

NOTICE

Amendment to 803 KAR 2:110, Employer and employee representatives, 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 2:110. Employer and employee representatives.
7 RELATES TO: ~~[KRS 338.054]~~ KRS 338.111
8 STATUTORY AUTHORITY: KRS 338.051, 338.061 ~~[KRS Chapter 13A]~~
9 NECESSITY, FUNCTION, AND CONFORMITY: KRS.338.051(3) requires ~~[Pursuant to the~~
10 ~~authority granted]~~ the Kentucky Occupational Safety and Health Standards Board to promulgate
11 occupational safety and health [by KRS 338.051, the following rules and] administrative
12 regulations and authorizes the chairman to reference federal standards without board approval if
13 necessary to meet federal time requirements. KRS 338.061 authorizes the board to establish,
14 modify, or repeal standards and reference federal standards. This administrative regulation
15 establishes employer and employee representation during an inspection ~~[are adopted concerning~~
16 ~~the employer and employee representatives who may accompany compliance safety and health~~
17 ~~officers during the course of the inspection].~~
18 Section 1. Definitions. (1) "Compliance safety and health officer" means a person authorized by
19 the commissioner to conduct occupational safety and health inspections or investigations.
20 (2) "Employee" is defined by KRS 338.015(2).
21 (3) "Employer" is defined by KRS 338.015(1).

1 Section 2. Representatives of Employers and Employees. (1) The compliance [~~Compliance~~] safety
2 and health officer[s] shall be in charge of the inspection [~~inspections~~] and questioning of persons.

3 (2) A representative of the employer and a representative authorized by her or his employees shall
4 be given an opportunity to accompany the compliance safety and health officer.

5 (3) The compliance safety and health officer may permit additional employer representatives and
6 additional representatives authorized by employees to accompany her or him when she or he
7 [~~where he~~] determines it aids [~~that such additional representatives will further aid~~] the inspection.

8 (4) A different employer and employee representative may accompany the compliance safety and
9 health officer during each different phase of an inspection if it does [~~this will~~] not interfere with the
10 conduct of the inspection.

11 (5) [(2)] The compliance [~~Compliance~~] safety and health officer[s] shall have authority to resolve
12 all disputes as to who is the representative authorized by the employer and employees [~~for the~~
13 ~~purpose of this section~~].

14 (6) If there is no authorized representative of employees, or if the compliance safety and health
15 officer is unable to determine with reasonable certainty who is the [~~such~~] representative, she or he
16 shall consult with a reasonable number of employees concerning matters of safety and health in the
17 workplace.

18 (7) [(3)] The representative[(s)] or representatives authorized by employees shall be an
19 employee[(s)] of the employer.

20 (8) If, [~~However, if~~] in the judgment of the compliance safety and health officer, good cause is [~~has~~
21 ~~been~~] shown why accompaniment by a third party, such as a safety professional or industrial
22 hygienist, who is not an employee of the employer [~~(such as an industrial hygienist or a safety~~
23 ~~engineer)~~] is reasonably necessary to [~~the~~] conduct [~~of~~] an effective and thorough [~~physical~~]

1 inspection ~~[of the workplace]~~, the ~~[such]~~ third party may accompany the compliance safety and
2 health officer during the inspection.

3 (9) A compliance ~~[(4) Compliance]~~ safety and health officer[s] may consult with employees
4 concerning matters of occupational safety and health ~~[to the extent they deem]~~ necessary for ~~[the~~
5 ~~conduct of]~~ an effective and thorough inspection.

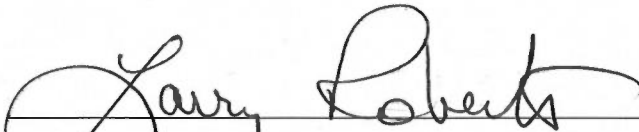
6 (10) During the course of an inspection, any employee shall be afforded an opportunity to bring
7 any violation of KRS Chapter 338 which she or he has reason to believe exists in the workplace to
8 the attention of the compliance safety and health officer.

9 (11) The compliance ~~[(5) Compliance]~~ safety and health officer is ~~[officers are]~~ authorized to deny
10 ~~[the right of]~~ accompaniment ~~[under this section]~~ to any person whose conduct interferes with the
11 ~~[a fair and orderly]~~ inspection.

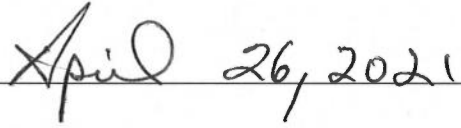
12 (12) Accompaniment ~~[The right of accompaniment]~~ in areas containing trade secrets shall be
13 subject to KRS 338.171.

14 (13) Only persons authorized access to ~~[With regard to]~~ information classified by an agency of the
15 United States Government ~~[in the interest of national security, only persons authorized to have~~
16 ~~access to such information]~~ may accompany a compliance safety and health officer in areas
17 containing such information.

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=Q2VOcDQ3ZkVBaUtoNERCMDNIKzZJZz09>, 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 2:110

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 December 11, 1974, defines terms. Section 2 establishes the requirements pursuant to 29 CFR 1903.8 relating to representatives of employers and employees. 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 was reviewed in accordance with HB 50 from the Regular Session of the 2017 General Assembly. This regulation is necessary to meet the requirements established in Public Law 91-596 84 STAT. 1590 Section 18 (OSH Act of 1970), 29 CFR 1902.3(c), 29 CFR 1902.3(d), 29 CFR 1953.1(a), 29 CFR 1953.1(b), and 29 CFR 1956.2(a), which all require Kentucky occupational safety and health (OSH) regulations to be as effective as the federal requirements. This regulation is equivalent.

(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 is necessary to meet the requirements established in Public Law 91-596 84 STAT. 1590 Section 18 (OSH Act of 1970), 29 CFR 1902.3(c), 29 CFR 1902.3(d), 29 CFR 1953.1(a), 29 CFR 1953.1(b), and 29 CFR 1956.2(a), which all require Kentucky OSH regulations to be as effective as the federal requirements. 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 and ensures the state is as effective as the federal requirement. This regulation is necessary to meet the requirements established in Public Law 91-596 84 STAT. 1590 Section 18 (OSH Act of 1970), 29 CFR 1902.3(c), 29 CFR 1902.3(d), 29 CFR 1953.1(a), 29 CFR 1953.1(b), and 29 CFR 1956.2(a), which all require Kentucky OSH regulations to be as effective as the federal requirements. This regulation is equivalent.

(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 December 11, 1974, defines terms not used in the federal standard. Section 2 establishes the requirements pursuant to 29 CFR 1903.8 relating to representatives of employers and employees. This amendment also updates this administrative