

EDUCATION AND 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 2:404. Personal protective and lifesaving equipment.

RELATES TO: KRS 338.051(3), 338.061, 29 C.F.R. 1926.95-1926.107

STATUTORY AUTHORITY: KRS 338.051(3), 338.061

CERTIFICATION STATEMENT:

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 of the board 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. 1926.95 to 1926.107 establish the federal requirements relating to personal protective and lifesaving equipment. This administrative regulation establishes personal protective and lifesaving equipment standards enforced by the Department of Workplace Standards in the construction industry.

Section 1. Definitions.

- (1) "Assistant secretary" means Secretary, Kentucky Education and Labor Cabinet or Commissioner of the Department of Workplace Standards.
- (2) "C.F.R." means Code of Federal Regulations.
- (3) "Employee" is defined in KRS 338.015(2).
- (4) "Employer" is defined in KRS 338.015(1).
- (5) "OSHA" means the Occupational Safety and Health Administration or the Kentucky Division of Occupational Safety and Health.

Section 2. Except as modified in Section 1 of this administrative regulation, the ~~the~~ construction industry shall comply with 29 C.F.R. 1926, Subpart E, Personal Protective and Life Saving Equipment, ~~the following federal regulations~~ published by the Office of the Federal Register, National Archives and Records Services, General Services Administration ~~except as modified by the definitions in Section 1 of this administrative regulation.~~

~~[(1)] [29 C.F.R. 1926.95 through 29 C.F.R. 1926.107; and]~~

~~[(2)] [The amendments to 29 C.F.R. 1926.102 as published in the March 25, 2016 Federal Register, Volume 81, Number 58.]~~

~~[(3)] [The amendments to 29 C.F.R. 1926.104 as published in the May 14, 2019 Federal Register, Volume 84, Number 93].~~

COMPILER'S NOTE: 2025 RS HB 6, enacted by the General Assembly on March 27, 2025, altered the information to be provided at the time an administrative regulation is filed. Aside from formatting changes necessary to upload the regulation into the LRC's publication application, this regulation has been published as submitted by the agency.

JAMIE LINK, Secretary

APPROVED BY AGENCY: June 11, 2025

FILED WITH LRC: June 12, 2025 at 2:30 p.m.

PUBLIC HEARING AND COMMENT PERIOD: A public hearing on this administrative regulation shall be held August 21, 2025, at 10:00 a.m. EDST via Zoom.

Public access to the meeting is available at: <https://us06web.zoom.us/j/85365100652>. Individuals interested in being heard at this hearing shall notify this agency in writing by five 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 of the public 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 through August 31, 2025. 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, Education and 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 defines terms not found in the federal standard. Section 2 requires employers to comply with the requirements of 29 CFR 1926.95-107.

(b) The necessity of this administrative regulation:

This regulation is necessary to meet the requirements established in Public Law 91-596 84 STAT. 1590 Section 18 (Occupational Safety and Health ("OSH") Act of 1970), 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 1953.5(a)(2), 29 CFR 1956.2(a), and 29 CFR 1956.10(d)(1), which require Kentucky 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 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 1953.5(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 requirement 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)(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 1953.5(a)(2), 29 CFR 1956.2(a), and 29 CFR 1956.10(d)(1), 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:

This amendment explicitly requires personal protective equipment ("PPE") worn by employees in the construction industry properly fit. Employers must ensure all PPE is: (1) of safe design and construction for the work to be performed; and (2) selected to ensure that it properly fits each affected employee.

(b) The necessity of the amendment to this administrative regulation:

Kentucky operates a State Plan approved by OSHA that provides employee 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 (OSH Act of 1970), 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 Education and 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 the amendment conforms to the content of the authorizing statutes:

KRS 338.051(3) requires the Kentucky OSH Standards Board to promulgate OSH 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 (OSH Act of 1970), 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 the amendment will assist in the effective administration of the statutes:

This amendment promotes employee health and safety throughout Kentucky and keeps the state program consistent with the federal program.

(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 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 administrative regulation.

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

This administrative regulation promotes employee health and safety throughout Kentucky and ensures the state requirement is as effective as the federal program.

(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 are no new costs associated with this 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.

FISCAL IMPACT STATEMENT

(1) Identify each state statute, 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 Section 18 (OSH Act of 1970), 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 1953.5(a)(2), 29 CFR 1956.2(a), and 29 CFR 1956.10(d)(1)

(2) State whether this administrative regulation is expressly authorized by an act of the General Assembly, and if so, identify the act:

This administrative regulation is not expressly authorized by an act of the General Assembly.

(3)(a) Identify the promulgating agency and any other affected state units, parts, or divisions:

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

(b) Estimate the following for each affected state unit, part, or division identified in (3)(a):

1. Expenditures:

For the first year:None

For subsequent years:None

2. Revenues:

For the first year:None

For subsequent years:None

3. Cost Savings:

For the first year:None

For subsequent years:None

(4)(a) Identify affected local entities (for example: cities, counties, fire departments, school districts):

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

(b) Estimate the following for each affected local entity identified in (4)(a):

1. Expenditures:

For the first year:None

For subsequent years:None

2. Revenues:

For the first year:None

For subsequent years:None

3. Cost Savings:

For the first year:None

For subsequent years:None

(5)(a) Identify any affected regulated entities not listed in (3)(a) or (4)(a):

None

(b) Estimate the following for each regulated entity identified in (5)(a):

1. Expenditures:

For the first year:None

For subsequent years:None

2. Revenues:

For the first year:None

For subsequent years:None

3. Cost Savings:

For the first year:None

For subsequent years:None

(6) Provide a narrative to explain the following for each entity identified in (3)(a), (4)(a), and (5)(a)

(a) Fiscal impact of this administrative regulation:

This administrative regulation imposes no new direct cost burden on employers and does not require them to take any action to comply.

(b) Methodology and resources used to reach this conclusion:

Federal Register, Volume 89, Number 63, V. Final Economic Analysis and Regulatory Flexibility Act Certification.

(7) Explain, as it relates to the entities identified in (3)(a), (4)(a), and (5)(a):

(a) Whether this administrative regulation will have a "major economic impact", as defined by KRS 13A.010(13):

This administrative regulation will not have a "major economic impact" as defined by KRS 13A.010(14).

(b) The methodology and resources used to reach this conclusion:

This administrative regulation imposes no new direct cost burden on employers and does not require them to take any action to comply. Federal Register, Volume 89, Number 63, V. Final Economic Analysis and Regulatory Flexibility Act Certification.

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 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 1953.5(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. This regulation is equivalent.

(3) Minimum or uniform standards contained in the federal mandate.

Public Law 91-596 84 STAT. 1590 Section 18 (OSH Act of 1970), 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 1953.5(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 amendment does not impose stricter requirements.