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RE: **Advanced Notice of Proposed Rule Making (ANPRM) – Blood Lead Level for Medical Removal (Docket NO. OSHA-2018-0004)**

The undersigned organizations are pleased to submit comments in response to the Department of Labor's (DOL) Occupational Safety and Health Administration's (OSHA) review of the blood lead level for medical removal. As part of the ANPRM, OSHA solicited feedback on over 60 questions related not only to the medical removal triggers, workplace lead exposures and procedures and return to work benchmarks, but also included many questions inquiring whether OSHA should consider making changes to related air standards (*e.g.*, Permissible Exposure Limits (PELs) and Action Levels (ALs)). The agency also requested public comment on what elements, if any, of several recent state rulemakings (*i.e.*, California, Washington, and Michigan) should be considered as OSHA drafts its Proposed Rule (including the aforementioned proposed reductions in air lead triggers).

Battery Council International, Association of Battery Recyclers, the International Lead Association and other industry organizations are responding in great detail to the lead ANPRM. We believe that any OSHA action on the lead standard has the potential to have significant and wide-ranging impacts on employers and employees in many other industries which will require OSHA's attention and analysis. As such, we provide below general matters that we believe are important factors that should be considered for all industries.

I. OSHA Must Meet Mandated Feasibility Requirements

As an initial matter, any OSHA rulemaking must be both technologically and economically feasible for the industries affected by agency rulemakings. Our experience around the nation reveals, however, that the standards urged by some stakeholders have the potential to promptly put employers out of business, or force them to replace many workers with robotics. OSHA must conduct a robust feasibility assessment.

OSHA must also assess the economic feasibility of any revised provisions by analyzing whether there is a “reasonable likelihood that these costs will [] threaten the existence or competitive structure of [each impacted] industry....” *United Steelworkers of America, AFL-CIO-CLC v. Marshall*, 647 F.2d 1189, 1272 (D.C. Cir. 1981). The undersigned organizations are concerned that the scope and breadth of the potential changes under consideration could have impacts of national importance. For example, the California draft rule is estimated by Cal/OSHA to regulate at least 1.2% of the state’s workforce,¹ and the Washington draft rule is widely viewed as much more broad. Such incredibly broad impacts, which we believe are likely underestimated, will require careful economic analysis.

With regard to technological feasibility, OSHA must assess the available technological methods to achieve new standards, and must make a finding that these methods are available to all in the affected industries. That is, OSHA is mandated to assess the available technological methods to achieve any new standard—including methods for measuring compliance—and must make a finding that these methods are available for use at both existing and new facilities in each impacted industry and industry segment, including small businesses.

II. OSHA should focus its review on blood lead levels

The most pertinent metric of exposure for a worker is an individual blood lead test, and OSHA should focus its efforts on assessing potential changes to the medical removal and return to work provisions of the rule. The current regulatory framework is well understood by industry and regulators, and with appropriate and narrowly tailored updates to the medical removal protection (MRP) provisions, the current framework will protect workers from incidental or elevated exposures.

Industry experience has shown that worker exposures and blood lead levels can be well controlled in a variety of work environments across a wide range of air lead levels. EHS professionals in lead exposed workplaces are best placed to determine the necessary and appropriate measures to ensure worker safety in each work environment – there is no one-size-fits-all approach. Based on workplace observations, air lead levels are not closely correlated with observed blood lead levels, particularly when appropriate PPE, work practices, and hygiene protocols are implemented under the guidance of EHS professionals.

OSHA should focus its efforts on appropriate adjustments to the blood lead levels underlying the medical removal provisions and return-to-work, and empower EHS professionals to continue to

¹ California Department of Industrial Relations, Standardized Regulatory Impact Assessment: Revisions to Occupational Lead Standards (February 2019, revised August 2020). https://dof.ca.gov/wp-content/uploads/Forecasting/Economics/Documents/SRIA_DIR_Lead_Safety_Standards_Revised200830.pdf

manage individual facilities using those measures that are most effective at protecting workers from incidental or elevated exposures. To this end, the undersigned organizations urge OSHA to follow the focused and tailored approach taken by the State of Michigan in updating that state's lead standard, and not the broad-brush California or Washington approaches.

III. OSHA Should Refrain from Changes to Air Standards

OSHA is considering whether the agency should revise the air lead exposure limits and action levels in the general industry lead standard. It should not. With proper adjustment to medical removal levels and worker hygiene requirements, there is no need for OSHA to adjust the PEL or AL, as it applies to requirements to implement engineering controls. Modern experience has shown that at air-lead levels below the current PEL of 50 $\mu\text{g}/\text{m}^3$, work practices, modern hygiene practices, PPE, and other EHS solutions can more efficiently and effectively control blood lead levels among employees than reductions in air-lead levels. OSHA must also analyze the technological hurdles and determine that industry can in fact achieve any proposed reduction to the Action Level or PEL.

For example, if OSHA moves to adopt the air lead reductions set out in California's proposal (*i.e.*, PEL from 50 $\mu\text{g}/\text{m}^3$ to 10 $\mu\text{g}/\text{m}^3$ and the action level from 30 $\mu\text{g}/\text{m}^3$ as an 8-hour TWA to 2 $\mu\text{g}/\text{m}^3$) the scope of industries that are subject to the standard would skyrocket along with the number of workers that require blood lead testing. It is estimated that required blood tests of workers in the state would increase from ~45,000 to ~200,000+ annually. At the Federal level, this could mean that some 2,000,000 workers would be required to be tested for blood leads. Such action would present numerous financial and logistical challenges including those noted below.

IV. There Should be Phase-in Periods for Any New Standards

Any changes OSHA makes to the industry standard for medical removal, or any other standards, should provide for a phase-in period of at least five years. If the changes eventually adopted are as broad as those under consideration in California or Washington, thousands of EHS professionals will need to be hired, trained and educated about the lead rule, and millions of workers would be required to be trained on lead hazards. Similarly, support vendors, such as blood sample collection facilities and analytical laboratories, would be required to increase their capacity more than ten-fold to handle the influx of workers requiring blood lead testing.

Furthermore, facilities required to implement capital improvements will need significant periods of time to make those investments. For air handling systems, engineering studies and equipment design require lengthy processes to design the multi-million dollar, complex air control systems. Facilities will also need time to seek construction authorizations and relevant state and/or federal EPA air emission permits, prior to beginning construction. Each of these activities has been made more time-consuming and expensive by the COVID-19 pandemic, further increasing the need for an appropriate phase-in period.

All of these major investments will require time, if they are even feasible. Logistically, it would make sense to allow at least two years for companies to develop and implement any required: new programs, policies, employee training, PPE provisions, non-capital ventilation projects, etc. However, newly regulated industries, those with unique facility profiles, and those that require capital

improvements or air permitting will likely need significantly longer lead times. This first step should be followed by a phased implementation schedule, similar to the method used for the 1978 OSHA lead rule, involving an incremental reduction of trigger levels (*i.e.*, 10 µg/dL) each year until the end of the phase-in period. This approach will provide industry time to adopt changes and come into compliance in a planned and thoughtful manner, without undue disruption.

V. Surface Lead Testing

Surface sampling and lead content in material as a constituent is not alone an effective means of assessing exposure. Understanding the existence of lead in a material or work area is important, but air monitoring and BLL monitoring are more reliable objective evidence. For surface sampling and the presence of lead in bulk materials, larger particles, or chips that are non-respirable can severely skew the perceived exposure potential of an employee, especially when proper training, hygiene, clothing, and PPE keep employees safe. Air monitoring, risk assessment and BLL monitoring are key to managing exposures.

VI. State Rulemakings

OSHA asked for input from the public on whether the lead standard in Michigan or proposed standards in California and Washington contain elements that should be adopted by OSHA. Although there are some elements in each state that may make sense, overall, we specifically do not endorse either California or Washington's approach. We also note that Washington's draft rules are especially problematic for many reasons, including their dramatic over-breadth and complexity. The undersigned organizations support the comments from Battery Council International which explore those issues in more depth.

Thank you for the opportunity to comment and please do reach out if we can be of any assistance in your continued efforts.

Sincerely,

American Foundry Society
Association of Battery Recyclers
Association of Washington Business
Auto Care Association
Battery Council International
Building Industry Association of Washington
California Automotive Wholesalers Association
California Manufacturers & Technology Association
California Retailers Association
International Lead Association