

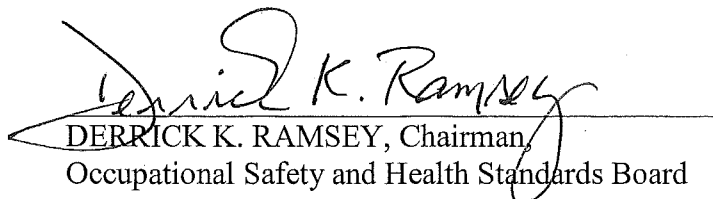
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Emily B Caudill REGULATIONS COMPILER

STATEMENT OF EMERGENCY  
803 KAR 2:425E

This emergency regulation amends 803 KAR 2:425 to align the deadline for the construction industry in the Commonwealth to comply with the final rule on Occupational Exposure to Crystalline Silica in Construction, which was published in the Federal Register on March 25, 2016 and codified in 29 C.F.R. 1926.1153, with the compliance deadline established by the United States Department of Labor, Occupational Safety and Health Administration (“OSHA”). In accordance with 29 CFR Parts 1952 and 1953, Kentucky adopted the final rule in 803 KAR 2:425.

As initially adopted, the final rule on Occupational Exposure to Crystalline Silica in Construction became effective on June 23, 2017. On April 6, 2017, OSHA announced that it was delaying enforcement of the Occupational Exposure to Crystalline Silica in Construction until September 23, 2017. In delaying enforcement of the final rule, OSHA noted that “the construction standard for crystalline silica has a number of unique features warranting additional guidance materials.” Therefore, OSHA concluded, a delay in enforcement “is needed to provide the opportunity to conduct additional outreach to the regulated community and to provide additional time to train compliance officers.” OSHA has advised that it is developing educational materials for employers and enforcement guidance for compliance staff. The regulation is being filed as an emergency regulation because the unavailability of adequate guidance to the regulated community and to compliance officers is an imminent threat to public welfare. An ordinary administrative regulation is not sufficient due to the current deadline for compliance with the final rule. This emergency regulation will be replaced by an ordinary administrative regulation, which is being filed simultaneously with the Regulations Compiler. The ordinary administrative regulation is identical to this emergency administrative regulation.

  
MATTHEW G. BEVIN, Governor

  
DERRICK K. RAMSEY, Chairman,  
Occupational Safety and Health Standards Board

1 LABOR CABINET

2 Department of Workplace Standards

3 Division of Occupational Health and Safety Compliance

4 Division of Occupational Safety and Health Education and Training

5 (Emergency Amendment)

6 803 KAR 2:425E. Toxic and hazardous substances.

7 RELATES TO: 29 C.F.R. 1926.1101-1926.1153

8 STATUTORY AUTHORITY: KRS 338.051(3), 338.061

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. 29 C.F.R. 1926.1101 to 1926.1153 establish the federal requirements  
12 relating to toxic and hazardous substances. This administrative regulation establishes the general  
13 standards to be enforced by the Department of Workplace Standards in the construction industry.

14 Section 1. Definitions. (1) "Assistant secretary" means Secretary, Labor Cabinet or  
15 Commissioner, Department of Workplace Standards, Labor Cabinet.

16 (2) "Director" means Director, Division of Occupational Safety and Health Compliance,  
17 Kentucky Labor Cabinet.

18 (3) "U.S. Department of Labor" means Kentucky Labor Cabinet or U.S. Department of Labor.

19 Section 2. Except as modified by the definitions in Section 1 of this administrative regulation,  
20 or as provided under Section 3 of this administrative regulation, the construction industry shall  
21 comply with the following federal regulations published by the Office of the Federal Register,

1 National Archives and Records Services, General Services Administration:

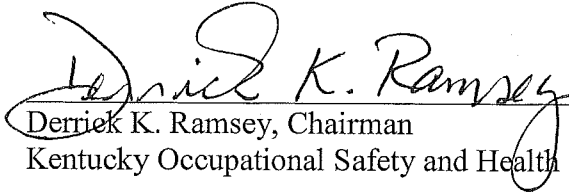
2 (1) 29 C.F.R. 1926.1101 through 1926.1153, revised as of July 1, 2016; and

3 (2) The amendments to 29 C.F.R. 1926 Subpart Z as published in the January 9, 2017 Federal  
4 Register, Volume 82, Number 5.

5 Section 3. (1) The provisions of 29 C.F.R. 1926.1153 shall not be in effect as to the construction  
6 industry until the United States Department of Labor, Occupational Safety and Health  
7 Administration begins enforcement of the standard.

8 (2) The construction industry shall comply with mineral dusts table for silica exposure in  
9 Appendix A to 29 C.F.R. 1926.55, as adopted in 803 K.A.R. 2:403, until the United States  
10 Department of Labor, Occupational Safety and Health Administration begins enforcement of 29  
11 C.F.R. 1926.1153.

As approved by the Chairman of the Kentucky Occupational Safety and Health Standards Board.

  
\_\_\_\_\_  
Derriek K. Ramsey, Chairman  
Kentucky Occupational Safety and Health Standards Board

6-26-17  
\_\_\_\_\_  
Date

## REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Regulation Number: 803 KAR 2:425E  
Contact Person: Michael G. Swansburg, General Counsel, Labor Cabinet, 1047 U.S. Highway 127 South Suite 4, Frankfort, Kentucky 40601, phone: (502) 564-3281; facsimile: (502) 564-5484

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation, in Section 1, defines terms not found in the federal standard. Section 2 requires employers to comply with the requirements of 29 C.F.R. 1926.1101 to 1926.1153, except as modified or provided in Section 1 or Section 3. Section 2 also updates the C.F.R. to July 2016 and establishes the amendments to Subpart Z, as published in the January 9, 2017 Federal Register, Volume 82, Number 5. On April 6, 2017, OSHA announced that because the “construction standard for crystalline silica has a number of unique features warranting development of additional guidance materials,” it had decided to delay enforcement of 29 C.F.R. 1926.1153 until September 23, 2017, “in order to provide the opportunity to conduct additional outreach to the regulated community and to provide additional time to train compliance officers.” Section 3, therefore, provides that 29 C.F.R. 1926.1153 shall not take effect as to the construction industry until the United States Department of Labor, Occupational Safety and Health Administration begins to enforce the standard. Subsection (2) of Section 3 requires the construction industry to continue to comply with the exposure limits for silica that were in effect before the adoption of 29 C.F.R. 1926.1153 until enforcement of the new standards begins.

(b) The necessity of this administrative regulation: The Kentucky OSH Program is mandated by 29 C.F.R. Parts 1952 and 1953 to be as least as effective as OSHA. This administrative regulation incorporates occupational safety and health standards set forth in 29 C.F.R. 1926.1101 to 1926.1153, thereby ensuring that the state program is at least as effective as OSHA.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation conforms to the content of the authorizing statutes of KRS Chapter 338.051 and 338.061.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will promote employee health and safety throughout Kentucky and keep the state program as effective as the federal program.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: This amendment aligns the deadline for the construction industry to comply with new requirements pertaining to exposure to crystalline silica, as set forth in 29 C.F.R. 1926.1153, with the compliance deadline established by the federal government.

(b) The necessity of the amendment to this administrative regulation: The amendment is necessary due to the announcement from OSHA that additional time is needed to conduct outreach

to the regulated community and to train compliance officers. The amendment ensures that the deadline for compliance with the provisions of 29 C.F.R. 1926.1153 is consistent with federal compliance deadlines and ensures that the regulated community is able to comply with, and compliance officers are able to enforce, the new standards.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to the content of the authorizing statutes of KRS Chapter 338.051 and 338.061. Specifically, KRS 338.051 authorizes the Chairman of the Occupational Safety and Health Standards Board to adopt established federal standards if necessary to meet federal time requirements. As mentioned above, OSHA has delayed the enforcement of the final rule on silica exposure until September 23, 2017.

(d) How the amendment will assist in the effective administration of the statutes: This amendment will ensure that the deadline for compliance with the provisions of 29 C.F.R. 1926.1153 is consistent with the federal compliance deadline and will ensure that the regulated community is able to comply with, and compliance officers are able to enforce, the new standards.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation affects all employers in the Commonwealth engaged in construction industry activities covered by KRS Chapter 338.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Approximately 676,000 workplaces in the nation are expected to be affected by the final OSHA silica rule, which requires employers to implement engineering controls and work practices where employees are exposed to respirable crystalline silica. Engineering controls may include the use of wet work practices or local exhaust ventilation. Work practices may include the designation of a regulated area, use of personal protective equipment, medical surveillance of exposed employees, and hazard training. Under the amendment to this administrative regulation, regulated entities will have until the compliance deadline established by OSHA to comply with the new standards set forth in 29 C.F.R. 1926.1153.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): According to OSHA, the annualized national cost of the rule is about one billion dollars, with a net benefit of around 3.8 to 7.7 billion dollars.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Improved employee protection is expected to result from the final rule, due to the consistence with the federal requirement, providing a clear understanding of the requirements.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:

(a) Initially: There is no cost to the OSH Program or the Commonwealth generally to implement

this administrative regulation.

(b) On a continuing basis: There is no continuing cost to the OSH Program or the Commonwealth generally to implement this administrative regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Current state restricted funds and federal funding.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: There is neither an increase in fees nor an increase in funding necessary to implement these revisions.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: The administrative regulation does not establish or increase any fees.

(9) TIERING: Is tiering applied? Tiering is not applied. All employers covered by KRS Chapter 338 are treated equally.

## FEDERAL MANDATE ANALYSIS COMPARISON

Regulation Number: 803 KAR 2:425E  
Agency Contact: Michael G. Swansburg

### 1. Federal statute or regulation constituting the federal mandate.

Public Law 91-596, the Occupational Safety and Health Act of 1970, Section 18; 29 CFR Part 1952; 29 CFR Part 1953

### 2. State compliance standards.

The Kentucky OSH Program is mandated by 29 CFR Parts 1952 and 1953 to be at least as effective as OSHA. 29 CFR 1953.5 requires state implementation of the new federal standard, or a more stringent amendment, within six (6) months of the March 25, 2016 final rule. Kentucky does not have an effective alternative to the final rule. Accordingly, in order to maintain its state program as effective as the federal program, Kentucky incorporated the federal requirements.

### 3. Minimum or uniform standards contained in the federal mandate.

The Kentucky OSH Program is mandated by 29 CFR Parts 1952 and 1953 to be at least as effective as OSHA. 29 CFR 1953.5 requires state implementation of the new federal standard, or a more stringent amendment, within six (6) months of the March 25, 2016 final rule. Kentucky does not have an effective alternative to the final rule. Accordingly, in order to maintain its state program as effective as the federal program, Kentucky incorporated the federal requirements.

### 4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate?

The amendments to the regulation do not impose stricter requirements than those required by the federal mandate.

### 5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements.

The amendments to the regulation do not impose stricter requirements than those required by the federal mandate.



FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

Regulation Number: 803 KAR 2:425E  
Agency Contact: Michael G. Swansburg

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation?

This administrative regulation will affect any unit, part, or division of local government covered by KRS Chapter 338 and engaged in construction industry activities.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation.

KRS 338.051, KRS 338.061, KRS 13A.190, Public Law 91-596 84 STAT. 1590, 29 C.F.R. Parts 1952 and 1953.

3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

- (a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year?

None.

- (b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years?

None.

- (c) How much will it cost to administer this program for the first year?

OSHA expects the rule to result in an annual costs of approximately 1,500 dollars to the average workplace covered by the rule.

- (d) How much will it cost to administer this program for subsequent years?

OSHA expects the rule to result in an annual costs of approximately 1,500 dollars to the average workplace covered by the rule.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-): Unknown.

Expenditures (+/-): Unknown.

Other Explanation: No information was specific to local governments, but estimated expenditures of about 560 dollars was given for smaller firms affected by the regulations.