OCCUPATIONAL SAFETY
AND HEALTH STANDARDS BOARD
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NOTICE OF PROPOSED MODIFICATIONS TO
CALIFORNIA CODE OF REGULATIONS
TITLE 8: Chapter 4, Subchapter 4, Article 4,
Section 1532.1 of the Construction Safety Orders

Notification to the Division of Lead-Related Work

Pursuant to Government Code Section 11346.8(c), the Occupational Safety and Health Standards Board (Standards Board) gives notice of the opportunity to submit written comments on the above-named regulations in which further modifications are being considered as a result of public comments and/or Board staff evaluation.

On April 19, 2001, the Standards Board held a Public Hearing to consider revisions to Title 8, Section 1532.1 of the Construction Safety Orders, California Code of Regulations. The Standards Board received oral comments on the proposed revisions. The regulations have been further modified as a result of these comments, written comments and Board consideration.

A copy of the full text of the regulation as originally proposed, and a copy of the modified text clearly indicating the further modifications, is attached for your information. In addition, a summary of all oral and written comments regarding the original proposal and staff responses is included.

Any written comments on these modifications must be received by 5:00 p.m. on September 19, 2001 at the Occupational Safety and Health Standards Board, 2520 Venture Oaks Way, Suite 350, Sacramento, California 95833. These regulations will be scheduled for adoption at a future business meeting of the Standards Board.

The Standards Board's rulemaking files on the proposed action are open to public inspection Monday through Friday, from 8:00 a.m. to 4:30 p.m., at the Standards Board's office at 2520 Venture Oaks Way, Suite 350, Sacramento, California 95833.

Inquiries concerning the proposed changes may be directed to the Executive Officer, John D. MacLeod at (916) 274-5721.

REGULATIONS AS ORIGINALLY PROPOSED

STANDARDS PRESENTATION
TO
CALIFORNIA OCCUPATIONAL SAFETY AND HEALTH STANDARDS BOARD

PROPOSED STATE STANDARD,
TITLE 8, CHAPTER 4

Amend Section 1532.1, subsection (p) to read:

§ 1532.1. Lead.

* * * * *

(p) ~~Effective date. This standard shall become effective immediately upon filing with the Secretary of State~~. Lead-Work Notification. The employer shall provide written notification to the nearest Division District Office in the manner prescribed by subsections (p)(1) through (p)(4) when work is planned that includes any of the tasks listed in subsection (d)(2).
EXCEPTION NO. 1: The employer is not required to notify the Division if:
A. The amount of lead-containing materials to be disturbed is less than 100 square or 100 linear feet; or
B. The only subsection (d)(2) task to be performed consists of torch cutting or welding, not to exceed a duration of 1 hour in any shift.
EXCEPTION NO. 2: The employer is not required to notify the Division if the percentage of lead in the material disturbed is less than 0.5%, 5,000 parts per million (weight by weight), or 1.0 mg/cm^2.
(1) The employer shall ensure that the information required by subsection (p)(2) is received by the nearest Division District Office at least 24 hours prior to the commencement of the work by any of the following means:
(A) Letter;
(B) Facsimile;
(C) Electronic mail; or
(D) Telephone call, followed by written notification sent or mailed within 24 hours of placing the call.
EXCEPTION: When an employer is requested by a customer to initiate lead abatement service within 24 hours of the request for service, the notification requirement may be met by giving telephone notice to the Division at any time prior to commencement of the work, followed by written notification sent or mailed within 24 hours of telephoning the Division.
(2) The written notification provided by the employer shall contain the following:
(A) The name, address and phone number of the employer;
(B) The address of the job (or common name of the site with closest streets or roadways identified);
(C) The precise physical location of the lead related work at the job site;
(D) The projected starting date;
(E) The expected completion date or approximate duration of the work in days;
(F) The approximate number of lead exposed workers;
(G) The type of structure(s) in which or on which the work is to be performed;
(H) The amount of lead containing material to be disturbed in square feet or linear feet;
(I) A description of the type of lead-related work to be performed and work practices that will be utilized;

PROPOSED STATE STANDARD,
TITLE 8, CHAPTER 4

(J) The name of the supervisor who will be responsible for the lead-related work; and
(K) The amount of lead in the disturbed materials (percent by weight, parts per million or milligrams per square centimeter) if known.
(3) The employer shall notify the Division, and provide the current information, if changes are made to the starting date, the surface area to be disturbed, or the type of lead-related work performed or work practices to be utilized, before or upon adoption of that change.
(4) An employer conducting ongoing, lead-related operations and maintenance work on stationary steel structures need only notify the Division once for each structure if the duration of the operations and maintenance work is less than one year. If the duration of the work is more than one year, the employer shall submit to the Division at least once per year a supplemental written notification updating all of the information required by subsection (p)(2) for each structure.

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NOTE: Authority cited: Sections 142.3 and 6717, Labor Code. Reference: Sections 142.3 and 6717, Labor Code.

PROPOSED MODIFICATIONS
(Modifications are indicated by
bold, double underline wording for new language and
bold, double strikeout for deleted language.)

STANDARDS PRESENTATION
TO
CALIFORNIA OCCUPATIONAL SAFETY AND HEALTH STANDARDS BOARD

PROPOSED STATE STANDARD,
TITLE 8, CHAPTER 4

Amend Section 1532.1, subsection (p) to read:
§ 1532.1. Lead.

* * * * *

(p) ~~Effective date. This standard shall become effective immediately upon filing with the Secretary of State~~. Lead-Work **Pre-Job** Notification. The employer shall provide written notification to the nearest Division District Office in the manner prescribed by subsections (p)(1) through (p)(4) when work is planned that includes any of the tasks listed in subsection (d)(2).
EXCEPTION NO. 1: The employer is not required to notify the Division if:
A. The amount of lead-containing materials to be disturbed is less than 100 square or 100 linear feet; or
B. The only subsection (d)(2) task to be performed consists of torch cutting or welding, not to exceed a duration of 1 hour in any shift.
EXCEPTION NO. 2: The employer is not required to notify the Division if the percentage of lead in the material disturbed is less than 0.5%, 5,000 parts per million (weight by weight), or 1.0 mg/cm^2.
(1) The employer shall ensure that the information required by subsection (p)(2) is received by the nearest Division District Office at least 24 hours prior to the commencement of the work by any of the following means:
(A) Letter;
(B) Facsimile;
(C) Electronic mail; or
(D) Telephone call, followed by written notification sent or mailed within 24 hours of placing the call.
EXCEPTION: When an employer **intends to initiate unforeseen lead-work on an urgent basis** ~~**is requested by a customer to initiate lead abatement service**~~ within 24 hours ~~**of the request for service**~~, the notification requirement may be met by giving telephone notice to the Division at any time prior to commencement of the work, followed by written notification sent or mailed within 24 hours of telephoning the Division.
(2) The written notification provided by the employer shall contain the following:
(A) The name, address and phone number of the employer;
(B) The address of the job (or common name of the site with closest streets or roadways identified);
(C) The precise physical location of the lead related work at the job site;
(D) The projected starting date;
(E) The expected completion date or approximate duration of the work in days;
(F) The approximate number of ~~**lead exposed**~~ workers **planned to do the lead-related work**;
(G) The type of structure(s) in which or on which the work is to be performed;
(H) The amount of lead containing material to be disturbed in square feet or linear feet;
(I) A description of the type of lead-related work to be performed and work practices that will be utilized;
(J) The name of the supervisor who will be responsible for the lead-related work; and

PROPOSED STATE STANDARD,
TITLE 8, CHAPTER 4

(K) The amount of lead in the disturbed materials (percent by weight, parts per million or milligrams per square centimeter) if known.
(3) The employer shall notify the Division, and provide the current information, if changes are made to the starting date, the surface area to be disturbed, or the type of lead-related work performed or work practices to be utilized, before or upon adoption of that change.
(4) An employer conducting ongoing, lead-related operations and maintenance work on stationary steel structures need only notify the Division once for each structure if the duration of the operations and maintenance work is less than one year. If the duration of the work is more than one year, the employer shall submit to the Division at least once per year a supplemental written notification updating all of the information required by subsection (p)(2) for each structure.

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NOTE: Authority cited: Sections 142.3 and 6717, Labor Code. Reference: Sections 142.3 and 6717, Labor Code.

SUMMARY AND RESPONSE TO COMMENTS

SUMMARY AND RESPONSE TO ORAL AND WRITTEN COMMENTS

I. Written Comments

1) Daniel Tappen, Supervising Industrial Hygienist, San Diego County Department of Environmental Health by letter dated March 30, 2001.

Comment No. 1A: Mr. Tappen states that since Section 1532.1 does not require an employer to either test materials for lead content, or presume that the materials contain lead, the proposed notification requirement will elicit responses only from diligent employers who have the materials tested. Employers who do not test the lead containing materials will not have to notify the Division and may not comply with the requirements of Section 1532.1. Therefore, proposed notification should be replaced with another method to identify construction sites where painted surfaces are likely to be removed.

Response: The proposal was developed with the help of the Advisory Committee primarily to make it easier for the Division to find non-compliant employers and enforce the requirements of Section 1532.1. The proposal does not require the employer to have an analysis conducted of the lead-containing material unless the employer seeks to apply Exception No. 2. As stated in the Initial Statement of Reasons (ISOR), alternative methods of finding and inspecting lead-work construction sites, such as the Dodge report, were tried by the Division before developing this proposal. Based on the failure of that alternative method and the recommendations of the Advisory Committee, the proposed notification process was determined to be the best approach. Also, see Mr. Olhiser's written Comment No. 2. Therefore, the Board declines to withdraw the proposed notification requirement in response to the comment.

Comment No. 1B: The proposed notification will add to the overall cost of a project.

Response: The employer, in preparing a bid for the job, typically produces the specific information that is required by the proposed notification with the possible exception of the lead content of the lead-containing material. The employer representatives on the Advisory Committee who have prepared similar notifications advised the Division that transmitting the required information would impose a negligible expense on the affected employers based on their experience. Also, see Mr. Olhiser's oral Comment No. 4. The commenter does not specify a cost based on experience or provide cost data from other employers. Therefore, the Board declines to make any change to its cost estimate based on this statement.

Comment No. 1C: The annual notification requirements in subsection (p)(4) seem to apply to maintenance procedures that fall within the scope of the General Industry Safety Orders (GISO) for lead, Section 5198, when viewed in terms of the Federal Confined Space Compliance Directive (CPL 2.100) statement, "…refurbishing of existing equipment and space is maintenance; reconfiguration of space or installation of substantially new equipment (as for a process change) is usually construction." The activities described by proposed subsection (p)(4) should be placed in the scope of the GISO.

Response: The work described by subsection (p)(4) involves activities that are described within Section 1532.1, subsection (a) and is therefore consistent with the definition of covered maintenance operations as provided in subsection (a)(7). Representatives of California Department of Transportation and the Steel Structures Painting Council participated in the Advisory Committee to develop the annual notification requirement. The Board concurs that the annual notification activities are consistent with the GISO. The statement cited in the comment is taken from an informational appendix to the Federal OSHA Compliance Directive (CPL) for enforcing the Federal Confined Space Standard and does not supersede the California Construction Safety Orders (CSO), Section 1532.1 by directive or jurisdiction. Therefore, the Board declines to make the recommended change to the proposal, or by inference, to the scope of Section 1532.1 in subsection (a).

The Board thanks Mr. Tappen for his comments and interest in the Board's rulemaking process.

2) Clifford A. Burg, Executive Director, Painting and Decorating Contractors of California, Inc. (PDCA) by letter dated March 14, 2001.

Comment No. 2: The PDCA supports the proposed change to the CSO, Section 1532.1(p). The PDCA was a member of the Division's Advisory Committee and participated in developing the proposal. The PDCA supports this effort to address the issue of employers who are able to underbid other contractors by ignoring the requirements of the CSO and avoiding those costs to their operations. The proposed notification requirement will reduce the number of employers that do not address the public health threat of lead poisoning.

Response: The Board thanks the PDCA for assistance in the advisory committee process, and comments in support of the proposal.

II. Oral Comments

Oral comments received at the April 19, 2001 Public Hearing in Sacramento.

3) Richard Warner, Southern California Edison.

Comment No. 3A: Mr. Warner is concerned that the Division will initiate a chain of reporting requirements in other regulations and that there will be administrative costs associated with the reporting requirements. There are already similar requirements for asbestos and other carcinogens.

Response: The Division convened an Advisory Committee as part of the implementation of the Lead in Construction Special Emphasis Program (SEP). The Division invited the participation of various segments of the regulated community, such as the Associated General Contractors, the Painting and Decorating Contractors of California, Inc., California Department of Transportation, and the Steel Structures Painting Council in order to involve employers directly affected by the implementation of Section 1532.1 and by serving as the SEP Advisory Committee. The Advisory Committee also included representatives of labor groups and

industrial hygiene consultants. The notification process was identified as a specific need to make the standard more enforceable. The Advisory Committee proposed using the asbestos notification requirement as a model since asbestos construction work is done in a very similar manner. The proposed notification requirement is limited to Section 1532.1 due to the unique nature of lead-related construction activities and the Division's great difficulty in enforcing the standard without a notification process. The Advisory Committee also determined that the proposal would not impose a significant cost burden on employers. Please see the response to Comment 1B and Comment 4A. The Board declines to withdraw or revise the proposal based on the commenter's statements.

Comment No. 3B: The exception to subsection (p)(1)(D) refers to a request by a "customer" and omits the case where the employer's own employees conduct the lead activity.

Response: The exception is intended to allow an employer a means to notify the Division when circumstances do not allow sufficient time to make the notification within the time frame specified in (p)(1). The ISOR explained that this exception is necessary for jobs requiring immediate lead abatement, such as emergency repair work after a catastrophic event. The Board finds that the reference to a customer request unintentionally implied that only the employers who perform lead-related construction operations for other employers might avail themselves of the exception. The Board deleted references to a customer and included language to make it clear that any employer engaging in construction lead activities may use the procedure specified in the exception.

Comment No. 3C: Mr. Warner stated that in subsection (p)(2)(C), the qualifying term "precise" for location burdens an employer with providing unnecessary detail when making the notification. The term should be replaced with physical location.

Response: The subsection specifies a "precise location" to enable Division personnel to readily locate the lead-related activity site, for example one room or floor in a twenty story building, or one tower or pipe in a refinery. The physical location term recommended by the commenter would not provide enough information for the Division to find the exact location of a lead-work job at such large sites. Therefore, the Board declines to make the recommended change.

Comment No. 3D: Mr. Warner believes that the term "structure" in subsection (p)(4) is unclear. Does this mean a building, a plant or a location? Notifying of each potential structure being worked on will be a large task.

Response: The term "structure" is a commonly used term in the industry and refers to steel edifices, such as a bridge, a building, or refinery tanks that have lead-work being done on them on a continuous or long-term basis. The Board agrees that notification of steel structures for each time lead-work is performed would be a large task. That is why subsection (p)(4) is intended as an alternative once a year notification mechanism for an employer who would otherwise have to submit a notification for each phase or section of progressing work on such a structure. Therefore, Board staff will retain the proposed annual notification alternative for steel structures.

The Board thanks Mr. Warner for his participation and interest in the Board's rulemaking process.

4) Burt Olhiser, Painting and Decorating Contractors of America, Council of California (PDCA).

Comment 4A: The PDCA is an industry association that is directly affected by the requirements of this Standard and fully supports the notification proposal. In response (to Comment 3A), the PDCA believes that notification is necessary as a step towards enabling the Division to find employers who are disregarding the worker protections required by the standard in order to underbid competitors for work projects. Based on the experience of the PDCA membership, the proposed notification will not be a significant cost for employers.

Response: The Board thanks Mr. Olhiser for his participation in the Advisory Committee, comments in support of the proposal, and for his assistance in answering questions regarding specific issues raised at the meeting.

5) Robert Robinson, San Diego Gas and Electric.

Comment 5A: Mr. Robinson asked if his company, San Diego Gas and Electric, would be exempt from the notification requirement.

Response: The notification requirement applies to all employers engaging in construction lead activities that are described in subsection 1532.1(a) Scope.

The Board thanks Mr. Robinson for seeking this clarification and for his participation in the Board's rulemaking process.

Comments from Board Members during April 19, 2001 Public Hearing in Sacramento.

Member Berman: Is the Advisory Committee a standing or representative committee? It seems to have mostly Cal/OSHA staff in attendance.

Response: The Advisory Committee for the Lead in Construction Special Emphasis Program is a standing committee. As noted previously (see Response to Comment 3A), the Division invited the participation of representatives of employers and employee groups directly affected by the SEP and Section 1532.1 along with Division staff charged with implementing the SEP. Consequently, the Committee has Division participants from each of the five compliance regions and headquarters. The Division created this proposal with the consensus of the representative employer and employee advisory committee members. Also see Comments 2 and 3.

Member Berman: It is not clear if all employers have to report or just one.

Response: The Standard states within subsection (a), Scope, that the requirements apply to employers who engage in lead-related construction activities. Therefore, only the employer or employers covered by Section 1532.1 have to report. If more than one employer is working at

the same site, they each have to report but they could combine their notice so long as the information specified in subsection (p) is provided for each employer's lead-work activity.

Member Bradshaw: Do other states have a notification requirement?

Response: Mr. Olhiser stated that several states, including Virginia, Massachusetts, and Vermont, have enacted lead abatement notification requirements. To further respond to the Board query, the Division contacted some of these states to provide the following information. Virginia requires the employer to provide a notification in the form of a permit application 20 days prior to the job and charges a fee of one hundred dollars. Massachusetts requires an employer to provide a 10-day notification for lead abatement. Vermont requires employers doing lead abatement work to apply in advance for a permit through their children's lead poisoning prevention program.

Chairman Ingram: The Division should assure that the proposal will not be superseded or duplicated by new regulations that will be made by the U.S. Environmental Protection Agency (EPA) in the near future. The Board would like to make it easy for an employer to report to all agencies; the Division should create a clearinghouse for notifications.

Response: The EPA completed rulemaking in 40 CFR part 745, Lead; Identification of Dangerous Levels of Lead; Final Rule on January 5, 2001 that applies to "target housing" described as most pre-1978 housing, child-occupied facilities such as daycare and kindergartens, and federally controlled or subsidized housing. This Rule establishes that reports "pertaining to" lead-based paint or other lead hazards are to be disclosed as part of real estate or rental transactions by the owner. The EPA is also developing final regulations for lead-based activities that include the development of lead assessments and abatement plans. The intent is to make these documents a method of hazard disclosure for the property owner, tenant, or potential buyer. The current EPA regulations and proposed rules do not describe a mechanism for notifying public agencies (except for the agencies in ownership or in tenancy of the affected property) of intended lead-related construction activities.

The Division and the Advisory Committee anticipated the possibility that there may be other notifications that the contractor may be required to make for public or environmental health purposes. Therefore, the proposal allows the Division to accept any reasonable format of notification as long as the required information is provided. If other regulatory agencies begin to require similar notifications for lead-related work, the Division appreciates Board member Ingram's clearinghouse suggestion as a possible administrative method of minimizing the burden of multiple reportings. However, at this time no modifications to the proposal are necessary in response to the comment.

Member Berman: The proposal may generate a large number of calls. Will the Division be able to handle the volume of information?

Response: The Division is already managing a significant number of asbestos notifications and is working on creating a database system to make the best use of the data that is reported.

Member Bradshaw: Is there data showing that the blood lead levels (BLLs) are rising in the population of employees performing lead-related construction work?

Response: The Department of Health Services, Occupational Health Branch (OHB) is not able to evaluate trends of this nature because they only receive BLLs if they are 25 micrograms per deciliter or higher. The OHB stated that BLLs in California continue to be a significant concern in their December 29, 1999 letter, which is included in the rulemaking file as a document relied upon.

Member Jackson: This may be a case similar to the situation with asbestos cement pipe where only employers who are already following the regulations make the notifications. There are some 70,000 employers who may be affected by this, and it is important to avoid concentrating on the better employers.

Response: Unlike asbestos cement pipe employers covered by Section 1529, the proposed notification is not a registration of employers. In part, this is an attempt to capture the mainstream of work being done. It is also intended as a tool to identify the employers who do not comply with the requirements of Section 1532.1. The Division and the Advisory Committee recognized that initially employers who already comply with the Standard would provide most of the notifications. Also see Comment 2.

Member Berman: The subsection should be amended to read: "Pre-job Notification" for clarity. Also, the threshold of 100 square feet seems to be arbitrarily appropriated from the asbestos notification requirements. Was this derived from a database?

Response: The Division concurs that adding the descriptive term "pre-job" to the title of this requirement would clearly define its purpose. The Division and the Advisory Committee recognize that the notification requirement should not be required for the full scope of work covered by the Standard but should be designed to identify the work that the Advisory Committee members and Division expect to involve high employee lead exposures. The Committee and Division used the asbestos notification as a model and determined that the selected thresholds would be suitable, based on the experience of the attendees who conduct air sampling of construction activities or review available data.

Member Berman: Subsection (p)(2)(F) should be changed from "exposed workers" to "potentially exposed workers" since the original phrase could be considered self-incriminating by employers.

Response: The Division and the Advisory Committee considered the proposed phrase but decided against it because the employer might attempt to include bystander employees. The Division recognizes the necessity of eliciting information from employers in a manner that is not intimidating to them. The Division proposes to modify the phrase from, "The approximate number of lead exposed workers…" to "The approximate number of workers planned to do the lead-related work."