

STATEMENT OF EMERGENCY
803 KAR 2:330E.

This emergency administrative regulation is promulgated to meet an imminent threat to public health, safety, or welfare, to prevent a loss of federal funds, and ensure compliance with federal mandates. Kentucky operates a State Plan approved by the Occupational Safety and Health Administration (OSHA) that provides employee occupational safety and health (OSH) protections. OSHA approves, monitors, and provides funding to Kentucky. On June 21, 2021, the Occupational Safety and Health Administration (OSHA) issued an emergency temporary standard (ETS) to protect healthcare and healthcare support service workers from occupational exposure to coronavirus disease 2019 (COVID-19) in settings where people with COVID-19 are reasonably expected to be present. OSHA determined that employee exposure to severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2) presents a grave danger to workers in all healthcare settings where people with COVID-19 are reasonably expected to be present. OSHA also determined that an ETS is necessary to protect healthcare and healthcare support employees in covered healthcare settings from exposures to SARS-CoV-2. During the period of the ETS, covered healthcare employers must develop and implement a COVID-19 plan to identify and control COVID-19 hazards in the workplace. Covered employers must also implement other requirements established in the ETS to reduce transmission of COVID-19 in their workplaces. It is necessary to promulgate this emergency regulation to meet the requirements established in Public Law 91-596 84 STAT. 1590, 29 C.F.R. 1902.3(c)(1), 29 C.F.R. 1902.3(d)(1), 29 C.F.R. 1902.3(d)(2), 29 C.F.R. 1902.7(a), 29 C.F.R. 1904.37(a), 29 C.F.R. 1904.37(b)(1), 29 C.F.R. 1904.37(b)(2), 29 C.F.R. 1953.1(a), 29 C.F.R. 1953.1(b), 29 C.F.R. 1953.5(b), 29 C.F.R. 1956.2(a), and 29 C.F.R. 1956.10(i), which all require the Kentucky OSH Program to be as effective as OSHA. This emergency administrative regulation ensures Kentucky's compliance with the federal mandates, maintains Kentucky's primacy, and retains federal funding. Kentucky must adopt OSHA's ETS within thirty (30) days of the June 21, 2021 final rule and it must remain in effect for the duration of OSHA's ETS. This emergency administrative regulation will be not replaced by an ordinary administrative regulation since OSHA has not promulgated a permanent final rule.

ANDY BESHEAR, Governor
JAMIE LINK, Secretary

LABOR CABINET
Department of Workplace Standards
Division of Occupational Safety and Health Compliance
Division of Occupational Safety and Health Education and Training
(New Emergency Administrative Regulation)

803 KAR 2:330E. Occupational Exposure to COVID-19.

RELATES TO: KRS 338.015, 29 C.F.R. 1910.502-509

STATUTORY AUTHORITY: KRS 338.051, 338.061

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 to adopt 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. This emergency temporary administrative regulation establishes federal requirements relating to COVID-19 in healthcare settings.

Section 1. Definitions.

- (1) "Assistant Secretary" means Secretary, Labor Cabinet, or Commissioner, Department of Workplace Standards, Labor Cabinet.
- (2) "C.F.R." means Code of Federal Regulations.
- (3) "Employee" is defined by KRS 338.015(2).
- (4) "Employer" is defined by KRS 338.015(1).
- (5) "Occupational Safety and Health Act" or "OSH Act" or OSHA" means KRS Chapter 338.
- (6) "Secretary of Labor" means the Secretary of the United States Department of Labor or the Secretary of the Labor Cabinet.
- (7) "Section 11(c) of the OSH Act" means KRS 338.121(3).

Section 2. Except as modified by the definitions in Section 1 and the requirements in Section 3 of this emergency administrative regulation, an employer shall comply with 29 C.F.R. Part 1910, Subpart U, COVID-19 Emergency Temporary Standard, published in the June 21, 2021 Federal Register, Volume 86, Number 116.

Section 3.

- (1)
 - (a) The language in paragraph (b) of this subsection shall apply in lieu of 29 C.F.R. 1910.502(r)(1)(ii).
 - (b) An employer shall report COVID-19 hospitalizations pursuant to 803 KAR 2:181 or 803 KAR 2:181E, whichever is in effect.
- (2)
 - (a) The language in paragraph (b) of this subsection shall apply in lieu of 29 C.F.R. 1910.502(r)(2).
 - (b) An employer shall follow the requirements established in 803 KAR 2:181 or 803 KAR 2:181E, whichever is in effect, when reporting COVID-19 fatalities and hospitalizations.

JAMIE LINK, Secretary of Labor

PUBLIC HEARING AND COMMENT PERIOD: A public hearing on this emergency administrative regulation shall be held on September 21, 2021 at 10:00 am. (ET). The hearing will be conducted by live videoconference (ZOOM) pursuant to Senate Bill 150,

Section 1, subparagraph (8)(b) (2020) and the continuing state of emergency. Public access to the meeting will be available at <https://us02web.zoom.us/j/87800440284?pwd=dUZHamFJeTk0TUZpWlQ3UHp5cE9vdz09>, passcode 064833; 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 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 through September 30, 2021. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

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