NOTICE

803 KAR 2:321, Occupational health and environmental control, was filed with the Legislative Research Commission on November 23, 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: 11:15am
NOV 23 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 (New administrative regulation)

6 803 KAR 2:321. Occupational health and environmental control.

7 RELATES TO: KRS Chapter 338, 29 C.F.R. 1910.6, 1910.94-1910.98

8 STATUTORY AUTHORITY: KRS 338.051(3), 338.061

9 NECESSITY, FUNCTION, AND CONFORMITY: KRS 338.051(3) requires the Kentucky Oc-
10 cupational Safety and Health Standards Board to promulgate occupational safety and health ad-
11 ministrative regulations and authorizes the chairman to reference federal standards without board
12 approval if necessary to meet federal time requirements. KRS 338.061 authorizes the board to es-
13 tablish, modify, or repeal standards and reference federal standards. This administrative regula-
14 tion establishes the occupational health and environmental control standards that are enforced by
15 the Department of Workplace Standards in general industry.

16 Section 1. Definitions. (1) "Act" means KRS Chapter 338.

17 (2) "Assistant Secretary" means Secretary, Labor Cabinet, or Commissioner, Department of
18 Workplace Standards, Labor Cabinet.

19 (3) "C.F.R." means Code of Federal Regulations.

20 (4) "Standard" is defined by KRS 338.015(3).

21 (5) "U.S. Department of Labor" means Kentucky Labor Cabinet, Mayo-Underwood Building,

1 3rd Floor, Frankfort, Kentucky 40601, or the U.S. Department of Labor.

2 Section 2. Except as modified by the definitions in Section 1, general industry shall comply with

3 29 C.F.R. 1910, Subpart G, Occupational Health and Environmental Control published by the

4 Office of the Federal Register, National Archives and the Records Services, General Services

5 Administration.

As approved by

Jamie Link, Secretary of Labor

11/22/2021
Date

PUBLIC HEARING AND PUBLIC COMMENT PERIOD

A public hearing on this administrative regulation shall be held on February 21, 2022, at 10:00 am ET. The hearing 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://us06web.zoom.us/j/86990674099?pwd=WWs1MEV5UTE0N1VBbmFVSVE3eDhWUT09, passcode 609938; or by telephone at (713) 353-0212, or (888) 822-7517 toll free, conference code 194378. Individuals interested in being heard at this hearing shall notify this agency in writing by five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing was received by that date, the hearing may be cancelled. A transcript for this hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted until February 28, 2022. 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, phone (502) 564-4107, fax (502) 564-4769, email Robin.Maples@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Regulation Number: 803 KAR 2:321
Contact person: Robin Maples (502) 564-4107, robin.maples@ky.gov

(1) Provide a brief summary of:

(a) What this administrative regulation does: Section 1 of this administrative regulation, effective since December 15, 1989, defines terms not used in the federal standard. Section 2 adopts the requirements of 29 C.F.R. 1910, Subpart G, Occupational Health and Environmental Control.

(b) The necessity of this administrative regulation: Kentucky operates a State Plan approved by the Occupational Safety and Health Administration (OSHA) that provides employee occupational safety and health (OSH) protections. OSHA approves, monitors, and provides funding to Kentucky. It is necessary to promulgate this regulation to meet the requirements established in Public Law 91-596 84 STAT. 1590, 29 CFR 1902.3(c)(1), 29 CFR 1902.3(d)(1), 29 CFR 1902.3(d)(2), 29 CFR 1902.37(b)(3), 29 CFR 1953.1(a), 29 CFR 1953.1(b), 29 CFR 1953.5(a)(1), 29 CFR 1953.(a)(2), 29 CFR 1956.2(a), and 29 CFR 1956.10(d)(1), which all require the Kentucky OSH Program to be as effective as OSHA. The Labor Cabinet must promulgate this administrative regulation to ensure the state is at least as effective as the federal requirement. This administrative regulation ensures Kentucky's compliance with the federal mandates, maintains Kentucky's primacy, and retains federal funding.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 338.051(3) requires the Kentucky Occupational Safety and Health Standards Board to promulgate occupational safety and health administrative regulations and authorizes the chairman to reference federal standards without board approval if necessary to meet federal time requirements. This administrative regulation is necessary to meet the requirements established in Public Law 91-596 84 STAT. 1590, 29 CFR 1902.3(c)(1), 29 CFR 1902.3(d)(1), 29 CFR 1902.3(d)(2), 29 CFR 1902.37(b)(3), 29 CFR 1953.1(a), 29 CFR 1953.1(b), 29 CFR 1953.5(a)(1), 29 CFR 1953.(a)(2), 29 CFR 1956.2(a), and 29 CFR 1956.10(d)(1), which all require the Kentucky OSH Program to be as effective as OSHA. 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 administrative regulation is necessary to meet the requirements established in Public Law 91-596 84 STAT. 1590, 29 CFR 1902.3(c)(1), 29 CFR 1902.3(d)(1), 29 CFR 1902.3(d)(2), 29 CFR 1902.37(b)(3), 29 CFR 1953.1(a), 29 CFR 1953.1(b), 29 CFR 1953.5(a)(1), 29 CFR 1953.(a)(2), 29 CFR 1956.2(a), and 29 CFR 1956.10(d)(1), which all require the Kentucky OSH Program to be as effective as OSHA.

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

(a) Not applicable.

(b) The necessity of the amendment to this administrative regulation: Not applicable.

(c) How the amendment conforms to the content of the authorizing statutes: Not applicable.

(d) How the amendment will assist in the effective administration of the statutes: Not applicable.

(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 in general industry 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.

(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 and ensures the state is as effective as the federal requirement.

(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 administrative regulation.

(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.

FEDERAL MANDATE ANALYSIS COMPARISON

Regulation Number: 803 KAR 2:321
Contact person: Robin Maples (502) 564-4107, robin.maples@ky.gov

1. Federal statute or regulation constituting the federal mandate. Public Law 91-596 84 STAT. 1590, 29 CFR 1902.3(c)(1), 29 CFR 1902.3(d)(1), 29 CFR 1902.3(d)(2), 29 CFR 1902.37(b)(3), 29 CFR 1953.1(a), 29 CFR 1953.1(b), 29 CFR 1953.5(a)(1), 29 CFR 1953.(a)(2), 29 CFR 1956.2(a), and 29 CFR 1956.10(d)(1).

2. State compliance standards. The Kentucky OSH Program is mandated to be at least as effective as the federal requirement. Accordingly, in order to maintain the state program as effective as the federal program, Kentucky must adopt the federal requirement or develop an equivalent standard.

3. Minimum or uniform standards contained in the federal mandate. Public Law 91-596 84 STAT. 1590, 29 CFR 1902.3(c)(1), 29 CFR 1902.3(d)(1), 29 CFR 1902.3(d)(2), 29 CFR 1902.37(b)(3), 29 CFR 1953.1(a), 29 CFR 1953.1(b), 29 CFR 1953.5(a)(1), 29 CFR 1953.(a)(2), 29 CFR 1956.2(a), and 29 CFR 1956.10(d)(1).

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? No.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements: This administrative regulation does not impose stricter, additional, or different responsibilities.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

Regulation Number: 803 KAR 2:321
Contact Person: Robin Maples, (502) 564-4107, Robin.Maples@ky.gov

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 affects any unit, part, or division of local government covered by KRS 338 and engaged in construction 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, Public Law 91-596 84 STAT. 1590, 29 CFR 1902.3(c)(1), 29 CFR 1902.3(d)(1), 29 CFR 1902.3(d)(2), 29 CFR 1902.37(b)(3), 29 CFR 1953.1(a), 29 CFR 1953.1(b), 29 CFR 1953.5(a)(1), 29 CFR 1953.(a)(2), 29 CFR 1956.2(a), and 29 CFR 1956.10(d)(1).

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.
None.

(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?
This administrative regulation will not impose any cost to the employer.

(d) How much will it cost to administer this program for subsequent years?
None.

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: This administrative regulation does not impose any additional requirements or expenditures to the employer.