

NOTICE

Amendment to 803 KAR 2:062, Employer responsibility when employee is exposed to toxic substances or harmful physical agents, 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.

FILED WITH LRC
TIME: 9:39 AM
APR 27 2021
Emily B Caudill
REGULATIONS COMPILER

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 2:062. Employer[s] responsibility when employee is ~~[where employees are]~~ exposed to
7 toxic substances or harmful physical agents
8 RELATES TO: KRS Chapter 338
9 STATUTORY AUTHORITY: KRS 338.051, 338.061 ~~[KRS Chapter 13A]~~
10 NECESSITY, FUNCTION, AND CONFORMITY: KRS 338.051(3) requires ~~[authorizes]~~ the
11 Kentucky Occupational Safety and Health Standards Board to ~~[adopt and]~~ promulgate
12 occupational safety and health ~~[rules,]~~ administrative regulations and authorizes the chairman to
13 reference federal standards without board approval if necessary to meet federal time requirements.
14 ~~This [, and standards. The purpose and function of the following]~~ administrative regulation
15 establishes ~~[is to provide that all employers]~~ employer responsibility when employees are exposed
16 to toxic substances or harmful physical agents ~~[monitor areas and maintain accurate records of~~
17 ~~such monitoring where their employees are exposed to potentially toxic substances and to make~~
18 ~~available to those employees the records of such monitoring].~~
19 Section 1. Definitions. (1) "Board" is defined by KRS 338.015(6).
20 (2) "Employee" is defined by KRS 338.015(2).
21 (3) "Employer" is defined by KRS 338.015(1).

1 (4) “Occupational safety and health standard” is defined by KRS 338.015(3).

2 Section 2. General Requirements. (1) Employers shall monitor areas where employees are exposed
3 to potentially toxic substances or harmful physical agents ~~that~~ [which] are required to be monitored
4 or measured pursuant to [those] standards [as] adopted by the ~~board~~ [Kentucky Occupational
5 Safety and Health Standards Board].

6 (2) Employers shall provide employees or their representatives an opportunity to observe such
7 monitoring or measuring.

8 (3)(a) Each employer shall promptly notify every [any] employee [~~or employees~~] who was or is

9 [have been or are being] exposed to toxic materials or harmful physical agents in concentrations or

10 [at] levels ~~that~~ [which] exceed those prescribed by [those] applicable [~~occupational safety and~~

11 health] standards adopted by the ~~board~~ [Kentucky Occupational Safety and Health Standards

12 Board].

13 (b) Where [pursuant to those applicable occupational safety and health standards adopted and

14 promulgated by the Kentucky Occupational Safety and Health Standards Board] it is required that

15 exposure to certain toxic substances or agents is [be] limited or prohibited, each employer shall:

16 (1) Notify [notify his] employees who are subject to such exposure; [s]

17 (2) Inform employees [inform them] of the corrective action required, if any; [s] and

18 (3) Notify employees [notify them] when such action will be, or was, [has been] taken.

19 (4)(a) Each employer shall make and maintain records of all monitoring activity required by this

20 administrative regulation and make appropriate provisions whereby each employee, former

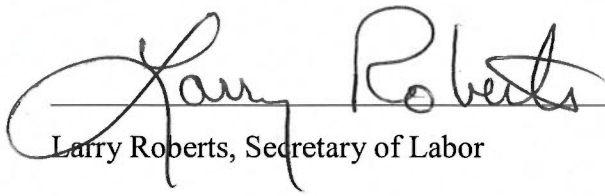
21 employee, or a representative of either, has [may have] access to such records ~~that~~ [which will]

22 indicate the levels [to which] the [particular] employee or former employee was [has been]

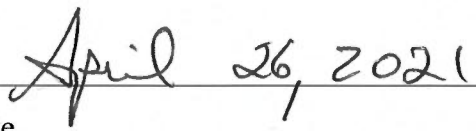
23 exposed.

1 (b) Each employee, former employee, or representative of either, [Said person] shall [also] be
2 permitted to copy [these] records pertaining to her or his exposure levels or the exposure levels of
3 the employee or former employee she or he is representing.

As approved by



Larry Roberts, Secretary of Labor



Date

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on July 21, 2021 at 10:00 am (ET). The meeting will be conducted by live videoconference (ZOOM) pursuant to Senate Bill 150, Section 1, subparagraph (8) b (2020) and the continuing state of emergency. Public access to the meeting will be available at

<https://us02web.zoom.us/j/86731399141?pwd=Q2VOcDQ3ZkVBaUtoNERCMDNlKzZlZz09>, password 446261; or by telephone at (713) 353-0212, (888) 822-7517 toll free, conference code 194378.

Individuals interested in being heard at this hearing shall notify this agency in writing five (5) working days prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through July 31, 2021. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Robin Maples, OSH Standards Specialist, Labor Cabinet, Mayo-Underwood Building, 500 Mero Street, 3rd Floor, Frankfort, Kentucky 40601, Telephone: (502) 564-4107, Facsimile: (502) 564-4769, Email: Robin.Maples@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Regulation Number: 803 KAR 2:062

Contact person: Robin Maples (502) 564-4107, Robin.Maples@ky.gov, Facsimile: (502) 564-4769

(1) Provide a brief summary of:

(a) What this administrative regulation does: Section 1 of this administrative regulation, effective since October 6, 1976, defines terms. Section 2 establishes requirements when employees are exposed to potentially toxic substances or harmful physical agents that are required to be monitored or measured pursuant to standards adopted by the Kentucky Occupational Safety and Health (OSH) Standards Board. This amendment also updates this administrative regulation to meet KRS Chapter 13A considerations and was reviewed in accordance with House Bill (HB) 50 from the Regular Session of the 2017 General Assembly. Amendments to this regulation are technical and intended to maintain consistency with other regulations.

(b) The necessity of this administrative regulation: This administrative regulation, effective since October 6, 1976, was reviewed in accordance with HB 50 from the Regular Session of the 2017 General Assembly. The regulation establishes requirements when employees are exposed to potentially toxic substances or harmful physical agents.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 338.051(3) requires the Kentucky OSH Standards Board to promulgate OSH administrative regulations. This regulation complies and conforms with the authorizing statutes.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation promotes worker safety and health throughout Kentucky. Amendments to this regulation are technical and intended to maintain consistency with other regulations.

(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: Section 1 of this administrative regulation, effective since October 6, 1976, defines terms. Section 2 establishes requirements when employees are exposed to potentially toxic substances or harmful physical agents that are required to be monitored or measured pursuant to standards adopted by the Kentucky OSH Standards Board. This amendment also updates this administrative regulation to meet KRS Chapter 13A considerations and was reviewed in accordance with HB 50 from the Regular Session of the 2017 General Assembly. Amendments to this regulation are technical and intended to maintain consistency with other regulations.

(b) The necessity of the amendment to this administrative regulation: This administrative regulation was reviewed in accordance with HB 50 from the Regular Session of the 2017 General Assembly. Amendments to this regulation are technical and intended to maintain consistency with other regulations.

(c) How the amendment conforms to the content of the authorizing statutes: KRS 338.051(3) requires the Kentucky OSH Standards Board to promulgate OSH administrative regulations. This regulation complies and conforms with the authorizing statutes.

(d) How the amendment will assist in the effective administration of the statutes: This amendment promotes employee health and safety throughout Kentucky. Amendments to this regulation are technical and intended to maintain consistency with other regulations.

(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 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: No additional compliance duties are imposed and no immediate action is required. Amendments to this regulation are technical and intended to maintain consistency with other regulations.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): There is no additional cost to the OSH Program to implement this administrative regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): This administrative regulation promotes worker safety and health throughout Kentucky. Amendments to this regulation are technical and intended to maintain consistency with other regulations.

(5) Provide an estimate of how much it will cost to implement this administrative regulation: (a) Initially: There is no cost to the OSH Program to implement this administrative regulation.

(b) On a continuing basis: There is no continuing cost to the OSH Program 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 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 this amendment.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: This administrative regulation neither establishes any fees nor directly or indirectly increases any fees.

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