

Occu. Safety and Health Admin., Labor

§ 1910.4

§ 1910.2 Definitions.

As used in this part, unless the context clearly requires otherwise:

(a) *Act* means the Williams-Steiger Occupational Safety and Health Act of 1970 (84 Stat. 1590).

(b) *Assistant Secretary of Labor* means the Assistant Secretary of Labor for Occupational Safety and Health;

(c) *Employer* means a person engaged in a business affecting commerce who has employees, but does not include the United States or any State or political subdivision of a State;

(d) *Employee* means an employee of an employer who is employed in a business of his employer which affects commerce;

(e) *Commerce* means trade, traffic, commerce, transportation, or communication among the several States, or between a State and any place outside thereof, or within the District of Columbia, or a possession of the United States (other than the Trust Territory of the Pacific Islands), or between points in the same State but through a point outside thereof;

(f) *Standard* means 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;

(g) *National consensus standard* means any standard or modification thereof which (1) has been adopted and promulgated by a nationally recognized standards-producing organization under procedures whereby it can be determined by the Secretary of Labor or by the Assistant Secretary of Labor that persons interested and affected by the scope or provisions of the standard have reached substantial agreement on its adoption, (2) was formulated in a manner which afforded an opportunity for diverse views to be considered, and (3) has been designated as such a standard by the Secretary or the Assistant Secretary, after consultation with other appropriate Federal agencies; and

(h) *Established Federal standard* means any operative standard established by any agency of the United States and in effect on April 28, 1971, or contained in any Act of Congress in force on the date of enactment of the Williams-

Steiger Occupational Safety and Health Act.

§ 1910.3 Petitions for the issuance, amendment, or repeal of a standard.

(a) Any interested person may petition in writing the Assistant Secretary of Labor to promulgate, modify, or revoke a standard. The petition should set forth the terms or the substance of the rule desired, the effects thereof if promulgated, and the reasons therefor.

(b)(1) The relevant legislative history of the Act indicates congressional recognition of the American National Standards Institute and the National Fire Protection Association as the major sources of national consensus standards. National consensus standards adopted on May 29, 1971, pursuant to section 6(a) of the Act are from those two sources. However, any organization which deems itself a producer of national consensus standards, within the meaning of section 3(9) of the Act, is invited to submit in writing to the Assistant Secretary of Labor at any time prior to February 1, 1973, all relevant information which may enable the Assistant Secretary to determine whether any of its standards satisfy the requirements of the definition of "national consensus standard" in section 3(9) of the Act.

(2) Within a reasonable time after the receipt of a submission pursuant to paragraph (b)(1) of this section, the Assistant Secretary of Labor shall publish or cause to be published in the FEDERAL REGISTER a notice of such submission, and shall afford interested persons a reasonable opportunity to present written data, views, or arguments with regard to the question whether any standards of the organization making the submission are national consensus standards.

§ 1910.4 Amendments to this part.

(a) The Assistant Secretary of Labor shall have all of the authority of the Secretary of Labor under sections 3(9) and 6(a) of the Act.

(b) The Assistant Secretary of Labor may at any time before April 28, 1973, on his own motion or upon the written

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petition of any person, by rule promulgate as a standard any national consensus standard and any established Federal standard, pursuant to and in accordance with section 6(a) of the Act, and, in addition, may modify or revoke any standard in this part 1910. In the event of conflict among any such standards, the Assistant Secretary of Labor shall take the action necessary to eliminate the conflict, including the revocation or modification of a standard in this part, so as to assure the greatest protection of the safety or health of the affected employees.

§ 1910.5 Applicability of standards.

(a) Except as provided in paragraph (b) of this section, the standards contained in this Part shall apply with respect to employments performed in a workplace in a State, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, Wake Island, Outer Continental Shelf lands defined in the Outer Continental Shelf Lands Act, and Johnston Island.

(b) None of the standards in this part shall apply to working conditions of employees with respect to which Federal agencies other than the Department of Labor, or State agencies acting under section 274 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2021), exercise statutory authority to prescribe or enforce standards or regulations affecting occupational safety or health.

(c)(1) If a particular standard is specifically applicable to a condition, practice, means, method, operation, or process, it shall prevail over any different general standard which might otherwise be applicable to the same condition, practice, means, method, operation, or process. For example, §1915.23(c)(3) of this title prescribes personal protective equipment for certain ship repairmen working in specified areas. Such a standard shall apply, and shall not be deemed modified nor superseded by any different general standard whose provisions might otherwise be applicable, to the ship repairmen working in the areas specified in §1915.23(c)(3).

(2) On the other hand, any standard shall apply according to its terms to any employment and place of employment in any industry, even though particular standards are also prescribed for the industry, as in subpart B or subpart R of this part, to the extent that none of such particular standards applies. To illustrate, the general standard regarding noise exposure in §1910.95 applies to employments and places of employment in pulp, paper, and paperboard mills covered by §1910.261.

(d) In the event a standard protects on its face a class of persons larger than employees, the standard shall be applicable under this part only to employees and their employment and places of employment.

(e) [Reserved]

(f) An employer who is in compliance with any standard in this part shall be deemed to be in compliance with the requirement of section 5(a)(1) of the Act, but only to the extent of the condition, practice, means, method, operation, or process covered by the standard.

[39 FR 23502, June 27, 1974, as amended at 58 FR 35308, June 30, 1993; 85 FR 8732, Feb. 18, 2020]

§ 1910.6 Incorporation by reference.

(a)(1) The standards of agencies of the U.S. Government, and organizations which are not agencies of the U.S. Government which are incorporated by reference in this part, have the same force and effect as other standards in this part. Only the mandatory provisions (i.e., provisions containing the word “shall” or other mandatory language) of standards incorporated by reference are adopted as standards under the Occupational Safety and Health Act.

(2) Any changes in the standards incorporated by reference in this part and an official historic file of such changes are available for inspection in the Docket Office at the national office of the Occupational Safety and Health Administration, U.S. Department of Labor, Washington, DC 20210; telephone: 202-693-2350 (TTY number: 877-889-5627).

(3) The standards listed in this section are incorporated by reference into