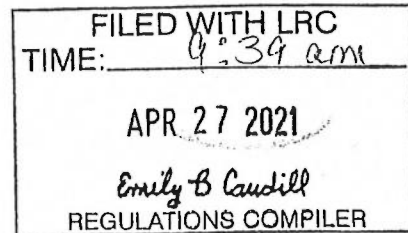


NOTICE

Amendment to 803 KAR 2:070, Inspections, was filed with the Legislative Research Commission on April 27, 2021.

The amendment is posted at <https://legislature.ky.gov>. Select the Kentucky Law Tab, Kentucky Administrative Regulations, KAR List by Title, then Title 803 Labor Cabinet and scroll down to the regulation under Chapter 2 Occupational Safety and Health.

Changes to the regulation and public hearing information is available at the aforementioned website or in the pages below following this notice.



1 LABOR CABINET

2 Department of Workplace Standards

3 Division of Occupational Safety and Health Compliance

4 Division of Occupational Safety and Health Education and Training

5 (Amendment)

6 803 KAR 2:070. Inspections [~~procedure~~].

7 RELATES TO: KRS 338.101

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

9 NECESSITY, FUNCTION, AND CONFORMITY: KRS 338.051(3) requires the Kentucky

10 Occupational Safety and Health Standards Board to promulgate occupational safety and health

11 administrative regulations and authorizes the chairman to reference federal standards without

12 board approval if necessary to meet federal time requirements. KRS 338.061 authorizes the

13 board to establish, modify, or repeal standards and reference standards. [~~Pursuant to the authority~~

14 ~~granted the Commissioner of the Department of Workplace Standards by KRS 338.121, the~~

15 ~~following rules and administrative regulations are adopted, governing the authority to conduct~~

16 ~~inspections. The function of the]~~ This administrative regulation establishes the [~~is to identify~~

17 ~~this]~~ authority for conducting occupational safety and health inspections and the procedure to be

18 followed by the compliance officers during the conduct of the inspections.

19 Section 1. Definitions. (1) "Commissioner" is defined in KRS 338.015.

20 (2) "Compliance safety and health officer" means a person authorized by the commissioner to

21 conduct occupational safety and health inspections and investigations.

1 (3) “Compulsory process” means the institution of any appropriate action, including ex parte
2 application for an inspection, or investigation, warrant or its equivalent.

3 (4) “Director” means Director, Division of Occupational Safety and Health Compliance.

4 (5) “Employee” is defined in KRS 338.015(2).

5 (6) “Employer” is defined in KRS 338.015(1).

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

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

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

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

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

10 (3) The commissioner shall promptly take appropriate action including compulsory process [5] if
11 necessary.

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

15 (b) It may be desirable or necessary to seek compulsory process in advance of an attempt to
16 inspect when:

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

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

22 3. An inspection includes the use of special equipment or the presence of an expert, or experts, is
23 needed to conduct the inspection and procuring a warrant prior an inspection would alleviate the

1 difficulties or costs encountered in coordinating the availability of such equipment or expert.

2 (5) With the approval of the commissioner, the director or other designee may obtain compulsory
3 process.

4 (6) Ex parte inspection warrants shall be the preferred form of compulsory process when
5 compulsory process is relied upon.

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

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

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

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

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

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

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

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

1 videos, oral recordings, and statements. [~~related to the purpose of the inspection,~~]

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

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

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

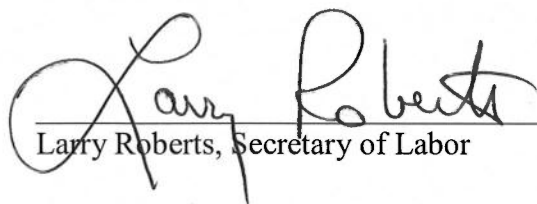
15 (5) [(4)] The conduct of an inspection shall [~~be such as to~~] preclude unreasonable disruption of
16 [~~the~~] operations at [~~of~~] the employer's establishment or worksite.

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

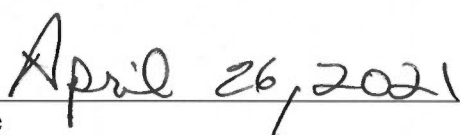
20 (b) The [~~During such conference, the~~] employer shall be afforded an opportunity to bring to the
21 attention of the compliance safety and health officer any pertinent information regarding
22 conditions in the workplace

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

As approved by



Larry Roberts, Secretary of Labor



Date