

Date: June 16, 2008

**MINUTES**  
**KENTUCKY OCCUPATIONAL SAFETY AND HEALTH STANDARDS BOARD**  
**PUBLIC MEETING**

A public meeting of the Kentucky Occupational Safety and Health (OSH) Standards Board, hereinafter referred to as Board, was held on May 6, 2008, at the Galt House East, Fourth Street and River Road, Louisville, Kentucky. Mr. J. R. Gray, Chair and Commissioner, Department of Labor, presided. In addition to Chairman Gray, members present were Mr. Greg Conley, Mr. Curtis Foote, Mr. Don Goodman, Mr. David Hart, Ms. Helena Pitcock, Ms. Mary Sharp, Ms. Savannah Wade and Mr. Russell A. Wethington, Jr. Also present representing the Department of Labor were the Honorable Kembra Sexton Taylor and Mr. Chuck Stribling.

Chairman Gray called the meeting to order at approximately 1:30 p.m. E.T. The roll was taken and a quorum was established.

Chairman Gray introduced himself as the new Commissioner of Labor, introduced Mr. Mark Brown as the new Deputy Commissioner, Mr. Mike Dixon as the new Executive Director of the Office of Occupational Safety and Health and as Acting Director of the Division of Compliance, Ms. Kim Perry as the new Director of the Division of Education and Training, and Ms. Candace Sacre and Ms. Susan Long who are in the Commissioner's Office. Chairman Gray then asked everyone around the table to introduce themselves.

Chairman Gray asked for approval of the May 8, 2007 meeting minutes. Mr. Goodman made a motion, seconded by Ms. Pitcock, to approve the minutes. The motion passed unanimously.

Chairman Gray asked Mr. Chuck Stribling, Safety Standards Specialist, to provide the Board an explanation of the first item being considered.

Mr. Stribling briefed the Board on the consideration of adoption of a Direct Final Rule published in the December 14, 2007 *Federal Register*, and confirmed in the March 14, 2008 *Federal Register*, removing several references to national consensus standards having requirements that duplicate, or are comparable to other OSHA rules; and, removes a reference to a 1969 American Welding Society standard. Mr. Stribling stated that, if adopted, the final rule would amend Kentucky Administrative Regulations (KAR) 803 KAR 2:300, 803 KAR 2:305, 803 KAR 2:306, 803 KAR 2:307, 803 KAR 2:309, 803 KAR 2:315, 803 KAR 2:316, 803 KAR 2:317.

Chairman Gray asked for a motion to approve the adoption. Mr. Wethington made a motion, seconded by Mr. Goodman. Chairman Gray asked if there were any questions or comments. There being no comments, questions, or opposition, the motion passed unanimously.

Chairman Gray asked if there was any discussion of old business. There being none, Chairman Gray asked for a discussion of new business. Chairman Gray asked Mr. Chuck Stribling to brief the board regarding a personal protective equipment (PPE) final rule that was adopted during the interim since the May 8, 2007 Board meeting.

Mr. Stribling briefed the Board on the adoption of the Employer Payment for Personal Protective

Equipment Final Rule, published in the *Federal Register*, Volume 72, No. 220, November 15, 2007. Kentucky was required by federal mandate to implement the new rule by May 15, 2008 in order to maintain the state program as effective as OSHA. Waiting until the May 6, 2008 meeting for Board consideration and action would not have permitted Kentucky to meet that mandate. Thus, pursuant to KRS 338.051, the final rule was adopted January 8, 2008 by the Chairman in order to meet the federal time requirement. This new rule generally requires employers to pay for PPE used to comply with OSH standards and sets forth specific exceptions where employers are not required to pay for PPE. The five (5) items exempted from payment are:

1. Ordinary safety toed footwear and ordinary prescription safety eye wear, so long as the employer allows the employee to wear those items off the job site;
2. Shoes or boots with built-in metatarsal protection that the employee has requested to use instead of employer provided detachable metatarsal guards;
3. Logging boots required by 1910.266;
4. Everyday work clothing; and
5. Ordinary clothing, skin creams, or other items used solely for protection from the weather.

The new requirement establishes that employers are responsible for paying for the minimum level of PPE required by the standards. If an employer decides to use upgraded PPE to meet the requirement, the employer must pay for that PPE. If the employer provides PPE at no cost, and an employee asks to use different PPE and the employer allows him or her to do so, the employer is not required to pay for that upgraded item. The final rule also requires employer payment for replacement PPE. However, when an employee loses or intentionally damages the PPE issued to him or her, the employer is not required to pay for its replacement and may require the employee to pay for such replacement. The final rule addresses the use of employee owned PPE. The rule acknowledges that employees may wish to use PPE they own and if their employer allows them to do so, the employer is not required to reimburse employees for their PPE. The regulatory text makes clear that employers cannot require employees to provide their own PPE or pay for their own PPE. The employees' use of PPE they own must be completely voluntary.

The November 15, 2007 Federal Register established a delayed enforcement date of May 15, 2008 to allow employers time to change their existing PPE payment policies to accompany the final rule. The PPE standards published in the November 15, 2007 Federal Register became effective in Kentucky on May 2, 2008. The new requirements apply to construction, general and maritime industries. The final rule amended three (3) administrative regulations. They are 803 KAR 2:308, 803 KAR 2:404; and 803 KAR 2:500.

Chairman Gray thanked Mr. Stribling and asked if there were any questions. There were none. There being no further discussion and no other new business, Chairman Gray asked for a motion to adjourn. Ms. Pitcock made a motion, seconded by Mr. Goodman. There being no comments, questions, or opposition, the motion to adjourn passed unanimous.