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Lead Industries Association, Inc.

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VIA F.E.M.
[Signature]

Environmental Health Department

September 30, 1980

TO: Official Members - LIA
LIA Environmental Health Committee

FROM: Jerome F. Cole

SUBJECT: Occupational Exposure to Lead; Limited Reopening of Rulemaking Record

As you may know, OSHA has scheduled hearings on November 5, 6 and 7, 1980 to "complete its reassessment of the feasibility issue" for all of the lead industries for which the new Standard was remanded by the Court of Appeals. OSHA's supplemental rulemaking notice, a copy of which is enclosed, applies to all lead industries except primary smelting, secondary smelting, printing, gray-iron foundries, and battery, can, paint, ink, electronics and wallpapering manufacturing. All comments and notices of intention to appear must be received by OSHA by October 27, 1980.

LIA plans to participate in the hearings and to present testimony. In order to make our presentation as effective as possible, it is imperative that the enclosed confidential questionnaire be returned as soon as possible (but in no case later than October 17). We realize that the shortness of time may require you to approximate answers, but please provide us with your best and most accurate estimates. The information that you provide us will be kept confidential and will not be disclosed (except in summary form, along with data from others) without your permission. To ensure confidentiality, the completed questionnaire should be returned directly to LIA's attorney, Standish F. Medina, Jr., Debevoise, Plimpton, Lyons & Gates, 299 Park Avenue, New York, New York 10017. Please call Standish Medina (212-752-6400) or me (212-532-2373) if you have any questions.

Although LIA plans to participate, we urge you and all other interested industry companies to appear at the hearings and to present evidence directly. The D.C. Court of Appeals has in effect stated (erroneously, we believe) that "best available evidence" in the OSHA Act simply means whatever evidence happens to be in the record, good or bad, and hence OSHA is unlikely to submit very much evidence at the hearing. Unless every company does its best to provide accurate and reliable engineering, cost and monitoring data (even if it is necessary to estimate), the agency will undoubtedly reissue the Standard as to all of the "remand industries" in the very near future. Consequently, it is very important for individual companies, including yours, to participate.

Sincerely,

[Signature of Jerome F. Cole]
Jerome F. Cole
Director, Environmental Health
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LIA 3293

Enclosures

N 3709

Federal Register

Wednesday
September 24, 1980

Highlights

Briefings on How To Use the Federal Register—
For details on the resumption of briefings in
Washington, D.C., see announcement in the Reader
Aids section at the end of this issue.

- 63476 Occupational Safety and Health** Labor/OSHA
reopens rulemaking record for lead standard;
comments by 10-27-80; hearings on 11-5, 11-6 and
11-7-80 (Part IV of this issue)
- 63462 Wage and Price Controls** CWPS extends second-
year price standards; effective 10-1-80; comments
by 10-20-80 (Part III of this issue)
- 63263 Excise Taxes** Treasury/IRS issues interim rule
and proposes rule for determining base prices for
tier 2 and tier 3 oil; effective with respect to oil
removed after 2-29-80; comments by 11-24-80 (2
documents)
- 63295 Truth in Lending** FRS proposes staff interpretation
regarding security interest disclosures in closed end
credit transactions; comments by 10-20-80
- 63410 Treasury Notes** Treasury/Sec'y announces the
interest rate on Series W-1982 will be 11% percent
- 63326 Football Helmets** CPSC denies petition requesting
issuance of standards

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DEPARTMENT OF LABOR

Occupational Safety and Health
Administration

29 CFR Part 1910

[Docket No. H-004E]

Occupational Exposure to Lead;
Limited Reopening of Rulemaking
Record; Notice of Comment Period
and Informal Public HearingAGENCY: Occupational Safety and
Health Administration (OSHA), Labor.ACTION: Notice of reopening of the lead
rulemaking record; notice of comment
period and informal public hearing.

SUMMARY: This notice reopens the rulemaking record for the lead standard (29 CFR 1910.1025) to receive specific information relating to the feasibility of meeting the permissible exposure limit (PEL) specified in the lead standard through engineering controls and work practices in certain industries. The notice is published pursuant to a Court Appeals remand of the feasibility question as to certain specified industries. This notice also schedules a period for receipt of written comments and an informal public hearing on the question of feasibility.

DATES: Written comments will be received until October 27, 1980. An informal public hearing will be held on November 5, 6, and 7, 1980. All notices of intention to appear at the public hearing and all written testimony and documentary evidence which will be introduced into the hearing record must be received by October 27, 1980.

ADDRESS: Comments should be sent to: Docket Officer, Docket H-004E, Room S6212, U.S. Department of Labor, Washington, D.C. 20210. Notices of intention to appear and written testimony should be sent to: Mr. Clarence Page, OSHA, Division of Consumer Affairs, Room N3635, U.S. Department of Labor, Washington, D.C. 20210. The public hearing will be held in the Auditorium, Frances Perkins Labor Department Building, 3rd Street and Constitution Avenue, NW., Washington, D.C. 20210.

FOR FURTHER INFORMATION CONTACT: Dr. Robert P. Beliles, Occupational Safety and Health Administration, Room N3718, U.S. Department of Labor, Washington, D.C. 20210, 202-523-7061.

SUPPLEMENTARY INFORMATION: On October 3, 1975, OSHA proposed a standard for occupational exposure to lead (40 FR 45934) to replace the permissible exposure limit which had been adopted from a national consensus

standard pursuant to § 6(a) of the Occupational Safety and Health Act (ACT). A lengthy hearing in Washington, D.C. and two regional hearings in St. Louis, Missouri, and San Francisco, California, were held in the Spring of 1977. In the fall of the same year, hearings were held for the receipt of additional information on certain specific issues, including medical removal protection. The hearing record was closed in January of 1978. On November 14, 1978, a final standard was published in the Federal Register ((43 FR 52952); supplemental attachments published November 21, 1978, (43 FR 54354)) which limited occupational exposure to airborne concentrations of lead to 50 µg/m³ (micrograms per cubic meter) based on an eight-hour time weighted average (TWA). Additional protective provisions included environmental monitoring, recordkeeping, employee education and training, medical surveillance, medical removal protection, hygiene facilities, and other requirements.

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. Simultaneously, various parties sought administrative reconsideration and stays of the regulation, one of which was granted. On March 1, 1979, the D.C. Circuit partially stayed the lead standard by delaying the requirement for installing engineering controls and instituting work practices. However, enforcement of the PEL and provisions for environmental monitoring, recordkeeping, employee education and training, medical surveillance, and medical removal protection was permitted to begin on March 1, 1980.

In a lengthy opinion issued on August 15, 1980, the United States Court of Appeals for the District of Columbia Circuit, per Chief Judge Wright, upheld the validity of OSHA's lead standard in most respects. However, the Court found that OSHA failed to present substantial evidence or adequate reasons to support the feasibility of the standard, with respect to certain industries, and remanded the standard to the Agency for reconsideration of the question of the technological and economic feasibility of the standard for those industries.

With respect to the following industries, the Court found OSHA's analysis of the feasibility of the standard to be adequate and upheld the validity of the entire standard: Primary smelting; secondary smelting; printing

can manufacturing; battery manufacturing; paint and coatings manufacturing; ink manufacturing; wallpaper manufacturing; electronics manufacturing; and gray-iron foundries.

The Court also found that:

"OSHA failed to present substantial evidence or adequate reasons to support the feasibility of the standard for the following industries: nonferrous foundries; pigment manufacture; shipbuilding; auto manufacture; solder manufacture; wire patenting; pottery; brick manufacture; agricultural pesticides manufacture; leather manufacture; pipe galvanizing; gasoline additives manufacture; linoleum-rubber-plastics manufacture; paint spraying; ammunition manufacture; smelting and refining of zinc, silver, gold, platinum, copper, and aluminum; machining; lead burning; glass manufacture; textile manufacture; book binding; steel alloy manufacture; ferrous metal manufacture; glass polishing and spinning; cutlery manufacture; diamond processing; plumbing; jewelry manufacture; pearl processing; casting; cable coating; electroplating; explosives manufacture; lamp manufacture; sheet metal manufacture; tin rolling; telecommunications; and independent collecting and processing of scrap lead (excluding collecting and processing that is part of a secondary smelting operation)." (*United Steelworkers of America v. Marshall*, No. 79-1048 [D.C. Cir. Aug. 15, 1980], slip opinion, pg. 245.)

The Court did not vacate any portion of the lead standard. Rather, it stayed the enforcement of 29 CFR 1910.1025(e)(1) (requiring compliance with the PEL through engineering controls and work practices) for those industries for which OSHA failed to present substantial evidence or adequate reasons to support the feasibility of the standard. The Court gave OSHA six months in which to complete its reassessment of the feasibility issue.

Accordingly, OSHA hereby reopens the lead record for the limited and express purpose of soliciting and receiving additional information pertaining to the technological and economic feasibility, including the time necessary for meeting the 50 µg/m³ PEL solely by engineering controls and work practices for those industries for which the Court ruled OSHA had not adequately determined feasibility or for any other industries not ruled upon in the Court's decision. OSHA also expects to put into the record some additional evidence concerning these issues. Evidence previously submitted on these issues will be considered along with any new evidence, and need not be resubmitted. Information is not requested concerning the ten industries for which the standard's feasibility has been upheld or pertaining to issues other than feasibility.

The following questions are considered relevant in determining the feasibility of the PEL for a given industry. Persons possessing or having access to information pertinent to any of the following questions are requested to submit it to OSHA:

1. In which industries, other than those identified above, do exposures to lead occur? In which standard industrial classification (SIC) codes are these industries located?

2. What are the size, age, economic life (plant and equipment), location and number of firms and plants in each of these industries?

3. How many employees are exposed to lead in each of the industries?

4. In what processes do lead exposures occur? What are the sources of exposure?

5. What job classifications or position descriptions are used to describe employees exposed to lead in these processes?

6. What are the chemical and physical characteristics of the lead to which these employees are exposed (e.g., name of compound, aerosol size, solubility)?

7. Does exposure result from the inhalation or ingestion of lead, or both?

8. What is the nature of exposure (air concentrations, duration and frequency)?

9. How many workers are exposed to less than $30 \mu\text{g}/\text{m}^3$ of lead as an eight hour TWA?

10. How many workers are exposed to greater than $30 \mu\text{g}/\text{m}^3$ but less than $50 \mu\text{g}/\text{m}^3$ TWA?

11. How many workers are exposed in excess of $50 \mu\text{g}/\text{m}^3$ TWA?

12. What are the blood lead levels for employees exposed in (9), (10), and (11)? Are there any other medical indicators which are useful in assessing environmental conditions?

13. Are there examples of operations or processes where control of exposure to lead to $50 \mu\text{g}/\text{m}^3$ has been achieved? Please describe.

14. If control has not been achieved in the industry, which of the following methods are available to achieve such control? Please provide a detailed discussion of the use of these controls and also the time necessary for implementation.

a. Engineering controls—ventilation/collection, isolation/containment, substitution of product or process, modification of process or equipment (e.g., booths, islands, cabs), other.

b. Work practices—housekeeping, administrative controls—employee rotation or scheduling of work operations, other.

15. Are there any unique conditions in the industry which would preclude the

use of engineering controls and work practices to reduce exposures?

16. In what operations should personal protective equipment (including respirators) be required?

17. What regulatory activities of State agencies or other Federal agencies affect worker exposure to lead in the industry?

18. Are there other OSHA standards that require the use of engineering controls which would also effect airborne exposure levels to lead?

19. Have there been technological improvements or changes in the industry for the purpose of improving productivity or product quality which have also resulted in reductions in lead exposures?

20. What are the availability, price, and serviceability of substitutes?

21. What were the total annual volume and dollar value of productions, shipments, and inventories for at least the last 5 years?

22. What were the total annual investments categorized as replacement, expansion, modernization, and environmental health and safety related expenditures for at least the last 5 years?

23. What were the retained earnings, after tax income, total assets, stockholders' equity, net worth, debt-equity ratios, and depreciation charges for at least the last 5 years?

24. What were the rates of return on assets, equity or net worth for the at least the last 5 years?

25. What is the degree of market concentration in the industry? (Please give special attention to the role of small businesses and approximate numbers of firms in the industry each year.)

26. What is the geographic dispersion of the industry and its customers?

27. What were the annual volume and dollar value or imports and exports for at least the last 5 years?

28. What were the total annual employment and labor turnover for the industry for at least the last 5 years?

Each employer who has employees exposed to lead is requested to provide specific information related to the above questions concerning his firm or plant. Additionally, the following information should also be provided:

1. Since 1971, what engineering controls and work practices have been implemented to control lead exposure? Provide copies of engineering feasibility studies, cost estimates, exposure records (especially those required to be kept by the new standard) blood lead determinations, cost estimates (capital and operating) and time necessary for implementation.

2. Were any benefits other than reduced lead exposure derived from the

implementation of engineering controls and work practices such as increased productivity, product improvement, or reductions in absenteeism?

Public Participation

OSHA is aware of the limited period of time this notice provides for the filing of information and notices of intention to appear. However, the Court of Appeals, in its remand, has given OSHA a timetable of six months to reassess the feasibility issue. OSHA believes that an expedited supplementary rulemaking, with comment period and public hearing, is the most fair and effective means to gather and evaluate the necessary information in so short a period. Accordingly, OSHA cannot grant any requests for extensions.

In addition to the request for written information, which should be submitted to the Docket Office, OSHA is providing an opportunity under section 6(b)(3) of the Act and 29 CFR Part 1911, to submit oral testimony concerning the hearing issues at an informal hearing scheduled to begin at 9:30 a.m., November 5, 1980, in the Auditorium, Frances Perkins Labor Department Building, 3rd Street and Constitution Avenue, NW., Washington, D.C. 20210.

Notice of Intention To Appear and Written Comments

Persons desiring to participate at the hearing must file a notice of intention to appear by October 27, 1980, with Mr. Clarence Page, OSHA, Division of Consumer Affairs, Room N3635, U.S. Department of Labor, 3rd Street and Constitution Avenue, NW., Washington, D.C. 20210. Telephone (202) 523-8024. Persons who do not intend to appear at the hearing may submit written comments on the specified issues, by October 27, 1980, to the Docket Office, Room S-6212, Docket H-004E, U.S. Department of Labor, Washington, D.C. 20210. Telephone (202) 523-7894.

The notices of intention to appear, which will be available for inspection and copying at the OSHA Docket Office during business hours, must contain the following information:

1. The name, address, and telephone number of each person to appear;
2. The capacity in which the person will appear;
3. The approximate amount of time required for the presentation;
4. The specific issues that will be addressed;
5. A detailed statement of the position that will be taken with respect to each issue addressed; and
6. Whether the party intends to submit documentary evidence, and if so, a

detailed summary of the evidence to be adduced in support of the position.

Filing of Testimony and Evidence Before Hearing

Any party requesting more than 15 minutes for presentation at the hearing or submitting documentary evidence, must provide, in quadruplicate, the complete text of its testimony, including all documentary evidence to be presented at the hearing, to the OSHA Division of Consumer Affairs, where they will be available for inspection and copying. This material must be received by October 27, 1980. Each submission will be reviewed in light of the amount of time requested in the notice of intention to appear and in light of the very limited time available for the public hearings. In instances where the information contained in the submission does not justify the amount of time requested, a more appropriate amount of time will be allocated and the participant will be notified of that fact.

Conduct of the Hearings

The hearings will commence at 9:30 a.m., November 5, 1980, with the resolution of any procedural matters relating to the proceeding. The hearing will be presided over by an Administrative Law Judge who will have all the powers necessary and appropriate to conduct a full and fair informal hearing as provided in 29 CFR Part 1911, including the powers:

1. To regulate the course of the proceedings;
2. To dispose of procedural requests, objections, and comparable matters;
3. To confine the presentation to the matters pertinent to the issues raised;
4. To regulate the conduct of those present at the hearing by appropriate means;
5. In the Judge's discretion, to question and permit questioning of any witness; and
6. In the Judge's discretion, to keep the record open for a reasonable stated time to receive written information and additional data, views, and arguments from any person who has participated in the oral proceeding.

Following the close of the hearing, the presiding Administrative Law Judge will certify the record of the hearing to the Assistant Secretary of Labor for Occupational Safety and Health.

The question of the feasibility of achieving the PEL through engineering controls and work practices for the industries indicated above will be reviewed in light of all testimony and written submissions received as part of this record, including information

previously submitted, and a decision will be forthcoming.

This notice was prepared under the direction of Eula Bingham, Assistant Secretary of Labor for Occupational Safety and Health, Frances Perkins Labor Department Building, 3rd Street and Constitution Avenue, NW., Washington, D.C. 20210.

(Secs. 8, 8, 84 Stat. 1583-1586, 1589, (29 U.S.C. 655, 657); Secretary of Labor's Order 8-76 (41 FR 25059); (29 CFR 1911))

Signed at Washington, D.C., this 22nd day of September, 1980.

Eula Bingham,

Assistant Secretary of Labor.

(PR Doc. 80-28738 Filed 9-23-80; 10:27 am.)

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Confidential Questionnaire

- A. Business. Please identify your company's business or businesses (e.g., zinc smelter, pigment manufacturer, etc.). _____
- _____
- B. Plants. Please give the address of each of your plants or factories and state the approximate size and age of each such plant or factory. _____
- _____
- _____
- C. Lead Levels. Please identify each operation in your plant or factory which involves air-lead exposures in excess of 30 micrograms of lead per cubic meter of air (30 ug/m³) and with respect to each such operation, (a) state the approximate number of employees working in the operation, (b) state the average or range of air-lead levels experienced at the station and the duration, (c) state whether, if the air-lead levels exceed 50 ug/m³, it is technologically possible to reduce air-lead levels to below 50 ug/m³ using engineering controls and, if so, the nature of those controls (e.g., added ventilation, baghouses, enclosed operations, etc.), (d) state the approximate cost and length of time that would have to be spent in order to reduce air-lead levels below 50 ug/m³, and (e) state whether the plant could remain in operation if required to comply with the exposure limit of 50 ug/m³ by engineering controls or work practices.

1. Operation # 1.

- a. Identity _____
- b. No. of employees in operation _____
- c. Air-lead levels and duration _____

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d. Technological feasibility of 50 ug/m3 _____

e. Cost and time _____

f. Viability of business if PEL enforced _____

2. Operation # 2.

a. Identity _____

b. No. of employees in operation _____

c. Air-lead levels and duration _____

d. Technological feasibility of 50 ug/m3 _____

e. Cost and time _____

f. Viability of business if PEL enforced _____

3. Operation # 3.

a. Identity _____

b. No. of employees in operation _____

c. Air-lead levels and duration _____

d. Technological feasibility of 50 ug/m3 _____

e. Cost and time _____

f. Viability of business if PEL enforced _____

4. Operation # 4.

a. Identity _____

b. No. of employees in operation _____

c. Air-lead levels and duration _____

d. Technological feasibility of 50 ug/m3 _____

e. Cost and time _____

f. Viability of business if PEL enforced _____

5. Operation # 5.

a. Identity _____

b. No. of employees in operation _____

c. Air-lead levels and duration _____

d. Technological feasibility of 50 ug/m3 _____

e. Cost and time _____

f. Viability of business if PEL enforced _____

6. Operation # 6.

a. Identity _____

b. No. of employees in operation _____

c. Air-lead levels and duration _____

d. Technological feasibility of 50 ug/m3 _____

e. Cost and time _____

f. Viability of business if PEL enforced _____

7. Operation # 7.

a. Identity _____

b. No. of employees in operation _____

c. Air-lead levels and duration _____

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- d. Technological feasibility of 50 ug/m3 _____

- e. Cost and time _____
- f. Viability of business if PEL enforced _____

C. Unique Conditions. Are there any unique conditions in your industry or plant that would preclude the use of engineering controls and work practices to reduce exposures below the PEL of 50 ug/m3? If so, please identify them briefly.

E. Other OSHA Regs. Are there other OSHA standards which your company is required to meet and which call for the use of engineering controls that also affect airborne exposure to lead? If so, please identify the other standards and the operations affected by those standards.

F. Technology and Productivity. Have there been technological improvements or changes in your industry for the purpose of improving productivity or product quality which have also resulted in reductions in lead exposure? If so, please identify the improvements and the operations affected.

G. If you have any information which is responsive to questions 20 through 28 of OSHA's 9/24/80 Federal Register notice (see enclosure) and which can be provided to LIA by October 17, please furnish that information separately.

LIA 03302