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


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.

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) 693–2350. 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 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.

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 above address. 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.

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FOR FURTHER INFORMATION CONTACT:

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 μg/m³ 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 μg/m³, 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,’’
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. In addition, the construction industry includes about 2 million self-employed independent contractors. Assum ing 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. 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.

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

2 Ibid.
3 United States Census Bureau, Economic Census 2002.
4 Ibid.
income housing is more likely to have LBP hazards (35 percent) than middle to upper income housing (19 percent).

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 EPA and HUD have programs that address lead abatement to limit the exposure of residents, particularly children, who are susceptible to illness from lead exposure. EPA 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 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 and 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 LBP exceeded?

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

10. Are there conflicting, 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

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6 29 CFR 1926.62, Appendix A, Section II.
13 40 CFR part 745.
14 40 CFR part 141, subpart I.
15 40 CFR part 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?
28. Is there additional compliance assistance or outreach that OSHA could provide to help employers and workers understand and comply with the Standard?

**Compliance Assistance**

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.

[FR Doc. 05–11149 Filed 6–3–05; 8:45 am]

BILLING CODE 4510–26–P