



OSHA Docket Office  
Docket No. H023  
Technical Data Center, Room N-2625  
U.S. Department of Labor  
200 Constitution Avenue NW  
Washington, DC 20210  
Facsimile No.: (202) 693-1648  
<http://ecomments.osha.gov>

**RE: Docket No. HO23 Lead in Construction**

Dear Docket Clerk:

ASA urges the Occupational Safety and Health Administration (OSHA) to develop a Lead in Construction standard based on the input of industry stakeholders and the highest quality data available. The current standard (29 CFR 1926.62) has proven to be an effective regulation for larger projects, but the regulatory burden imposed on small subcontractors is overwhelming. The proposed Section 610 review provides OSHA, with input from the small business community, an opportunity to develop a fair and equitable Lead in Construction standard that will provide for the safest possible worksite and equitable regulations for large and small businesses.

**American Subcontractors Association, Inc.**

The American Subcontractors Association, Inc. (ASA) is an IRS § 501(c)(6) tax-exempt nonprofit, national, membership trade association of 4,500 construction subcontractors and suppliers. ASA's members participate in "new construction, alteration, repair, or renovation of structures, substrates, or portions thereof that potentially contain lead."<sup>1</sup>

**Correct Rulemaking Irregularities**

In 1993, in response to a statutory mandate to adopt a standard to protect construction workers from lead exposures, OSHA implemented a standard that requires testing of construction sites for lead exposures, protections for workers from exposure where lead is present and medical monitoring of exposed workers.<sup>2</sup> The process by which the interim standard was developed was inadequate. Congress waived OSHA's obligation to engage in notice and comment, hence the basic tenets of present day rulemaking, guided by the parameters of the Regulatory Flexibility Act were absent. There was no comment period and no SBREFA panel. Now fifteen years after the "interim" rule was adopted, there still has been no official rulemaking or opportunity for stakeholder comment. OSHA should seek the input of construction subcontractors and other stakeholders to develop a new Lead in Construction standard based on industry consensus.

**Address Technical Omissions**

The OSH Act requires the best-available scientific evidence be used to develop a standard. Due to the hurried mandate from Congress, OSHA was not required to meet the rigid standards of the OSH Act. Further, the Information Quality Act (IQA), sometimes referred to as the Data Quality Act, enacted in December 2000 requires the Department of Labor to meet a higher standard for data quality and peer

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<sup>1</sup> 29 CFR 1926.62 (a)(3)

<sup>2</sup> 70 Federal Register 32739-32742

review today than was required in 1992. OSHA should develop a new Lead in Construction standard that embraces the guidelines of the IQA to produce a standard that is based on the sound scientific research.

**Recommendation**

ASA urges OSHA to develop a Lead in Construction standard based on the input of industry stakeholders and the highest quality data available. ASA offers its full cooperation to OSHA in the development an equitable and safe Lead in Construction standard.

Thank you for your consideration,

Luke McFadden  
Director of Government Relations  
American Subcontractors Association, Inc.