

October 25, 2023

The Honorable David Thomas, Chair
Cal/OSHA Standards Board
2520 Venture Oaks Way, Suite 350
Sacramento, CA 95833

Re: Response to “Cal/OSHA Standards Board 15-Day Comment Period”, issued October 6, 2023, Proposed General Industry and Construction Lead Standards.

The undersigned organizations have reviewed the Cal/OSHA Standards Board proposed changes issued in the October 6, 2023 “15-Day Comment Period” to the “California Code of Regulations, Title 8, Section 1532.1 Lead”, and we respectfully submit the following comments and recommendations for the lead in construction standard.

This coalition appreciates that some of the unnecessary requirements in the last proposal have been reduced or eliminated in this revision. There are still many more changes that need to be made before this proposal could become an effective regulation.

Issues that must be addressed

The SRIA costs are hugely understated. The employers who would have to actually implement and pay for these regulations have calculated the realistic costs of this regulation. The SRIA states that the 10-year costs for construction are \$862 Million. **The actual costs are \$38 Billion.** The actual costs are 44 times what the SRIA estimates. This must be addressed.

In the absence of recent and meaningful advisory committee meetings and a side-by-side comparison of the original Lead in Construction proposal, stakeholders were not allowed the time or opportunity to present the real costs to employers. **The SRIA that was offered with the current proposed changes to the lead regulation is outdated and provides inaccurate cost estimates.**

An unprecedented reduction in the PEL and AL Reductions of 80% and 93% respectively, have no justification from the information provided by Cal/OSHA. Action Levels and Permissible Exposure Limits must be set at reasonable and achievable levels. Cal/OSHA has not demonstrated any credible evidence for reducing the Action Level and Permissible Exposure Limits to these unrealistic levels.

This revised proposal is still overbroad and confusing. With many more contractors (even those with minimal exposures) having to attempt to comply with this regulation, this regulation must be made clearer and simpler.

This proposal expands the “presumed” exposure of trigger tasks regardless of frequency and duration of the task to require “interim protection.” This is not a feasible approach to protecting employees from lead exposure. Additionally, there is no rationale for moving more trigger tasks into the “Level 3 Trigger Task” designation. The trigger tasks must be moved to align with the Federal lead regulation.

The training requirements go far beyond any reasonable position. The Federal regulation has reasonable training requirements for housekeeping and hygiene. The Federal regulation also requires training when workers are exposed to lead at or above an action level of 30mg. This proposal requires “effective” training for an employee exposed at, or above, an action level of 2mg. **Many employees could be exposed to 2mg, even if they never work with lead.**

The Training must include all 38 pages of the regulation, plus the 24 pages of Appendices A and B. Effective “training” as mandated by Cal/OSHA means a Cal/OSHA inspector could ask an employee on any part of the 62 pages and expect a clear and precise answer. If the employee doesn’t answer correctly, the employer receives a citation.

The many components for compliance and implementation are complex and costly. Costs include experts, medical assessments and services, blood draws, logistics, supplies, equipment, personnel hours, travel and per diem, and training certification.

Components of Compliance and Implementation:

Initial Exposure Assessment	Personnel Protective Clothing
Blood Level Testing	Changing Stations
Notification of Blood Level Testing	Eating Facilities
Training: Supervisors and Employees	Regulated Areas
Compliance Program	Medical Exams
Respiratory Protection	Recordkeeping

We have calculated costs based on 86,000 Class C licensees, 50,000 supervisors and 110,000 employees (for a total employee community of 160,000) and included all elements of compliance and implementation, which the SRIA fails to do.

Cal/OSHA asserts that compliance costs to each Large Business in Year 1 will be \$10,647 and \$8,514 in subsequent years. For a Small Business (100 or less employees) the costs will be \$5,989 in Year 1 and \$4,837 in subsequent years. **The actual cost is \$46,000 annually per business. The SRIA is incorrect by a factor of 400% for Large Businesses and 750% for Small Businesses.**

To focus on just one cost, “Training” alone is \$259 Million annually...4 times the TOTAL Annual SRIA for the ENTIRE Lead Standard. The required Lead Construction Related Supervisor Training (LRC) is a 40-hour course, at \$770 per Supervisor, PLUS exam fees, annual CDPH fee, biennial certification renewal, personnel hours, travel and per diem, and Supervisor training of 110,00 employees on extensive and complex issues.

There are many unanswered questions about medical removal procedures and the impacts on employers and employees, workers' comp implications, and unaddressed concerns about fertility issues, making it impossible to project these additional costs.

The Division and the Standards Board need to take one of the following two options to properly amend the lead in construction regulations.

- **Rescind this entire proposal and start over. This process started in 2011. Great strides continue to be made in reducing lead exposure in construction products used and installed. The Division should engage in true stakeholder meetings focused on the construction regulations, separate from stakeholder meetings on general industry. Justify the necessity, and work together to develop an effective regulation.**
- Require a 3-year delay after approval by OAL. During this time, require the Division to conduct the above referenced stakeholder meetings to eliminate the unnecessary requirements, and develop a clear and workable regulation.

Governor Newsom has said his Administration is taking an “all of government” approach to the decarbonization of existing buildings in order for the state to achieve carbon neutrality by 2045. Under Cal/OSHA staff's proposed AL and PEL, a significant and new cost multiple will be added to the price tag of building decarbonization for contractors and their customers. Ironically, these new costs will detract from the actual goal of building decarbonization. Market access to the capital needed for these projects by public and private building owners is already strained to the limit. **Has Cal/OSHA staff considered the fact that any new and unnecessary costs created by this rule directly threatens our state's ability to fund and therefore achieve the Administration's goal of carbon-neutrality by 2045?**

In conclusion, stakeholders have not been included in any meaningful dialogue with Cal/OSHA regarding the changes made to the “Lead in Construction Standard.” Instead, Cal/OSHA has refused to find a workable solution to a compromise regarding an Action Level and Permissible Exposure Limit that is reasonable for employers and employees. Cal/OSHA continues its practice of simply informing employers of the changes made and expecting 100% compliance without question. **The Administrative Procedures Act (APA) requires Cal/OSHA to demonstrate a compelling reason to change regulation.** Implicit in this demonstration is to show where the current lead regulation is falling short in achieving reduced BLLs in these workplaces. This requires demonstrating with credible evidence that worker BLLs are indeed unsafe due to actual and identified activity exposures at the workplace. That burden has not been met.

The Lead in Construction Coalition stands ready to engage with Cal/OSHA to develop common sense regulations starting with existing worker protections found in Federal Regulations that employers can understand and implement into “real world operations.”

Respectfully,

Lead in Construction Coalition

- American Subcontractors Association of California
- Associated Roofing Contractors of the Bay Area Counties
- Building Owners and Managers Association
- California Hispanic Chambers of Commerce
- California Sheet Metal and Air Conditioning Contractors, National Association
- California Building Industry Association
- California Business Properties Association
- California Framing Contractors Association
- Construction Employers’ Association
- Flasher Barricade Association
- Housing Contractors of California
- National Electrical Contractors Association
- National Roofing Contractors Association
- Northern California Allied Trades
- Orange County Hispanic Chamber of Commerce
- Painting and Decorating Contractors of California
- Residential Contractors Association
- Roofing Contractors Association of California
- Southern California Contractors Association
- Southern California Glass Management Association
- Union Roofing Contractors
- United Contractors Association
- Wall and Ceiling Alliance
- Western Electrical Contractors
- Western Painting & Coatings Contractors Association
- Western Wall & Ceiling Contractors Association
- Western Steel Council



American Subcontractors Association of California



Associated Roofing Contractors of the Bay Area Counties



Building Owners and Managers Association of California



California Association of Sheet Metal and Air Conditioning Contractors, National Association



California Building Industry Association



California Business Properties Association



California Framing Contractors Association



Construction Employers' Association



Flasher Barricade Association



Housing Contractors of California



National Electrical Contractors Association



National Roofing Contractors Association



Northern California Allied Trades



Painting & Decorating Contractors of CA



Roofing Contractors Association of California



Southern California Contractors Association Southern California Glass Management Association



Union Roofing Contractors



United Contractors



Wall and Ceiling Alliance



Western Electrical Contractors Association



Western Painting & Coatings Contractors Association



Western Wall & Ceiling Contractors Association