

NORTH CAROLINA DEPARTMENT OF LABOR  
DIVISION OF OCCUPATIONAL SAFETY AND HEALTH  
RALEIGH, NORTH CAROLINA

Chapter 7  
Subchapter 7F  
NC-OSH

NCAC 7

Field Information System Part I  
Personal Protective Equipment  
General Industry  
OSHNC Specific Amendments

DISCUSSION: The question of who is responsible for paying for personal protective equipment - the employer or the employee - has been a frequently presented to OSHNC. This matter was previously addressed in OPN 85 - "Interpretation of Personal Protective Equipment standards." However, OSHNC believed that this standard would be much more clear to employers and employees with the addition of a clarifying amendment.

Pursuant to a 1990 federal OSHA internal memo, OSHNC chose to amend 29 CFR 1910.132, *General requirements*. The memo stated that it was the position of federal OSHA that employers were obligated to pay for PPE not worn off the jobsite. Federal OSHA based that interpretation on a 3rd Circuit Court case, The Budd Co. v. OSHRC, 513 F.2d 201 (1975). Further, since it has always been the employer's responsibility to provide a safe and healthful workplace, and PPE is part of that workplace, then it logically follows that the employer should also provide and pay for PPE. OSHNC incorporated this interpretation into the current General Industry PPE standard.

OSHNC maintains that there are some items which are personal in nature (i.e. prescription safety glasses) and those which can be used either at home or at a second job which are not required to be purchased by the employer. The matter of payment for these items may be left to labor-management negotiations.

On October 20, 1994, federal OSHA issued a news release and a compliance memorandum that clarified their interpretation of the standard and mirrored OSHNC's intent of the amendment. The memorandum included specific references to PPE which fall under the employer's payment obligation. These include "welding gloves, wire mesh gloves, respirators, hard hats, specialty glasses and goggles (such as those designed for laser or ultraviolet radiation protection), specialty foot protection (such as metatarsal shoes and linemen's shoes with built-in gaffs), face shields and rubber gloves, blankets, cover-ups, hot sticks and other live-line tools used by power generation workers." The memorandum also cited examples of PPE that are personal in nature which include "specialty safety glasses (prescription), safety shoes and cold-

weather outer wear. . . unless the shoes or outer wear is subject to contamination by carcinogens or other toxic or hazardous substances and cannot be safely worn off-site...." OSHNC adopts these examples.

Failure of the employer to provide, at no cost, PPE which is not personal and not used away from the job is a violation of the amended OSHNC standard and must be cited.

As an exception, there are work situations in which it is customary for workers in a particular trade to provide their own PPE. The standard at 1910.132(b)(2) acknowledges that employees may provide their own equipment, however, it remains the employer's obligation to assure that any such piece of equipment is adequate and that it is properly maintained.

ACTION:

This amendment separates 1910.132(b) into two subparts: (b)(1) *Employer- provided equipment* (the amendment) and (b)(2) *Employee-owned equipment* (the current language).

This final rule at 29 CFR 1910.132, Subpart I, was adopted in North Carolina with an effective date of November 1, 1994. A copy of the regulatory text from the **North Carolina Administrative Code at 13 NCAC 07F.0101** is attached.

Date: 10/26/1994

Charles N. Jeffress, Director  
Division Of Occupational Safety and Health  
(Signed on Original)

NC Effective Date: November 1, 1994

Filing Date: July 22, 1994

Number: 13 NCAC 7F.0101(a)(2)

## **SUBCHAPTER 7F - STANDARDS**

### **.0100 - GENERAL INDUSTRY STANDARDS**

#### **.0101 GENERAL INDUSTRY**

- a. The provisions for the Occupational Safety and Health Standards for General Industry, Title 29 of the Code of Federal Regulations Part 1910, are incorporated by reference except as follows:
  1. Subpart H - Hazardous Materials, 29 CFR 1910.120, Hazardous waste operations and emergency response, § 1910.120(q)(6) is amended by adding a new level of training:

"(vi) First responder operations plus level. First responders at operations plus level are individuals who respond to hydrocarbon fuel tank leaks where the leaking tanks contain a hydrocarbon fuel which is used to propel the vehicle on which the tank is located. Only those vehicles designed for highway use or those used for industrial, agricultural or construction purposes are covered. First responders at the operations plus level shall have received at least training equal to first responder operations level and, in addition, shall receive training or have had sufficient experience to objectively demonstrate competency in the following areas and the employer shall so certify:

    - A. Know how to select and use proper specialized personal protective equipment provided to the first responder at operations plus level;
    - B. Understand basic hazardous materials terms as they pertain to hydrocarbon fuels;
    - C. Understand hazard and risk assessment techniques that pertain to gasoline, diesel fuel, propane and other hydrocarbon fuels;
    - D. Be able to perform control, containment, and/or confinement operations for gasoline, diesel fuel, propane and other hydrocarbon fuels within the capabilities of the available resources and personal protective equipment; and
    - E. Understand and know how to implement decontamination procedures for hydrocarbon fuels."
  2. Subpart I -- Personal Protective Equipment -- 29 CFR 1910.132, General requirements, is amended at 29 CFR 1910.132(b) to read:

"(b) *Equipment.* (1) *Employer-provided equipment.* It is the responsibility of the employer to provide, at no cost to the employee, all personal protective equipment which the employee does not wear off the

jobsite for use off the job.

(2) *Employee-owned equipment.* Where employees provide their own protective equipment, the employer shall be responsible to assure its adequacy, including proper maintenance, and sanitation of such equipment."

3. Subpart Z -- Toxic and Hazardous Substances, 29 CFR 1910.1000, Air Contaminants: Re-adoption of revised permissible exposure limits as originally published in 54 FR (January 19, 1989) pages 2496 - 2533 and pages 2668 - 2695 as follows:

### "RESPIRATORY EFFECTS

Chemical Name	CAS No.	PEL
Aluminum	7429-90-5	15 mg/m <sup>3</sup> TWA Total Dust 5 mg/m <sup>3</sup> TWA Resp. fraction
Bismuth telluride, Undoped	1304-82-1	15 mg/m <sup>3</sup> TWA Total Dust 5 mg/m <sup>3</sup> TWA Resp. fraction
Chlorine dioxide	10049-04-4	0.1 ppm TWA 0.3 ppm STEL
Chromium metal (as Cr)	7440-47-3	1 mg/m <sup>3</sup> TWA
Coal Dust (<5% quartz) Resp. fraction	None	2 mg/m <sup>3</sup> TWA
Coal Dust (>5 % quartz) Respirable quartz fraction	None	0.1 mg/m <sup>3</sup> TWA
Ethyl acrylate	140-88-5	5ppm TWA 25 ppm STEL, Skin
Ferrovandium dust	12604-58-9	1 mg/m <sup>3</sup> TWA 3 mg/m <sup>3</sup> STEL
Grain Dust (oat, wheat, barley)	None	10 mg/m <sup>3</sup> TWA

Graphite, natural, Resp. Dust	7782-42-5	2.5 mg/m <sup>3</sup> TWA
Indium & compounds (as In)	7440-74-6	0.1 mg/m <sup>3</sup> TWA
Iron oxide (dust & fume)	1309-37-1	10 mg/m <sup>3</sup> TWA
Methylene bis (4-Cyclohexylisocyanate)	5124-30-1	0.01 ppm Ceiling, Skin
Mica, Respirable Dust	12001-26-2	3 mg/m <sup>3</sup> TWA
Nitrogen dioxide	10102-44-0	1 ppm STEL
Oxygen difluoride	7783-41-7	0.05 ppm Ceiling
Ozone	10028-15-6	0.1 ppm TWA 0.3 ppm STEL
Paraquat, Respirable Dust	4685-14-7	0.1 mg/m <sup>3</sup> TWA, Skin
Silica, crystalline cristobalite, Respirable Dust	14464-46-1	0.05 mg/m <sup>3</sup> TWA
Silica, crystalline quartz, Respirable Dust	14808-60-7	0.1 mg/m <sup>3</sup> TWA
Silica, crystalline tridymite, Respirable Dust	15468-32-3	0.05 mg/m <sup>3</sup> TWA
Silica, crystalline tripoli (as quartz) Respirable Dust	1317-95-9	0.1 mg/m <sup>3</sup> TWA
Silica, fused Respirable Dust	60676-86-0	0.1 mg/m <sup>3</sup> TWA
Soapstone, total dust	None	6 mg/m <sup>3</sup> TWA
Soapstone, Respirable Dust	None	3 mg/m <sup>3</sup> TWA
Sulfur dioxide	7446-09-5	2 ppm TWA 5 ppm STEL

Sulfur tetrafluoride	7783-60-0	0.1 ppm Ceiling
Talc (containing no asbestos) Respirable Dust	14807-96-6	2 mg/m <sup>3</sup> TWA
Tin oxide (as Sn)	7440-31-5	2 mg/m <sup>3</sup> TWA
Trimellitic anhydride	552-30-7	0.005 ppm TWA
Wood dust, hard	None	5 mg/m <sup>3</sup> TWA 10 mg/m <sup>3</sup> STEL
Wood dust, soft	None	5 mg/m <sup>3</sup> TWA 10 mg/m <sup>3</sup> STEL
Wood dust, allergenic (Western Red Cedar)	None	2.5 mg/m <sup>3</sup> TWA

### AVOIDANCE OF CANCER

Chemical Name	CAS No.	PEL
Acrylamide	79-06-1	0.03 mg/m <sup>3</sup> TWA, Skin
Amitrole	61-82-5	0.2 mg/m <sup>3</sup> TWA
Carbon tetrachloride	56-23-5	2 ppm TWA
Chloroform	67-66-3	2 ppm TWA
Chromic acid	1333-82-0	0.1 mg/m <sup>3</sup> Ceiling
Dimethyl sulfate	77-78-1	0.1 ppm TWA, Skin
2-Nitropropane	79-46-9	10 ppm TWA
Perchloroethylene	127-18-4	25 ppm TWA
o-Toluidine	95-53-4	5 ppm TWA, Skin

p-Toluidine	106-49-0	2 ppm TWA, Skin
Vinyl bromide	593-60-2	5 ppm TWA
Vinyl cyclohexene dioxide	106-87-6	10 ppm TWA, Skin."

4. Subpart Z -- Toxic and Hazardous Substances -- incorporation by reference of modified final rule for 29 CFR 1910.1200, Hazard Communication, including Appendices A through E, published in 59 FR (February 9, 1994) pages 6170 - 6184 except that 1910.1200(b)(6)(ii) is amended to read:
 

"(ii) Any hazardous substance as such term is defined by the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) (42 U.S.C. 9601 *et seq*), when regulated as a hazardous waste under that Act by the Environmental Protection Agency;"
- b. The parts of the Code of Federal Regulations adopted by reference in this Subchapter shall not automatically include any subsequent amendments thereto, except as follows:
  1. Subpart H -- Hazardous Materials:
    - A. Technical corrections at 1910.109(g)(4)(v), Explosives and Blasting Agents, published in 58 FR (March 29, 1993) page 16496 and adopted by the North Carolina Department of Labor on December 31, 1993;
    - B. Technical corrections at 1910.110(d)(11), Storage and Handling of Liquefied Petroleum Gases, published in 58 FR (March 19, 1993) page 15089 and adopted by the North Carolina Department of Labor on December 31, 1993;
    - C. Technical amendments to the existing Appendix B and addition of non-mandatory Appendix E to 1910.120, *Hazardous waste operations and emergency response* as published in 59 FR (August 22, 1994) pages 43270 - 43280 and effective on November 1, 1994.
  2. Subpart I -- Personal Protective Equipment:
    - A. Addition of paragraphs (d), (e) and (f) to 1910.132 - *General requirements*; revisions to 1910.133 - *Eye and face protection*, 1910.135 - *Head protection*, 1910.136 - *Foot protection*; and addition of 1910.138 - *Hand protection*, including non-mandatory Appendices A and B, published in 59 FR (April 6, 1994) pages 16360 - 16364 and effective on September 1, 1994; addition of paragraph (g) to 1910.132 - *General*

*requirements*; technical and clarifying amendments to 1910.133 - *Eye and face protection*, 1910.136 - *Foot protection*, and 1910.138 - *Hand protection*, as published in 59 FR (July 1, 1994) pages 33910 - 33911 and effective on September 1, 1994.

B. Revisions to 1910.137, *Electrical Protective Equipment*, published in 59 FR (January 31, 1994) pages 4435 - 4437 and effective on November 1, 1994.

3. Subpart J -- General Environmental Controls -- typographical and clarifying corrections at 1910.146, Permit-Required Confined Spaces, published in 58 FR (June 29, 1993) pages 34844 - 34851 and effective on September 24, 1993; corrections are to final rule for Permit-Required Confined Spaces as originally published in 58 FR 4462 (January 14, 1993); a metric equivalent addition of "1.52 m" to 1910.146 (k) (3) (ii) and revisions to "Atmospheric monitoring" section of Appendix E as published in 59 FR (May 19, 1994) pages 26114 - 26116 and effective on September 1, 1994; corrections are to final rule for Permit-Required Confined Spaces as originally published in 58 FR 4462 (January 14, 1993).
4. Subpart S - *Electrical* - amendment to citation authority for Subpart S of 1910, and amendments to Notes 2 and 3 for 1910.133(c)(1) and the Note for 1910.133(c)(3), published in 59 FR (January 31, 1994) pages 4475 - 4576 and effective on November 1, 1994.
5. Subpart Z -- Toxic and Hazardous Substances:
  - A. Revision of Authority Citation for Subpart Z of Part 1910 published in 59 FR (July 19, 1994) pages 366919 - 36700 and effective on November 1, 1994.
  - B. Revocation of exposure limits in "Final rule limits" columns of Table Z-1-A at 1910.1000, Air Contaminants, published in 58 FR (June 30, 1993) pages 35338-35351 and adopted by the North Carolina Department of Labor on September 24, 1993.
  - C. Correction to Table Z-3 Mineral Dust at 1910.1000, Air Contaminants. published in 58 FR (July 27, 1993) page 40191 and adopted by the North Carolina Department of Labor on December 31, 1993.
  - D. Typographical and technical corrections at 1910.1027, Cadmium, published in 58 FR (April 23, 1993) pages 21778 - 21787 and adopted by the North Carolina Department of Labor on September 24, 1993; corrections are to final rule for Occupational Exposure to Cadmium as originally published in 57 FR 42101 (September 14, 1992).

- E. Addition of 1910.1201 "Retention of DOT markings, placards, and labels," published in 59 FR (July 19, 1994) pages 36699 - 36700 and effective on November 1, 1994.
- c. Copies of the applicable Code of Federal Regulations sections referred to in this Subchapter are available to the public. Please refer to 13 NCAC 7A.0302 for the costs involved and from whom copies may be obtained.

*History Note: Filed as a Temporary Amendment Eff. August 16, 1993, for a Period of 180 Days or Until the Permanent Rule Becomes Effective, Whichever is Sooner; Statutory Authority G.S. 95-131; 95-133; 150B-21.6;*

- *Eff. August 2, 1993;*
- *Amended Eff. May 1, 1994; February 1, 1994; December 31, 1993; September- 24, 1993.*

## **.0102 LIFE SAFETY CODE**

All places of employment shall be designed, constructed, maintained, and occupied in accordance with the standards set out in the 1991 edition of the Code for Safety to Life from Fire in Buildings and Structures, ANSI/NFPA 101, which is hereby incorporated by reference. This incorporation shall not include any subsequent editions or amendments to this code. Copies of this code may be obtained from the National Fire Protection Association, 1 Batterymarch Park, Quincy, Massachusetts 02269, for twenty-seven dollars and fifty cents (\$27.50). This rule supersedes any standards based on earlier editions of the Life Safety Code.

*History Note: Statutory Authority G. S. 95-131;  
Eff. April 1, 1992;  
Recodified from 13 NCAC 7C .0107 Eff. August 2, 1993.*