



VOSH PROGRAM DIRECTIVE: 02-410

ISSUED: May 15, 1998

SUBJECT: Brass and Bronze Ingot Manufacturing Industry Compliance Requirements and Dates Under the Lead Standard, § 1910.1025

A. Purpose.

This directive transmits to field personnel changed compliance requirements and compliance dates for enforcement of the engineering and work practice controls provisions of the Lead Standard, § 1910.1025(e)(1), in the brass and bronze ingot manufacturing industry.

(NOTE: The stay on enforcement of paragraph (e)(1) of the Lead Standard as it applies to the brass and bronze ingot manufacturing industry has not yet been lifted by the court. Until the stay is lifted employers in this industry must continue to control lead exposures to 200 ug/m³ by some combination of engineering and work practice controls and respiratory protection. A follow-up instruction will be issued as soon as the stay is lifted.)

This Program Directive is an internal guideline, not a statutory or regulatory rule, and is intended to provide instructions to VOSH personnel regarding internal operation of the Virginia Occupational Safety and Health Program and is solely for the benefit of the program. This document is not subject to the Virginia Register Act or the Administrative Process Act; it does not have general application and is not being enforced as having the force of law.

B. Scope.

This directive applies to all VOSH personnel.

C. Reference.

OSHA Instruction CPL 2-2.67 (February 27, 1997)

D. Cancellation.

Not Applicable.

E. Action.

The Deputy Commissioner, Directors and Managers shall assure that the general inspection procedures in this directive are followed and that compliance officers are familiar with the changes in employers' obligations under the engineering and work practice controls provisions of the Lead Standard in the brass and bronze ingot manufacturing industry. In addition, the Deputy Commissioner, Directors and

Managers shall ensure that compliance officers are aware that follow-up instructions will be issued informing them as to the date of the lifting of the judicial stay of paragraph (e)(1) of the Lead standard as it pertains to the brass and bronze ingot manufacturing industry.

F. Effective Date.

May 15, 1998

G. Expiration Date.

Not Applicable.

H. Background.

On November 14, 1978, federal OSHA promulgated the Lead Standard, 29 CFR 1910.1025, which reduced the permissible exposure limit (PEL) from 200 ug/m³ to 50 ug/m³ based on an eight-hour time-weighted average (TWA) (29 CFR 1910.1025(c)). This PEL was to be achieved solely by means of engineering and work practice controls 1910.1025(e)(1)). The standard was challenged by industry and labor. In *United Steelworkers of America v. Marshall*, 647 F.2d 1189 (D.C. Cir. 1980), *cert. denied*, 453 U.S. 913 (1981), the court affirmed most aspects of the standard covering worker exposure to airborne lead, including the PEL of 50 ug/m³ but remanded to OSHA the question of the feasibility of complying with 1910.1025(e)(1) including the PEL of 50 ug/m³.

After OSHA amended the Lead standard and promulgated a bifurcated standard for the nonferrous foundries, six industries challenged OSHA's feasibility findings. They are as follows: nonferrous foundries; secondary copper smelting; brass and bronze ingot manufacturing; collection and processing of scrap (including independent battery breaking); leaded steel manufacturing and lead chemicals manufacturing.

In 1991, the D.C. Circuit Court ruled that substantial evidence supported OSHA's finding that it was technologically and economically feasible for all industries in question to achieve the PEL by means of engineering and work practice controls. The court also ruled, however, that it was not economically feasible for the brass and bronze ingot manufacturing industry to achieve the PEL. While the court lifted the judicial stay of 1910.1025(e)(1) for the other five industries, it remained in effect for the brass and bronze ingot manufacturing industry.

On June 27, 1995, representatives of BBIM and the Institute of Scrap Recycling Industries (ISRI) entered into a settlement agreement with OSHA acknowledging that an eight-hour TWA airborne lead concentration of 75 ug/m³ in the lowest economically feasible level that can be achieved by means of engineering and work practice controls in the brass and bronze ingot manufacturing industry as a whole. The settlement agreement requires the brass and bronze ingot industry to achieve an eight-hour, time-weighted average (TWA) of 75 micrograms of lead per cubic meter of air, down from the 200 ug/m³ level. The parties agreed that an eight-hour TWA of 75 ug/m³ is economically feasible for the industry. Where an employer cannot achieve that level with engineering and work practice controls, the parties agreed to require the use of a supplemental respirator to achieve the permissible exposure level.

In recognition of the economic feasibility constraints on the brass and bronze ingot manufacturing

industry, OSHA is allowing employers six years from the date the court lifts the stay to comply with 75 ug/m³ TWA by engineering and work practice controls. As soon as the court lifts the stay, the effective date for enforcement of the PEL will be six years from the date the stay was lifted. A follow-up instruction listing the new compliance date will be issued around that time.

- I. Inspection Guidance.** Not all provisions and paragraphs of the Lead Standard are included in this program directive. Refer to VOSH Program Directive 02-403A, Compliance Dates for the Lead Standard with Clarification of the Implementation Schedule (1/15/92), and STP 2-1.94, Occupational Exposure to Lead Standard, Final Standard (2/14/79), and its preamble for further guidance on specific subjects not covered here.

Inspections to assess compliance with the engineering and work practice control provisions of the Lead Standard in general industry, including the brass and bronze ingot manufacturing industry, must be done by a Compliance Safety and Health Officer (CSHO) appropriately trained in conducting inspections of the Lead Standard (e.g., thoroughly familiar with the relevant provisions of § 1910.1025, particularly paragraph (e)(1), and with the guidelines in this directive). Citations issued for violations of § 1910.1025(e)(1) must be reviewed by the Compliance Manager and the Regional Director.

1. **Current compliance**--The CSHO shall determine whether the employer in the brass and bronze ingot manufacturing industry is currently in compliance with the following items:
 - a. The employer must be in compliance with all of the provisions of the Lead Standard. Compliance with paragraph (e)(1) and the PEL of 50 ug/m³ must be achieved and maintained by some combination of engineering controls, work practices, and respiratory protection in each operation where there is lead exposure, as specified in paragraph (c)(1).
 - b. The employer must be achieving and maintaining eight-hour TWA of 200 ug/m³ solely by means of engineering and work practice controls in each operation where there is lead exposure.

2. **Compliance during years 1-6**--**Within the first six years after the federal judicial stay of paragraph (e)(1) of the Lead Standard is lifted by the court for the brass and bronze ingot manufacturing industry**, the CSHO shall determine whether the employer in this industry is also in compliance with the following items:
 - a. The employer must provide interim and/or supplemental respiratory protection throughout the period in which engineering and work practice controls are being implemented where the employer cannot achieve and maintain the PEL solely by means of engineering and work practice controls.
 - b. Until the employer achieves and maintains control of air lead exposures to a TWA of 75 ug/m³, the employer must submit to BBIM and/or ISRI air lead and blood lead monitoring data that is required to be collected under the Lead Standard.
 - c. **By the end of year 1**--**As soon as is practicable and, in any event, within one year after the federal judicial stay of paragraph (e)(1) of the Lead Standard is lifted for the brass and bronze ingot manufacturing industry**, the employer whose air lead levels

are above an eight-hour TWA of 75 ug/m³ must take the following steps to reduce those levels to or below the eight-hour TWA of 75 ug/m³, where doing so is low cost or no cost:

- Conduct an industrial hygiene evaluation;
- Improve work practices, which are to be written, communicated to employees and followed;
- Improve housekeeping and preventive maintenance of ventilation and production systems;
- Control cross contamination.

3. **Compliance after year 6--Six years after the federal judicial stay of paragraph (e)(1) of the Lead Standard is lifted by the court**, the CSHO shall determine whether the employer in the brass and bronze ingot manufacturing industry is in compliance with all provisions of the Lead Standard, including the following items:

- a. The employer must achieve and maintain an eight-hour TWA of 75 ug/m³ solely by means of engineering and work practice controls. (***NOTE***: In briquetting and baghouse maintenance operations, OSHA recognizes that it is probably not economically feasible to achieve an eight-hour TWA of 75 ug/m³ by means of engineering and work practice controls. Therefore, OSHA would have the burden of proving the economic feasibility of materially reducing existing air lead levels above 75 ug/m³ by engineering and work practice controls in any enforcement proceeding under paragraph (e)(1) of the Lead Standard for these two operations.)
- b. The employer must provide supplemental respiratory protection (APF sufficient enough to be in compliance with the PEL) to each employee in every operation where the PEL of 50 ug/m³ cannot be achieved and maintained by engineering and work practice controls alone.

Theron J. Bell
Commissioner

Attachment: None.

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