

STATEMENT OF EMERGENCY
803 KAR 2:404E.

This emergency amendment to an existing administrative regulation amends 803 KAR 2:404, Personal protective and lifesaving equipment, to adopt the United States Department of Labor, Occupational Safety and Health Administration ("OSHA") final rule, Personal Protective Equipment in Construction, published in the December 12, 2024, Federal Register, codified in 29 Code of Federal Regulations ("CFR") Part 1926, as required by federal law. The final rule states that personal protective equipment ("PPE") worn by employees in the construction industry must properly fit. The final rule requires employers ensure all PPE equipment is: (1) of safe design and construction for the work performed; and (2) selected to ensure it properly fits each affected employee. It is necessary to promulgate this emergency amendment to an existing regulation to meet the requirements established in Public Law 91-596 84 STAT. 1590 Section 18 of the 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 all require Kentucky OSH regulations to be as effective as the federal requirements. Furthermore, 29 CFR 1953.5 mandates adoption of the final rule within six (6) months of the date of the promulgation. Therefore, Kentucky must adopt the rule no later than June 12, 2025. This emergency amendment to an existing administrative regulation will be replaced by an ordinary amendment to the existing administrative regulation, which is being filed simultaneously with the Regulations Compiler. The ordinary amendment to the existing administrative regulation is identical to this emergency amendment.

ANDY BESHEAR, Governor
JAMIE LINK, Chair

EDUCATION AND 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 2:404E. 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 construction industry shall comply with 29 C.F.R. 1926, Subpart E, Personal Protective and Life Saving Equipment, published by the Office of the Federal Register, National Archives and Services, General Services Administration.

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 July 21, 2025, at 11:00 a.m. EDT via Zoom. Public access to the meeting is available at: <https://us06web.zoom.us/j/87069584882>. 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 July 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.