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Title 41—PUBLIC CONTRACTS

Chapter 50—Division of Public Contracts, Department of Labor.

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

The Walsh-Healey Public Contracts Act (49 Stat. 2036, 41 U.S.C. 35 et seq.) requires that contracts entered into by any agency of the United States for the manufacture or furnishing of materials, supplies, articles, or equipment in any amount exceeding \$10,000 must contain, among other provisions, a stipulation that no "part of such contract will be performed nor will any of the materials, supplies, articles, or equipment to be manufactured or furnished under said contract be manufactured or fabricated 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 said contract".

A single standard of safety and health conditions is thus required for all work subject to the Act. An objective description of the working conditions encountered, established by a preponderance of the reliable, probative, and substantial evidence, is, of course, essential to the administrative application of this standard. A second question which must be resolved is whether conditions of the type described are "unsanitary or hazardous or dangerous to the health or safety of employees". This is a question of fact. For assistance in its resolution, the act provides a special rule of evidence: "Compliance with the safety, sanitary, and factory inspection laws of the State in which the work or part thereof is to be performed shall be prima-facie evidence of compliance with this subsection."

The statutory provision concerning "prima-facie evidence" does not purport to take the place of the uniform national standard. It has application only to issues which require evidence. In the absence of opposing evidence, it authorizes resolution of such issues compatibly with the prima-facie evidence. Also, rules concerning prima-facie evidence obviously have no application in situa-

tions where evidence is not required. Where, therefore, the common experience of men is all that is needed to lead a rational and prudent person to the conclusion that certain conditions of employment are incompatible with the safety and health of employees, no defense is provided by the statutory "prima-facie evidence" rule merely because such conditions may not be specifically prohibited in the State safety, sanitary, and factory inspection laws, or the regulations hereby proposed. Neither is it necessary to call a witness to testify concerning the hazardous nature of such conditions.

The statutory rule of "prima-facie evidence" was not designed to deter the Secretary of Labor from diligent inquiry even beyond the safety, sanitary, and factory inspection laws of the several states to discover more directly what are the "working conditions which are unsanitary or hazardous or dangerous to the health and safety of employees." This is demonstrated by the provisions in sections 4 and 5 of the Act, directing the Secretary to administer it and authorizing him to appoint experts, make investigations, hold hearings, compel the production of evidence, and make findings of fact. Accordingly, following enactment of the Act, experts were appointed and their testimony used in the administrative enforcement proceedings conducted under section 5 of the Act. Differences of opinion over what conditions of employment fail to meet the statutory standard have thus been resolved with the assistance of expert testimony on a case-by-case basis in nearly a quarter of a century of hearings and findings under the Act. These have been conducted in accordance with sections 5, 7, and 8 of the Administrative Procedure Act since its enactment.

The hazardous characteristic of a particular working condition, is, of course, the likelihood that it will cause illness or injury in the employment situation. This characteristic is not always immediately apparent. Causative analysis of injury frequency rates in industry has shed much light on the importance of certain precautions not fully appreciated by those responsible for the operation of industrial establishments. The Department's discovery and evaluation of these hazards and the development of

the regulations herein promulgated has relied quite extensively on the outstanding contributions of the private and public organizations which are generally accepted as preeminent in this field. Among these are the publications of American Standards Association, Inc., American Society of Mechanical Engineers, National Fire Protection Association, National Board of Fire Underwriters, the Public Health Service of the United States Department of Health, Education, and Welfare, the Bureau of Mines of the United States Department of the Interior, and the Atomic Energy Commission.

Section 7(d) of the Administrative Procedure Act recognizes that, even in the most formal type of administrative adjudications, agency decision may rest on "official notice of a material fact not appearing in the evidence in the record," but it requires that "any party shall on timely request be afforded an opportunity to show the contrary". The Attorney General's Manual on the Administrative Procedure Act points out (p. 80) that this authority "extends properly to all matters as to which the agency by reason of its functions is presumed to be expert, such as technical or scientific facts within its specialized knowledge. Cf. H.R. Rep. p. 38 (Sen. Dec. p. 372). . . . The matters thus noticed become a part of the record and, unless successfully controverted, furnish the same basis for findings of fact as does 'evidence' in the usual sense."

The hazardous characteristics of many working conditions, thus being facts of a "technical or scientific" nature, and having come within the Department's "specialized knowledge" by reason of its experience, proof of them in administrative adjudications by official notice is appropriate. The facts declared in these regulations are soundly based in the experience of the Department and in the experience of outstanding public and private experts in their specialized divisions of the field of health and safety engineering. The regulations herewith promulgated extend, however, into areas in which reasonable men may differ. Any party to an administrative adjudication who is adversely affected by them will, therefore, have the opportunity to contest them by presenting the issue in

water the construction of the container shall be such that the ice does not come in direct contact with the water.

(e) Open containers such as barrels, pails, or tanks for drinking water from which the water must be dipped or poured, whether or not they are fitted with a cover, shall not be allowed.

(e) Where single service cups are supplied, a sanitary container for the unused cups and a receptacle for disposing of the used cups shall be provided.

Outlets for non-potable water, such as water for industrial or fire-fighting purposes only, shall be posted to indicate that the water is unsafe and is not to be used for drinking, washing, or cooking purposes.

50-204,264 Medical services.

(b) In the absence of an infirmary, a person trained to render first aid and a kit containing the following items shall be available at every place of employment:

- 1 Adhesive Plaster $1\frac{1}{2}$ " x 5 yd. Roll.
- 1 Adhesive Plaster, 1 x 5 yd. Roll.
- 1 Absorbent Cotton, 3-ounce packages.
- 1 Absorbent Gaze, 1 yd.
- 1 Acrid Soap, 3-ounce bottle.
- 10 Adhesive Bandages, 1".
- 1 Aromatic Spirits of Ammonia, 3-ounce bottle.
- 1 Boric Acid Solution, 3-ounce bottle.
- 1 Castor Oil, 2-ounce bottle.
- 12 Compress Bandages, 2".
- 4 Compress Bandages, 4".
- 12 Cotton Wound Applicators.
- 1 Eye Cup.
- 1 Eye Dropper.
- 6 Finger Coes.
- 6 Foilte for Burns, $\frac{1}{2}$ oz. tubes.
- 1 Foilte for Burns, 3-ounce bottle.
- 6 Gauze Roller Bandages 1" x 6 yds.
- 6 Gauze Roller Bandages 2" x 6 yds.
- 6 Gauze Roller Bandages 3" x 6 yds.
- 10 Gauze Sterilized, 15" x 18".
- 1 Mercurialine Tincture, 3-ounce bottle.
- 1 Medicine Glass.
- 1 Manual First Aid Instruction.
- 1 Schaefer's Pair 4" Bandage.
- 1 Tweezers Pair $3\frac{1}{2}$ ".
- 12 Safety Pins.
- 1 Spoon.
- 1 Tourniquet.
- 2 Triangular Bandages 40".
- 6 Wood Splints for Fractures.
- 12 Wood Tongue Depressors.

§ 30-201.369 General requirement.

Eye protection shall be provided where persons are exposed to any hazard which may cause injury to the eyes from the following operations: chipping, calking, coarse grinding, riveting, sledging, scaling, light grinding, stone dressing, spot welding, woodworking, metal-working, babbitting, casting, dipping in hot metal baths, handling of acids and caustics, electric arc welding, oxyacetylene and oxyhydrogen welding and cutting.

§ 50-204.270 First-aid for chemical
burns.

Where workers' eyes may be exposed to injurious chemical materials such as acids, caustics, etc., suitable facilities for quick drenching or flushing of the eyes shall be provided within the workroom, for immediate emergency use.

§ 30-204-275 Toxic gases, vapors, fumes, dusts, and mists.

No employee shall be exposed to any of the gases, vapors, mists, dusts, or fumes on the list in section 50-304.376 which exceed the limits there stated when applied to him on an average basis for an eight hour workday, unless he is protected therefrom by respiration equipment approved for the purpose by the United States Bureau of Mines of the United States Department of the Interior and operated in accordance with the recommendations of its manufacturer. Exposures without such equipment which exceed such limits temporarily, without exceeding them on a daily average basis, or which involve less than one such toxic substance, regardless of the degree of its toxicity, are also hazardous unless they are undertaken in strict conformity with prior written approval of a qualified industrial hygienist who has studied the particular circumstances of exposure and the toxic substances and concentrations involved.

§ 30-204.276 Threshold link values

[illegible]

Where 10 or more women are employed at any one time, at least one retiring room shall be provided.

(a) Where less than 10 women are employed and a retiring room is not furnished, some equivalent space shall be provided which can be properly screened for privacy and made suitable for the use of women employees.

(b) At least one couch or bed shall be provided in every place where women are employed. The number of such beds or couches required shall be as follows:

- | | Beds |
|-----------------|------|
| 1 to 100..... | 1 |
| 100 to 250..... | 2 |
- 1 additional bed for each additional
250 women-employees. A minimum of
60 square feet per bed shall be provided.

30-204,251 Location.

In all places of employment where employees lunch on the premises, an adequate space suitable for that purpose shall be provided for the maximum number of employees who may use such space at one time. Such space shall be separate from any location where there is exposure to toxic materials.

A covered receptacle shall be provided and shall be used by employees for the disposal of all waste food.

§ 50-204.253 Presence of toxic materials.

No employee shall be permitted to store or eat any part of his lunch or

other food at any time where there are present any toxic material or other substance that may be injurious to health.

30-201238 Potable water.

(a) An adequate supply of potable water, approved as to source and distribution by appropriate authority, shall be provided for drinking, washing and cooking purposes in all places of employment.

(b) In all instances where water is cooled by ice made from non-potable

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perature of 65° F. should be maintained in all other workrooms unless prohibited by process requirements.

§ 50-204.229 Local exhaust ventilation.

(a) Every local exhaust ventilation system shall produce and maintain a movement of air toward the opening, sufficient to prevent escape of contaminant to the workroom during working hours, beyond the limits shown in section 50-204.276.

(b) Air flow through branch and main ducts shall be sufficient to transport the contaminant through the system without settling.

(c) Piping shall be located so as to be accessible for inspection and maintenance.

(d) Air flow equipment including hoods, pipes, fans, motors, and collectors shall be effectively grounded.

(e) Two or more operations involving more than one substance shall not be permitted to be connected to the same exhaust system when a combination of the substances removed may constitute a fire hazard, an explosion hazard, or otherwise dangerous mixture.

(f) Those processes or operations using or generating flammable dusts, gases, fumes, vapors, mists, fibers or other impurities shall be completely protected from all sources of ignition.

(g) The capacity of an exhaust system shall be calculated on the basis of all hoods, booths, and enclosures connected to the system being open, except where the system is so interlocked that only a portion of it can be operated at a given time, in which case the capacity should be calculated on the basis that all the hoods in the group requiring the greatest volume rate of exhaust are open.

(h) Suitable air inlets shall be provided for replacement of exhausted air.

(i) Exhaust systems handling dusts and discharging to the outer air shall be provided with suitable air-cleaning devices to remove air contaminants prior to the discharge to the outer air, except under unusual circumstances.

(j) The discharge from any exhaust system shall be such that no air contamination therefrom will enter any window, door, or other opening of any work space in quantities sufficient to create a health hazard to such space or create a nuisance to surrounding areas.

(k) Collected materials shall be removed at intervals frequent enough to insure that the exhaust system will meet the requirements of section 50-204.228 (a), at all times.

Noise

§ 50-204.293 Noise.

Noise shall be reasonably reduced or eliminated as a means of preventing fatigue or accidents.

PERSONAL PROTECTIVE EQUIPMENT

§ 50-204.298 Personal protective equipment.

Personal protective equipment or protective shields or barriers shall be provided and maintained in usable condition whenever substances, radiation, or mechanical irritants are encountered in a manner capable of causing injury or impairment in function of any part of the body through skin or mucous membrane absorption.

BITUMINOUS COAL AND LIGNITE MINES

§ 50-204.300 Federal Mine Safety Code.

The Federal Mine Safety Code for Bituminous Coal and Lignite Mines of the United States, Part I—Underground Mines, and Part II—Strip Mines, as published by the Bureau of Mines, United States Department of Interior is hereby adopted by reference as the safety and health standard required for observance in the bituminous coal and lignite mining to which section 1(a) of the Walsh-Healey Public Contracts Act has application.

Signed at Washington, D.C., this 12th day of December 1960.

JAMES F. MITCHELL,
Secretary of Labor.

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8:45 a.m.]