



STATEMENT OF EMERGENCY
803 KAR 2:120E

This emergency amendment to an existing regulation, 803 KAR 2:120, Citations, is necessary under House Bill 398 that was enacted in the 2025 Regular Session and amended Kentucky Revised Statutes ("KRS") 338.062, effective June 27, 2025 which requires "the Kentucky Occupational Safety and Health Standards board, secretary, the secretary's designee, the commissioner, and the commissioner's authorized representative shall not adopt, promulgate, or enforce any occupational safety and health administrative regulation that the Occupational Safety and Health Administration or the United States Department of Labor has not promulgated or that is more stringent than the corresponding federal provision enforced by the United States Department of Labor under the Occupational Safety and Health Act of 1970." This emergency amendment is also necessary to meet the requirements 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.

This emergency amendment to an existing administrative regulation will be replaced by an identical ordinary administrative regulation that is being filed simultaneously with the Regulations Compiler.



ANDY BESHEAR, Governor



JAMIE LINK, Secretary
Education and Labor Cabinet

1 EDUCATION AND 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 (Emergency Amendment)

6 803 KAR 2:120E. Citations.

7 RELATES TO: KRS Chapter 338

8 STATUTORY AUTHORITY: KRS 338.051, 338.061

9 NECESSITY, FUNCTION, AND CONFORMITY: KRS 338.051(3) requires the Kentucky

10 Occupational Safety and Health Standards Board to promulgate occupational safety and health

11 administrative regulations and authorizes the chairman to reference federal standards without

12 board approval if necessary to meet federal time requirements. KRS 338.061 authorizes the

13 board to establish, modify, or repeal standards and reference federal standards. This

14 administrative regulation establishes occupational safety and health citation procedures followed

15 by the Department of Workplace Standards.

16 Section 1. Definitions.

17 (1) "Commissioner" is defined by KRS 338.015.

18 (2) "Compliance safety and health officer" means a person authorized by the commissioner to

19 conduct occupational safety and health inspections.

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

21 (4) "Employer" is defined by KRS 338.015(1).

(5) "Occupational safety and health standard" is defined by KRS 338.015(3).

(6) "Review commission" is defined by KRS 338.015(8).

(7) "Working days" means Monday through Friday and does not include Saturday, Sunday, federal or state holidays, or the day of receipt of notice.

Section 2. Citations.

(1) If the commissioner has reason to believe that an employer violated a requirement of KRS Chapter 338, or any occupational safety and health standard, rule, or order promulgated pursuant KRS Chapter 338, the commissioner shall issue, with delivery or receipt confirmation, the employer a citation indicating the violation.

(2) An appropriate citation shall be issued even if after being informed of an alleged violation by the compliance safety and health officer, the employer immediately abates, or initiates steps to abate, the alleged violation.

(3) A citation shall not be issued more than six (6) months after the occurrence of any alleged violation [~~Each citation shall be issued with reasonable promptness~~].

Section 3. Content of Citation.

(1) Each citation shall describe with particularity the ~~[nature of the]~~ alleged violation, including a reference to the provision or provisions of KRS Chapter 338, standard, rule, or administrative regulation alleged to have been violated [~~or order allegedly violated~~].

(2) Each citation shall establish a reasonable date for the elimination of [~~by which~~] the alleged violation [~~shall be remedied~~].

(3) Each citation may propose a civil penalty.

Section 4. Citations Issued for Requested Inspections. If a citation is issued for a violation alleged in request for inspection pursuant KRS 338.121, a copy of the citation shall be sent, with

1 delivery or receipt confirmation, to the employee or representative of employees who made the
2 request or notification.

3 Section 5. Final Order Statement. Each citation shall state the citation shall be deemed a final
4 order of the review commission and not be subject to review by any court or agency if an
5 employer, employee, or representative of the employees fails to notify the commissioner within
6 fifteen (15) working days from the receipt of the citation that he or she intends to contest the
7 citation.

As approved by



Jamie Link, Secretary, Education and Labor Cabinet

07/19/2025

Date

PUBLIC HEARING AND PUBLIC COMMENT PERIOD

A public hearing on this administrative regulation shall be held September 23, 2025, at 10:00 am EDT via Zoom. Public access to the meeting is available at:

<https://us06web.zoom.us/j/88651455153?pwd=KOS0cuAiuFNVyujAdiRTrV4Wkp5luc.1>,
Passcode: 557226, 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 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 emergency administrative regulation. Written comments shall be accepted through September 30, 2025. Send written notification of intent to be heard at the public hearing or written comments on the proposed emergency 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

Regulation Number: 803 KAR 2:120E

Contact person: Robin Maples

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Facsimile: (502) 564-4769

Subject Headings: Occupational Safety and Health, Education and Labor Cabinet, Workplace Standards

(1) Provide a brief summary of:

(a) What this emergency administrative regulation does: Section 1 of this emergency administrative regulation defines terms. Section 2 establishes requirements for citations issued by the Department of Workplace Standards Division of Occupational Safety and Health Compliance.

(b) The necessity of this emergency administrative regulation: This regulation is necessary pursuant to House Bill 398 of the 2025 Regular Session and subsequent amendment to Kentucky Revised Statute ("KRS") 338.141, effective June 27, 2025, and 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. This regulation is equivalent.

(c) How this emergency administrative regulation conforms to the content of the authorizing statutes: KRS 338.061 authorizes the Kentucky Occupational Safety and Health Standards Board to adopt, modify, or repeal occupational safety and health administrative regulations. This administrative regulation is necessary pursuant to House Bill 398 of the 2025 Regular Session and subsequent amendment to KRS 338.141, effective June 27, 2025, and to meet the requirements established in Public Law 91-596 84 STAT. 1590 Section 18 of the 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 the Kentucky OSH Program to be as effective as OSHA. This regulation complies and conforms with the authorizing statutes.

(d) How this emergency administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation is necessary pursuant to House Bill 398 of the 2025 Regular Session and subsequent amendment to KRS 338.141, effective June 27, 2025, and to meet the requirements established in Public Law 91-596 84 STAT. 1590 Section 18 of the 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 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 updates the requirements for citations issued by the Department of Workplace Standards Division of Occupational Safety and Health Compliance pursuant to House Bill 398 of the 2025 Regular Session and subsequent amendment to KRS 338.141, effective June 27, 2025.

(b) The necessity of the amendment to this emergency administrative regulation: This emergency regulation is necessary pursuant to House Bill 398 of the 2025 Regular Session and subsequent amendment to Kentucky Revised Statute ("KRS") 338.141, effective June 27, 2025, and 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.

(c) How the amendment conforms to the content of the authorizing statutes: 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 pursuant to House Bill 398 of the 2025 Regular Session and subsequent amendment to KRS 338.141, effective June 27, 2025, and to meet the requirements established in Public Law 91-596 84 STAT. 1590 Section 18 of 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 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 complies with the amendment to KRS 338.141 and ensures the state program is consistent and as effective as the federal program.

(3) Does this emergency administrative regulation or amendment implement legislation from the previous five years? No

(4) List the type and number of individuals, businesses, organizations, or state and local governments affected by this emergency administrative regulation: This emergency administrative regulation affects all employers in the Commonwealth covered by KRS Chapter 338.

(5) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this emergency 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 emergency administrative regulation or amendment: No additional compliance duties are imposed and no immediate action is required.

(b) In complying with this emergency 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 complies with the amendment to KRS 338.062 and ensures the state program is consistent and as effective as the federal program.

(6) Provide an estimate of how much it will cost to implement this emergency 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 regulation.

(7) What is the source of the funding to be used for the implementation and enforcement of this emergency administrative regulation or this amendment: Current state and federal funding.

(8) Provide an assessment of whether an increase in fees or funding will be necessary to implement this emergency 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 emergency administrative regulation.

(9) State whether or not this emergency administrative regulation establishes any fees or directly or indirectly increases any fees: This emergency administrative regulation neither establishes any fees nor directly or indirectly increases any fees.

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

FISCAL IMPACT STATEMENT

803 KAR 2:120E

Contact Person: Robin Maples

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(1) Identify each state statute, federal statute, or federal regulation that requires or authorizes the action taken by the emergency administrative regulation: KRS 338.061 authorizes the Kentucky Occupational Safety and Health Standards Board to adopt, modify, or repeal occupational safety and health administrative regulations. This administrative regulation is necessary pursuant to House Bill 398 of the 2025 Regular Session and subsequent amendment to KRS 338.141, effective June 27, 2025, and to meet the requirements established in KRS 338.051, KRS 338.061, Public Law 91-596 84 STAT. 1590 Section 18 of the 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 emergency administrative regulation is expressly authorized by an act of the General Assembly, and if so, identify the act: This administrative regulation is necessary pursuant to House Bill 398 of the 2025 Regular Session and subsequent amendment to KRS 338.141, effective June 27, 2025.

(3)(a) Identify the promulgating agency and any other affected state units, parts, or divisions: This emergency 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 emergency 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 emergency administrative regulation: This emergency 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: Not applicable.

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

(a) Whether this emergency administrative regulation will have a "major economic impact", as defined by KRS 13A.010(13): This emergency administrative regulation will not have a "major economic impact" as defined by KRS 13A.010(13).

(b) The methodology and resources used to reach this conclusion: Not applicable.

FEDERAL MANDATE ANALYSIS COMPARISON

Regulation Number: 803 KAR 2:120E

Agency Contact: Robin Maples

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1. Federal statute or regulation constituting the federal mandate. Public Law 91-596 84 STAT. 1590 Section 18 of the 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. This emergency regulation is equivalent.

3. Minimum or uniform standards contained in the federal mandate. Public Law 91-596 84 STAT. 1590 Section 18 of the 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 emergency 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.

EMERGENCY REGULATION DOCUMENTATION

It is necessary to promulgate this emergency regulation pursuant to House Bill 398 of the 2025 Regular Session and subsequent amendment to Kentucky Revised Statute (“KRS”) 338.062, effective June 27, 2025, and 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.