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

803 KAR 2:402. General safety and health provisions.

RELATES TO: KRS 338.015, 29 C.F.R. 1926.20-~~[1926.30,]~~1926.35
STATUTORY AUTHORITY: KRS 338.051(3), 338.061
NECESSITY, FUNCTION, AND CONFORMITY: 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. KRS 338.061 authorizes the board to establish, modify, or repeal standards and reference federal standards.~~[29 C.F.R. 1926.20 to 1926.30 and 1926.32 to 1926.35 authorize federal safety and health requirements relating to construction.]~~ This administrative regulation establishes ~~[general safety and health]~~standards that are~~[to be]~~ enforced by the Department of Workplace Standards in ~~[the area of]~~construction.

Section 1. Definitions.
(1) "Act" means KRS Chapter 338.
(2) "Assistant Secretary of Labor" means Secretary, Labor Cabinet, or Commissioner, Department of Workplace Standards, Labor Cabinet.
(3) "C.F.R." means Code of Federal Regulations.
(4) "Employee" is defined by KRS 338.015(2).
(5) "Employer" is defined by KRS 338.015(1).
(6) "Established federal standard" is defined by KRS 338.015(10).
(7) "National consensus standard" is defined by KRS 338.015(9).
(8) "Secretary of Labor" means Secretary, Labor Cabinet, or Commissioner, Department of Workplace Standards, Labor Cabinet.
(9) "Standard" is defined by KRS 338.015(3).
(10) "U.S. Department of Labor" means U.S. Department of Labor or Kentucky Labor Cabinet, 500 Mero Street, 3rd Floor~~[U.S. 127 South]~~, Frankfort, Kentucky 40601.

Section 2. Except as modified by the definitions in Section 1 of this administrative regulation, the construction industry shall comply with 29 C.F.R. Subpart C, General safety and health provisions,~~[the following federal requirements]~~ published by the Office of the Federal Register, National Archives and Records Services, General Services Administration~~[:]~~
~~[(1)]~~ ~~[29 C.F.R. 1926.20-1926.30 and 1926.32-1926.35, effective July 1, 2014; and]~~
~~[(2)]~~ ~~[The amendments to 29 C.F.R. 1926.21 as published in the May 4, 2015 Federal Register, Volume 80, Number 85]~~.
(16 Ky.R. 1099; eff. 12-15-1989; Am. 20 Ky.R. 2704; eff. 5-11-1994; 23 Ky.R. 1732; eff. 12-13-1996; 3938; eff. 7-17-1997; 25 Ky.R. 2457; eff. 6-16-1999; TAm eff. 8-9-2007; 36 Ky.R. 175; 592; eff. 10-2-2009; 37 Ky.R. 1057; eff. 1-3-2011; 42 Ky.R. 119; 684; eff. 10-2-2015; 48 Ky.R. 2517; eff. 10-4-2022.)

JAMIE LINK, Secretary of Labor

APPROVED BY AGENCY: February 11, 2022
FILED WITH LRC: February 11, 2022 at 3 p.m.

PUBLIC HEARING AND COMMENT PERIOD: A public hearing on this administrative regulation shall be held on April 21, 2022 at 1:00 pm (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://us06web.zoom.us/j/81934895287 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 April 30, 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

Contact Person:Robin Maples

(1) Provide a brief summary of:

(a) What this administrative regulation does:

Section 1 of this administrative regulation, effective since, defines terms including terms previously found in Section 2. Section 2 adopts the requirements of 29 C.F.R. 1926, Subpart C, General Safety and Health Provisions. 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 C.F.R. 1902.3(c), 29 C.F.R. 1902.3(d), 29 C.F.R. 1953.1(a), 29 C.F.R. 1953.1(b), and 29 C.F.R. 1956.2(a), which all require Kentucky OSH regulations to be as effective as the federal requirements. Amendments to this regulation are technical and intended to maintain consistency with other regulations.

(c) How this administrative regulation conforms to the content of the authorizing statutes:

KRS 338.051(3) requires the Kentucky Occupational Safety and Health (OSH) Standards Board to promulgate occupational safety and health 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 C.F.R. 1902.3(c), 29 C.F.R. 1902.3(d), 29 C.F.R. 1953.1(a), 29 C.F.R. 1953.1(b), and 29 C.F.R. 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 C.F.R. 1902.3(c), 29 C.F.R. 1902.3(d), 29 C.F.R. 1953.1(a), 29 C.F.R. 1953.1(b), and 29 C.F.R. 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 15, 1989 defines terms including terms previously found in Section 2. Section 2 adopts the requirements of 29 C.F.R. 1926 Subpart C, General Safety and Health Provisions. 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. This 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), 29 C.F.R. 1902.3(d), 29 C.F.R. 1953.1(a), 29 C.F.R. 1953.1(b), and 29 C.F.R. 1956.2(a), which all require Kentucky OSH regulations to be as effective as the federal requirements.

(c) How the amendment conforms to the content of the authorizing statutes:
This administrative regulation complies and conforms with the authorizing statutes of KRS 338.051 and 338.061. KRS 338.051(3) and 338.061 authorize the Kentucky OSH Standards Board to promulgate OSH administrative regulations.

(d) How the amendment will assist in the effective administration of the statutes:
This amendment provides all a clear understanding of the requirements. It promotes employer and employee occupational safety and health throughout Kentucky.

(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 engaged in construction activity 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):
Improved employee protection will result from clarification of the regulation. (5) Provide an estimate of how much it will cost to implement this administrative regulation:

(5) Provide an estimate of how much it will cost the administrative body 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 established any fees or directly or indirectly increased 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

(1) Federal statute or regulation constituting the federal mandate.
Public Law 91-596 84 STAT. 1590 Section 18 (OSH Act of 1970), 29 C.F.R. 1902.3(c), 29 C.F.R. 1902.3(d), 29 C.F.R. 1953.1(a), 29 C.F.R. 1953.1(b), 29 C.F.R. 1956.2(a)

(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 Section 18 (OSH Act of 1970), 29 C.F.R. 1902.3(c), 29 C.F.R. 1902.3(d), 29 C.F.R. 1953.1(a), 29 C.F.R. 1953.1(b), 29 C.F.R. 1956.2(a)

(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 amendment does not impose stricter requirements.

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 administrative regulation affects any unit, part, or division of state or local government covered by KRS Chapter 338 in construction.

(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

(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 requirements or expenditures.