

NOTICE

Amendment to 803 KAR 2:308, Personal protective equipment, was filed with the Legislative Research Commission on April 27, 2021.

The amendment is posted at <https://legislature.ky.gov>. Select the Kentucky Law Tab, Kentucky Administrative Regulations, KAR List by Title, then Title 803 Labor Cabinet and scroll down to the regulation under Chapter 2 Occupational Safety and Health.

Changes to the regulation and public hearing information is available at the aforementioned website or in the pages below following this notice.

FILED WITH LRC
TIME: 9:39 am
APR 27 2021
Emily B Caudill
REGULATIONS COMPILER

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 2:308 Personal protective equipment
7 RELATES TO: 29 C.F.R. 1910.132-1910.140
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 ~~[adopt]~~ occupational safety and
11 health ~~[administrative]~~ regulations and authorizes the chairman to reference ~~[of the board to~~
12 ~~promulgate-established]~~ federal standards without ~~[board]~~ approval if necessary to meet federal
13 time requirements. KRS 338.061 authorizes the board to establish, modify, or repeal standards
14 and reference federal standards. ~~[29 C.F.R. 1910.132 to 1910.140 and Appendices establish the~~
15 ~~federal requirements relating to personal protective equipment.]~~ This administrative regulation
16 establishes ~~[personal protective equipment]~~ standards that are ~~[to be]~~ enforced by the Department
17 of Workplace Standards in general industry.
18 Section 1. Definitions. (1) "C.F.R." means Code of Federal Regulations.
19 (2) "Employee" is defined by KRS 338.015(2).
20 (3) "Employer" is defined by KRS 338.015(1).
21 ~~[(4) "Established federal standard" is defined by KRS 338.015(10).]~~

1 ~~(4)~~ [(5)] "National consensus standard" is defined by KRS 338.015(9).

2 ~~(5)~~ [(6)] "Standard" is defined by KRS 338.015(3).

3 ~~[(7) "U.S. Department of Labor" means Kentucky Labor Cabinet or U.S. Department of Labor.]~~

4 Section 2. Except as established [~~modified~~] by the definitions in Section 1 of this administrative

5 regulation, general industry shall comply with 29 C.F.R. 1910 Subpart I, Personal Protective

6 Equipment [~~the following federal regulations~~] published by the Office of the Federal Register,

7 National Archives and Records Administration and the revisions to 29 C.F.R. 1910.134

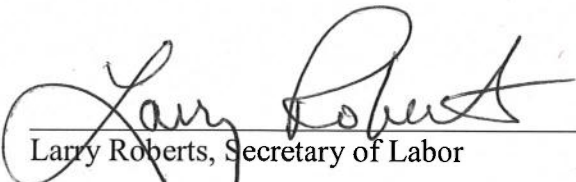
8 Appendix A published in the September 26, 2019 Federal Register, Volume 84, Number 187 [:

9 ~~(1) 29 C.F.R. 1910.132 through 29 C.F.R. 1910.140, and Appendices, revised July 1, 2016; and~~

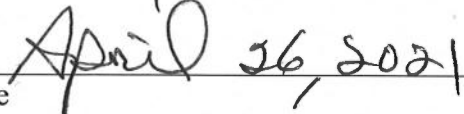
10 ~~(2) The amendments to 29 C.F.R. 1910.140 as published in the November 18, 2016 Federal~~

11 ~~Register Volume 81, Number 223].~~

As approved by



Larry Roberts, Secretary of Labor



Date

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on July 21, 2021 at 10:00 am (ET). The meeting 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/86731399141?pwd=Q2VOcDQ3ZkVBaUtoNERCMDNlKzZlZz09>, password 446261; or by telephone at (713) 353-0212, (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 July 31, 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.

CONTACT PERSON: Robin Maples, OSH Standards Specialist, Labor Cabinet, Mayo-Underwood Building, 500 Mero Street, 3rd Floor, Frankfort, Kentucky 40601, Telephone: (502) 564-4107, Facsimile: (502) 564-4769, Email: Robin.Maples@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Regulation Number: 803 KAR 2:308

Contact person: Robin Maples (502) 564-4107, Robin.Maples@ky.gov, Facsimile: (502) 564-4769

(1) Provide a brief summary of:

(a) What this administrative regulation does: Section 1 of this administrative regulation, effective since December 15, 1989, defines terms not used in the federal standard. Section 2 adopts the requirements of 29 CFR 1910, Subpart I, Personal Protective Equipment the revisions to 29 CFR 1910.134 Appendix A published in the September 26, 2019 Federal Register. The Occupational Safety and Health Administration (OSHA) approved two (2) additional quantitative fit testing protocols for inclusion in Appendix A. These protocols are the modified ambient aerosol condensation nuclei counter (CNC) quantitative fit testing protocol for full-facepiece and half-mask elastomeric respirators; and, the modified ambient aerosol CNC quantitative fit testing protocol for filtering facepiece respirators. The protocols apply to employers in general industry, shipyard employment, and the construction industry. Both protocols are abbreviated variations of the original OSHA-approved ambient aerosol CNC quantitative fit testing protocol (often referred to as the PortaCount protocol), but differ from the test by the exercise sets, exercise duration, and sampling sequence. These protocols serve as alternatives to the four (4) existing quantitative fit testing protocols already listed in Appendix A and maintain safety and health protections for workers while providing additional flexibility and reducing compliance burdens. This amendment also updates this administrative regulation to meet KRS Chapter 13A considerations and was reviewed in accordance with House Bill (HB) 50 2017 from the Regular Session of the 2017 General Assembly. Amendments to this regulation are also technical and intended to maintain consistency with other regulations.

(b) The necessity of this administrative regulation: This administrative regulation was reviewed in accordance with HB 50 from the Regular Session of the 2017 General Assembly. This 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), 29 CFR 1902.3(d), 29 CFR 1953.1(a), 29 CFR 1953.1(b), and 29 CFR 1956.2(a), which all require Kentucky OSH regulations to be as effective as the federal requirements. OSHA's September 26, 2019 amendment did not impose any additional or more stringent requirements on employers than the existing standard, the Kentucky Occupational Safety and Health (OSH) Standards Board was not obligated to adopt this amendment. However, to promote consistency and provide employers and employees with a clear understanding of the requirements, the Kentucky OSH Standards Board adopted the amendment.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 338.051(3) requires the Kentucky Occupational Safety and Health Standards Board to promulgate occupational safety and health (OSH) administrative regulations. This 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), 29 CFR 1902.3(d), 29 CFR 1953.1(a), 29 CFR

1953.1(b), and 29 CFR 1956.2(a), which all require Kentucky OSH regulations to be as effective as the federal requirements. 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 administrative regulation promotes worker safety and health throughout Kentucky and ensures the state 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 (OSH Act of 1970), 29 CFR 1902.3(c), 29 CFR 1902.3(d), 29 CFR 1953.1(a), 29 CFR 1953.1(b), and 29 CFR 1956.2(a), 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: Section 1 of this administrative regulation, effective since December 15, 1989, defines terms not used in the federal standard. Section 2 adopts the requirements of 29 CFR 1910, Subpart I, Personal Protective Equipment the revisions to 29 CFR 1910.134 Appendix A published in the September 26, 2019 Federal Register. The Occupational Safety and Health Administration (OSHA) approved two (2) additional quantitative fit testing protocols for inclusion in Appendix A. These protocols are the modified ambient aerosol condensation nuclei counter (CNC) quantitative fit testing protocol for full-facepiece and half-mask elastomeric respirators; and, the modified ambient aerosol CNC quantitative fit testing protocol for filtering facepiece respirators. The protocols apply to employers in general industry, shipyard employment, and the construction industry. Both protocols are abbreviated variations of the original OSHA-approved ambient aerosol CNC quantitative fit testing protocol (often referred to as the PortaCount protocol), but differ from the test by the exercise sets, exercise duration, and sampling sequence. These protocols serve as alternatives to the four (4) existing quantitative fit testing protocols already listed in Appendix A and maintain safety and health protections for workers while providing additional flexibility and reducing compliance burdens. This amendment also updates this administrative regulation to meet KRS Chapter 13A considerations and was reviewed in accordance with HB 50 2017 from the Regular Session of the 2017 General Assembly. Amendments to this regulation are technical and intended to maintain consistency with other regulations.

(b) The necessity of the amendment to this administrative regulation: This administrative regulation was reviewed in accordance with HB 50 from the Regular Session of the 2017 General Assembly. This 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), 29 CFR 1902.3(d), 29 CFR 1953.1(a), 29 CFR 1953.1(b), and 29 CFR 1956.2(a), which all require Kentucky OSH regulations to be as effective as the federal requirements. OSHA's September 26, 2019 amendment did not impose any additional or more stringent requirements on employers than the existing standard, the Kentucky Occupational Safety and Health (OSH) Standards Board was not obligated to adopt this amendment. However, to promote consistency and provide employers and employees with a clear understanding of the requirements, the Kentucky OSH Standards Board adopted the amendment.