

NOTICE

Amendment to 803 KAR 2:122, Abatement, 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
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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 2:122. Abatement [~~Application for extension of abatement~~].
7 RELATES TO: KRS 338.141
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 federal standards. [The
14 Commissioner of the Department of Workplace Standards is empowered to extend abatement
15 periods established pursuant to KRS 338.141(2) and 803-KAR 2:120. The function of this] This
16 administrative regulation establishes [is to detail] the form of the application for extension of
17 abatement, steps necessary to make application, content of the application, form and timing for
18 the ruling of the Commissioner of the Department of Workplace Standards on the application,
19 and, appeal available to the parties adversely affected by the decision on the application. Section
20 1. (1) "Abatement" means action by an employer to comply with a cited regulation, standard,
21 statute, or order to eliminate a hazard identified by the Division of Occupational Safety and

- 1 Health Compliance.
- 2 (2) “Abatement date” means:
- 3 (a) For an uncontested citation item, the later of:
- 4 1. The date in the citation for abatement of the violation; or
- 5 2. The date approved by Division of Occupational Safety and Health Compliance or established
- 6 in litigation as a result of a petition for modification of the abatement date (PMA); or
- 7 3. The date established in a citation by an informal settlement agreement.
- 8 (b) For a contested citation item for which the Kentucky Occupational Safety and Health Review
- 9 Commission (KOSHRC) has issued a final order affirming the violation, the later of:
- 10 1. The date identified in the final order for abatement; or
- 11 2. The date computed by adding the period allowed in the citation for abatement to the final
- 12 order date;
- 13 3. The date established by a formal settlement agreement.
- 14 (3) “Affected employees” means employees who exposed to a hazard identified as violation in a
- 15 citation.
- 16 (4) “C.F.R.” means Code of Federal Regulations.
- 17 (5) “Commissioner” is defined by 803 KRS 338.015(7).
- 18 (6) “Compliance officer” means a person authorized by the commissioner to conduct
- 19 occupational safety and health inspections and investigations.
- 20 (7) “Employee” is defined by KRS 338.015(2).
- 21 (8) “Employer” is defined by KRS 338.015(1).
- 22 (9) “Final order date” means:
- 23 (a) For an uncontested citation item, the 15th working day after the employer's receipt of the

1 citation;

2 (b) For a contested citation item:

3 1. The 30th day after the date a decision or order of a commission hearing officer has been
4 docketed with the commission, unless a member of the commission has directed review; or

5 2. When review has been directed, the date the commission issues its decision or order disposing
6 of all or pertinent part of a case; or

7 3. The date an appeals court issues a decision affirming the violation in a case when a final order
8 of the review commission has been stayed.

9 (10) "Movable equipment" means a hand held or non-hand held machine or device, powered or
10 unpowered, used to do work and moved within a worksite or between worksites.

11 (11) "Review commission" is defined by KRS 338.015(8).

12 (12) "Working days" means Monday through Friday and does not include Saturday, Sunday,
13 federal, or state holidays, as well as the day of receipt of notice.

14 Section 2. Extension or Modification of Abatement. (1) An employer may apply for an [make
15 application for] extension or modification of abatement [date] with the commissioner or designee
16 [Commissioner of the Department of Workplace Standards or his designee the Director of
17 Compliance,] when the employer [has] made a good faith effort to comply with the abatement
18 requirements [of a citation,] but abatement is not [has not been] completed due to factors
19 reasonably beyond the employer's [his] control.

20 (2) The [Where] application for extension or modification of abatement [is made, said
21 application] shall be made no [filed not] later than 4:30 p.m. Eastern Time on [the close of] the
22 day [on which] abatement is required [was originally required].

23 (3) A later filed petition shall be accompanied by the employer's written statement of exceptional

1 circumstances explaining the delay.

2 (4) The application for extension or modification of abatement shall be posted for ten (10)
3 working days in a conspicuous location where all affected employees have notice or near the
4 location where the violation occurred [~~A later filed petition shall be accompanied by the~~
5 ~~employer's written statement of exceptional circumstances explaining the delay~~].

6 (5) [Section 2.] An application for extension or modification of abatement shall [may] be in
7 writing or may be made orally when [where] time does not permit a written application [writing].

8 (6) When an [Where] application for extension or modification of abatement is made orally, a
9 written application shall follow the [said] oral request within three (3) working days.

10 (7) Every [The] application for extension or modification of abatement shall include [the
11 following information]:

12 (a) [(1)] All steps taken by the employer, and the dates of such action, in an effort to achieve
13 compliance during the prescribed abatement period.

14 (b) [(2)] The specific additional [abatement] time or modification necessary [in order] to achieve
15 compliance.

16 (c) [(3)] The reason [s-such] additional time or modification is necessary [including the
17 unavailability of professional and technical personnel or materials and equipment, or because
18 necessary construction or alteration of facilities cannot be completed by the original abatement
19 date].

20 (d) [(4)] All [available] interim steps implemented [being taken] to safeguard [the] employees
21 against the [cited] hazard [during the abatement period]. (e) Certification the application for
22 extension or modification of abatement was posted for ten (10) working days and, if appropriate,
23 provided to the authorized representative of affected employees including the date the posting

1 and service were made.

2 (8)(a) Affected employees or their representatives may file a written objection to the application
3 with the commissioner within ten (10) working days of the date of posting of such petition or
4 service upon an authorized representative.

5 (b) Failure to file an objection within ten (10) working days of the date of posting of such
6 petition or service upon an authorized representative, shall constitute a waiver of any further
7 right to object to the application.

8 (9) [Section 3.] The commissioner or designee [Commissioner of the Department of Workplace
9 Standards or his designated representative, the Director of Compliance,] shall rule on the
10 application for extension or modification of abatement within three (3) working days of receipt
11 of the application [same].

12 (10) [Where extension is granted, amended citation shall issue and the employer shall post the
13 amended citation at or near the same location as the original citation as under 803 KAR 2:125.
14 Adversely affected employees may appeal an extension or modification of abatement pursuant to
15 KRS 338.141 [(1) and rules of the KOSHRC].

16 (11) When an application for extension or modification of abatement [(2) Where extension] is
17 denied, the employer may [adversely affected employers may shall have right of] appeal
18 pursuant to [as under] KRS 338.141 [(1) and rules of the KOSHRC].

19 Section 3. Abatement certification. (1) Within ten (10) calendar days after the abatement date,
20 the employer shall certify to the commissioner that each cited violation is abated, except as
21 provided in paragraph (2) of this section.

22 (2) The employer is not required to certify abatement if the compliance officer, during the on-site
23 portion of the inspection: