

South Carolina Department of Labor, Licensing and Regulation
Division of Labor
Office of Occupational Safety and Health
Columbia, South Carolina 29211

OSH Program Directive Number 93-1910.1025-2 (REVISED)

Subject: Compliance Dates for Lead Standard with Clarifications.

Standard: Subarticle 6, Section 1910.1025 (e) (1), Table 1, Rules and Regulations, Commissioner of Labor, State of South Carolina.

Cross Reference to Federal Standards: 29 CFR 1910.1025 (e) (1), Table 1.

Background:

- a. The effective date of the engineering controls provision of the lead standard is considered to be June 29, 1981, since this is the date on which the Supreme Court denied certiorari on the appeal of the decision of the U.S. Court of Appeals for the District of Columbia Circuit.
- b. On August 15, 1980, the United States Court of Appeals for the District of Columbia Circuit upheld the validity of the entire lead standard for the following industry sectors: primary and secondary lead smelting, can manufacturer, battery manufacturing, printing, ink manufacturing, wallpaper manufacturing, electronic manufacturing, paint and coating manufacturing, and gray-iron foundries. However, for several industry sectors the Court stayed the enforcement of 1910.1025 (e) (1) which requires compliance with the PEL through engineering and work practice controls.
- c. On December 11, 1981, federal OSHA issued a revised supplemental statement of reason regarding the feasibility of complying with the lead standard for certain industries. At that time, Table 1 was amended to extend the compliance deadline for other industries to two and one-half years to allow sufficient time for the design and installation of controls and to prevent inequities to the affected industries as a result of the Secretary's reconsideration of the standard.
- d. It was federal OSHA's belief that the compliance dates for "all other industries" would be two and one-half years from the date that the stay was lifted, with the exception of auto manufacture/solder grinding industry which would be seven years from that date.

- e. In the same revised supplement statement of reason of December 11, 1981, federal OSHA also amended the lead standard in three important aspects:
 - 1. The first amendment was to exempt employers from the requirement to implement engineering and work practice controls to achieve 50 ug/m^3 for employees who are exposed above the PEL for 30 days or less annually. The employer shall still be required to implement engineering and work practice controls to reduce exposures to 200 ug/m^3 , but thereafter may implement any combination of engineering and work practice controls (including administrative) and respiratory controls to reduce employee exposure to or below 50 ug/m^3 .
 - 2. The second amendment was the change in the language of paragraph (e) (1) to reflect federal OSHA's past compliance policy by incorporating the concept of feasibility of engineering and work practice controls so that employers may use effective respiratory equipment to achieve compliance with the standard once they have demonstrated the infeasibility of such controls.
 - 3. The third amendment was federal OSHA's request of the Court to remand the record for nine industry sectors for further administrative proceedings. These nine industry sectors were lead pigments manufacture, lead chemicals manufacture, leaded steel production, shipbuilding and repair, nonferrous foundries, secondary copper smelting, brass and bronze ingot production, battery breaking (when not part of secondary lead smelting operation), and stevedoring.
- f. On March 31, 1987, the Court of Appeals for the District of Columbia granted federal OSHA's request of December 11, 1981, to remand the record to federal OSHA for further administrative proceedings to determine the feasibility of paragraph (e) (1) of the lead standard in the nine industry sectors listed above and ordered federal OSHA to return the record on or before October 1, 1987. On July 31, 1987, the Court granted federal OSHA's motion to extend to January 1, 1988, for return of the record.
 - 1. A public hearing was held in Washington, D.C., from November 3-6, 1987. On December 16, 1987, the Court

granted federal OSHA's request to extend the deadline for return of the record until July 15, 1988.

2. A notice of limited reopening of lead remand rulemaking was published in the Federal Register on April 7, 1988. On July 15, and again on November 30, 1988, federal OSHA filed for extension to complete its economical and technical feasibility analyses for all nine (9) industry sectors concerning paragraph (e) (1), Table 1.
3. On September 28, 1988, the Court granted federal OSHA's original request of July 15; also additional extensions of the deadline were granted. On June 28, 1989, federal OSHA returned the record and requested that the court approve the agency's findings on the nine remaining industry sectors. At the same time, federal OSHA asked the Court to remand the record for the nonferrous foundry industry to determine whether an engineering level above 50 ug/m^3 was feasible for the small business segment of the nonferrous sector. On August 15, 1989, the Court agreed to remand the record for this industry to federal OSHA for further analysis.
- g. On January 30, 1990, federal OSHA published its findings and recommendations for the nonferrous industry sector. The agency also revised its implementation schedule of Section 1910.1025 (e) (1) to achieve compliance by engineering and work practice controls at 50 ug/m^3 for all nine remaining industries. All findings and recommendations were submitted to the Court for its review and approval.
- h. The Court's decision was finalized on July 19, 1991. On this date, all stays on the lead standard were lifted. The Court found that compliance with paragraph (e) (1), Table 1, as last amended and published by federal OSHA, to be feasible for all of the remaining industry sectors.

Interpretation:

- a. In accordance with the decision of the U.S. Court of Appeals for the District of Columbia Circuit, the implementation schedule for 1910.1025 (e) (1) shall be as shown in appendix A of this instruction.
- b. Under 1910.1025 (j), Medical Surveillance, paragraph (2) (i), the zinc protoporphyrin (ZPP) test is required as of December 29, 1981.

- c. All provisions of the lead standard, § 1910.1025, are enforceable except for the following exemption to paragraph (f) (2) (i), Table II. As published in the January 26, 1979, Federal Register notice, federal OSHA granted 3M's request to reconsider the respirator issue and permitted the continued use of dust, fume, and mist air-purifying respirators for concentrations not in excess of 0.5 ug/m^3 in addition to the respirators listed in Table II, pending consideration.

Effective Date: This instruction is effective upon receipt and will remain in effect until cancelled or superseded by amendment to the Rules and Regulations. Program Directive #89-1910.1025-2R is canceled.

William M. Lybrand, Administrator
March 8, 1994