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Thomas G. Grumbles

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Re: Lead Standard Revisions

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DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Part 1910

[Docket Nos. H-004E, F, G, H, I, and J]

Occupational Exposure to Lead

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.
ACTION: Final Rule; corrections.

SUMMARY: On November 14, 1978, the Occupational Safety and Health Administration (OSHA) published a final rule in the Federal Register on occupational exposure to lead (29 CFR 1910.1025, 43 FR 52952). This document makes administrative corrections and amendments to 29 CFR 1910.1025, based on the lifting of a judicial stay which had been in effect on the effective date of the final standard.

EFFECTIVE DATE: May 31, 1991.

FOR FURTHER INFORMATION CONTACT: Mr. James Foster, Occupational Safety and Health Administration, Office of Information and Consumer Affairs, U.S. Department of Labor, room N-3647, 200 Constitution Avenue, NW., Washington, DC 20210. Telephone (202) 523-8151.

SUPPLEMENTARY INFORMATION: OSHA promulgated the lead standard on November 14, 1978 (43 FR 52952). Immediately after promulgation, the lead standard was challenged by both industry and labor in several U.S. Courts of Appeals. All cases were transferred and consolidated in the U.S. Court of Appeals for the District of Columbia Circuit. On March 1, 1979, the U.S. Court of Appeals for the DC Circuit stayed a number of the standard's provisions, including the requirement of paragraph (e)(1) that employers implement engineering and work practice controls to achieve the permissible exposure limit (PEL). On August 15, 1980, the Court issued its decision upholding the standard in most respects. With that decision, the Court lifted the stay with regard to all provisions of the standard except paragraph (e)(1) as it applied to certain lead industries. Thus, as of that date every other provision of the lead standard was in effect in all the lead industries. However, on December 8, 1980, pending the filing and disposition of industry petitions for certiorari, the U.S. Supreme Court issued a stay of the same provisions that had been stayed by the DC Circuit in March 1979. With its denial of the petition of certiorari on June 29, 1981, the Supreme Court dissolved its stay, leaving in effect only the partial stay by the DC Circuit of

paragraph (e)(1). Thus, as of June 29, 1981 and since then, every other provision of the lead standard has been in effect in all the lead industries. *United Steelworkers of America v. Marshall*, 647 F.2d 1189 (1980), cert. denied, 453 U.S. 913 (1981).

The Appendices to the lead standard in 29 CFR 1910.1025 contain specific references to certain requirements of the lead standard that are said to be judicially stayed. The Court's 1981 action in lifting the stay has made those references obsolete and incorrect. This document deletes those references to the judicial stay where they appear in the Appendices of the lead standard.

Authority and Signature

This document was prepared under the direction of Gerard F. Scannell, Assistant Secretary of Labor for Occupational Safety and Health, 200 Constitution Avenue, NW., Washington DC 20210.

This action is taken pursuant to section 6(b) and 8(c) of the Occupational Safety and Health Act of 1970 (84 Stat. 1593, 1597, 1599; 29 U.S.C. 653, 655, 657); Secretary of Labor's Order No. 1-90 (55 FR 9033) and 29 CFR part 1911, and 33 U.S.C. 941. Part 1910, title 29, Code of Federal Regulations, is hereby amended, for the reasons set forth in the preamble, by revising appendices A, B, and C of § 1910.1025.

List of Subjects in 29 CFR Part 1910

Lead, Occupational safety and health.
 Gerard F. Scannell,
 Assistant Secretary of Labor for Occupational Safety and Health.

PART 1910—[AMENDED]

1. The authority citation for subpart Z of part 1910 continues to read as follows:

Authority: Secs. 6, 8 Occupational Safety and Health Act, 29 U.S.C. 655, 657; Secretary of Labor's Orders 12-71 (38 FR 8754, 8-78 (41 FR 25059), or 9-83 (48 FR 35736) as applicable; and 29 CFR Part 1911.

Section 1910.1000 Tables Z-1, Z-2, Z-3 also issued under 5 U.S.C. 553.

Section 1910.1000 not issued under 29 CFR Part 1911, except for "Arsenic" and "Cotton Dust" listing in Table Z-1.

Section 1910.1001 also issued under Sec. 107 of Contract Work Hours and Safety Standards Act, 40 U.S.C. 333.

Section 1910.1002 not issued under 29 U.S.C. 655 or 29 CFR Part 1911; also issued under 5 U.S.C. 553.

Section 1910.1003 through 1910.1018 also issued under 29 U.S.C. 653.

Section 1910.1025 also issued under 29 U.S.C. 653 and 5 U.S.C. 553

Section 1910.1028 also issued under 29 U.S.C. 653.

Section 1910.1043 also issued under 5 U.S.C. 551 *et seq.*

Section 1910.1045 and 1910.1047 also issued under 29 U.S.C. 653.

Section 1910.1048 also issued under 29 U.S.C. 653.

Section 1910.1200, 1910.1499 and 1910.1500 also issued under 5 U.S.C. 553.

§ 1910.1025 Lead [Amended]

2. Part 1910 of title 29 of the Code of Federal Regulations is hereby amended in § 1910.1025 as follows:

A. Appendix A to § 1910.1025 is amended by removing the last sentence of that appendix.

B. Appendix B to § 1910.1025 is amended by removing the following:

(1) The second paragraph.

(2) Under Section III. Methods of Compliance—Paragraph (E), the entire text, except for the first two sentences.

(3) Under Section IV. Respiratory Protection—Paragraph (F), the words "but this requirement has been stayed as part of the pending litigation" in the last sentence of the second paragraph.

(4) Under Section VII. Hygiene Facilities and Practices—Paragraph (I), the second sentence, the words "and these facilities are made available, however," in the next (third) sentence, and the words "if available," in the fourth sentence.

(5) Under Section VIII. Medical Surveillance—Paragraph (J), the words "but this test has been temporarily stayed by the Court" in the second sentence of the fourth paragraph and the next (third) sentence of that paragraph. Also, the words "As a result," in the seventh sentence of the eighth paragraph.

(6) Under Section XI. Signs—Paragraph (M), the last sentence.

C. Appendix C to § 1910.1025 is amended by removing the following:

(1) Under Section I. Medical Surveillance and Monitoring Requirements for Lead Workers Exposed to Inorganic Lead, the last two sentences of the second paragraph and the last sentence of the eleventh paragraph.

(2) Under Section III. Medical Evaluation, the words "(This requirement is currently not in effect due to the pending litigation, but is recommended nonetheless)" in the last sentence (item 6) of the thirteenth paragraph.

(3) Under Section IV. Laboratory Evaluation, the words "which" and "is," due to the pending litigation, not required under the standard" in the second sentence.

[FR Doc. 91-12882 Filed 5-30-91; 8:45 am]
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