



## 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  
Occupational Safety and Health Standards Board

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 2:404E. Personal protective and lifesaving equipment.

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

8 STATUTORY AUTHORITY: KRS 338.051(3), 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 of the board to reference federal

12 standards without board approval if necessary to meet federal time requirements. KRS 338.061

13 authorizes the board to establish, modify, or repeal standards and reference federal standards. 29

14 C.F.R. 1926.95 to 1926.107 establish the federal requirements relating to personal protective and

15 lifesaving equipment. This administrative regulation establishes personal protective and

16 lifesaving equipment standards enforced by the Department of Workplace Standards in the

17 construction industry.

18 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 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].~~

As approved by

A handwritten signature in black ink, appearing to read "J. Link", written in a cursive style.

Jamie Link, Secretary of Education and Labor

06/11/2025  
Date

## PUBLIC HEARING AND PUBLIC COMMENT PERIOD

A public hearing on this administrative regulation shall be held July 21, 2025, at 11:00 am 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, 3<sup>rd</sup> Floor, Frankfort, Kentucky 40601, phone (502) 564-4107, fax (502) 564-4769, email [robin.maples@ky.gov](mailto:robin.maples@ky.gov).

## REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

803 KAR 2:404E

Contact person: Robin Maples

Phone: (502) 564-4107

Email: robin.maples@ky.gov

(1) Provide a brief summary of:

(a) What this administrative regulation does: Section 1 of this emergency administrative regulation defines terms not found in the federal standard. Section 2 requires employers to comply with the requirements established in 29 CFR 1926.95-107.

(b) The necessity of this administrative regulation: This emergency 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.(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 OSH 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 emergency administrative regulation is necessary to meet the requirements established in Public Law 91-596 84 STAT. 1590 Section 18 (OSA 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 this administrative regulation currently assists or will assist in the effective administration of the statutes: This emergency 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 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 explicitly requires 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 emergency 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 emergency administrative to ensure the state is at least as effective as the federal requirement. This emergency 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 emergency 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 emergency 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 emergency administrative regulation.

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

(a) Initially: There is no cost to the OSH Program to implement this emergency administrative regulation.

(b) On a continuing basis: There are no continuing cost to the OSH Program to implement this emergency 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 emergency administrative regulation.

(8) State whether or not this 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.

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



## FISCAL IMPACT STATEMENT

803 KAR 2:404

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 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.(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

803 KAR 2:404E

Contact person: Robin Maples

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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.