

FAA's Determination

We have considered the commenter's request and find it appropriate to extend the comment period to give all interested persons additional time to examine the proposed requirements of the original NPRM and submit comments. We have determined that extending the comment period by 60 days will not compromise the safety of these airplanes.

Extension of Comment Period

The comment period for Docket No. FAA-2005-20836, Directorate Identifier 2005-NM-028-AD, has been revised. The comment period now closes on August 3, 2005.

No other part of the regulatory information has been changed; therefore, the original NPRM is not republished in the **Federal Register**.

Issued in Renton, Washington, on May 27, 2005.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

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DEPARTMENT OF LABOR**Occupational Safety and Health Administration****29 CFR Part 1926**

[Docket No. H023]

RIN 1218-AC18

Notice of a Regulatory Flexibility Act Review of Lead in Construction

AGENCY: Occupational Safety and Health Administration, Labor.

ACTION: Notice of a section 610 review; request for comments.

SUMMARY: The Occupational Safety and Health Administration (OSHA) is conducting a review of the lead in construction standard under section 610 of the Regulatory Flexibility Act and section 5 of Executive Order 12866 on Regulatory Planning and Review. In 1993, in response to a statutory mandate to adopt a standard to protect construction workers from lead exposures, OSHA promulgated a standard that requires testing of construction sites for lead exposures, provisions to protect workers from exposure where lead is present, and medical monitoring of exposed workers. The purpose of this review is to determine whether there are ways to modify this standard to make

implementation more practical, to reduce regulatory burden on small business, and to improve its effectiveness, while still protecting worker health. OSHA solicits comments from the public on these and other relevant issues.

DATES: Written comments to OSHA must be sent or postmarked by September 6, 2005.

ADDRESSES: You may submit three copies of your written comments to the OSHA Docket Office, Docket No. H023, Technical Data Center, Room N-2625, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210; telephone (202) 693-2350. If your written comments are 10 pages or fewer, you may fax them to the OSHA Docket Office at (202) 693-1648. You do not have to send OSHA a hard copy of your faxed comments. Supplemental information such as studies and journal articles cannot be attached. Instead, three copies of each study, article, or other supplemental document must be sent to the OSHA Docket Office at the address above. These materials must clearly identify the associated comments to which they will be attached in the docket by the following information: Name of person submitting comments; date of comment submission; subject of comments; and docket number to which comments belong.

You may submit comments electronically at either of the following:

- Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.
- OSHA Web Site: <http://ecomments.osha.gov>. Follow the instructions for submitting comments on OSHA's Web page.

Please note that you may not attach materials such as studies or journal articles to your electronic comments. If you wish to include such materials, you must submit three copies of the material to the OSHA Docket Office at the above address. When submitting such material to the OSHA Docket Office, you must clearly identify your electronic comments by name, date, subject, and docket number so that the Docket Office can attach the materials to your electronic comments.

Note that security-related problems may result in significant delays in receiving comments and other materials by regular mail. Telephone the OSHA Docket Office at (202) 693-2350 for information regarding security procedures concerning delivery of materials by express delivery, hand delivery, and messenger service.

All comments and submissions will be available for inspection and copying in the OSHA Docket Office at the address above. Most comments and submissions will be posted on OSHA's Web page (<http://www.osha.gov>). Contact the OSHA Docket Office at (202) 693-2350 for information about materials not available on the OSHA Web page and for assistance in using this Web page to locate docket submissions. Because comments sent to the docket or to OSHA's Web page are available for public inspection, the Agency cautions interested parties against including in these comments personal information, such as social security numbers and birth dates.

FOR FURTHER INFORMATION CONTACT:

Joanna Dizikes Friedrich, Directorate of Evaluation and Analysis, Occupational Safety and Health Administration, Room N-3641, 200 Constitution Avenue, NW., Washington, DC 20210, Telephone (202) 693-1939, Fax (202) 693-1641.

SUPPLEMENTARY INFORMATION:**Background**

In 1971, in accordance with section 6(a) of the Occupational Safety and Health Act (OSH Act), OSHA adopted standards incorporating a permissible exposure limit (PEL) of 200 $\mu\text{g}/\text{m}^3$ to regulate occupational exposure to lead in general industry, 29 CFR 1910.1000, and in the construction industry, 29 CFR 1926.55. In both standards, the PEL had to be achieved by engineering and work practice controls, where feasible. In 1978, after a section 6(b) rulemaking, OSHA promulgated a final lead standard for general industry which lowered its PEL to 50 $\mu\text{g}/\text{m}^3$, and included requirements for medical surveillance, monitoring, and other provisions, 29 CFR 1910.1025. The 1978 lead standard in paragraph (a) excluded the construction industry from its coverage. OSHA, in the preamble, explained that it had exempted the industry because of insufficient information in the record to resolve issues specific to conditions in the construction industry. Therefore, after 1978, there was a less stringent lead standard for employees in the construction industry than for employees in general industry.

OSHA, in the fall of 1990, announced it would develop a proposal for a comprehensive standard regulating occupational lead exposure in construction. To expedite that rulemaking, in October 1992, Congress passed sections 1031 and 1032 of Title X of the Housing and Community Development Act of 1992 ("the Act,"

Pub. L. 102-550). In those sections, Congress provided that:

(1) No later than 180 days after enactment (April 26, 1993), the Secretary of Labor must issue an interim final lead standard covering the construction industry.

(2) The standard must be as protective as the worker protection guidelines for identification and abatement of lead-based paint (LBP) in public and Indian housing issued by the Department of Housing and Urban Development (HUD) (Revised Chapter 8, "HUD Guidelines"; (55 FR 38973, August 1991).

(3) The interim final standard is to take effect upon "issuance," except that the standard may include a reasonable delay in the effective date.

(4) The standard will have the effect of an OSH Act standard and will apply until a final standard becomes effective under section 6 of the OSH Act.

(5) The Secretary of Labor in developing this standard must consult and coordinate with the Environmental Protection Agency (EPA) to achieve maximum enforcement of the Toxic Substances Control Act (TSCA) and the OSH Act while minimizing duplication.

Congress indicated that OSHA was to include medical surveillance, a preference for engineering controls, housekeeping, air monitoring, recordkeeping, and hazard communication provisions similar to those in the Guidelines and general industry lead standard, except insofar as it was necessary to adapt requirements of the interim final to conditions in the construction industry. OSHA promulgated, as an interim final rule, § 1926.62, the lead in construction standard on May 4, 1993 (58 FR 26590), which included these and other requirements. The final rule became effective June 3, 1993.

Regulatory Review

In 2002, the Office of Management and Budget (OMB) solicited suggestions from the public for regulations that should be reviewed to determine if the regulations were still needed or could be revised to mitigate the burden imposed. The National Association of Home Builders recommended that OSHA review the lead in construction standard to determine whether it has become unnecessary, to seek stakeholder input, and to assess the economic impact on small entities. In response, OSHA is reviewing the lead in construction standard under section 610 of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) and section 5 of Executive Order 12866 (59 FR 51739, October 4, 1993).

The purpose of a review under section 610 of the Regulatory Flexibility Act: (S)hall be to determine whether such rule should be continued without change, or should be rescinded, or amended consistent with the stated objectives of applicable statutes to minimize any significant impact of the rule on a substantial number of small entities.

The Agency shall consider the following factors:

- (1) The continued need for the rule;
- (2) The nature of complaints or comments received concerning the rule from the public;
- (3) The complexity of the rule;
- (4) The extent to which the rule overlaps, duplicates or conflicts with other Federal rules; and, to the extent feasible, with State and local governmental rules; and
- (5) The length of time since the rule has been evaluated or the degree to which technology, economic conditions, or other factors have changed in the areas affected by the rule.

The review requirements of section 5 of Executive Order 12866 require agencies:

To reduce the regulatory burden on the American people, their families, their communities, their State, local and tribal governments, and their industries; to determine whether regulations promulgated by the [Agency] have become unjustified or unnecessary as a result of changed circumstances; to confirm that regulations are both compatible with each other and not duplicative or inappropriately burdensome in the aggregate; to ensure that all regulations are consistent with the President's priorities and the principles set forth in this Executive Order, within applicable law; and to otherwise improve the effectiveness of existing regulations.

An important step in the review process involves the gathering and analysis of information from affected persons about their experience with the rule and any material changes in circumstances since issuance of the rule. This notice requests written comments on the continuing need for the lead in construction standard, its adequacy or inadequacy, its effectiveness in protecting construction workers, its small business impacts, and all other issues raised by section 610 of the Regulatory Flexibility Act and section 5 of the Executive Order. It would be particularly helpful for commenters to address how the applicability or requirements could be changed or tailored to reduce the burden on employers whose employees rarely, if ever, are exposed to lead while

continuing to protect workers who are exposed during construction projects.

Lead Use in Construction

In 2001, the construction industry had 691,000 firms employing about 6.5 million workers, about 5 million of whom were construction workers.¹ In addition, the construction industry includes about 2 million self-employed independent contractors.² At the end of 2002, there were 697,514 construction firms employing 6,953,001 workers.³ Assuming that the ratio of construction workers to the total number of employees in the construction industry is the same as in 2001, there were approximately 5.4 million construction worker employees in 2002. In addition, there were approximately 2,071,317 self-employed construction workers in 2002.⁴ Furthermore, according to the Bureau of Labor Statistics (BLS), there were 6.965 million employees and 5.3 million production workers in construction in 2004.⁵

For the purpose of industrial classification, the construction industry is divided into construction of buildings, heavy and civil engineering construction, and specialty trade contractors. For the purpose of considering the lead in construction standard; however, it is more useful to focus on activities where lead exposures are most likely to occur: paint removal, building and bridge renovation, plumbing and water system repair and replacement. The use of lead-based paint (LBP) in residences and other buildings where consumers could be exposed was banned in 1978; the use of lead solder and piping in public water systems and buildings was banned in 1988.

Health Effects

As detailed in Appendix A to § 1926.62, lead is a potent systemic poison. A short-term acute dose of lead can lead to acute encephalopathy, seizures, coma, and death. Chronic overexposure to lead may result in severe damage to the blood-forming, nervous, urinary and reproductive systems. Chronic overexposure to lead also impairs the reproductive systems of both men and women. Children born of parents, either one of whom were exposed to excess lead levels, are more likely to have birth defects, mental

¹ United States Census Bureau, Economic Survey 2001.

² *Ibid.*

³ United States Census Bureau, Economic Census 2002.

⁴ *Ibid.*

⁵ United States Department of Labor, Bureau of Labor Statistics, Employment Statistics 2004.

retardation, behavioral disorders, or die during the first year of childhood.⁶

Exposures to lead in construction work have resulted in high blood lead levels (BLLs) in employees. According to the Centers for Disease Control and Prevention, clinical symptoms of lead poisoning usually occur when BLLs exceed 40 µg/dL, though lower levels may have adverse effects. In 1988, OSHA found that five of nine workers employed to demolish a bridge had BLLs from 58 µg/dL to 160 µg/dL.⁷ Four workers at a 1992 bridge demolition in Georgia where exposures were measured at 10 times the permissible limit had BLLs that ranged from 59 µg/dL to 93 µg/dL.⁸ In 1994, eight workers who had been sandblasting the interior of 100-year-old Texas building were found to have BLLs that ranged from 15 µg/dL to 245 µg/dL (the worker with the 15 µg/dL had been at the site for only a week).⁹ A 1994 physicians monitoring database that tracked 373 bridge workers found that nine percent of the workers had BLLs above 50 µg/dL.¹⁰ An EPA study in the late 1990s on residential renovation and remodeling workers found less evidence of elevated BLLs among these workers, which may be the result of the subjects' relatively short-term and infrequent exposure to high levels of lead dust.¹¹

Prevalence of Lead

Although lead based paint (LBP) was not banned at the national level until 1978, its use was not widespread on residential interiors after 1940. Use of LBP was more common on exteriors. Overall, between 21 percent to 25 percent of U.S. housing stock of about 120 million units has some LBP, but there is considerable regional variation primarily related to age of the housing stock. A HUD study of pre-1999 housing reported that in the Northeast and Midwest 36 percent of that housing has LBP hazards compared with about 16 percent of the housing in South and West. The study indicated that there is no difference between large urban and small urban and rural areas, but low-

income housing is more likely to have LBP hazards (35 percent) than middle to upper income housing (19 percent).¹²

The prevalence of LBP in the housing stock is relevant because construction workers engaged in renovation and remodeling work may be exposed to lead. This is particularly true for painters, the specialty trade most likely to be disturbing significant amounts of LBP. A painting contractor's employees could work on a substantial number of separate projects in a year. In some areas, most of the projects may not involve potential LBP exposures, but in other areas many projects could expose workers to lead.

In some industrial construction, the likelihood of lead exposures is greater. The U.S. has about 200,000 structural steel bridges; bridges built prior to the 1970s generally had lead-based paint coatings. When these bridges are cleaned and repainted the LBP is removed, which is usually done by abrasive blasting that produces high concentrations of lead. Similarly there are thousands of water and chemical storage tanks that were painted with LBP and require LBP removal before repainting. Exposed steel structures, such as sports stadiums, and pipelines also may require LBP removal. These projects share the characteristic of involving potential exposure to high levels of lead over months. Repair and renovation of older municipal water supply systems may result in lead exposure because lead piping was often used.

Other Regulations

Other factors OSHA must consider in this lookback are the requirements imposed by other Federal agencies on lead abatement and lead pollution. Both the EPA¹³ and HUD¹⁴ have programs that address lead abatement to limit the exposure of residents, particularly children, who are susceptible to illness from lead exposure. EPA¹⁵ and the states also bar the release of lead to water, which affects construction projects over or next to waterways.

Request for Comments

OSHA is seeking comments and information on the following questions and all other issues raised by section 610 of the Regulatory Flexibility Act and section 5 of the Executive Order. Specific data on the issues, questions,

and relevant projects are particularly helpful. OSHA understands that in many cases, commenters may be able to provide only anecdotal evidence and welcomes that information as well. OSHA also requests comments on current lead exposures of construction workers, current health data, and the effectiveness of current controls in protecting workers.

The following questions are arranged by topic. Your answers should be keyed to the topics and, where possible, the specific question.

Cost Issues

1. What does a lead testing and protection program cost construction employers? (This includes, for example, the costs for monitoring, medical surveillance, respirators, and the other costs required by the Standard.) Which elements impose the highest/lowest costs? Indicate the type of construction project.

2. How much does compliance with the OSHA standard affect the cost of a project for the consumer? Indicate the type of construction project.

3. Does lead abatement affect the value of a housing unit? If so, by how much or what percentage?

Compliance Issues

4. How do employers determine whether LBP is present at a site? How often is the site tested for lead prior to the start of a project? On what basis is the decision to test made? Please identify the type of site.

5. How much time does it take for initial site testing results to be known?

6. How often is LBP identified? At what percentage of sites is LBP identified?

7. When LBP is found, how widespread is it? Which parts of housing units are most likely to have LBP and deteriorated LBP?

8. How often are the action levels of the OSHA standard exceeded?

9. Do you measure worker blood lead levels? If so, please submit data.

10. Are there confusing, conflicting, or duplicative requirements in the OSHA, EPA, and HUD programs that could be clarified?

Renovation/Remodeling Industry Structure Issues

11. How much time do your renovation/remodeling and painting projects typically take?

12. How many separate projects (separate residential/commercial units) do you complete in a year?

13. Where there is deteriorated paint, how much time does it normally take you to prepare the surface for

⁶ 29 CFR 1926.62, Appendix A, Section II.

⁷ CDC, "Lead Poisoning in Bridge Demolition Workers—Massachusetts," MMWR, October 13, 1989/38(40): 687–688, 693–694.

⁸ CDC, "Lead Poisoning in Bridge Demolition Workers—Georgia, 1992," MMWR, May 28, 1993/42(20): 388–390.

⁹ CDC, "Epidemiological Notes and Reports Lead Poisoning Among Sandblasting Workers—Galveston, Texas, March 1994," MMWR, January 27, 1995/44(03): 44–45.

¹⁰ CDC, "Current Trends Controlling Lead Toxicity in Bridge Workers—Connecticut, 1991–1994," MMWR, February 3, 1995/44(04): 76–79.

¹¹ "Lead Exposure Associated with Renovation and Remodeling Activities, Final Summary Report," EPA 747-S-00-001, January 2000.

¹² Jacobs, David E., *et al.*, "The Prevalence of Lead-Based Paint Hazards in U.S. Housing," Environmental Health Perspectives, 110: A599–A606 (2002).

¹³ 40 CFR part 745.

¹⁴ 24 CFR part 35.

¹⁵ 40 CFR 141.43; 40 CFR part 141, subpart I.

repainting? What percentage of the total project is this?

14. What is the annual rate of your employee turnover?

15. What is the average age of the units on which you have worked?

16. Are there sources of lead exposure in construction other than LBP and older plumbing, piping, and solder?

17. If your firm specializes in lead abatement, what are its characteristics (e.g., number of employees, size, total revenue, percent of business that performs lead abatement, etc.)?

18. Do you know of data or studies on the extent to which older structures have already been renovated (e.g., window change-out)? If so, please submit the information.

Industrial Construction Issues

19. Where is LBP being used and on what structures?

20. What is the average length of time for your project? What is the length of your shortest project? What is the length of your longest project?

21. What is the annual rate of employee turnover? How many

employees do you have, and what are your annual revenues?

22. Are there elements of the standard that pose particular compliance problems?

23. Have there been technological changes or improvements that facilitate lead removal and compliance? If so, what impact have they had on the cost of lead removal and employee exposure levels?

24. Are there areas where additional employee protections are needed?

Health Issues

25. Can you provide data or studies subsequent to the 1993 Lead in Construction Standard that provide both air lead exposure and blood lead levels for construction workers?

26. Can you provide data or studies subsequent to the 1993 Lead in Construction Standard that address the short-term and long-term health effects of intermittent and/or continuing exposures to lead?

27. Are current monitoring, respirator, engineering controls, and medical surveillance requirements protecting workers from lead exposures?

Compliance Assistance

28. Is there additional compliance assistance or outreach that OSHA could provide to help employers and workers understand and comply with the Standard?

Comments must be mailed or submitted by September 6, 2005. Comments should be submitted to the addresses and in the manner specified at the beginning of this notice.

Authority: This document was prepared under the direction of Jonathan L. Snare, Acting Assistant Secretary of Labor for Occupational Safety and Health, 200 Constitution Avenue, NW., Washington, DC 20210. It is issued under section 610 of the Regulatory Flexibility Act (5 U.S.C. 610) and section 5 of Executive Order 12866 (59 FR 51724, October 4 1993).

Signed in Washington, DC, this 27th day of May, 2005.

Jonathan L. Snare,

Acting Assistant Secretary, Occupational Safety and Health Administration.

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