

STATEMENT OF EMERGENCY
803 KAR 2:180E

This emergency administrative regulation is promulgated to meet an imminent threat to public health, safety, or welfare, to prevent a loss of federal funds, and ensure compliance with federal mandates. 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. 803 KAR 2:180, Recordkeeping, reporting, statistics was found deficient by the Administrative Regulations Review Subcommittee on June 9, 2020. Senate Bill 65 of the 2021 Regular Session creates a new section of KRS Chapter 13A to nullify administrative regulations that became effective after being found deficient during the 2020 legislative interim. This emergency administrative regulation amends 803 KAR 2:180, Recordkeeping, reporting, and statistics to address the finding of deficiency. It is necessary to promulgate this emergency regulation to meet the requirements established in Public Law 91-596 84 STAT. 1590, 29 C.F.R. 1902.3(c)(1), 29 C.F.R. 1902.3(d)(1), 29 C.F.R. 1902.3(d)(2), 29 C.F.R. 1902.7(a), 29 C.F.R. 1904.37(a), 29 C.F.R. 1904.37(b)(1), 29 C.F.R. 1904.37(b)(2), 29 C.F.R. 1953.1(a), 29 C.F.R. 1953.1(b), 29 C.F.R. 1956.2(a), and 29 C.F.R. 1956.10(i), which all require the Kentucky OSH Program to be as effective as OSHA. This emergency administrative regulation ensures Kentucky's compliance with the federal mandates, maintains Kentucky's primacy, and retains federal funding. This emergency administrative 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.

ANDY BESHEAR, Governor
LARRY ROBERTS, Secretary
KIMBERLEE C. PERRY, Commissioner

LABOR CABINET
Department of Workplace Standards
Division of Occupational Safety and Health Compliance
Division of Occupational Safety and Health Education and Training
(Emergency Amendment)

803 KAR 2:180E. Recordkeeping, reporting, and statistics.

EFFECTIVE: March 10, 2021

RELATES TO: KRS 338.015(1), (2), 338.121(3), 338.161, 29 C.F.R. Part 1904

STATUTORY AUTHORITY: KRS 338.061, 338.161

NECESSITY, FUNCTION, AND CONFORMITY: KRS 338.161(1) requires the Department of Workplace Standards [~~represented by the commissioner~~] to promulgate administrative regulations for the collection, compilation, and analysis of [~~requiring employers to report~~] occupational safety and health statistics. 29 C.F.R. Part 1904 authorizes requirements for the recording and reporting of occupational illnesses and injuries. This emergency administrative regulation establishes recordkeeping and reporting requirements for employers pursuant to KRS Chapter 338.

Section 1. Definitions. (1) "Amputation" means an injury in which a portion of the body including bone tissue is removed.

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

(3) [(2)] "Employee" is defined by KRS 338.015(2).

(4) [(3)] "Employer" is defined by KRS 338.015(1).

(5) [(4)] "Hospitalization" means formal admission to a hospital or clinic for care or treatment [~~-, treatment, observation, or diagnostic testing~~].

(6) [(5)] "Loss of eye" means the physical removal of an eye from the socket.

(7) [(6)] "Occupational Safety and Health Act" or "OSHA" means KRS Chapter 338.

(8) [(7)] "Secretary of Labor" means the Secretary of the United States Department of Labor or the Secretary of the Labor Cabinet.

(9) [(8)] "Section 11(c) of the Act" means KRS 338.121(3).

Section 2. Except as modified by the definitions in Section 1 and the requirements in Sections 3 and 4 of this emergency administrative regulation, an [An] employer shall comply with 29 C.F.R. Part 1904, Recording and Reporting Occupational Injuries and Illnesses, [the following federal regulations] published by the Office of the Federal Register, National Archives and Records Administration [~~-, except as modified by the definitions in Section 1 of this administrative regulation and the requirements of Section 3 of this administrative regulation:~~

(1) 29 C.F.R. Part 1904, effective July 1, 2019; and

(2) ~~The amendment to 29 C.F.R. Part 1904 as published in the May 14, 2019 Federal Register, Volume 83, Number 93].~~

Section 3. Reporting Fatalities, Amputations, Hospitalizations, or Loss of Eye. (1) The reporting requirements established in this section shall apply in lieu of 29 C.F.R. 1904.39.

(2) [(4)] An employer shall orally report to the Kentucky Labor Cabinet, Department of Workplace Standards, Division of Occupational Safety and Health Compliance, at (502) 564-3070, the work-related death of an employee, including death resulting from a heart attack [~~any of the following which occurs in the work environment, or is caused or contributed to by an event in the work environment:~~

(a) ~~Death of any employee, including any death resulting from a heart attack; or~~

(b) ~~Hospitalization of three (3) or more employees, including any hospitalization resulting from a heart attack].~~

(3) [(2)] The report required pursuant to subsection (2) [(1)] of this section shall be made within eight (8) hours from when the death [~~or hospitalization of three (3) or more employees]~~ is reported to the employer, the employer's agent, or another employee [~~-. If the employer cannot speak with someone in the Frankfort office, the employer shall report the incident using the OSHA toll-free, central telephone number, 1-800-321-OSHA (1-800-321-6742)].~~

(4) [(3)] An employer shall orally report to the Kentucky Labor Cabinet, Department of Workplace Standards, Division of Occupational Safety and Health Compliance, at (502) 564-3070, any of the following that [which] occurs as a result of a work-related incident [~~in the work environment, or is caused or contributed to by an event in the work environment]:~~

(a) An amputation suffered by an employee;

(b) An employee's loss of an eye; or

(c) The hospitalization of an employee [~~fewer than three (3) employees within seventy-two (72) hours following the incident], including [any] hospitalization resulting from a heart attack.~~

(5) [(4)] The report required pursuant to subsection (4) [(3)] of this section shall be made within seventy-two (72) hours from when the amputation, loss of an eye, or hospitalization [~~of three (3) or less employees]~~ is reported to the employer, the employer's agent, or another employee.

Section 4. If the employer cannot speak with someone in the Frankfort office, the employer shall make the report required pursuant to Section 3 of this emergency administrative regulation to the OSHA toll-free, central telephone number, 1-800-321-OSHA (1-800-321-6742)[

~~(5) The requirement to report the loss of an eye pursuant to subsection (3)(b) of this section shall be effective January 1, 2016.~~

~~Section 4. This administrative regulation was found deficient by the Administrative Regulation Review Subcommittee on June 9, 2020].~~

KIMBERLEE PERRY, Commissioner
LARRY ROBERTS, Secretary of Labor

APPROVED BY AGENCY: March 9, 2021

FILED WITH LRC: March 10, 2021 at 1:05 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this emergency administrative regulation shall be held on April 22, 2021 at 10:00 a.m. (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://us02web.zoom.us/j/85836524599?pwd=TFcydIFoQzk0THIWM0s0SWJBNU5jdz09,> password 460764 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 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 April 30, 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, phone (502) 564-4107, fax (502) 564-4769, email Robin.Maples@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Robin Maples

(1) Provide a brief summary of:

(a) What this administrative regulation does: Section 1 of this emergency administrative regulation defines terms not used in the federal standard. The amended definition for hospitalization eliminates the requirement to report hospitalizations for observation or diagnostic testing. The amended definition matches the federal definition. Section 2 requires employers to comply with the requirements of 29 C.F.R. Part 1904 except as modified by the definitions in Section 1 and requirements of Sections 3 and 4 of this emergency administrative regulation. Section 3 establishes the reporting criteria for an employee death, amputation, in-patient hospitalization, or loss of eye. To provide clarity and promote understanding, the language in Section 3 clarifies the reporting criteria apply when the event is work related. Section 3 removes the requirement that dates back to the 1980s to report the hospitalization of three (3) or more

employees within eight (8) hours. This emergency administrative regulation retains other provisions of the regulation that have been effective since August 7, 2006.

(b) The necessity of this administrative regulation: This emergency administrative regulation is necessary to meet the requirements established in Public Law 91-596 84 STAT. 1590 Section 18 (OSH Act of 1970), 29 C.F.R. 1902.3(c)(1), 29 C.F.R. 1902.3(d)(1), 29 C.F.R. 1902.3(d)(2), 29 C.F.R. 1902.7(a), 29 C.F.R. 1904.37(a), 29 C.F.R. 1904.37(b)(1), 29 C.F.R. 1904.37(b)(2), 29 C.F.R. 1953.1(a), 29 C.F.R. 1953.1(b), 29 C.F.R. 1956.2(a), and 29 C.F.R. 1956.10(i) which all require the Kentucky OSH Program to be as effective as OSHA.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 338.161(1) requires the Department of Workplace Standards to promulgate administrative regulations for the collection, compilation, and analysis of occupational safety and health statistics.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This emergency administrative regulation is necessary to meet the requirements established in Public Law 91-596 84 STAT. 1590 Section 18 (OSH Act of 1970), 29 C.F.R. 1902.3(c)(1), 29 C.F.R. 1902.3(d)(1), 29 C.F.R. 1902.3(d)(2), 29 C.F.R. 1902.7(a), 29 C.F.R. 1904.37(a), 29 C.F.R. 1904.37(b)(1), 29 C.F.R. 1904.37(b)(2), 29 C.F.R. 1953.1(a), 29 C.F.R. 1953.1(b), 29 C.F.R. 1956.2(a), and 29 C.F.R. 1956.10(i) which all require the Kentucky OSH Program to be as effective as OSHA. This emergency administrative regulation ensures the state is as effective as the federal requirement.

(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 emergency administrative regulation defines terms not used in the federal standard. The amended definition for hospitalization eliminates the requirement to report hospitalizations for observation or diagnostic testing. The amended definition matches the federal definition. Section 2 requires employers to comply with the requirements of 29 C.F.R. Part 1904 except as modified by the definitions in Section 1 and requirements of Sections 3 and 4 of this emergency administrative regulation. Section 3 establishes the reporting criteria for an employee death, amputation, in-patient hospitalization, or loss of eye. To provide clarity and promote understanding, the language in Section 3 clarifies the reporting criteria apply when the event is work related. Section 3 removes the requirement that dates back to the 1980s to report the hospitalization of three (3) or more employees within eight (8) hours. This emergency administrative regulation retains other provisions of the regulation that have been effective since August 7, 2006.

(b) The necessity of the amendment to this administrative regulation: The Kentucky OSH Program is mandated to be at least as effective as OSHA. This emergency administrative regulation is necessary to meet the requirements established in Public Law 91-596 84 STAT. 1590 Section 18 (OSH Act of 1970), 29 C.F.R. 1902.3(c)(1), 29 C.F.R. 1902.3(d)(1), 29 C.F.R. 1902.3(d)(2), 29 C.F.R. 1902.7(a), 29 C.F.R. 1904.37(a), 29 C.F.R. 1904.37(b)(1), 29 C.F.R. 1904.37(b)(2), 29 C.F.R. 1953.1(a), 29 C.F.R. 1953.1(b), 29 C.F.R. 1956.2(a), and 29 C.F.R. 1956.10(i).

(c) How the amendment conforms to the content of the authorizing statutes: This amendment conforms to KRS 338.161, which requires the Department of Workplace Standards to develop and maintain a program of collection, compilations, and analysis of occupational safety and health statistics.

(d) How the amendment will assist in the effective administration of the statutes: This amendment provides all clarity and a clear understanding of the requirements. This amend-

ment promotes employee health and safety throughout Kentucky and keeps the state program as effective as the federal program.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This emergency administrative regulation affects employers in the Commonwealth engaged in all 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: 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 emergency administrative regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3):

This amendment promotes employee safety and health throughout Kentucky and ensures the state program as effective as the federal program.

(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 emergency administrative regulation.

(b) On a continuing basis: There are no new costs associated with this amendment.

(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 are no fees associated with this emergency administrative regulation. There is no need to increase funding for this emergency administrative regulation.

(8) State whether or not this administrative regulation establishes any fees or directly or indirectly increases any fees: There are no fees associated with this emergency administrative regulation.

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

FEDERAL MANDATE ANALYSIS COMPARISON

1. Federal statute or regulation constituting the federal mandate. Public Law 91-596, the Occupational Safety and Health Act of 1970, Section 18(c)(2), 29 U.S.C. 667

2. State compliance standards. The Kentucky OSH Program is mandated to be at least as effective as OSHA. This emergency administrative regulation is necessary to meet the requirements established in Public Law 91-596 84 STAT. 1590 Section 18 (OSH Act of 1970), 29 C.F.R. 1902.3(c)(1), 29 C.F.R. 1902.3(d)(1), 29 C.F.R. 1902.3(d)(2), 29 C.F.R. 1902.7(a), 29 C.F.R. 1904.37(a), 29 C.F.R. 1904.37(b)(1), 29 C.F.R. 1904.37(b)(2), 29 C.F.R. 1953.1(a), 29 C.F.R. 1953.1(b), 29 C.F.R. 1956.2(a), and 29 C.F.R. 1956.10(i).

3. Minimum or uniform standards contained in the federal mandate. The Kentucky OSH Program is mandated to be at least as effective as OSHA. This emergency administrative regulation is necessary to meet the requirements established in Public Law 91-596 84 STAT. 1590 Section 18 (OSH Act of 1970), 29 C.F.R. 1902.3(c)(1), 29 C.F.R. 1902.3(d)(1), 29 C.F.R.

1902.3(d)(2), 29 C.F.R. 1902.7(a), 29 C.F.R. 1904.37(a), 29 C.F.R. 1904.37(b)(1), 29 C.F.R. 1904.37(b)(2), 29 C.F.R. 1953.1(a), 29 C.F.R. 1953.1(b), 29 C.F.R. 1956.2(a), and 29 C.F.R. 1956.10(i).

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate? This emergency administrative regulation differs from the federal requirement and allows employers greater reporting flexibility.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements: This emergency administrative regulation allows employers greater reporting flexibility.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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 emergency administrative regulation affects any unit, part, or division of local government covered by KRS 338.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 338.061, Public Law 91-596 84 STAT. 1590 Section 18 (OSH Act of 1970), 29 C.F.R. 1902.3(c)(1), 29 C.F.R. 1902.3(d)(1), 29 C.F.R. 1902.3(d)(2), 29 C.F.R. 1902.7(a), 29 C.F.R. 1904.37(a), 29 C.F.R. 1904.37(b)(1), 29 C.F.R. 1904.37(b)(2), 29 C.F.R. 1953.1(a), 29 C.F.R. 1953.1(b), 29 C.F.R. 1956.2(a), 29 C.F.R. 1956.10(i)

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? There are no costs associated with this amendment.

(d) How much will it cost to administer this program for subsequent years? There are no costs associated with this amendment.

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 amendment does not impose any additional expenditures to employers.