

**STATEMENT OF EMERGENCY**  
**803 KAR 2:320E**

On January 9, 2017, the United States Department of Labor, Occupational Safety and Health Administration published an Occupational Exposure to Beryllium and Beryllium Compounds final rule that established health standards for beryllium exposure in general industry codified in 29 Code of Federal Regulations (C.F.R.) 1910.1024. Kentucky adopted the rule. On July 14, 2020, OSHA published a final rule that clarified certain provisions and simplified, or improved, compliance with 29 C.F.R. 1910.1024. The final rule is deregulatory action. The changes maintain safety and health protections for workers and enhance worker protections by ensuring the standard is well understood. The final rule enhances employee safety by revising provisions that may be misinterpreted. The majority of the changes clarify certain provisions and simplify, or improve, employer compliance with 29 C.F.R. 1910.1024.

This emergency administrative regulation amends 803 KAR 2:320, Toxic and Hazardous Substances and adopts OSHA's July 14, 2020 final rule. It is necessary to promulgate this emergency regulation to meet the requirements established in Section 18 of the OSH Act, 29 C.F.R. 1902.3(c), 29 C.F.R. 1902.3(d), 29 C.F.R. 1953.1, and 29 C.F.R. 1953.5, which all require Kentucky OSH regulations to be as effective as the federal requirements. 29 C.F.R. 1953.5 mandates state adoption of OSHA's July 14, 2020 Occupational Exposure to Beryllium and Beryllium Compounds final rule within six (6) months of its July 14, 2020 publication in the Federal Register. Therefore, Kentucky must adopt the rule no later than February 14, 2021 to ensure the state program is at least as effective as OSHA. This emergency administrative regulation will be replaced by an ordinary administrative regulation, which is being filed simultaneously with the Regulations Compiler. The ordinary administrative regulation is identical to this emergency administrative regulation.

ANDY BESHEAR, Governor  
LARRY ROBERTS, Chairman

**LABOR CABINET**  
**Department of Workplace Standards**  
**Division of Occupational Safety and Health Compliance**  
**Division of Occupational Safety and Health Education and Training**  
**(Emergency Amendment)**

**803 KAR 2:320E. Toxic and hazardous substances.**

EFFECTIVE: January 13, 2021

RELATES TO: KRS 338.015, 338.031, 29 C.F.R. 1910.134, 1910.141, 1910.1000-1910.1450

STATUTORY AUTHORITY: KRS 338.051(3), 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 reference 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. 29 C.F.R. 1910.1000 to 1910.1450 establish federal requirements relating to toxic and hazardous substances. This administrative regulation establishes the toxic and hazardous substances standards enforced by the Department of Workplace Standards in ~~[the area of]~~

general industry.

Section 1. Definitions. (1) "Absolute filter" means a filter capable of retaining 99.97 percent of a mono disperse aerosol of three-tenths (0.3)  $\mu$  particles.

(2) "Area director" means Director, Division of Occupational Safety and Health Compliance, Kentucky Labor Cabinet.

(3) "Authorized employee" means an employee whose duties require the employee to be in the regulated area and who has been specifically assigned to that area by the employer.

(4) "Clean change room" means a room where employees put on clean clothing or protective equipment in an environment free of 4,4'-Methylene bis (2-chloroaniline).

(5) "Closed system" means an operation involving 4,4'-Methylene bis (2-chloroaniline) if containment prevents the release of 4,4'-Methylene bis (2-chloroaniline) into regulated areas, nonregulated areas, or the external environment.

(6) "Decontamination" means the inactivation of 4,4'-Methylene bis (2-chloroaniline) or its safe disposal.

(7) "Director" means the Director, National Institute for Occupational Safety and Health, or any person directed by the director or the Secretary of Health, Education, and Welfare to act for the director.

(8) "Disposal" means the safe removal of 4,4'-Methylene bis (2-chloroaniline) from the work environment.

(9) "Emergency" means an unforeseen circumstance or set of circumstances resulting in the release of 4,4'-Methylene bis (2-chloroaniline) that may result in exposure to or contact with 4,4'-Methylene bis (2-chloroaniline).

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

(11) "Employer" is defined by KRS 338.015(1).

(12) "External environment" means any environment external to regulated and nonregulated areas.

(13) "Isolated system" means a fully enclosed structure, other than the vessel of containment, of 4,4'-Methylene bis (2-chloroaniline), which is impervious to the passage of entry of 4,4'-Methylene bis (2-chloroaniline), and which would prevent the entry of 4,4'-Methylene bis (2-chloroaniline) into regulated areas, or the external environment, if leakage or spillage from the vessel of containment occurs.

(14) "Laboratory type hood" means a device:

(a) Enclosed on three (3) sides with the top and bottom designed and maintained to draw air inward at an average linear face velocity of 150 feet per minute with a minimum of 125 feet per minute; and

(b) Designed, constructed, and maintained so that an operation involving 4,4'-Methylene bis (2-chloroaniline) within the hood does not require the insertion of any portion of an employee's body other than hands and arms.

(15) "National consensus standard" is defined by KRS 338.015(9).

(16) "Nonregulated area" means any area under the control of the employer where entry and exit is neither restricted nor controlled.

(17) "Open-vessel system" means an operation involving 4,4'-Methylene bis (2-chloroaniline) in an open vessel, which is not in an isolated system, a laboratory type hood, nor in any other system affording equivalent protection against the entry of 4,4'-Methylene bis (2-chloroaniline) into regulated areas, nonregulated areas, or the external environment.

(18) "Protective clothing" means clothing designed to protect an employee against contact with or exposure to 4,4'-Methylene bis (2-chloroaniline).

(19) "Regulated area" means an area where entry and exit is restricted and controlled.

(20) "Standard" means "occupational safety and health standards" as defined by KRS 338.015(3).

Section 2. 4,4'-Methylene bis (2-chloroaniline). (1) Scope and application.

(a) This section shall apply to any area in which 4,4'-Methylene bis (2-chloroaniline), Chemical Abstracts Service Registry Number 101144, is manufactured, processed, repackaged, released, handled, or stored. This section shall not apply to trans-shipment in sealed containers, except for the labeling requirements under subsection (4)(b), (c), and (d) of this section.

(b) This section shall not apply to solid or liquid mixtures containing less than one and zero-tenths (1.0) percent by weight of 4,4'-Methylene bis (2-chloroaniline).

(2) Requirements for areas containing 4,4'-Methylene bis (2-chloroaniline). A regulated area shall be established by an employer where 4,4'-Methylene bis (2-chloroaniline) is manufactured, processed, used, repackaged, released, handled, and stored. Those areas shall be controlled in accordance with the requirements for the following category or categories describing the operations involved:

(a) Isolated systems. Employees working with 4,4'-Methylene bis (2-chloroaniline) within an isolated system such as a "glove box" shall wash their hands and arms upon completion of the assigned task and before engaging in other activities not associated with the isolated system.

(b) Closed system operation. Within regulated areas if 4,4'-Methylene bis (2-chloroaniline) is stored in a sealed container, or contained in a closed system including piping systems, with any sample ports or openings closed while 4,4'-Methylene bis (2-chloroaniline) is contained within:

1. Access shall be restricted to authorized employees only; and
2. Employees shall be required to wash hands, forearms, face, and neck upon each exit from the regulated areas, close to the point of exit and before engaging in other activities.

(c) Open vessel system operations. Open vessel system operations shall be prohibited.

(d) Transfer from a closed system, charging or discharging point operations, or otherwise opening a closed system. In operations involving a "laboratory type hood," or in locations where 4,4'-Methylene bis (2-chloroaniline) is contained in an otherwise "closed system," but is transferred, charged, or discharged into other normally closed containers, the provisions of this paragraph shall apply.

1. Access shall be restricted to authorized employees only.
2. Each operation shall be provided with continuous local exhaust ventilation so that air movement shall always be from ordinary work areas to the operation.

a. Exhaust air shall not be discharged to regulated areas, nonregulated areas, or the external environment unless it is decontaminated.

b. Clean make-up air shall be introduced in sufficient volume to maintain the correct operation of the local exhaust system.

3. Employees shall be provided with, and required to wear, clean, full body protective clothing (smocks, coveralls, or long-sleeved shirt and pants), shoe covers, and gloves prior to entering the regulated area.

4. Employees engaged in 4,4'-Methylene bis (2-chloroaniline) handling operations shall be provided with and required to wear and use a half-face, filter-type respirator for dusts, mists, and fumes, in accordance with 29 C.F.R. 1910.134. A respirator affording a higher level of protection may be substituted.

5. Prior to each exit from a regulated area, employees shall be required to remove and leave protective clothing and equipment at the point of exit and at the last exit of the day, to place used clothing and equipment in impervious containers at the point of exit for

decontamination or disposal. The contents of the impervious containers shall be identified, as required under subsection (4)(b), (c), and (d) of this section.

6. Employees shall be required to wash hands, forearms, face, and neck on each exit from the regulated area, close to the point of exit, and before engaging in other activities.

7. Employees shall be required to shower after the last exit of the day.

8. Drinking fountains shall be prohibited in the regulated area.

(e) Maintenance and decontamination activities. In cleanup of leaks or spills, maintenance or repair operations on contaminated systems or equipment, or any operations involving work in an area where direct contact with 4,4'-Methylene bis (2-chloroaniline) could result, each authorized employee entering that area shall be:

1. Provided with and required to wear clean, impervious garments, including gloves, boots, and continuous-air supplied hood in accordance with 29 C.F.R. 1910.134;

2. Decontaminated before removing the protective garments and hood; and

3. Required to shower upon removing the protective garments and hood.

(f) Laboratory activities. The requirements of this paragraph shall apply to research and quality control activities involving the use of 4,4'-Methylene bis (2-chloroaniline).

1. Mechanical pipetting aids shall be used for all pipetting procedures.

2. Experiments, procedures, and equipment that could produce aerosols shall be confined to laboratory-type hoods or glove boxes.

3. Surfaces on which 4,4'-Methylene bis (2-chloroaniline) is handled shall be protected from contamination.

4. a. Contaminated wastes and animal carcasses shall be collected in impervious containers that are closed and decontaminated prior to removal from the work area.

b. The wastes and carcasses shall be incinerated so that no carcinogenic products are released.

5. All other forms of 4,4'-Methylene bis (2-chloroaniline) shall be inactivated prior to disposal.

6. Employees engaged in animal support activities shall be:

a. Provided with and required to wear, a complete protective clothing change, clean each day, including coveralls or pants and shirt, foot covers, head covers, gloves, and appropriate respiratory protective equipment or devices;

b. Required, prior to each exit from a regulated area, to remove and leave protective clothing and equipment at the point of exit and at the last exit of the day, to place used clothing and equipment in impervious containers at the point of exit for decontamination or disposal. The contents of the impervious containers shall be identified as required under subsection (4)(b), (c), and (d) of this section;

c. Required to wash hands, forearms, face, and neck upon each exit from the regulated area close to the point of exit and before engaging in other activities; and

d. Required to shower after the last exit of the day.

7. Employees, except for those engaged in animal support activities, each day shall be:

a. Provided with and required to wear a clean change of appropriate laboratory clothing, such as a solid front gown, surgical scrub suit, or fully buttoned laboratory coat;

b. Required, prior to each exit from a regulated area, to remove and leave protective clothing and equipment at the point of exit and at the last exit of the day, to place used clothing and equipment in impervious containers at the point of exit for decontamination or disposal. The contents of the impervious containers shall be identified as required under subsection (4)(b), (c), and (d) of this section; and

c. Required to wash hands, forearms, face, and neck upon each exit from the regulated area close to the point of exit and before engaging in other activities.

8. Air pressure in laboratory areas and animal rooms where 4,4'-Methylene bis (2-chloroaniline) is handled and bioassay studies are performed shall be negative in relation to the pressure in the surrounding area. Exhaust air shall not be discharged to regulated areas, nonregulated areas, or the external environment unless it is decontaminated.

9. There shall not be a connection between regulated areas and any other areas through the ventilation system.

10. A current inventory of 4,4'-Methylene bis (2-chloroaniline) shall be maintained.

11. Ventilated apparatus such as laboratory type hoods, shall be tested at least semi-annually or immediately after ventilation modification or maintenance operations, by personnel fully qualified to certify correct containment and operation.

(g) Premixed solutions. If 4,4'-Methylene bis (2-chloroaniline) is present only in a single solution at a temperature not exceeding 120 degrees Celsius, the establishment of a regulated area shall not be required, except:

1. Only authorized employees shall be permitted to handle the materials;

2. Each day employees shall be provided with and required to wear a clean change of protective clothing (smocks, coveralls, or long-sleeved shirts and pants), gloves, and other protective garments and equipment necessary to prevent contact with the solution in the process used;

3. Employees shall be required to remove and leave protective clothing and equipment if leaving the work area at the end of the work day or if solution is spilled on the clothing or equipment. Used clothing and equipment shall be placed in impervious containers for decontamination or disposal. The contents of the impervious containers shall be identified, as required under subsection (4)(b), (c), and (d) of this section;

4. Employees shall be required to wash hands and face after removing protective clothing and equipment and before engaging in other activities;

5. Employees assigned to work covered by this paragraph shall be deemed to be working in regulated areas for the purposes of subsection (4)(a), (b), and (c) of this section; and

6. Work areas where solution may be spilled shall be:

a. Covered daily or after any spill with a clean covering; and

b. Cleaned thoroughly daily and after any spill.

(3) General regulated area requirements.

(a) Employee identification.

1. A daily roster of employees entering regulated areas shall be established and maintained.

2. The rosters or a summary of the rosters shall be retained for a period of twenty (20) years.

3. The rosters or summaries shall be provided upon request to authorized representatives of the assistant secretary and the director.

4. If the employer ceases business without a successor, rosters shall be forwarded by registered mail to the director.

(b) Emergencies. In an emergency, immediate measures, including the requirements of this paragraph, shall be implemented.

1. The potentially affected area shall be evacuated as soon as the emergency is determined.

2. Hazardous conditions created by the emergency shall be eliminated and the potentially affected area shall be decontaminated prior to the resumption of normal operations.

3. a. Special medical surveillance by a physician shall be instituted within twenty-four (24) hours for employees present in the potentially affected area at the time of the emergency.

b. A report of the medical surveillance and any treatment shall be included in the incident report, in accordance with subsection (5)(b) of this section.

4. If an employee has a known contact with 4,4'-Methylene bis (2-chloroaniline), the employee shall be required to shower as soon as possible, unless contraindicated by physical injuries.

5. An incident report on the emergency shall be reported as provided in subsection (5)(b) of this section.

(c) Hygiene facilities and practices.

1. Storage or consumption of food, storage or use of containers of beverages, storage or consumption of beverages, storage or application of cosmetics, smoking, storage of smoking materials, tobacco products or other products for chewing, or the chewing of those products, shall be prohibited in regulated areas.

2. If employees are required by this section to wash, washing facilities shall be provided in accordance with 29 C.F.R. 1910.141.

3. If employees are required by this section to shower, facilities shall be provided in accordance with 29 C.F.R. 1910.141(d)(3).

4. If employees wear protective clothing and equipment, clean change rooms shall be provided, in accordance with 29 C.F.R. 1910.141(e), for the number of employees required to change clothes.

5. If toilets are located in regulated areas, the toilets shall be in a separate room.

(d) Contamination control.

1. Regulated areas, except for outdoor systems, shall be maintained under pressure negative with respect to nonregulated areas.

a. Local exhaust ventilation may be used to satisfy this requirement.

b. Clean make-up air in equal volume shall replace air removed.

2. Any equipment, material, or other item taken or removed from a regulated area shall be done so in a manner that does not cause contamination in nonregulated areas or the external environment.

3. Decontamination procedures shall be established and implemented to remove 4,4'-Methylene bis (2-chloroaniline) from the surface of materials, equipment, and the decontamination facility.

4. Dry sweeping and dry mopping shall be prohibited.

(4) Signs, information, and training.

(a) Signs.

1. Entrance to regulated areas shall be posted with signs bearing the legend:

CANCER-SUSPECT AGENT  Authorized Personnel Only
---

2. Entrances to regulated areas containing operations established in subsection (2)(e) of this section shall be posted with signs bearing the legend:

Cancer-Suspect Agent Exposed In this Area  Impervious Suit Including Gloves, Boots, and Air-Supplied Hood Required At All Times  Authorized Personnel Only
---

3. Appropriate signs and instructions shall be posted at the entrance to, and exit from, regulated areas, informing employees of the procedures that shall be followed in entering and leaving a regulated area.

(b) Container labeling. Containers shall be labeled in accordance with the requirements of 29 C.F.R. 1910.1200.

(c) Lettering.

1. Lettering on signs and instructions required by paragraph (a) of this subsection shall be a minimum letter height of two (2) inches.

2. Labels on containers required by paragraph (b) of this subsection shall:

a. Not be less than one-half (1/2) the size of the largest lettering on the package, up to a maximum required size of one (1) inch in height; and

b. Not use less than eight (8) point type.

(d) Prohibited statements. A statement shall not appear on or near any required sign, label, or instruction that contradicts or detracts from the effect of any required warning, information, or instruction.

(e) Training and indoctrination.

1. Each employee, prior to being authorized to enter a regulated area, shall receive a training and indoctrination program including:

a. The nature of the carcinogenic hazards of 4,4'-Methylene bis (2-chloroaniline), including local and systemic toxicity;

b. The specific nature of the operation involving 4,4'-Methylene bis (2-chloroaniline) that could result in exposure;

c. The purpose for and application of the medical surveillance program, including, as appropriate, methods of self-examination;

d. The purpose for and application of decontamination practices and procedures;

e. The purpose for and significance of emergency practices and procedures;

f. The employee's specific role in emergency procedures;

g. Specific information to aid the employee in recognition and evaluation of conditions and situations that may result in the release of 4,4'-Methylene bis (2-chloroaniline); and

h. The purpose for and application of specific first-aid procedures and practices.

2. Each employee shall receive a review of this section at the employee's first training and indoctrination program and annually thereafter.

3. Specific emergency procedures shall be prescribed and posted, and employees shall be familiarized with their terms and rehearsed in their application.

4. All materials relating to the program shall be provided if requested by authorized representatives of the assistant secretary and the director.

(5) Reports.

(a) Operations. Not later than March 1 of each year, the information required by this paragraph shall be reported in writing by the employer to the nearest Area Director. Any change in the reported information shall be reported in writing within fifteen (15) calendar days of the change. The report shall contain the following information:

1. A brief description and in-plant location of the areas regulated and the address of each regulated area;

2. The names and other identifying information as to the presence of 4,4'-Methylene bis (2-chloroaniline) in each regulated area;

3. The number of employees in each regulated area, during normal operations including maintenance activities; and

4. The manner in which 4,4'-Methylene bis (2-chloroaniline) is present in each regulated area, such as whether it is manufactured, processed, used, repackaged, released, stored, or otherwise handled.

(b) Incidents. Incidents that result in the release of 4,4'-Methylene bis (2-chloroaniline) into any area where employees may be exposed shall be reported in accordance with this

paragraph.

1. A report of the incident and the facts obtainable at that time, including a report on any medical treatment of affected employees, shall be made within twenty-four (24) hours to the nearest Area Director.

2. A written report shall be filed with the nearest Area Director within fifteen (15) calendar days of the initial report and shall include:

a. A specification of the amount of material released, the amount of time involved, and an explanation of the procedure used in determining this figure;

b. A description of the area involved, and the extent of known and possible employee and area contamination;

c. A report of any medical treatment of affected employees and any medical surveillance program implemented; and

d. An analysis of the steps to be taken, with specific completion dates, to avoid further similar release.

(6) Medical surveillance. At no cost to the employee, a program of medical surveillance shall be established and implemented for employees considered for assignment to enter regulated areas, and for authorized employees.

(a) Examinations.

1. Before an employee is assigned to enter a regulated area, a preassignment physical examination by a physician shall be provided. The examination shall include the personal history of the employee, family and occupational background, including genetic and environmental factors.

2. Authorized employees shall be provided with periodic physical examinations at least annually, following the preassignment examination.

3. In all physical examinations, the examining physician shall consider whether there exist conditions of increased risk, including reduced immunological competence, current treatment with steroids of cytotoxic agents, pregnancy, and cigarette smoking.

(b) Records.

1. Employers of employees examined pursuant to this subsection shall maintain complete and accurate records of all medical examinations. Records shall be maintained for the duration of the employee's employment. If the employee's employment is terminated, including by retirement or death, or if the employer ceases business without a successor; records, or notarized true copies thereof, shall be forwarded by registered mail to the director.

2. Records required by this paragraph shall be provided if requested by authorized representatives of the assistant secretary or the director. If requested by an employee or former employee, the records shall be provided to a physician designated by the employee or to a new employer.

3. Any physician who conducts a medical examination required by this subsection shall furnish to the employer a statement of the employee's suitability for employment in the specific exposure.

Section 3. Laboratory Activities. The requirements of this section shall apply to research and quality control activities involving the use of chemicals covered by 29 C.F.R. 1910.1003 to 1910.1016.

(1) Mechanical pipetting aids shall be used for all pipetting procedures.

(2) Experiments, procedures, and equipment which could produce aerosols shall be confined to laboratory-type hoods or glove boxes.

(3) Surfaces on which chemicals covered by 29 C.F.R. 1910.1003 to 1910.1016 are handled shall be protected from contamination.

(4) Contaminated wastes and animal carcasses shall be collected in impervious containers that are closed and decontaminated prior to removal from the work area. The wastes and carcasses shall be incinerated so that carcinogenic products shall not be released.

(5) All other forms of chemicals covered by 29 C.F.R. 1910.1003 to 1910.1016 shall be inactivated prior to disposal.

(6) Laboratory vacuum systems shall be protected with high-efficiency scrubbers or with disposal absolute filters.

(7) Employees engaged in animal support activities shall be:

(a) Provided with and required to wear, a complete protective clothing change, clean each day, including coveralls, or pants and shirt, foot covers, head covers, gloves, and appropriate respiratory protective equipment or devices;

(b) 1. Required, prior to each exit from a regulated area, to remove and leave protective clothing and equipment at the point of exit and at the last exit of the day, to place used clothing and equipment in impervious containers at the point of exit for decontamination or disposal; and

2. The contents of the impervious containers shall be identified as required under Section 2(4)(b), (c), and (d) of this administrative regulation;

(c) Required to wash hands, forearms, face, and neck upon each exit from the regulated area close to point of exit, and before engaging in other activities; and

(d) Required to shower after the last exit of the day.

(8) Employees, except for those engaged only in animal support activities, each day shall be:

(a) Provided with and required to wear a clean change of appropriate laboratory clothing, such as a solid front gown, surgical scrub suit, or fully buttoned laboratory coat;

(b) 1. Required, prior to each exit from a regulated area, to remove and leave protective clothing and equipment at the point of exit and at the last exit of the day, to place used clothing and equipment in impervious containers at the point of exit for decontamination or disposal; and

2. The contents of the impervious containers shall be identified as required under Section 2(4)(b), (c), and (d) of this administrative regulation; and

(c) Required to wash hands, forearms, face, and neck upon each exit from the regulated area close to point of exit, and before engaging in other activities.

(9) Air pressure in laboratory areas, and animal rooms where chemicals covered by 29 C.F.R. 1910.1003 to 1910.1016 are handled and bioassay studies are performed shall be negative in relation to the pressure in surrounding areas. Exhaust air shall not be discharged to regulated areas, nonregulated areas, or the external environment unless it is decontaminated.

(10) There shall not be a connection between regulated areas and any other areas through the ventilation system.

(11) A current inventory of chemicals covered by 29 C.F.R. 1910.1003 to 1910.1016 shall be maintained.

(12) Ventilated apparatus such as laboratory-type hoods shall be tested at least semi-annually or immediately after ventilation modification or maintenance operations, by personnel fully qualified to certify correct containment and operation.

Section 4. Access to Exposure or Medical Records. (1) The language relating to the access to exposure or medical records in subsection (2) of this section shall apply in lieu of 29 C.F.R. 1910.1020(e)(1)(i).

(2) If an employee or designated representative requests access to an exposure or medical record, the employer shall assure that access is provided in a reasonable time, place, and

manner, but not longer than fifteen (15) days after the request for access is made unless sufficient reason is given why that time is unreasonable or impractical.

(3) The language relating to the access to exposure or medical records in subsection (4) of this section shall apply in lieu of 29 C.F.R. 1910.1020(e)(1)(iii).

(4) If an employee or designated representative requests a copy of a record, the employer shall, except as specified in 29 C.F.R. 1910.1020(e)(1)(v) of this section, within the period of time previously specified assure that either:

(a) A copy of the record is provided without cost to the employee or representative;

(b) The necessary mechanical copying facilities (e.g., photocopying) are made available without cost to the employee or representative for copying the record; or

(c) The record is loaned to the employee or representative for a reasonable time to enable a copy to be made.

Section 5. (1) The language relating to gloves in subsection (2) of this section shall apply in lieu of 29 C.F.R. 1910.1030(d)(3)(ix).

(2) Gloves shall be worn if it can be reasonably anticipated that the employees may have hand contact with blood, other potentially infectious materials, mucous membranes, and nonintact skin if performing vascular access procedures or if handling or touching contaminated items or surfaces.

Section 6. Except as modified by Sections 1 through 5 of this emergency administrative regulation, general industry shall comply with 29 C.F.R. Subpart Z, Toxic and Hazardous Substances, [~~the following federal requirements~~] published by the Office of the Federal Register, National Archives and Records Services, General Services Administration and the revisions to 29 C.F.R. 1910.1024 published in the July 14, 2020 Federal Register, Volume 85, Number 135[:

~~(1) 29 C.F.R. 1910.1000 - 1910.1450; and~~

~~(2) The revisions to 29 C.F.R. 1910.1001, 29 C.F.R. 1910.1018, 29 C.F.R. 1910.1027, 29 C.F.R. 1910.1029, 29 C.F.R. 1910.1043, and 29 C.F.R. 1910.45 as published in the May 14, 2019 Federal Register, Volume 84, Number 93].~~

LARRY ROBERTS, Secretary

APPROVED BY AGENCY: December 22, 2020

FILED WITH LRC: January 13, 2021 at 1:52 p.m.

CONTACT PERSON: Robin Maples, OSH Standards Specialist, Kentucky Department of Work-place Standards, 500 Mero Street, Frankfort, Kentucky 40601, phone (502) 564-4107, fax (502) 564-4769, email Robin.Maples@ky.gov.

## REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact person: Robin Maples

(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, effective since February 12, 1996, retains requirements for employees with occupational exposure to 4,4'-Methylenebis(2-Chloroaniline). Section 3, also effective since February 12, 1996, retains requirements associated with research and quality control laboratory activities involving the use of the chemicals covered by 29 C.F.R. 1910.1003-1016. Section 4, effective since July 17, 1997, retains requirements related to access to exposure or medical records. Section 5, effective

since October 7, 1992, retains requirements involving glove use related to 29 C.F.R. 1910.1030. Section 6 requires employers to comply with the requirements of 29 C.F.R. Parts 1910.1000-1910.1450 and the amendments to 29 C.F.R. 1910.1024, published in the July 14, 2020 Federal Register, Volume 85, Number 135. On July 14, 2020, OSHA published a final rule that clarified certain provisions and simplified, or improved, compliance with 29 C.F.R. 1910.1024, Beryllium. The final rule is deregulatory action. The changes maintain safety and health protections for workers and enhance worker protections by ensuring the standard is well understood. The final rule enhances employee safety by revising provisions that may be misinterpreted. This amendment also updates this administrative regulation to meet KRS Chapter 13A considerations.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to meet the requirements established in Section 18 of the OSH Act, 29 C.F.R. 1902.3(c), 29 C.F.R. 1902.3(d), 29 C.F.R. 1953.1, and 29 C.F.R. 1953.5, which all require Kentucky OSH regulations to be as effective as the federal requirements. 29 C.F.R. 1953.5 mandates state adoption of OSHA's July 14, 2020 Occupational Exposure to Beryllium and Beryllium Compounds final rule within six (6) months of its July 14, 2020 publication in the Federal Register. Therefore, Kentucky must adopt the rule no later than February 14, 2021 to ensure the state program is at least as effective as OSHA.

(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 OSH administrative regulations. This regulation is necessary to meet the requirements established in Section 18 of the OSH Act, 29 C.F.R. 1902.3(c), 29 C.F.R. 1902.3(d), 29 C.F.R. 1953.1, and 29 C.F.R. 1953.5, 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 Section 18 of the OSH Act, 29 C.F.R. 1902.3(c), 29 C.F.R. 1902.3(d), 29 C.F.R. 1953.1, and 29 C.F.R. 1953.5.

(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: The amendment enhances employee safety by revising provisions that may be misinterpreted. The majority of the changes clarify certain provisions and simplify, or improve, employer compliance with 29 C.F.R. 1910.1024, Beryllium. The final rule is deregulatory action. The changes maintain safety and health protections for workers and enhance worker protections by ensuring the standard is well understood. The final rule enhances employee safety by revising provisions that may be misinterpreted. The majority of the changes clarify certain provisions and simplify, or improve, employer compliance with 29 C.F.R. 1910.1024. This amendment also updates this administrative regulation to meet KRS Chapter 13A considerations.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to meet the requirements established in Section 18 of the OSH Act, 29 C.F.R. 1902.3(c), 29 C.F.R. 1902.3(d), 29 C.F.R. 1953.1, and 29 C.F.R. 1953.5, which all require Kentucky OSH regulations to be as effective as OSHA. 29 C.F.R. 1953.5 mandates state adoption of OSHA's July 14, 2020 Occupational Exposure to Beryllium and Beryllium Compounds final rule within six (6) months of its July 14, 2020 publication in the Federal Register. Therefore, Kentucky must adopt the rule no later than February 14, 2021 to ensure the state program is at least as effective as OSHA.

(c) How the amendment 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 administrative regulations. This regulation is necessary to meet the requirements established in Section 18 of the OSH Act, 29 C.F.R. 1902.3(c), 29 C.F.R. 1902.3(d), 29 C.F.R. 1953.1, and 29 C.F.R. 1953.5, 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 the amendment will assist in the effective administration of the statutes: This amendment provides all a clear understanding of the requirements. This amendment promotes employee health and safety throughout Kentucky and ensures the state is as effective as the federal program.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation affects employers in the Commonwealth engaged in all general industry 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 administrative regulation.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): This amendment maintains consistency with the federal requirements, providing all a clear understanding of the requirements. This amendment promotes employee health and safety throughout Kentucky and ensures the state is as effective as the federal requirement.

(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 administrative regulation.

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

(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

1. Federal statute or regulation constituting the federal mandate. Public Law 91-596, the Occupational Safety and Health Act of 1970, Section 18; 29 C.F.R. 1902.3(c), 29 C.F.R. 1902.3(d), 29 C.F.R. 1953.1, and 29 C.F.R. 1953.5.

2. State compliance standards. The Kentucky OSH Program is mandated by Section 18 of the OSH Act, 29 C.F.R. 1902.3(c), 29 C.F.R. 1902.3(d), 29 C.F.R. 1953.1, and 29 C.F.R.

1953.5 to develop and enforce standards that are at least as effective as the federal requirement. 29 C.F.R. 1953.5 mandates adoption of OSHA's July 14, 2020 Occupational Exposure to Beryllium and Beryllium Compounds final rule within six (6) months of its July 14, 2020 publication in the Federal Register. Therefore, Kentucky must adopt the final rule or develop an equivalent standard no later than February 14, 2021 to ensure the state program is at least as effective as OSHA.

3. Minimum or uniform standards contained in the federal mandate. The Kentucky OSH Program is mandated by Section 18 of the OSH Act, 29 C.F.R. 1902.3(c), 29 C.F.R. 1902.3(d), 29 C.F.R. 1953.1, and 29 C.F.R. 1953.5 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.

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

5. Justification for the imposition of the stricter standard, or additional or different responsibilities or requirements: Section 1 of this emergency administrative regulation defines terms not found in the federal standard. Section 2, effective since February 12, 1996, retains requirements related to 4,4'-Methylene bis (2-chloroaniline). Section 3, also effective since February 12, 1996, retains requirements associated with research and quality control laboratory activities involving the use of the chemicals covered by 29 C.F.R. 1910.1003-1016 that are different from OSHA. Section 4, effective since July 17, 1997, retains requirements related to access to exposure or medical records that are different from OSHA. Section 5, effective since October 7, 1992, retains requirements related to glove use as it applies to 29 C.F.R. 1910.1030 that are different from OSHA. Section 6 requires employers to comply with the requirements of 29 C.F.R. Parts 1910.1000-1910.1450 and the amendments to 29 C.F.R. 1910.1024, published in the July 14, 2020 Federal Register, Volume 85, Number 135. The final rule is deregulatory action. The changes maintain safety and health protections for workers and enhance worker protections by ensuring the standard is well understood. The final rule enhances employee safety by revising provisions that may be misinterpreted.

## FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

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 affects any unit, part, or division of local government covered by KRS 338 and engaged in any general industry activities.

2. Identify each state or 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, 29 C.F.R. Parts 1952 and 1953.

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. None.

(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 government (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? There are no costs associated with this amendment.

(d) How much will it cost to administer this program for subsequent years? There are no costs associated with this amendment.

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

Revenues (+/-): Unknown.

Expenditures (+/-): Unknown.

Other explanation: This amendment does not impose any additional requirements or expenditures to the employer.