

1 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 (Amendment)

6 803 KAR 2:180. Recordkeeping, reporting, statistics.

7 RELATES TO: KRS 338.015(1), (2), 338.121(3), 338.161, 29 C.F.R. Part 1904

8 STATUTORY AUTHORITY: KRS 338.061, 338.161

9 NECESSITY, FUNCTION, AND CONFORMITY: KRS 338.161(1) requires the Department of
10 Workplace Standards, represented by the commissioner to promulgate administrative regulations
11 requiring employers to report occupational safety and health statistics. 29 C.F.R. Part 1904 au-
12 thorizes requirements for the recording and reporting of occupational illnesses and injuries. This
13 administrative regulation establishes recordkeeping and reporting requirements for employers
14 pursuant to KRS Chapter 338.

15 Section 1. Definitions. (1) "Amputation" means an injury in which a portion of the body includ-
16 ing bone tissue is removed.

17 (2) "Employee" is defined by KRS 338.015(2).

18 (3) "Employer" is defined by KRS 338.015(1).

19 (4) "Loss of eye" means the physical removal of an eye from the socket.

20 (5) "Occupational Safety and Health Act" means KRS Chapter 338.

21 (6) "Secretary of Labor" means the Secretary of the United States Department of Labor or the

1 Secretary of the Labor Cabinet.

2 (7) "Section 11(c) of the Act" means KRS 338.121(3).

3 Section 2. An employer shall comply with the following federal regulations published by the Of-
4 fice of the Federal Register, National Archives and Records Administration, except as modified
5 by the definitions in Section 1 and the requirements of Section 3 of this administrative regula-
6 tion:

7 (1) 29 C.F.R. Part 1904, effective July 1, 2015; [~~2014; and~~]

8 (2) Beginning January 1, 2017, the amendments to 29 C.F.R. Part 1904 as published in the May
9 12, 2016 Federal Register, Volume 81, Number 92; and

10 (3) The correction to the May 12, 2016 Federal Register, Volume 81, Number 92 as published in
11 the May 20, 2016 Federal Register, Volume 81, Number 98. [~~Beginning January 1, 2016, the re-~~
12 ~~visions to 29 C.F.R. Part 1904 as published in the September 18, 2014 Federal Register, Volume~~
13 ~~79, Number 181.]~~

14 Section 3. Reporting Fatalities, Amputations, In-Patient Hospitalizations, or Loss of Eye. The re-
15 porting requirements established in this section shall apply in lieu of 29 C.F.R. 1904.39.

16 (1) An employer shall orally report to the Kentucky Labor Cabinet, Department of Workplace
17 Standards, Division of Occupational Safety and Health Compliance, at (502) 564-3070, any
18 work-related incident that results in the:

19 (a) Death of any employee; or

20 (b) Hospitalization of three (3) or more employees.

21 (2) The report required pursuant to subsection (1) of this section shall be made within eight (8)
22 hours from when the incident is reported to the employer, the employer's agent, or another em-
23 ployee. If the employer cannot speak with someone in the Frankfort office, the employer shall

1 report the incident using the OSHA toll-free, central telephone number, 1-800-321-OSHA (1-
2 800-321-6742).

3 (3) An employer shall orally report to the Kentucky Labor Cabinet, Department of Workplace
4 Standards, Division of Occupational Safety and Health Compliance, at (502) 564-3070, any
5 work-related incident that results in:

6 (a) An amputation suffered by an employee;

7 (b) An employee's loss of an eye; or

8 (c) The hospitalization of fewer than three (3) employees within seventy-two (72) hours follow-
9 ing the incident.

10 (4) The report required pursuant to subsection (3) of this section shall be made within seventy-
11 two (72) hours from when the incident is reported to the employer, the employer's agent, or an-
12 other employee.

13 (5) The requirement to report the loss of an eye pursuant to subsection (3)(b) of this section shall
14 be effective January 1, 2016.

As approved by the Kentucky Labor Cabinet, Department of Workplace Standards.

Derrick K. Ramsey, Secretary

Kentucky Labor Cabinet

Date

And

Ervin Dimeny, Commissioner

Department of Workplace Standards

Date

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on August 22, 2016 at 10:30 A.M. (EDT) at the Labor Cabinet, 1047 US HWY 127 South, Suite 4, Frankfort, Kentucky. 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 until August 31, 2016. 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: Kristi Redmon, OSH Standards Specialist, Kentucky Department of Workplace Standards, 1047 U.S. HWY 127 South, Suite 4, Frankfort, Kentucky 40601, Telephone: (502) 564-3504, Facsimile: (502) 564-1682.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Regulation Number: 803 KAR 2:180

Contact person: Kristi Redmon

(1) Provide a brief summary of: (a) What this administrative regulation does: This administrative regulation, in Section 1, defines terms not found in the federal standard. Section 2 requires employers to comply with the requirements of 29 CFR 1904 and updates the CFR to July 1, 2015. Section 2 also establishes the amendments to 29 CFR 1904 published in the May 12, 2016 Federal Register, Volume 81, Number 92 as well as the correction to this Federal Register published in the May 20, 2016 Federal Register, Volume 81, Number 98. Section 3 amends and replaces the requirements of 29 CFR 1904.39 with state-specific reporting occupational injuries and illnesses that have been in effect since 2006.

With the May 12, 2016 final rule OSHA is amending the recordkeeping text of the regulation to require certain employers to electronically report injury and illness statistics. The final rule also adds language clarifying how an employer must inform employees of their right to report injuries and illnesses and clarifies that reporting policies must not deter or discourage employees from reporting injuries and illnesses.

The new requirement to report will affect all employers with 250 or more employees and only specified employers in high hazard industries with 20-249 employees will have to report. The report will be made electronically to OSHA and will contain information that is already collected by the employer to fulfill the 300(A)(1) log requirements. This information will be submitted once a year and will be used to more efficiently direct enforcement and compliance assistance

resources.

The second element of this final rule clarifies an employer's obligation to inform employees of their right to report workplace injuries and illnesses. Wording was added to the standard to prevent an employer from discriminating or retaliating against an employee who reports an injury or illness. The new requirements also ensure an employer's reporting procedure or policy does not deter or discourage employees from reporting work related injuries and illnesses.

The May 20, 2016 Federal Register simply reinstates language related to access to the 300(1) log information, which was inadvertently deleted in the May 12, 2016 final rule.

Finally, this amendment updates this administrative regulation to meet KRS Chapter 13A considerations.

(b) The necessity of this administrative regulation: The Kentucky OSH Program is mandated by 29 CFR Parts 1952 and 1953 to be at least as effective as OSHA. 29 CFR 1953.5 requires state implementation of the new federal standard, or a more stringent amendment, within six (6) months of the May 12, 2016 final rule. Kentucky does not have an effective alternative to the final rule. Accordingly, in order to maintain its state program as effective as the federal program, Kentucky must incorporate the federal requirements in Section 2 of the regulation.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 338.161 (1) requires the Department of Workplace Standards to develop and maintain a program of collection, compilation, and analysis of occupational safety and health statistics. This amendment adopts the federal requirement, which, according to OSHA, improves the reporting requirement so that the OSH Program can better target employers for enforcement and compliance

assistance purposes.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: According to OSHA, the recordkeeping and reporting regulation enhances worker safety throughout Kentucky by maintaining a useful database of injuries and illnesses and keeps the state occupational safety and health program at least as effective as the federal program.

(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 2 requires employers to comply with the requirements of 29 CFR 1904. Section 2 also updates the CFR to July 2015 and establishes the amendments to 29 CFR 1904 published in the May 12, 2016 Federal Register, Volume 81, Number 92. The amendments in the Federal Register adds a requirement to report information that employers already maintain electronically so that OSHA and the OSH Program can better focus their resources for compliance and compliance assistance purposes. This amendment also updates this administrative regulation to meet KRS Chapter 13A considerations.

(b) The necessity of the amendment to this administrative regulation: The Kentucky OSH Program is mandated by 29 CFR Parts 1952 and 1953 to be at least as effective as OSHA. 29 CFR 1953.5 requires state implementation of the new federal standard, or a more stringent amendment, within six (6) months of the May 12, 2016 final rule. Kentucky does not have an effective alternative to the final rule. Accordingly, in order to maintain its state program as effective as the federal program, Kentucky must incorporate the federal requirements in Section 2 of the regula-

tion.

(c) How the amendment conforms to the content of the authorizing statutes: This amendment also conforms to KRS 338.161, which requires the Department of Workplace Standards to develop and maintain a program of collection, compilations, and analysis of occupational safety and health statistics. This amendment adopts the federal requirement, which, according to OSHA improves the reporting requirement so that the OSH Program can better target employers for enforcement and compliance assistance purposes.

(d) How the amendment will assist in the effective administration of the statutes: This amendment maintains consistency with the federal requirements, providing all a clear understanding of the requirements. According to OSHA, the recordkeeping and reporting regulation ensures that data collected in Kentucky are useful in comparing illness and injury incident rates to those nationally.

(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 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: This amendment will require employers with over 250 employer to annually report information that is already re-

quired by the standard and will require the reporting of specified employers that employ 20-249 employees. Employers may also need to amend their in-house injury and illness reporting procedures and policies if they are deemed to deter or discourage an employee from reporting an injury or illness.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): OSHA estimates that it will cost each employer somewhere between \$183 and \$9 per year (dependent on the size of the employer) to comply with the amendments.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): According to OSHA, improved employee protection is likely to result from the promulgation of this amendment due to the consistency with the federal requirement, providing all a clear understanding of the requirements.

(5) Provide an estimate of how much it will cost to implement this administrative regulation: (a) Initially: There will be no cost to implement this specific amendment.

(b) On a continuing basis: There will be no costs on a continuing basis to implement this amendment to the administrative regulation.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Restricted/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 these revisions.

(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.

FEDERAL MANDATE ANALYSIS COMPARISON

Regulation Number: 803 KAR 2:180

Agency Contact: Kristi Redmon

1. Federal statute or regulation constituting the federal mandate.

Public Law 91-596, the Occupational Safety and Health Act of 1970, Section 18(c)(2), 29 USC 667

2. State compliance standards.

This amendment requires employers to comply with the recordkeeping requirements of 29 CFR 1904 for recording occupational injuries and illnesses. Additionally, employers must report hospitalizations, amputations, and the loss of eye as required under Section 3 of the regulation.

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

The Kentucky OSH Program is mandated by 29 CFR Parts 1952 and 1953 to be at least as effective as OSHA. 29 CFR 1953.5 requires state implementation of the new federal standard, or a more stringent amendment, within six (6) months of the May 12, 2016 final rule. Kentucky does not have an effective alternative to the final rule. Accordingly, in order to maintain its state program as effective as the federal program, Kentucky must incorporate the federal recordkeeping requirements in Section 2 of the regulation.

4. Will this administrative regulation impose stricter requirements, or additional or different responsibilities or requirements, than those required by the federal mandate?

This administrative regulation poses different requirements than the federal mandate in Sections 1 and 3, in that the definition of amputation and injury reporting times are different, but this difference is not stricter than the federal mandate.

This amendment does not impose stricter requirements than those required by the federal mandate.

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements.

The requirement to report occupational hospitalizations, amputations, and fatalities has been in place since 2006. The additional requirement to report the loss of eye aligns the reporting requirements with the federal mandate.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

Regulation Number: 803 KAR 2:180

Contact Person: Kristi Redmon (502) 564-3070

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 will affect any unit, part, or division of local government covered by KRS 338.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation.

KRS 338.161, Public Law 91-596 84 STAT. 1590, 29 CFR Part 1953.4.

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.

(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 govern-

ment (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?

OSHA estimates that it will cost each employer somewhere between \$183 and \$9 per year (dependent on the size of the employer) to comply with the amendments.

There are no associated costs related to the reporting revisions as the reporting requirements have been in place since 2006.

(d) How much will it cost to administer this program for subsequent years?

OSHA estimates that it will cost each employer somewhere between \$183 and \$9 per year (dependent on the size of the employer) to comply with the amendments.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-): Unknown.

Expenditures (+/-):

Other explanation: