action. The CSHO must contact the supervisor if the walkaround is suspended. During the inspection, the CSHO must inform the employee representative that matters unrelated to the inspection are not discussed with employees.
- vii) Trade Secrets. If the employer will not allow the walkaround representative to enter a trade secret area, the CSHO consults with a reasonable number of employees who work in the area.
- viii) Classified Areas. In areas containing information classified by an agency of the U.S. Government in the interest of national security, only persons authorized to have access to such information may accompany a CSHO. The CSHO must also have the proper security clearances to enter these areas.
- ix) Apparent Violations Observed Prior to the Walkaround. The CSHO must document an apparent violation observed by the CSHO prior to the walkaround. The CSHO must recheck all such apparent violations during the walkaround and cite if appropriate. When possible, the CSHO must recheck and document serious violations immediately at the commencement of the walkaround.

G) Examination of Records, Programs, and Posting Requirements.

- i) Records. As appropriate, the CSHO must comply with the records review procedures that follow and document the findings in the case file.
 - (a) *Injury and Illness Records*. At the time of the inspection, the CSHO must examine all injury and illness records required by 803 KAR 2:180. If a CSHO of the same discipline has examined the records during the current calendar, the CSHO need only review the injury and illness records since the last inspection. The OSHA-300 data need not be entered on the OSHA-1, unless:
 - (1) The OSHA-300 data became available only after the time of the last inspection; or
 - (2) The calendar year has changed since the last inspection and new OSHA-300 data is available.

NOTE. The CSHO must not request access to the Bureau of Labor Statistics survey questionnaire (OSHA-300S) or even ask if the employer has participated in the survey program.

(b) *Access to Employee Exposure and Medical Records.* Medical records contain personal details and the CSHO should obtain them only in limited circumstances such as, but not limited to, proving that an amputation included bone, overexposure to a specific substance, etc.

(1) Any medical record obtained should be the minimum necessary to accomplish the purpose for which the CSHO obtained the information.

(2) The CSHO must request medical records from the employer first. If the employer refuses to provide the records, the CSHO must obtain a medical release form from the injured employee or his / her representative.

(3) When the CSHO is unable to obtain either the employer's cooperation or the employee's consent, the CSHO and supervisor determine whether the medical records are necessary.

(4) When the CSHO and supervisor determine the medical records are necessary, the supervisor contacts the OGC.

(5) When obtained, medical records are not included in the casefile and KY OSH maintains the records in a secure location with limited access.

(6) KY OSH maintains a log of the secured medical records containing the company name, inspection number, and number of pages.

(c) *Other Records and Programs.* The CSHO examines any other records which fall within the scope of the inspection and relate directly to the purpose of the inspection. These may include, but are not limited to:

(1) Required certification records properly completed and any available equipment inspection and maintenance records;

(2) Medical surveillance or monitoring records, employee exposure records, and other medical records.

(3) Safety committee minutes; checklists; records of inspections conducted by plant safety and health committees, insurance companies, or consultants; if voluntarily supplied by the employer.

ii) Programs.

(a) The CSHO must review any required programs.

- (b) The CSHO must review the employer's overall safety and health management program and specific programs such as those related to personal protective equipment and respiratory protection to evaluate their effectiveness and identify deficiencies.
 - iii) Posting. The CSHO must determine if the employer meets posting requirements in accordance with 803 KAR 2:125, 803 KAR 2:060, and 803 KAR 2:180. These include, but are not limited to:
 - (a) KY OSH Program poster informing employees of their rights and obligations;
 - (b) OSHA-300A; and
 - (c) Current citations, if any.
 - iv) Expanding the Scope of the Inspection. The CSHO may expand a partial inspection in consultation with the supervisor. When the CSHO expands the scope of an inspection, the CSHO informs the employer immediately. Expansions may be based on the following factors:
 - (a) Significant deficiencies in required programs such as respiratory protection programs, hazard communication, lockout/tagout, wire rope inspection for cranes, or fire protection programs.
 - (b) Moderate to high gravity serious violations of safety and health standards uncovered during the plant tour.
 - (c) Concentrations of injuries or illnesses in specific areas of the plant.
 - (d) High injury and illness rates relative to the specific industry.
- H) **Walkaround Inspection**. The main purpose of the walkaround is to identify potential safety and/or health hazards in the workplace. The CSHO must conduct the inspection in such a manner as to eliminate unnecessary personal exposure to hazards and to minimize unavoidable personal exposure to the extent possible.
- i) General Procedures. It is essential during the walkaround portion of every inspection for the CSHO to:
 - (a) Become familiar with plant processes, collect information on hazards, observe employees' activities and interview employees as appropriate.
 - (b) For health inspections, the CSHO conducts a preliminary tour of the establishment before recommending conducting an in-depth industrial hygiene investigation. Such a preliminary walkaround must survey existing engineering controls and collect screening samples, when appropriate, to determine the need for full-scale sampling.

- (1) The CSHO must conduct a comprehensive health inspection if screening reveals potentially high exposure levels.
 - (2) The CSHO informs the employer if screening samples must be sent to the laboratory for analysis.
 - a. The CSHO conducts a full-scale sampling of the potentially hazardous areas if the laboratory results show that potentially high employee exposure levels exist.
 - b. The CSHO closes the casefile if the results are negative.
- (c) Evaluate the employers safety and health program (whether written or not) as follows:
- (1) By ascertaining the degree to which the employer is aware of potential hazards present in the workplace and the methods in use to control them;
 - a. What plans and schedules does the employer have to institute, upgrade and maintain engineering and administrative controls?
 - b. What is the employer's work practices program?
 - (2) By determining employee knowledge of any hazards which exist in the establishment; the extent to which the employers program covers the precautions to be taken by employees actually or potentially exposed to plant hazards; emergency procedures and inspection schedules for emergency personal protective equipment; the program for the selection, use and maintenance of routine personal protective equipment; and overall quality and extent of the educational and training program and the degree of employee participation in it.
 - a. Compliance with the training requirements of any applicable safety and/or health standard must be determined.
 - b. The following specific elements of the establishment safety and health program must be evaluated in the detail appropriate to the circumstances of the inspection:
 1. Comprehensiveness. Evaluate the degree to which the employers safety and health programs address the full range of hazards normally encountered in the employer's operations. This is an overall evaluation and must take into account the evaluations of the remaining categories. The CSHO must indicate if the program is written.
 2. Communication. Evaluate the employees' awareness of the access to the safety and health program, taking into account the principal means by which the employer communicates the program to employees (such as, through oral instructions, booklets, memorandums, posters, etc.). Consider whether the employer holds safety meetings, the frequency of the safety meeting, and the

persons conducting them. The CSHO must evaluate the effectiveness of these means.

3. Enforcement. Evaluate the degree to which the employer enforces safety and health rules, taking into account the principal methods used and the effectiveness of these methods. Determine whether there is a staff (or one specific person) with assigned safety or health responsibilities and consider the effectiveness of the staff's performance.
 4. Safety/Health Training Program. Evaluate separately any safety and health training programs of the employer. The CSHO considers the need for special training in view of the hazards employees are likely to encounter and the need for ongoing or periodic training or retraining of employees.
 5. Investigations. Evaluate the employer's efforts to conduct accident/injury/illness investigations and indicate whether the employer takes adequate corrective and preventive actions as a result.
 6. Self-evaluation. Evaluate the employer's efforts to supervise its workplace to ensure employees are following its policies and procedures.
- (d) Identify locations and conditions that received citations during a previous inspection and include follow-up or monitoring activities as part of the walkaround to ensure proper abatement or to determine abatement progress, if the citations are a final order of the Review Commission. Follow-up and monitoring activities do not constitute a separate inspection when they are conducted as part of another investigation. The CSHO does not submit a separate OSH-1.
- (1) Record all facts pertinent to an apparent failure to abate, repeated or willful violation.
 - a. Determine if a letter of abatement previously received from the employer accurately described the correction of a previously cited violation.
 - b. The CSHO must bring apparent violations to the attention of employer and employee representatives at the time the CSHO documents them.
- (e) Record all facts pertinent to an apparent violation. The CSHO must bring apparent violations to the attention of employer and employee representatives at the time the CSHO documents them.
- (1) The CSHO must record all notes, observations, analyses, and other information.
 - a. Because this documentation is required for each instance of an alleged violation, the CSHO must normally describe each instance as it is noted.
 - b. If the CSHO notes identical violations of the same standard or of several related standards in one general location in the establishment and if the documentation is essentially the same, the CSHO may treat all of those violations as a single instance description.

- c. The CSHO must note photographs, recordings, sketches, and descriptions that are part of the inspection record. The CSHO must retain original field notes as basic documentation of the violation in the casefile.
- (2) The CSHO must provide as much detailed information as practical to establish the specific characteristics of each violation as follows:
- a. Describe the observed hazardous conditions or practices. The CSHO specifically identifies the hazards employees have been or could be exposed. Describe the type of accident that the violated standard was designed to prevent in this situation, or note the name and exposure level of any contaminant or harmful physical agent to which employees are, have been or could be exposed. If more than one type of accident or exposure could reasonably be predicted to occur, describe the one which would result in the most serious injury or illness for the type of accident described, include:
 1. All factors about the violative condition that could significantly affect the nature and severity of the resulting injuries.

EXAMPLE: Fall of 20 feet onto protruding rebar; fall into water-filled excavation.
 2. Other factors which could affect the probability that an injury would occur, such as:
 - (A) Proximity of the workers to the point of danger of the operation.
 - (B) Stress producing characteristics of the operation (such as speed, heat, repetitiveness, noise, or position of employee).
 - (C) Any additional facts that clarify the nature of employee exposure for contaminants and physical agents.
 - b. The identification of the equipment and process that pose the hazards, (such as serial numbers, equipment types, trade names, and manufacturers). The CSHO must take a video of a machine in operation.
 - c. The specific location of the violation.

EXAMPLE: Building No.3, second floor, column no. 6. Machine Shop, N.E. Department 12. Foundry, N.W. corner, shakeout area.
 - d. State the nature of the more serious types of injury or illness that is reasonably predictable and could result from the accident or exposure.
 1. Broad categories of injuries and health effects (such as electric shock, burns, or lacerations) must be qualified to indicate whether the injuries or health effects are major or minor.

2. In identifying the illnesses a standard that regulates exposure to an air contaminant or harmful physical agent is designed to prevent in a particular worksite, it may be necessary to consider not only the level of exposure, but also the frequency and duration of exposure to the contaminant or agent.

EXAMPLE: The entry for the fall from 20 feet onto protruding rebar might read "death from multiple injuries." For exposure to asbestos, the entry might read "asbestosis, cancer and death."

- e. Any specific measurements taken during the inspection, which will further document the nature of the hazardous conditions and operations.
 1. Describe how measurements were taken during the inspection.
 2. Identify the measuring techniques, equipment used, and those who were present.
 3. Include calibration dates and description of calibration procedures used, if appropriate.

EXAMPLE: The CSHO held an engineering rod at 90 degrees (measured using a protractor) to measure depth at northeastern corner of trench with the assistance of the company representative, Mr. Jones. The trench measured 15 feet deep.

- f. Exposure facts so as to present a picture of employee exposure to the hazard for each particular occupation, including:
 1. The occupation and the employer of the exposed employees if the employer is different from the one on the corresponding OSHA-1.
 2. The number of exposed employees in that occupation.
 3. The length of time that the alleged violation has existed.
 4. The duration and frequency that the employees are exposed.
 5. The name, address (with zip code) and telephone number of at least one exposed employee in each occupation. The CSHO should obtain signed and dated witness statements.

EXAMPLE: An unguarded radial arm saw has been on a construction site for three (3) months. All of the employer's 14 carpenters on the job use the saw. One of the carpenters is John Doe. Total use of the saw on a daily basis is approximately four (4) hours.

- g. Any facts that establish that the employer knew of the hazardous condition or could have known of that condition with the exercise of reasonable diligence. The CSHO should include any facts that show:

1. The employer actually knew of the hazardous condition that constitutes the violation. In this regard, a supervisor represents the employer and supervisory knowledge amounts to employer knowledge.
2. The employer could have known of the hazardous condition if the employer took all reasonable steps to identify hazards to which employees may have been exposed.

NOTE. When the CSHO has reason to believe the violation may be a willful violation, facts must be included to show that the employer knew that the condition existed and, in addition, knew that by law, he had to do something to abate the hazard.

- h. Any pertinent employer or employee remarks made during the walkaround and/or the closing conference, especially comments directly related to the instance described.
 1. Include employer comments that may be characterized as admissions of the specific violations described.
 2. Include any other facts that may assist in evaluating the situation or in reconstructing the total picture in preparation for testimony in possible legal actions.
 3. Include any additional comments (by the CSHO), particularly any explanation of abatement of dates when necessary.

EXAMPLE: Longer than five (5) days for a serious violation or when the CSHO recommends an abatement period exceeding 30 days for an item.

- i. If the CSHO does not observe employee exposure (to either safety or health hazards), state facts on which the determination is made that an employee was or could be exposed. In appropriate cases, state what the employer could have or should have done to be in compliance. When the CSHO recommends grouping violations, describe the reason for grouping. If a combination of violations causes a specific type of hazard exposure, describe it in sufficient detail.
- j. When the exposing employer neither created nor controlled the violative condition, state the name and relationship of the responsible party such as the prime contractor, subcontractor, building owner, equipment lessor, etc. Describe any steps taken by the exposing employer to have the condition corrected.

ii) Health and/or Safety Hazards. The CSHO:

- (a) Records all relevant information concerning potential exposure to chemical substances or physical hazards such as symptomology, duration and frequency of the hazard, pertinent employee comments, sources of potential health hazards, locations of employees pertinent to the inspection, types of engineering controls, use of personal protective equipment, and collect Safety Data Sheets where available and appropriate.
- (b) Observes employee activities throughout the establishment, concentrating particularly on potentially hazardous areas, and
 - (1) Estimate number of employees at each operation to be evaluated, indicating whether they are engaged in stationary or transient activities;
 - (2) Interview employees; and
 - (3) Record the duration and frequency of all work duties, including intermittent processes.
- (c) Requests and evaluates information on the following aspects of the employers occupational safety and health program (findings must be discussed in detail at the closing conference):
 - (1) Monitoring. The employer's program for monitoring safety and health hazards in the establishment should include a program for self-inspection. The CSHO must discuss the employer's maintenance schedules and inspection records. The CSHO obtains additional information concerning such employer activities as sampling and calibration procedures, ventilation measurements, pre-maintenance programs for engineering controls, laboratory services, use of industrial hygienists and accredited laboratories. Compliance with the monitoring requirement of any applicable standard must be determined.
 - (2) Medical. The CSHO must determine whether the employer provides the employees with required initial and periodic medical examinations. The medical examination protocol must be requested to determine the extent of the medical examinations and, if applicable, compliance with the medical surveillance requirements of any applicable standard.
 - (3) Recordkeeping. The CSHO must evaluate the employer's recordkeeping program including information such as, but not limited to:
 - a. Records pertaining to employee exposure and preservation of medical records in accordance with 29 CFR 1910.1020, and
 - b. Records required by specific standards.
 - (4) Industrial Hygiene Controls. The employer's compliance program may include engineering, work practice and administrative controls and the use of personal protective equipment. The CSHO must identify as follows:

- a. Engineering Controls. Pertinent engineering controls consist of substitution, isolation, ventilation and equipment modification.
 - b. Work Practice and Administrative Controls. These control techniques include personal hygiene, housekeeping practices and rotation of employees.
 - 1. There should be a program of employee training and education to utilize work practice controls effectively. Where pertinent, the CSHO must obtain a detailed description of such controls.
 - 2. The CSHO must evaluate the overall effect of such practices and programs, considering the employees' knowledge of their exposures.
 - 3. Rotation of employees as an administrative control requires employer knowledge of the extent and duration of exposure.
 - c. Personal Protective Equipment. An effective personal protective equipment program should exist. The CSHO makes a detailed evaluation of the program to determine compliance with the specific standards that require the use of protective equipment (e.g., 29 CFR 1910.95, 1910.132, 1910.134, 1910.129).
- (5) Regulated Areas. The CSHO must investigate compliance with the requirements for regulated areas as specified by certain standards.
- a. The employer must clearly identify regulated areas known to all appropriate employees.
 - b. The employer must maintain regulated area designations according to the prescribed criteria of the applicable standard.
- (6) Emergency Procedures. The CSHO must evaluate the employer's emergency program.
- a. When standards provide that specific emergency procedures be developed where certain hazardous substances are handled, the evaluation must determine if:
 - 1. Potential emergency conditions are included in the written plan.
 - 2. The employer has explained emergency conditions to employees.
 - 3. There is a training scheme for the protection of affected employees including use and maintenance of personal protective equipment.
 - b. Where employees handle hazardous substances for which there are not standards requiring emergency procedures, the CSHO must determine if the employer has established such procedures.
- (d) *Collecting Samples*. The CSHO determines as soon as possible after the start of the inspection whether sampling is required by utilizing the information collected during the walk-around and from the pre-inspection review.

- (1) If sampling is necessary, the CSHO develops a sampling strategy by considering potential chemical and physical hazards, number of samples to be taken, and the operations and locations to be sampled.
 - a. There must be no unreasonable delay between development of the sampling strategy and the actual sampling or between receipt of the results of spot or screen sampling and full-shift sampling, when the results indicate its necessity.
 - (2) When work schedules other than the usual 8-hour day are encountered, such as four (4) 10-hour days per week, the following procedures must be used when the standard itself does not cover such exposures:
 - a. The CSHO performs sampling for 8-hour exposure levels as usual; the CSHO must conduct separate sampling to determine any additional exposure beyond the eight (8) hours.
 - b. The CSHO compares the results from the 8-hour sampling with the Permissible Exposure Level (PEL) to determine whether an overexposure exists.
 - c. If it appears that the 8-hour exposure limits do not provide adequate protection from health hazards when longer workday schedules are used, the Supervisor must contact the Program Manager for additional instructions on further sampling that may be indicated as well as for guidance on evaluation of sampling data.
 - (3) If either the employer or the employee representative requests sampling results, the CSHO provides summaries of the results to the requesting representative as soon as practicable after consultation with the supervisor.
- iii) Digital Recordings (i.e. photographs, videos, and audio). The CSHO takes digital recordings to document each inspection. The CSHO takes photos and videos from varying distances and angles and takes videos of a process or a machine in operation. All digital recordings must be properly labeled and stored.
- (a) Do not use flash equipment in hazardous atmospheres.
 - (b) Ensure that equipment does not unexpectedly startle employees.
 - (c) The CSHO should advise any individual whose words the CSHO may record.
- iv) Interviews. The CSHO must identify ***ALL*** potential witnesses of incidents or hazardous conditions in every inspection. The CSHO must interview all witnesses identified, unless, after consultation with the supervisor, it is determined to be impractical to do so. This includes, but is not limited to, the employer, employer's employees, public, customers, employees of other contractors, etc.
- (a) *Purpose*. KRS 338.101(1)(a) authorizes the CSHO to question any employee privately during regular working hours in the course of a KY OSH Program inspection. The CSHO conducts interviews within reasonable limits and in a reasonable manner. The CSHO conducts individual interviews even when there is an employee representative.

- (b) *Employee Right of Complaint.* The CSHO may consult with any employee who desires to discuss a possible hazard. Upon receipt of such information, the CSHO must investigate the alleged hazard, when possible, and record the findings.
 - (1) 803 KAR 2:090 affords any employee an opportunity to bring any workplace condition believed to create a hazard to the attention of the CSHO during an inspection whether it violates a standard or KRS Chapter 338.031(1)(a).
 - (2) In certain instances, the employer and/or the employee walkaround representative may not be able to provide all the necessary information regarding an accident or possible violation. The CSHO must consult with employees while conducting the walkaround inspection and must arrange for interviews, where useful, with employees who may have knowledge of pertinent facts.
- (c) *Time and Location.* The CSHO normally conducts interviews normally during the walkaround; however, the CSHO may conduct interviews at any time during an inspection.
 - (1) *Workplace.* If the CSHO considers it useful and the employee requests it, the CSHO schedules additional consultation at a mutually convenient time. In retail or service establishments or in continuous production operations (e.g., assembly line), interviews must be scheduled to afford minimum interference with the employee's duties and the employer's business operations.
 - (2) *Other than Workplace.* The CSHO may conduct interviews at the employee's home, the KY-OSH Program Office, or at any other suitable place in the community where privacy can be maintained.
- (d) *Privacy.* The CSHO must inform employees that the interview is private. Whenever an employee expresses a preference that an employee representative be present for the interview, the CSHO must make a reasonable effort to honor that request. The CSHO is to construe and handle any employer objection to private interviews with employees as a refusal of entry.
- (e) *Interviews.* The CSHO must conduct interviews to document an inspection. The CSHO must assure the individual that the statement is confidential to the extent allowed by law.
 - (1) Interview documentation is prioritized as follows:
 - a. *Audio Recordings.* The CSHO should record all interviews, unless specifically refused by the interviewee. When an interviewee refuses an audio recording, the CSHO must document the refusal in work notes.
 - 1. The CSHO must start the recording by stating his or her name, title, the date and time of the interview, the location of the interview, the interviewee, and any additional attendee(s).

2. The CSHO must get the interviewee's information, such as but not limited to, name, company position, length of employment, email address, home address, and phone number.
 3. At the conclusion of the interview, the CSHO must state the interview is concluded and provide the time.
- b. **Written Statements.** Interview statements are normally written in the first person. The wording of the statement must be understandable to the individual and reflect only information obtained in the interview.
1. The individual should initial any changes or corrections; otherwise, the statement cannot be changed, added to or altered in any way.
 2. The statements must include language affirming the accuracy of the statement and include a space for the individual to initial and/or sign. The statements also include language regarding the statement's confidentiality and the option for the individual to waive confidentiality. The individual must sign and date the statement and the CSHO must then sign it as a witness.
 3. When the individual refuses to sign the statement, the CSHO must note such refusal on the statement.
- c. **Handwritten notes.** The CSHO must transform his/her handwritten notes into a detailed, type written format.
- v) **Special Circumstances.**
- (a) *Trade Secrets.* When the employer identifies an operation or condition as a trade secret, the CSHO treats it as such. See Chapter IX.
 - (b) *Areas Requiring Immunization.* When a non-immunized CSHO encounters an area requiring immunization, the CSHO must not enter that area but notes a description of the area, immunization required, employees exposed, location and other pertinent information in the casefile.
 - (1) Non-immunized CSHO. The CSHO must consult with the supervisor about scheduling a properly immunized CSHO for an immediate or later inspection, as applicable. The CSHO must then complete the inspection of all other areas of the establishment.
 - (2) Non-immunized Walkaround Representative. When a properly immunized CSHO finds that walkaround representatives of employers and employees are not properly immunized and, therefore, not authorized in the area, the CSHO must consult a reasonable number of employees and the supervisor of that area concerning workplace health and safety.
 - (c) *Violations of Other Laws.* When a CSHO observes apparent violations of laws enforced by other government agencies, the CSHO refers such to the appropriate agency.

- I) **Casefile Review.** CSHOs normally turn in their final report to the supervisor for review within the 120 days of opening the inspection. In some cases, inspections may take additional time or have extenuating circumstances. In those specific instances, the CSHO must seek prior supervisor approval to deviate from the 120 days. CSHOs must document reasons for this deviation in the casefile. At day 90 of each inspection's life cycle, the CSHOs must participate in a Case Status Review with their Supervisor to ensure the CSHO is on track to meet the deadline.
- J) **Closing Conference.** At the conclusion of an inspection, the CSHO must conduct a closing conference with the employer and the employee representatives. (On multiemployer: worksites, the CSHO must decide if he or she will hold separate closing conferences with each employer representative.) The CSHO must hold a joint closing conference with the employer and the employee representatives whenever practicable. Where either party wishes to have a separate conference or where it is not practical to hold a joint closing conference, the CSHO holds separate closing conferences. A written summary of each conference must be included in the case file.
- i) Attorney Involvement. The CSHO inquires whether the employer will be having an attorney present at the closing conference. If the employer has an attorney attend the closing conference, the CSHO suspends the closing conference and informs his or her supervisor. The closing conference resumes when an attorney from the Office of General Counsel can attend.
- ii) General. The CSHO describes the apparent violations found during the inspection and indicates the violated standards. The CSHO informs the employers and employees of how they can obtain copies of the KY OSH standards and regulations. During the closing conference, the CSHO advises both the employer and the employee representatives of their rights to participate in any subsequent conferences, meeting, or discussions.
- (a) The CSHO should discuss the strengths and weaknesses of the employer's occupational safety and health program at the closing conference.
- (b) During the discussion of apparent violations, the CSHO must note any comments in the OSHA-1B contained in the report and obtain input for establishing correction dates.
- (c) The CSHO must advise the employee representatives that:
- (1) If the employer contests, employees have the right to request participation in proceedings before the Review Commission.
- (2) The employer notifies them if the employer files a notice of contest.
- (3) They have discrimination rights. See Chapter X.
- (4) They have a right to contest the citation, penalty and abatement date. A contest must be in writing and filed within 15 working days after receipt of the citation.
- iii) Specific.
- (a) *Post Inspection Guide.* During the closing conference, the CSHO must give the employer the publication, "Post Inspection Guide," which explains the rights, responsibilities, and courses of action available to the employer if a citation is received. The CSHO must then

briefly discuss the information in the booklet and answer any questions. The CSHO must document all matters discussed during the closing conference in the case file, including a note describing printed materials distributed.

- (b) *Citation Issued.* If KY OSH issues citations, KY OSH must send the original Citation and Notification of Penalty to the employer representative at the establishment. In the case of a non-fixed worksite, KY OSH normally sends the original Citation and Notification of Penalty to the employer's headquarters. When in doubt, KY OSH sends the Citation and Notification of Penalty to the registered agent of the entity. In addition, KY OSH sends copies to any other employer representatives as requested by the attending employer representative.

NOTE. The original Citation and Notification of Penalty must be sent by certified mail, return receipt requested.

- (c) *Citation posting.* The employer must post the Citation and Notification of Penalty or a copy of it at or near the place where each violation occurred to inform the employees of hazards to which they may be exposed. If, because of the nature of the employer's operation, it is not practical to post the Citation and Notification of Penalty at near the place where each violation occurred, the employer must post the Citation and Notification of Penalty in a prominent place where all affected employees will readily observe it. The Citation and Notification of Penalty must remain posted for three (3) working days or until the employer corrects the violation, whichever is longer.

(1) If the citation is amended because of an informal conference or other procedure, the employer must post a copy of the amended Citation and Notification of Penalty along with a copy of the original Citation and Notification of Penalty.

(2) Even if contested, the employer must still post a copy of the citation.

(3) 803 KAR 2:125 Section 1(1) requires the employer to take steps to ensure that the Citation and Notification of Penalty is not altered, defaced, or covered by other material which would obscure the Citation and Notification of Penalty.

- (d) *Complying with Citation and Notification of Penalty.* If the employer does not contest the citation and penalty and it becomes a final order, then:

(1) The cited conditions must be abated by the dates set in the citation, and

(2) The employer must pay the penalty, if one was proposed.

- (e) *Informal Conference.* The CSHO must advise those attending the closing conference:

(1) That a request for an informal conference with the Supervisor is available. The informal conference provides an opportunity to:

a. Discuss disputed citations and penalties;

b. Obtain a more complete understanding of the specific safety or health standards;

- c. Discuss ways to correct the apparent violations;
 - d. Discuss questions concerning proposed penalties;
 - e. Discuss problems with proposed abatement dates;
 - f. Discuss problems concerning employee safety and health practices;
 - g. Learn more of other KY OSH Program projects and services available;
 - h. Obtain answers to other questions.
- (2) That, if a citation is issued, an informal conference or the request for one does not extend the 15-working-day period in which the employer or the employee representative may contest.
- (3) That an oral statement of disagreement with, or intent to contest, a citation, penalty or abatement date made during an informal conference will not serve as the required written notice of contest.
- (4) That the employer representative(s) has the right to participate in any informal conference or negotiations between the supervisor and the employees.
- (5) That the employee representative(s) has the right to participate in any informal conference or negotiations between the supervisor and the employer.
- (f) *Penalties.* The CSHO must explain that the employer must pay penalties within 15 working days after the employer receives the Citation and Notification of Penalty. If, however, the employer contests the citation and/or the penalty, the employer need not pay the penalties for those items contested until the citation becomes a final order.
- (g) *Contesting Citation and Notification of Penalty.* The CSHO must advise the employer that the employer may contest the citation, the penalty and/or the abatement date if the employer does not agree to the citation, penalty or abatement date.
- (1) Notice of contest. The CSHO must advise the employer that, in order to contest, the employer must notify the commissioner in writing within 15 working days after receipt of the citation and notification of penalty (working days are Monday through Friday, excluding State and Federal holidays). The CSHO must emphasize that a notice of intent to contest given orally does not satisfy this requirement to give written notification.

NOTE. The written notification must be postmarked, faxed, or emailed no later than the 15th working day after receipt of the citation, otherwise, the citation has become a final order and the KY OSH Program has no jurisdiction to modify it.

- a. Employer contest. The employer must clearly state what the employer is contesting in the written notice of contest: which item of the citation, the penalty, the correction date, or any combination. The CSHO advises the employer to read the pamphlet accompanying the citation for additional details.

1. If the employer wishes only a later abatement date and there is a valid reason, the employer must contact the commissioner or his designee, the director, to request to extend the abatement period. The director may agree to extend the abatement period and must notify the employer in writing of this extension prior to the expiration of the 15-working-day period without the employer filing a contest.
 2. If the employer contests only the penalty or only some of the citation items, the employer must still abate all uncontested items by the dates indicated on the citation and the corresponding penalties paid within 15 days of notification.
- b. **Employee Contest.** The CSHO must indicate that KRS 338 provides that employees or their authorized representative(s) have the right to contest in writing any or all of the citation, penalty and abatement dates set for a violation.
- (2) **Contest Process.** The CSHO explains that, when an employer properly files the notice of contest, the commissioner is required to forward the case to an independent agency, the Kentucky Occupational Safety and Health Review Commission (the Review Commission). At that time, the case is officially in litigation.
- a. The Review Commission informs the employer and/or employee representative of the procedural requirements which must be observed throughout the proceedings.
 - b. Following an administrative hearing in which all parties have presented evidence and testimony, the hearing officer may sustain, modify, or dismiss any item of the citation or the penalty that the employer and/or employee representative has challenged.
 - c. A sole proprietorship or partnership may represent himself or herself before the Review Commission or hire an attorney. An employer and/or employee representative doing business in the Commonwealth as a corporation, limited liability company, or any other artificial entity, must be represented by an attorney licensed in Kentucky.
- (h) **Abatement Action.** The CSHO must explain the following:
- (1) For violations the employer does not contest, the employer is expected to notify the commissioner or the director promptly by letter that the employer has corrected the cited conditions by the abatement date established in the citation. Failure to do so may trigger a follow-up inspection. The notification must explain the specific action taken with regard to each violation and the approximate date the corrective action was completed.
 - (2) When the citation permits an extended time for abatement, the employer must ensure adequate protection for employees during this time. The commissioner may request the employer to send periodic progress reports on actions to correct these violations.

- (i) *Application for Extension of Abatement Date.* The employer must be advised that abatement dates are established based on the information available at the time the citations are issued. When uncontrollable events or other circumstances prevent the employer from meeting an abatement date and the 15 working-day contest period has expired, the employer may submit an application in writing for an extension of abatement dates. Further information on applications for extensions of abatement dates is included in the Post Inspection Guide.
- (j) *Follow-up Inspection.* The CSHO must explain that:
 - (1) If the employer receives a citation, a follow-up inspection may be conducted to verify that the employer has:
 - a. Posted the citation as required.
 - b. Corrected the violations as required in the citation.
 - c. Adequately protected the employees during multi-step or lengthy abatement periods.
 - d. Taken appropriate administrative or engineering abatement steps in a timely manner.
 - (2) The employer has a continuing responsibility to comply with KY OSH standards and regulations. A CSHO may cite any violations discovered during a follow-up inspection.
- (k) *Failure to Abate.* The CSHO must explain that to achieve abatement by the date set forth in the citation, it is important that the employer take prompt corrective efforts. The CSHO must remind the employer that, under KRS Chapter 338, additional penalties of up to \$7,000 per day per violation may be proposed if the employer is found during a follow-up inspection to have failed to abate any violations that have not been contested.
- (l) *False Information.* The CSHO must explain that, if the employer knowingly provides false information relating to efforts to correct cited conditions, provides false information in records the employer is required to maintain, or provides false information in any other matter related to KRS Chapter 338, criminal penalties as specified in KRS Chapter 338 may be sought.
- (m) *Employee Discrimination.* The CSHO must emphasize that KRS Chapter 338 prohibits employers from discharging or discriminating in any way against an employee who has exercised any right under KRS Chapter 338, including the right to make safety or health complaints or to request a KY OSH Program inspection. The KY OSH Program investigates complaints from employees who believe their employer has discriminated against them for engaging in activities under KRS Chapter 338. If the investigation discloses a probable violation of employee rights, KY OSH may issue a Citation and Notification of Penalty to the violating entity.

(n) *Referral Inspection.* When applicable, the CSHO must explain that apparent violations, which the CSHO has observed during the inspection but may not be within the scope of the CSHO's expertise, are subject to referral to the supervisor and, as a result, additional inspections may be scheduled.

V) **Multi-Employer Worksites.** Kentucky adopted the Multi-Employer Citation Policy. See CPL 02-00-124.

VI) **Abatement.**

A) **Period.** The abatement period must be the shortest interval within which the employer can reasonably be expected to correct the violation. The Citation and Notification of Penalty establishes the abatement period as a specific date, not a number of days. When the abatement period is very short and it is uncertain when the employer receives the citation, the abatement date must allow for mail delivery and the agreed-upon abatement time. When abatement is witnessed by the CSHO during the inspection, the abatement period must be “corrected during inspection” on the citation.

B) **Reasonable Abatement Date.** The establishment of an abatement date requires the exercise of professional judgement on the part of the CSHO.

i) The CSHO exercises this judgment based on data found during the inspection. In all cases, the CSHO must ask the employer for any available information relative to the time required to accomplish abatement and/or any factors unique to the employer's operation, which may have an effect on the time needed for abatement.

ii) The CSHO considers all pertinent factors in determining what constitutes a reasonable period. The following considerations may be useful in arriving at a decision:

(a) The gravity of the alleged violation.

(b) The availability of needed equipment, material, and/or personnel

(c) The time required for delivery, installation, modification or construction.

(d) Training of personnel.

C) **Abatement Periods Exceeding 30 Calendar Days.** Abatement periods exceeding 30 calendar days should not normally be necessary, particularly for safety violations. Situations may arise, however, especially for health violations, where extensive structural changes are necessary or where new equipment or parts cannot be delivered within 30 calendar days. When an initial abatement date is granted that is in excess of 30 calendar days, the CSHO must document the reason in the case file. CSHOs must document initial abatement dates in excess of one year from the citation issuance date in the case file.

D) **Verification of Abatement.** The director or designee is responsible for determining if the employer has accomplished abatement. When the employer has not accomplished abatement at the time of the inspection or the employer does not notify the commissioner or director by letter of the abatement, verification may be determined by contacting the employer to request the required

abatement documentation. A follow-up inspection may be scheduled to determine whether the employer has completed abatement and how. The casefile must contain documentation describing the specific corrective action taken for each violation cited. See 803 KAR 2:060 Section 4.

- E) **Effect of Contest upon Abatement Period.** In situations where an employer contests either (1) the period set for abatement or (2) the citation itself, the abatement period generally does not begin until there is an affirmation of the citation and abatement period. In accordance with KRS Chapter 338, the abatement period begins when the Review Commission issues a final order, and an appeal does not toll this abatement period unless the court has granted the employer a stay. In situations where there is an employee contest of the abatement date, the abatement requirements of the citation remain unchanged.
- i) Where the Review Commission or a court alters the abatement period, the abatement period as altered must be the applicable abatement period.
 - ii) Where an employer has contested only the amount of the proposed penalty, the abatement period continues to run unaffected by the contest.
 - iii) Where the employer does not contest, he must abide by the date set forth in the citation even if such date is within 15-day notice of contest period. Therefore, when the abatement period designated in the citation is 15 days or less and the employer has not filed a notice of contest, a follow-up inspection of the worksite may be conducted for purposes of determining whether the employer has achieved abatement within the period set forth in the citation. A failure to abate citation may be issued to the employer based on the CSHO's findings.
 - iv) Where the employer has filed a notice of contest to the initial citation within the proper contest period, the abatement period does not begin to run until the entry of a final order by the Review Commission. Under these circumstances, a CSHO cannot conduct a follow-up inspection within the contest period nor issue a failure to abate citation.

NOTE. There is one exception to this rule. If an early abatement date is designated in the initial citation and it is the opinion of the CSHO and/or the Director of Compliance that a situation classified as imminent danger is presented by the cited condition, appropriate imminent danger proceedings may be initiated notwithstanding the filing of a notice of contest by the employer.

- F) **Control Methodology.** Where applicable (generally during health inspections), the CSHO must discuss control methodology with the employer during the closing conference.
- i) Engineering Controls. Engineering controls consist of substitution, isolation, ventilation and equipment modification.
 - (a) Substitution may involve process change, equipment replacement or material substitution.
 - (b) Isolation results in the reduction of the hazard by providing a barrier around the material, equipment, process or employee. This barrier may consist of a physical separation or isolation by distance.
 - (c) OSHA's Technical Manual discusses ventilation controls.

- (d) Equipment modification will result in increased performance or change in character, such as the application of sound absorbent material.
- ii) Administrative Controls. Administrative control is any procedure that significantly limits daily exposure by control, manipulation of the work schedule, or manner in which employees perform work. Administrative control does not include the use of personal protective equipment.
- iii) Work Practice Controls. Work practice controls are a type of administrative control by which the employer modifies the manner in which the employee performs assigned work. Such modification may result in a reduction of exposure through such methods as changing work habits, improving sanitation and hygiene practices, or making other changes in the way the employee performs the job.
- iv) Feasibility. Abatement measures required to correct a citation item are feasible when the employer can accomplish them.
 - (a) *Types of Feasibility*. There are two types of feasibility determinations that KY OSH must make with regard to potential abatement methods: technical and economic.
 - (b) *Technical Feasibility*. Technical feasibility is the existence of technical expertise as to materials and methods available or adaptable to specific circumstances, which apply to cited violations with a reasonable possibility that employee exposure to occupational hazards will be reduced.
 - (1) Sources which can provide information useful in making this determination are the following:
 - a. Similar situations observed elsewhere where adequate engineering controls do reduce employee exposure.
 - b. Written source materials or conference presentations that indicate that equipment and designs are available to reduce employee exposure in similar situations.
 - c. Studies by a qualified consulting firm, professional engineer, industrial hygienist, or insurance carrier that show engineering controls are technically feasible.
 - d. Studies and materials collected and prepared by the Federal Directorate of Compliance Programs, the Director of Technical Support and/or the Assistant Regional Administrator for Technical Support.
 - e. Equipment catalogs and suppliers that indicate engineering controls are technically feasible and are available.
 - f. Information provided by other government agencies when their regulations apply to operations involved and which may affect or limit the design or type of controls that may be used for abatement.

- (2) The director or designee is responsible for making determinations that engineering or administrative controls are not feasible.
- (c) *Economic Feasibility.* Economic feasibility means that the employer is financially able to undertake the measures necessary to abate the citations received.
 - (1) If the cost of implementing effective engineering, administrative, or work practice controls, or some combination of such controls, would seriously jeopardize the employers financial condition so as to result in the probable shut down of the establishment or a substantial part of it, an extended abatement date must be set when postponement of the capital expenditures would have a beneficial effect on the financial performance of the employer.
 - (2) If the employer raises the issue that the company has other establishments or other locations within the same establishment with equipment or processes which would require the same abatement measures as those under abatement, the economic feasibility determination must not be limited to the cited items alone. In such cases, although the employer is required to abate the cited items within time allowed for abatement, the CSHO must offer the opportunity to include both the cited and the additional items in a long-range abatement plan.
 - (3) When additional time is not expected to solve the employer's problem of financial infeasibility, the commissioner or designee may consult with the Office of General Counsel.
- v) Reducing Employee exposure. Whenever an employer can institute feasible engineering, administrative or work practice controls even though they are not sufficient to reduce exposure to or below the permissible exposure limit (PEL), they must be required in conjunction with personal protective equipment to reduce exposure to the lowest practical level.

G) Long-term Abatement Date(s).

- i) In situations when it is difficult to set a specific abatement date when the citation upon original issuance, the CSHO must discuss the abatement period with the employer at the closing conference.
- ii) A specific date for final abatement must be included in the citation. The employer cannot propose an abatement plan setting its own abatement dates. The employer may submit a request to the commissioner to modify the abatement date.

H) Multistep Abatement. Citations with multistep abatement periods are issued only in those situations in which final abatement requires the implementation of feasible engineering controls, as distinguished from feasible administrative controls, or the use of PPE.

- i) General. A step-by-step program for abatement provides a tool for the director or designee to monitor abatement progress after issuing a citation, for the employer to make abatement decisions, to set up schedules efficiently, and for the employees to understand the changes made by the employer to the working environment.

- ii) Interim and Long-range Abatement. In addition to long-term abatement, proper abatement will include a short-term requirement of appropriate PPE when the cited employer does not have an effective personal protection program.
 - (a) The commissioner, in issuing the citation, establishes abatement dates for prompt temporary protection for employees pending formulation and implementation of long-range feasible engineering and/or administrative controls.
 - (b) If it is determined that the employer uses engineering controls to achieve abatement, a specific date must be set by which the employer can reasonably be expected to implement engineering controls, including enough time for the development of engineering plans, designs for such controls, and necessary construction or installation time.
 - iii) Considerations. In general, engineering controls afford the best protection to employees, and the employer must utilize such controls in all instances to the extent feasible. For example, the noise and air contaminant standards require the use of either engineering or administrative controls.
- I) **Applications for Extension of Abatement Period**. 803 KAR 2:122 governs the disposition of applications for extension of abatement date. If the employer requests additional abatement time after the 15-working-day contest period has passed, the following procedures are to be observed:
- i) An employer may make application for extension of abatement date with the commissioner when the employer has made a good faith effort to comply with the abatement requirements of a citation, but the employer has not completed abatement due to factors reasonably beyond its control. An employer must file an application for extension of abatement no later than the close of the day on which the abatement was originally required. The employer's statement of exceptional circumstances explaining the delay must accompany a later filed petition.
 - ii) An employer may make an application for extension of abatement in writing or be made orally where time does not permit a writing. Where application for extension of abatement is made orally, a written application must follow said oral request within three (3) working days the application must include the following information:
 - (a) All steps taken by the employer, and the dates of such action, in an effort to achieve compliance during the prescribed abatement period.
 - (b) The specific additional abatement time necessary in order to achieve compliance.
 - (c) The reasons such additional time is necessary, including the unavailability of professional and technical personnel, materials and equipment, or because necessary construction or alteration of facilities cannot be completed by the original abatement date.
 - (d) All available interim steps taken by the employer to safeguard the employees against the cited hazard during the abatement period.
 - iii) The commissioner or director must rule on the application for extension of abatement within three (3) days of the receipt of it.

- (a) Where an extension is granted, an amended citation must be issued and the employer must post the amended citation at or near the same location as the original citation as under 803 KAR 2:125. Adversely affected employees may appeal pursuant to KRS 338.141 (1) and rules of the Review Commission.
- (b) Where the commissioner denies the extension, adversely affected employers must have the right of appeal as under KRS 338.141(1) and rules of the Review Commission.
- iv) 803 KAR 2:122 Section 4 provides where jurisdiction of the Review Commission has expired, the commissioner must again assume authority to modify the abatement.

J) Employer Abatement Assistance.

- i) Policy. CSHOs may provide abatement assistance during the inspection as to how the employer might eliminate workplace hazards. The information should provide guidance to the employer in developing acceptable abatement methods or in seeking appropriate professional assistance. The CSHO must document any abatement assistance provided by the CSHO in the casefile.
- ii) Disclaimers. The employer must be informed:
 - (a) The employer is not limited to the abatement methods suggested by KY OSH;
 - (b) The methods explained are general and may not be effective in all cases; and
 - (c) The employer is responsible for selecting and carrying out an effective abatement method.

VII) **Informal Conferences**. The inspecting CSHO's supervisor does normally hold the informal conference. A supervisor will not schedule an informal conference after receipt of a written notice of contest without the approval of the OGC. If the intent to contest is not clear, the director must contact the employer for clarification.

- A) **General**. Pursuant to 803 KAR 2:130, the employer, any affected employee or the employee representative may request an informal conference.
- B) **Procedures**. Whenever the employer requests an informal conference, an affected employee or the employee representative, the supervisor must afford both parties the opportunity to participate fully. If the requesting party objects to the attendance of the other party, the supervisor must hold separate informal conferences. During the conduct of a joint informal conference, the supervisor must permit separate or private discussions if either party so requests.
 - i) Notification of Participants. After an informal conference is scheduled, the Supervisor must notify the affected parties of the date, time and place, by telephone and, if considered useful, in writing. The Supervisor must place documentation of the supervisor's actions notifying the parties of the informal conference in the case file.
 - ii) Telephone Conferences. At the employer's request, the supervisor may conduct an informal conference over the telephone.

- iii) Participation by KY OSH Officials. The inspecting CSHO's supervisor normally conducts the informal conference. The supervisor should advise the CSHO of any changes made by the supervisor.
 - (a) In complex cases, the supervisor may involve other individuals, as they deem necessary. This employee may be the CSHO, program manager, attorney, or any other person.
 - (b) When counsel for the employer or affected employees attends the informal conference, the supervisor must notify the OGC so that counsel for the commissioner can attend.
 - (c) The supervisor must make notes indicating the basis for any decisions made at or as a result of the informal conference.
- C) **Conduct of the Informal Conference**. The supervisor conducts the informal conference in accordance with the following.
 - i) Opening Remarks. The opening remarks must include:
 - (a) Purpose of the informal conference;
 - (b) Rights of participants;
 - (c) Contest rights and time restraints;
 - (d) Limitations, if any;
 - (e) Settlements of cases;
 - (f) The supervisor must inform the representatives that once the employer contests the case, a sole proprietorship or partnership may represent himself or herself before the Review Commission or engage an attorney. An employer doing business in the Commonwealth as a corporation, limited liability company, or any other artificial entity, must engage an attorney to represent it before the Review Commission. Any questions regarding this issue must be referred to the Review Commission.
 - (g) Other relevant information.
 - ii) Conference. The conference must include discussion of any relevant matters including citations, safety and health programs, conduct of the inspection, means of correction, and penalties, in accordance with the following:
 - (a) All parties must be encouraged to participate fully so the supervisor can properly consider their views.
 - (b) The supervisor must fully consider the positions on all issues discussed before making a determination regarding possible settlement of the case in accordance with current KY OSH procedures.

- (c) KY OSH representatives must make every effort to assist both the employer and the affected employees and/or their representatives to improve safety and health in the workplace.
- (d) Supervisor should recommend the employer and employee representatives calculate the contest date themselves. The supervisor can provide the received date of the Citation and Notification of Penalty and the calculation formula.

NOTE. The contest date calculation refers to only working days. Saturdays, Sundays, and state and federal holidays not counted.

- iii) Closing. At the conclusion of the discussion, the supervisor must summarize main issues and potential courses of action. The supervisor must place a copy of the summary, together with any other relevant notes or tapes of the discussion made by the Supervisor in the casefile.

D) Decisions. At the termination of the informal conference, the supervisor makes a decision regarding what action is appropriate in light of facts presented during the conference.

- i) When preparing a decision, the supervisor must make a reasonable effort to obtain the views of the employee representative, if there is one, and/or if he/she was not in attendance at the conference.
- ii) The supervisor fully documents the informal conference on the Informal Conference Summary and includes it in the casefile. The summary should include all topics discussed with the employer and employee representatives as well as their requests and their reasons thereof.
- iii) The supervisor may reduce proposed penalties up to 20% without further approvals required. Penalty reductions more than 20% are approved in extraordinary circumstances. The rationale for the reduction must be included in the casefile.
- iv) The supervisor discusses with the program manager any penalty reduction greater than 20%. If approved, the program manager must document in the casefile the rationale for any penalty reduction greater than 20%.
- v) The director may approve a penalty reduction up to 50% with the written approval of the commissioner.
- vi) Only the commissioner or designee may reduce a penalty greater than 50%, amend, or dismiss a citation.
- vii) Only the commissioner or designee has final decision on any citation amendment including dismissal and/or penalty amount as the result of an incident resulting in an employee death.
- viii) The program manager informs the employer and employee representatives of any changes to citations, penalties, or abatement dates by means of a letter and the requirement to post the letter.
- ix) If no changes are made to the citations, penalties, or abatement dates, the supervisor contacts the employer and employee representatives to inform them of the determination. This is especially important when the contest period is ending soon.

VIII) **Follow-up Inspections.**

A) **Inspection Procedures.** The primary purpose of a follow-up inspection is to determine if the employer has corrected the previously cited violations. Normally, there is to be no additional inspection activity unless the CSHO becomes aware of other hazards in the workplace. In such a case, the CSHO consults his or her supervisor.

B) **Failure to Abate.** A failure to abate exists when the employer has not corrected a violation(s) for which a citation has been issued or has not complied with an interim measure(s) involved in a multi-step abatement within the time given.

i) **Initial Follow-up.** The initial follow-up is the first follow-up inspection after issuance of the citation.

(a) If the CSHO finds an employer has not abated a violation, the CSHO must inform the employer that the employer is subject to a Notification of Failure to Abate Alleged Violation and proposed additional daily penalties while such failure or violation continues.

(b) Failure to comply with enforceable inter abatement dates involving multi-step abatement must be subject to a Notification of Failure to Abate Alleged Violation.

(c) A Notification of Failure to Abate Alleged Violation normally must be issued where the employer has implemented some controls, but other technology was available which would have brought the levels of airborne concentrations or noise to within the regulatory requirement. If the employer has exhibited good faith, a late PMA for extenuating circumstances may be considered.

(d) Where an apparent failure to abate by means of engineering controls is due to technical infeasibility, no failure to abate notice will be issued to the employer; however, if the employer is not utilizing proper administrative controls, work practices, or personal protective equipment, a Notification of Failure to Abate Alleged Violation must be issued.

ii) **Second Follow-up.** Any subsequent follow-up after the initial follow-up dealing with the same violation is a second follow-up.

(a) After the commissioner or designee issues a Notification of Failure to Abate Alleged Violation, the director may allow a reasonable time for abatement of the violation before conducting a second follow-up. If the employer contests the proposed additional daily penalties, a follow-up inspection may still be scheduled to ensure correction of the original violation.

(b) If a second follow-up inspection reveals the employer still has not corrected the original violations, the director, after consultation with the commissioner and OGC, issues a second Notification of Failure to Abate Alleged Violation with additional daily penalties.

iii) **Follow-up Documentation.**

(a) CSHOs should use the narrative for documenting correction of violations and failure to correct items during follow-up inspections.

- (b) The CSHO must specifically describe the correction circumstances observed by the CSHO in the OSHA-1B, including any applicable dimensions, materials, specifications, personal protective equipment, engineering controls, measurements or readings, or other conditions. Brief terms such as “corrected” or “in compliance” are not acceptable as proper documentation for corrected violations. When appropriate, the CSHO must supplement this written description by a photograph and / or a videotape to illustrate correction circumstances. The CSHO only needs to complete the item description and identification blocks in the follow-up OSHA-1B with an occasional inclusion of an applicable employer statement concerning correction under the employer knowledge section, if appropriate.
- iv) Sampling. The CSHO conducting a follow-up inspection to determine compliance with violations of air contaminants and noise standards must decide whether sampling is necessary, and if so, what kind; i.e., spot sampling, short-term sampling or full-shift sampling. If there is reasonable probability of an issuance of a Notification of Failure to Abate Alleged Violation, full-shift sampling is required.
- v) Follow-up Files. The follow-up inspection reports must be a separate case file.

IX) Conduct of Monitoring Inspection.

- A) **General.** An inspection must be classified as a monitoring inspection when a safety / health inspection is conducted for one or more of the following purposes:
 - i) To determine the progress an employer is making toward final correction.
 - ii) To ensure the employer is meeting the target dates of a multi-step abatement plan.
 - iii) To ensure the dates of an employer’s petition for the modification of abatement date made in true and good faith and that the employer has attempted to implement necessary controls as expeditiously as possible.
 - iv) To ensure the employer is properly protecting employees while the employer implements final controls.
- B) **Procedures.** CSHOs must conduct monitoring inspections in the same manner as follow-up inspections.