

RULES AND REGULATIONS

Title 41—PUBLIC CONTRACTS AND PROPERTY MANAGEMENT

Chapter 18—National Aeronautics and Space Administration

PART 18-8—TERMINATION OF CONTRACTS

Termination Claims

Correction

In F.R. Doc. 71-4616 appearing at page 6345 in the issue of Saturday, April 3, 1971, the section heading and first five lines of § 18-8.101-25 appearing at the beginning of the first column on page 6348 should be transferred to the beginning of the third column on page 6347 directly above the five lines of undesignated text.

Chapter 50—Public Contracts, Department of Labor

PART 50-204—SAFETY AND HEALTH STANDARDS FOR FEDERAL SUPPLY CONTRACTS

Presumptions and Incorporations by Reference; Specific National Consensus Standards

Pursuant to section 4 of the Walsh-Healey Public Contracts Act (41 U.S.C. section 35), Part 50-204 of Title 41, Code of Federal Regulations is hereby amended as indicated below.

The reasons for the amendments are briefly these. Under section 4(b)(2) of the Williams-Steiger Occupational Safety and Health Act of 1970 (29 U.S.C. 653) standards issued under the laws listed in that provision, including the Walsh-Healey Public Contracts Act, must be deemed to be "occupational safety and health standards" issued under the Williams-Steiger Occupational Safety and Health Act of 1970 (OSHA) as well as under the listed laws. The term "occupational safety and health standard" is defined in section 3(8) of OSHA (29 U.S.C. 652) as meaning a "standard which requires conditions, or the adoption or use of one or more practices, means, methods, operations, or processes, reasonably necessary or appropriate to provide safe or healthful employment and places of employment." The term "standard" itself is not defined, but the quoted definition and the duty prescribed in section 5(a)(2) of OSHA (29 U.S.C. 654) indicate that in this context the term refers to a substantive rule; i.e., a rule having the force and effect of law. Under these circumstances, it is considered necessary and appropriate to amend the rules under the Walsh-Healey Public Contracts Act in order to make the changes needed to reflect the substantive effect given to the safety and health standards by removing certain rules of presumption, ordinary incorporations by reference, and other changes related to the substantive effect of the

rules involved. The variations provisions of the rules are also amended to conform with the procedural requirements of section 6 of OSHA (29 U.S.C. 655).

The ordinary incorporations by reference of private safety and health standards are replaced by the incorporation by reference of the national consensus standards which are adopted under section 6(a) of the Williams-Steiger Occupational Safety and Health Act of 1970 (29 U.S.C. 655) and which are published on this date in Part 1910 of Title 29 of the Code of Federal Regulations. The specific national consensus standards now incorporated and given substantive effect are determined to be more effective than the general references to private standards which have heretofore existed, and therefore the general references are in any event superseded by the specific national consensus standards under the express terms of section 4(b)(2) of OSHA.

Further, the document is intended to amend Part 50-204 so that its terms are consistent with the provision in section 4(b)(2) of the Williams-Steiger Occupational Safety and Health Act of 1970 reflecting the intent of Congress that where an employer is covered both by the Walsh-Healey Public Contracts Act (or the other laws listed in section 4(b)(2)) and the Williams-Steiger Occupational Safety and Health Act, the same standard will be applicable under each of the statutes. The procedures under the Williams-Steiger Occupational Safety and Health Act will be utilized in the first instance to enforce these occupational safety and health standards and in any proceeding under the Walsh-Healey Public Contracts Act to enforce such standards, the principle of collateral estoppel will apply.

Good cause is found for not providing notice and public procedure in the adoption of the substantive amendments. Such procedures are unnecessary because the changes are considered to reflect only those accomplished by operation of law as of April 28, 1971, by virtue of section 4(b)(2) of OSHA.

There is no delay in effective date for the amendments except in the case of the national consensus standards incorporated in § 50-204.2(a) which will be effective 90 days from the publication of this document in the FEDERAL REGISTER. The delay in effective date of the national consensus standards does not reduce the employers' general statutory and contractual requirement that no part of a contract subject to the Walsh-Healey Public Contracts Act be performed in any plants, factories, buildings or surroundings, or under working conditions which are unsanitary or hazardous or dangerous to the health and safety of employees engaged in the performance of such a contract. See 41 CFR § 50-204.1(d).

1. In § 50-204.1, paragraph (b) is amended and paragraphs (c) and (f) are revoked. As amended, § 50-204.1 reads as follows:

§ 50-204.1 Scope and application.

(b) (1) Every investigator conducting investigations and every officer of the Department of Labor determining whether there are or have been violations of the safety and health requirements of the Walsh-Healey Public Contracts Act and of any contract subject thereto; and whether a settlement of the resulting issues should be made without resort to administrative or court litigation, shall treat a failure to comply with, or violation of, any of the safety and health measures contained in this Part 50-204 as resulting in working conditions which are "unsanitary or hazardous or dangerous to the health and safety of employees" within the meaning of section 1(e) of the Act and the contract stipulation it requires. Evidence of compliance with the safety, sanitary, and factory inspection laws of a State in which the work, or part thereof, is performed will be considered prima facie evidence of compliance with the safety and health requirements of the Act and of any contract subject thereto, and it shall be sufficient unless rebutted or overcome by a preponderance of evidence of a failure to comply with any applicable safety and health rules contained in this part.

(2) Every investigator shall have technical competence in safety, industrial hygiene, or both as may be appropriate, in the matters under investigation.

2. Section 50-204.1a is revised to read as follows:

§ 50-204.1a Variances.

(a) Variances from standards in this part may be granted in the same circumstances in which variances may be granted under sections 6(b)(6)(A) or 6(d) of the Williams-Steiger Occupational Safety and Health Act of 1970 (29 U.S.C. 655). The procedures for the granting of variances and for related relief under this part are those published in Part 1905 of Title 29, Code of Federal Regulations.

(b) Any requests for variances shall also be considered requests for variances under the Williams-Steiger Occupational Safety and Health Act of 1970, and any variance from a standard which is contained in this part and which is incorporated in Part 1910 of Title 29, Code of Federal Regulations, shall be deemed a variance from the standard under both the Walsh-Healey Public Contracts Act and the Williams-Steiger Occupational Safety and Health Act of 1970.

3. Paragraphs (a) and (b) of § 50-204.2 are amended to read as follows:

§ 50-204.2 General safety and health standards.

(a) Every contractor shall protect the safety and health of his employees by complying with the standards described in the subparagraphs of this paragraph whenever a standard deals with an occupational safety or health subject or issue involved in the performance of the contract.

PLAINTIFF'S EXHIBIT

(1) U.S. Department of Labor—Title 29 CFR—

Part 1501—Safety and Health Regulations for Ship Repairing.
Part 1502—Safety and Health Regulations for Shipbuilding.
Part 1503—Safety and Health Regulations for Shipbreaking.
Part 1504—Safety and Health Regulations for Longshoring.
Part 1910—Subpart C through Subpart S (national consensus standards).

(2) U.S. Department of Interior, Bureau of Mines.

(i) In Chapter I of Title 30, Code of Federal Regulations, the standards requiring safe and healthful working conditions or surroundings in:

Subchapter B—Respiratory Protective Apparatus; Tests for Permissibility; Fees.
Subchapter C—Explosives and Related Articles; Tests for Permissibility and Suitability.
Subchapter D—Electrical Equipment, Lamps, Methane Detectors; Tests for Permissibility; Fees.
Subchapter O—Coal Mine Health and Safety.

(ii) In Chapter II of Title 30 the standards requiring safe and healthful working conditions or surroundings in:

Part 211—Coal-Mining Operating and Safety Regulations.
Part 216—Operating and Safety Regulations Governing the Mining of Coal in Alaska.
Part 221—Oil and Gas Operating Regulations.
Part 231—Operating and Safety Regulations Governing the Mining of Potash; Oil Shale, Sodium, and Phosphate; Sulphur; and Gold, Silver, or Quicksilver; and Other Nonmetallic Minerals, Including Silica Sand.

(3) U.S. Department of Transportation: 49 CFR Parts 171-179 and 14 CFR Part 103 Hazardous material regulation—Transportation of compressed gases.

(4) U.S. Department of Agriculture Respiratory Devices for Protection against Certain Pesticides—ARS-33-76-2.

(b) Information concerning the applicability of the standards prescribed in paragraph (a) of this section may be obtained from the following offices:

(1) Office of the Bureau of Labor Standards, U.S. Department of Labor, Railway Labor Building, Washington, D.C. 20210.

(2) The regional and field offices of the Bureau of Labor Standards which are listed in the U.S. Government Organization Manual, 1970-71 edition at p. 324.

(Secs. 1, 4, 49 Stat. 1036, 1038, as amended; 41 U.S.C. 35, 38)

Signed at Washington, D.C., this 20th day of May 1971.

J. D. HONGSON,
Secretary of Labor.

[FR Doc.71-7455 Filed 5-28-71;8:45 am]

Title 49—TRANSPORTATION

Chapter V—National Highway Traffic Safety Administration, Department of Transportation

PART 571—FEDERAL MOTOR VEHICLE SAFETY STANDARDS

Seat Belt Assembly Anchorages and Seat Belt Installations; Reconsideration and Amendment

The purpose of this notice is to amend Motor Vehicle Safety Standards No. 208 and 210, with respect to the installation of shoulder belts in multipurpose passenger vehicles exceeding 10,000 pounds GVWR and the provision of anchorages for shoulder belts in vehicles other than passenger cars.

1. The seat belt installation standard was amended on September 30, 1970, to require installation of seat belts in multipurpose passenger vehicles, trucks, and buses manufactured after July 1, 1971 (35 F.R. 15222). Exemptions from the requirement for shoulder belt installation were provided for certain types and weights of vehicles.

During the course of the subsequent rulemaking activity which led to the issuance of the occupant crash protection standard, it was determined that the larger weight classes of trucks and multipurpose passenger vehicles should not be required to install shoulder belts (35 F.R. 14941, 35 F.R. 16937, 36 F.R. 4600). The standard therefore required lap belts, but not shoulder belts, for vehicles over 10,000 pounds GVWR, effective January 1, 1972. The September 30 amendment, which is to become effective 6 months earlier than the occupant crash protection rule, had provided a similar exemption for large trucks but not for multipurpose passenger vehicles, with the result that shoulder belts would have been required for many large multipurpose passenger vehicles during the period July 1, 1971-January 1, 1972, but not afterward. To correct this inconsistency, the seat belt installation standard is amended, effective July 1, 1971, to exempt multipurpose passenger vehicles of more than 10,000 pounds GVWR from the shoulder belt requirement.

In accordance with the foregoing, section S3.1 of Standard No. 208 (§ 571.21), as published September 30, 1970 (35 F.R. 15222) is amended effective July 1, 1971, to read as follows:

S3.1 A Type 1 seat belt assembly shall be installed for each designated seating position in convertibles, open-body type vehicles, walk-in van-type trucks, and trucks and multipurpose passenger vehicles that have a gross vehicle weight rating of more than 10,000 pounds, and for the driver's seating position in buses.

2. Standard No. 210, "Seat Belt Assembly Anchorages," presently requires vehicles other than passenger cars to have shoulder belt anchorages installed at front outboard seating positions by July 1, 1971, and at rear outboard seating positions by January 1, 1972 (35 F.R. 15293, 35 F.R. 18116, 36 F.R. 4291). The Recreational Vehicle Institute has petitioned for an amendment of the standard, to delete the requirement for shoulder belt anchorages at positions where shoulder belt installation is not required by Standard No. 208.

It has been found that this petition has merit. The probability of shoulder belt installation by the owners of these vehicles is very small, and the difficulty of anchorage installation, particularly in multipurpose passenger vehicles, is often greater than in passenger cars. The amendment is therefore considered to be in the public interest.

The request by RVI for a postponement of the July 1, 1971, effective date for installation of shoulder belt anchorages has not been found justified, and the petition is in that respect denied.

In accordance with the foregoing, section S4.1.1 of the present Motor Vehicle Safety Standard No. 210 (effective July 1, 1971), and the amended Standard No. 210 as published November 26, 1970 (35 F.R. 18116, effective January 1, 1972), in 49 CFR 571.21, are both amended to read as follows:

S4.1.1 Seat belt anchorages for a Type 2 seat belt assembly shall be installed for each forward-facing outboard designated seating position in passenger cars, and for each designated seating position for which a Type 2 seat belt assembly is required by Standard No. 208 in vehicles other than passenger cars.

The effective dates of the amendments made by this notice are as indicated above. Because the amendments relieve restrictions and impose no additional burden on any person, notice and request for comments on such notice are found to be unnecessary, and it is found, for good cause shown, that an effective date earlier than 180 days after issuance is in the public interest.

(Sec. 103, 119, National Traffic and Motor Vehicle Safety Act, 15 U.S.C. 1392, 1407; delegation of authority at 49 CFR 1.51)

Issued on May 21, 1971.

DOUGLAS W. TOMS,
Acting Administrator.

[FR Doc.71-7512 Filed 5-28-71;8:45 am]

[Docket No. 70-12; Notice No. 9]

PART 574—TIRE IDENTIFICATION AND RECORD KEEPING

Location of Tire Identification Number for Retreaded Tires

The purpose of this amendment is to provide retreaders with an alternative