

U.S. Department of Labor

Occupational Safety and Health Administration
Washington, D.C. 20210

Reply to the Attention of:



MAR 20 1985

Mr. William N. Hall
Attorney
Cleary, Gottlieb, Steen & Hamilton
1752 N. St., N.W.
Washington, D.C. 20036

Representing: American Cyanamid Company - Polymer Products Division

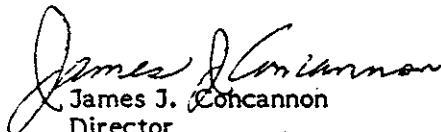
Dear Mr. Hall:

Enclosed is a copy of the Federal Register notice dated March 15, 1985, granting American Cyanamid Company a temporary variance from Section 1910.1025 (k)(1)(i)(D) concerning the 50 ug/100g Medical Removal Trigger Level, of the Standard for Occupational Exposure to Lead.

In accordance with 29 CFR Part 1905.10(c)(3), the affected supervisory, maintenance and skilled employees and their authorized employees' representative shall be notified of the grant of variance in the same manner they were informed of the Federal Register notice granting the interim order.

The temporary variance became effective on March 7, 1985, and shall remain in effect until September 1, 1985, unless otherwise revoked.

Sincerely,


James J. Concannon
Director
Office of Variance Determination

Enclosure

CYWI 3-001110

N14522

A certification was issued covering all workers separated on or after November 14, 1983 and before January 31, 1985.

TA-W-15,608; *Levi Strauss & Co.,*
Arkadelphia, AR

A certification was issued covering all workers separated on or after November 14, 1983 and before January 31, 1985.

TA-W-15,679; *Johnson Camping, Inc.,*
Walton, NY

A certification was issued covering all workers separated on or after December 3, 1983 and before February 15, 1985.

TA-W-15,625; *Airco Welding Products,*
Fillermets Plant, Sparrows Point,
MD

A certification was issued covering all workers separated on or after October 1, 1983.

I hereby certify that the aforementioned determinations were issued during the period February 28, 1985-March 1, 1985. Copies of these determinations are available for inspection in Room 6434, U.S. Department of Labor, 601 D Street, NW., Washington, D.C. 20213 during normal business hours or will be mailed to persons who write to the above address.

Dated: March 5, 1985.

Marvin M. Fooks,
Director, Office of Trade Adjustment
Assistance.

[FR Doc. 6258- Filed 3-14-85; 8:45 am]

BILLING CODE 4510-30-M

Occupational Safety and Health Administration

[V-84-4]

Temporary Variances From Final Trigger Level for Medical Removal Protection Under the Standard for Occupational Exposure to Lead

AGENCY: Occupational Safety and
Health Administration, Labor.

ACTION: Grant of Temporary Variances.

SUMMARY: This notice announces the grant of temporary variances to 28 plants for the final trigger level for medical removal protection, under the standard for Occupational Exposure to Lead (29 CFR 1910.1025(k)(1)(i)(D)). The variances temporarily relieve the affected employers of the requirement to comply with the 50 µg. of lead per 100g of blood removal trigger under the lead standard. As a condition of the granted relief, the employers must continue to comply with the 60/40 removal and return triggers and all other provisions of the lead standard and must satisfy the conditions and requirements of the variance order. This relief applies only

to the affected supervisory, maintenance and skilled production employees referred to in the 28 applications for temporary variances.

DATES: The effective date of the grant of temporary variances is March 7, 1985. The expiration date of the temporary variances is September 1, 1985.

FOR FURTHER INFORMATION CONTACT:

James J. Concannon, Director, Office of Variance Determination,
Occupational Safety and Health
Administration, U.S. Department of
Labor, Third and Constitution
Avenue, NW., Rm. N-3656,
Washington, D.C. 20210, Telephone:
(202) 523-7193

or the following Regional and Area
Offices:

U.S. Department of Labor—OSHA, 1515
Broadway (1 Astor Plaza), Room 3445,
New York, New York 10036

U.S. Department of Labor—OSHA, 90
Church Street, Room 1405, New York,
New York 10007

U.S. Department of Labor—OSHA,
Gateway Building, Suite 2100, 3535
Market Street, Philadelphia,
Pennsylvania 19104

U.S. Department of Labor—OSHA,
Room 242, U.S. Customs House,
Second & Chestnut Street,
Philadelphia, Pennsylvania 19106

U.S. Department of Labor—OSHA, Penn
Place, Room 2005, 20 North
Pennsylvania Avenue, Wilkes-Barre,
Pennsylvania 18701

U.S. Department of Labor—OSHA,
Federal Building, Room 2236, 1000
Liberty Avenue, Pittsburgh,
Pennsylvania 15522

U.S. Department of Labor—OSHA,
Progress Plaza, 49 North Progress
Avenue, Harrisburg, Pennsylvania
17109

U.S. Department of Labor—OSHA, 850
N. 5th Street, Allentown,
Pennsylvania 18102

U.S. Department of Labor—OSHA, 1375
Peachtree Street, NE., Suite 587,
Atlanta, Georgia 30367

U.S. Department of Labor—OSHA,
Building 10—Suite 33, La Vista
Perimeter Office Park, Tucker,
Georgia 30084

U.S. Department of Labor—OSHA, Todd
Mall, 2047 Canyon Road, Birmingham,
Alabama 35216

U.S. Department of Labor—OSHA, 951
Government Street—Suite 502,
Mobile, Alabama 36604

U.S. Department of Labor—OSHA,
Federal Building, Room 302, 299 East
Broward Boulevard, Fort Lauderdale,
Florida 33301

U.S. Department of Labor—OSHA, 700
Twiggs Street, Room 624, Tampa,
Florida 33602

U.S. Department of Labor—OSHA, 32nd
Floor, Room 3244, 230 South Dearborn
Street, Chicago, Illinois 60604

U.S. Department of Labor—OSHA, 1400
Torrence Avenue, 2nd Floor, Calumet
City, Illinois 60409

U.S. Department of Labor—OSHA, 6000
West Touhy Avenue, Niles, Illinois
60648

U.S. Department of Labor—OSHA, 344
Smoke Tree Business Park, North
Aurora, Illinois 60542

U.S. Department of Labor—OSHA,
Federal Office Building, Room 4028,
550 Main Street, Cincinnati, Ohio
45202

U.S. Department of Labor—OSHA,
Federal Office Building, Room 899,
1240 East 9th Street, Cleveland, Ohio
44199

U.S. Department of Labor—OSHA,
U.S. PO & Courthouse, Room 422, 46th
East Ohio Street, Indianapolis,
Indiana 46204

U.S. Department of Labor—OSHA,
Henry S. Reuss Building, 310 West
Wisconsin Avenue, Suite 1180,
Milwaukee, Wisconsin 53203

U.S. Department of Labor—OSHA, 555
Griffin Square Building, Room 802,
Dallas, Texas 75202

U.S. Department of Labor—OSHA, 1425
West Pioneer Drive, Irving, Texas
75061

U.S. Department of Labor—OSHA, 611
East 6th Street, Room 303, Austin,
Texas 78701

U.S. Department of Labor—OSHA,
Savers Building, Suite 828, 320 West
Capitol Avenue, Little Rock, Arkansas
72201

U.S. Department of Labor—OSHA,
Hoover Annex, Suite 200, 2156
Wooddale Boulevard, Baton Rouge,
Louisiana 70806

U.S. Department of Labor—OSHA, 911
Walnut Street, Room 406, Kansas City,
Missouri 64108

U.S. Department of Labor—OSHA, 1150
Grand Avenue, 8th Floor, Room 606,
Kansas City, Missouri 64106

SUPPLEMENTARY INFORMATION:

I. Background

Under the medical removal protection (MRP) provision of the lead standard, (29 CFR 1910.1025(k)), employers are required to remove an employee from work having and exposure to lead at or above the action level of 30 micrograms of lead per cubic meter of air (30 µg/m³), if the employee's blood lead level is at or above the specified medical removal trigger. The employee must be kept on temporary medical removal until the employee's blood lead level has declined to or below the return trigger. Employees are guaranteed full wages

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and benefits throughout the duration of the removal period generally to a maximum of 18 months.

The purpose of the MRP provision is to provide temporary medical removal protection to workers who are at risk of sustaining material impairment to health from continued exposure to lead. The standard specifies four removal and three return trigger levels. These levels were phased in over a five-year period. Phase one required removal of employees having blood levels at or above 80 micrograms of lead per 100 grams of whole blood (80 µg/100g) and allowed return when blood lead levels decline to 60 micrograms of lead per 100 grams of whole blood (60 µg/100g). Phase one expired March 1, 1978. Phase two required removal at 70 µg/100g and permitted return at 50 µg/100g. Phase two expired March 1, 1980. Phase three required removal at 60 µg/100g and authorized return at 40 µg/100g. Phase three expired March 1, 1981. The fourth and final phase requires removal at 50 µg/100g and allows return at 40 µg/100g.

The first three medical removal triggers—the 80, 70, and 60 µg/100g triggers—would require removal of an employee after periodic and follow-up blood sample tests indicate that the employee's blood lead is at or above the specified trigger. The fourth removal trigger, however, requires the removal of an employee whenever the average of the last three blood tests or the average of all blood tests taken over the previous six months, whichever is longer, is at or above 50 µg/100g. An employee need not be removed under the terms of the 50 µg/100g trigger whenever the employee's most recent blood test results indicate at blood lead level of 40 µg/100g or below.

Under the terms of the standard, the 60 and 50 µg/100g removal triggers are concurrently in effect. Thus, an employee must be removed when the employee's blood lead test results average 50 µg/100g or higher or when the employee's blood lead level is confirmed by a follow-up sample (within two weeks of the receipt of the results of the first test) to be 60 µg/100g or higher.

On March 1, 1983, the 50 µg/100g MRP removal trigger level became effective. Based on the data that had been submitted in support of earlier requests for temporary variance from the 60/40 µg/100g MRP trigger levels (48 FR 37897, July 23, 1983; and 48 FR 4082, January 28, 1983), the lead rulemaking record (OSHA Docket No. H-004), the judicial history of the lead standard and surveys of lead industries, OSHA recognized that the 50 µg/10g MRP removal trigger was likely to pose feasibility problems for many plants.

Relief from the 50 µg/100g removal trigger was originally sought by 125 employers. Of the 125 employers, 28 failed to submit sufficient data to establish a need, 13 were referred to the appropriate States with approved occupational safety and health plans, and 12 are not being granted relief at this time. Four of the remaining five employers submitted applications in error, and one has been withdrawn.

Of that number, only 67 were considered appropriate for relief at that time. The employers submitted applications for a temporary variance and an interim order with supporting data to indicate that 10 percent or more of their total skilled lead-exposed employees would require removal under the 50 µg/100g trigger. Based on those data, and the additional data generated during discussions with the employers and during variance investigations conducted at 12 of the affected plants, OSHA decided to grant an interim order to 65 of the 67 employers (two employers no longer needed this relief). The interim order became effective for 48 employers on September 2, 1983; for one employer on September 20, 1983; for nine employers on October 17, 1983; and for seven employers on August 24, 1984. Notice of the applications for temporary variances and of the grant of interim orders was published in the Federal Register on August 24, 1984 (49 FR 33757). Since the grant of the interim order to 65 plants, 34 have ceased to need the relief, two have closed, and one plant requires further evaluation.

Included in the termination of the relief were the following six employers who were listed in the August 24, 1984 Federal Register publication:

Exide Corporation, 2001 Lee High Street, Allentown, Pennsylvania 18103
Exide Corporation, 2510 North Boulevard, Raleigh, North Carolina 27604

Exide Corporation, U.S. Highway 15, Sumter, South Carolina 29150
GNB Batteries Inc., 11331 Satellite Boulevard, Orlando, Florida 32809
GNB Batteries Inc., 2800 Carrol Avenue, Lynchburg, Virginia 24001

New Castle Battery Manufacturing Company, 3601 Wilmington Road, New Castle, Pennsylvania 16105

The employers also had requested relief from the 40 µg/100g return trigger (29 CFR 1910.1025(k)(1)(iii)(A)(3)). The employers claim that the 40 return trigger is infeasible because the length of time required for blood lead levels to decline below 40 is longer than anticipated by OSHA. Their concerns focus particularly on long-tenured employees. Based on the evidence to

date, however, OSHA concluded that the data are insufficient to support the claim of infeasibility and denied the requests for interim orders providing relief from the 40 µg/100g return trigger (49 FR 33757, August 24, 1984).

The interim order granted temporary relief to each employer from the requirement to comply with the 50 µg/100g removal trigger level. As a condition of the relief, the employers were required to continue to comply with the 60/40 µg/100g removal and return triggers and all other provisions of the lead standard and to satisfy the conditions and requirements of the interim order.

The names and addresses of the 28 plants that have continued to operate under the interim order, which are now being granted temporary variances are:

Secondary Smelters

Franklin Smelting & Refining Corporation, Castor Avenue East of Richmond Street, Philadelphia, Pennsylvania 19134
GNB Batteries Inc., South 5th Street, Frisco, Texas 75034
General Battery Corporation, Spring Valley Road, Reading, Pennsylvania 19603
Gulf Coast Lead Company, 1910 N. 66th Street, Tampa, Florida 33619
ILCO, Inc., Dunnant Road, Leeds, Alabama 35094
Inland Metals Refining Company, 651 East 119th Street, Chicago, Illinois 60628
Master Metals, Inc., 2850 West 3rd Street, Cleveland, Ohio 44113
Non-Ferrous Processing Corporation, 551 Stewart Avenue, Brooklyn, New York 11222
Sanders Lead Company, Inc., Henderson Road, Troy, Alabama 36081
Seitzinger, Inc., 900 Ashby Street, N.W., Atlanta, Georgia 30318
Tonolli Corporation, R. D. #1, Route 54, Nesquehoning, Pennsylvania 18204

Battery Manufacturers

Abex Corporation, Bronze and Alloy Division, Route 19 (Baldwin Street Extension), Meadville, Pennsylvania 16335
Battery Manufacturing Company, Inc., 804 South Dixie, West Palm Beach, Florida 33401
Exide Corporation, 303 Water Street, Logansport, Indiana 46947
Exide Corporation, 1222 18th Street, Racine, Wisconsin 53403
GNB Batteries Inc., West Station Street, Kankakee, Illinois 60901
General Battery Corporation, Montrose Avenue & Angeline Street, Reading, Pennsylvania 19103

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General Battery Corporation, Spring Valley Road, Reading, Pennsylvania 19603
 K W Battery Company, 3555 Howard Street, Skokie, Illinois 60078
 Miami Battery Manufacturing Company, 11100 N.W. South River Drive, Miami, Florida 33178
 General Battery Corporation, 250 Grand Street, Hamburg, Pennsylvania 19526
 Prestolite Battery Division, 4700 Fifth Street Highway, Temple, Pennsylvania 19603
 Red Diamond Battery Company, Route 8, Box 828, Garland County Industrial Park, Hot Springs, Arkansas 71901
 Standard Industries, Nelson Road At Reliable Drive, San Antonio, Texas 78227

Other Industries

American Cyanamid Company, 4500 West Fifteenth Street, Chicago, Illinois 60623
 Associated Lead, Inc., 2545 Aramingo Avenue, Philadelphia, Pennsylvania 19125
 Eagle-Picher Industries, Inc., Post Office Box 550, Joplin, Missouri 64802
 Hamilton Brass & Aluminum Casting Company, Eighth and Chestnut Streets, Hamilton, Ohio 45011

Where temporary variance requests involve an employer at multiple locations, including one or more in a State with an approved occupational safety and health plan, the temporary variance is granted under the Federal/State Reciprocity Agreement established at 29 CFR 1905.14(b)(3). Thus, the State of Indiana, having jurisdiction over places of employment covered in the application, concurs with the granting of the variance.

The Federal Register notice of August 24, 1984 invited interested persons, including affected employers and employees, to submit written comments, data, views, and arguments regarding the grant or denial of the variance requested. In addition, affected employees were notified by employers of their right to request a hearing on the applications for temporary variance. No written comments or requests for a hearing were received concerning the 28 plants.

II. Issues Raised in the Temporary Variance Applications

The 28 secondary lead smelters, lead battery manufacturers, and facilities in other segments of the lead industry listed in the background section above submitted appropriate applications pursuant to section 6(b)(6)(A) of the Occupational Safety and Health Act of 1970 (84 Stat. 1596; 29 U.S.C. 655), 29 CFR 1905.10 and the Secretary of

Labor's Order No. 9-83 [48 FR 35738] for a temporary variance and an interim order, pending a decision on the variance, from 29 CFR 1910.1025(k)(1)(i)(D), the 50 µg/100g medical removal protection (MRP) trigger and 29 CFR 1910.1025(k)(1)(iii)(A)(3), the 40 µg/100g medical return trigger of the lead standard.

As discussed more fully above, the 50 removal trigger requires an employer to remove an employee from work where lead exposure is at or above the 30 µg/m³ action level whenever the average of the employee's last three blood sample tests (or of all tests conducted over the previous six months, whichever is longer) is at or above 50 µg/100g of whole blood. The 40 return trigger prohibits the employee from being returned to his or her former jobs unless two consecutive blood sampling tests indicate that the employee's blood lead is at or below 40 µg/100g of whole blood.

The requests for temporary variance are based upon the employers' alleged inability to comply with the standard because of the anticipated removal and consequent unavailability of a significant number of skilled and supervisory employees if the 50 removal and 40 return triggers for MRP were put into effect. Essentially, the applicants made the following three-spronged feasibility argument:

(1) The 50 removal trigger would require, for the first time, the removal of many supervisory, maintenance and highly skilled employees whose blood lead levels are between 50-59 µg/100g. For example, blood lead data from September 1, 1982 to March 1, 1983 indicate that the employers receiving relief appear to have severe problems in coming into compliance with the 50 trigger. The numbers alone suggest the severity of the problem. The anticipated removals range from a high of approximately 100 percent of all lead-exposed supervisory, maintenance and skilled employees to a low of approximately 10 percent. Current blood lead data indicate that the anticipated removals range from a high of approximately 64 percent to a low of 10 percent. Seitzinger, with the highest blood lead levels, would have to remove approximately 64 percent of its skilled workforce. Other plants with high levels include: Hamilton Brass (57 percent); ILCO (53 percent); Inland Metals and Master Metals (50 percent); Red Diamond (47 percent); and Miami Battery (40 percent). Among the plants having the lowest blood lead levels, approximately 10 percent, are:

Prestolite, American Cyanamid and Abex.

(2) The removal of the supervisory, maintenance and highly skilled employees would be prolonged beyond OSHA's original expectation in order for their blood lead levels to drop to the 40 µg/100g return level. As previously stated in the background section, the employers concerns focus particular on long-tenured employees.

(3) Since these employees are highly paid, occupy crucial positions and are extremely difficult to replace, placing them on MRP not only would be costly, but also would drastically reduce productivity and result in a less safe and healthful workplace. Employers contend that replacements for the substantial number of supervisory, maintenance and highly skilled production employees subject to the 50 trigger are not available in the labor market or at the plant. A few examples suffice to establish this point. American Cyanamid, for instance, contends that the supervisory and production capabilities of the plant would be severely impaired because one-third of the supervisory force and one-half of the litharge operators, process operators and blender-packers would be on removal. It would be difficult to find experienced employee replacements, particularly for the supervisors subject to removal. The company states it would have to hire and train new workers to replace the employees predicted to be on medical removal. A minimum training period for inexperienced replacements ranges from six months for blender-packers to 12 months for litharge and process operators, to three years for foremen.

Abex Corporation contends that many years of experience are necessary before replacements for the two electric furnace operators who would have to be removed could learn the chemistry of the approximately 75 different alloys used at the plant and operate the complex furnace controls. The operators must have knowledge ranging from the type of metals to add at various heats to the hazardous metals that require special handling. The two current electric furnace operators have a combined experience of over 35 years. Replacement operators reportedly have merely one to two years experience and, therefore, appear not to have the requisite expertise to adequately staff the job. A supervisor would be required to supervise and train them for up to one year, distracting from other supervisory duties. Other operations that require the production of the furnace for subsequent production stages would also be disrupted.

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Most employers claim that is not possible to estimate quantitatively with any precision the costs that would be incurred for training, pay, and benefits to the removed and transferred employees if more than 10 percent of their workers are placed on MRP. But they suggest that cost undoubtedly will be very substantial.

Prestolite, for instance, based its cost estimate on training cost, lost production, lost profit and increased spoilage and waste incurred over the one-year period required to train inexperienced workers. The company estimates an annual total cost of \$405,000 to remove 54 employees at the 50 $\mu\text{g}/100\text{g}$ trigger.

GNB Batteries, Frisco, Texas secondary smelter cost estimate is based on the predicted closing of the plant caused by temporary removal of 22 of the 58 skilled employees (or 38 percent) if the 50 $\mu\text{g}/100\text{g}$ trigger were applied. GNB estimates that the cost and time involved in training a replacement for each employee placed on MRP is \$28,700 annually. GNB contends that the cost of the removal program, combined with the reduced productivity caused by the impact of the 50 trigger and coupled with the economically depressed state of the secondary lead industry, could not be sustained.

In addition the potential adverse safety and health consequences of implementing the 50 $\mu\text{g}/100\text{g}$ trigger at once also appear to be serious. The removal of experienced and highly skilled employees will require hiring or transferring inexperienced personnel to work at complex jobs, which would promote the spread of lead contamination to other employees. Many examples are cited. For instance, at the Associated Lead plant approximately 29 percent of the total skilled workforce would be on continuous removal (3 of 12 supervisors, 4 of 21 maintenance men, and 21 of 63 skilled production employees). Eighty-six percent of these employees have 10 or more years of experience. The supervisors are responsible for the enforcement of all safety and health regulations and controls, as well as training in the operation of equipment, in individual job functions, and in safe work practices required to reduce the hazards of injury or excessive exposure to airborne lead. If experienced supervisors are replaced with inexperienced employees, the quality of such protective practices as respirator training and surveillance, work and hygiene practices (such as the cleaning of work areas and of equipment) and the

proper use and maintenance of local exhaust ventilation to keep airborne dust and fumes away from the employee's breathing zone will be impaired.

Similarly, the quality of maintenance is likely to suffer. Maintenance personnel are required to repair and perform preventive maintenance on all equipment located at the plant. If pollution control equipment is not properly maintained, it becomes inoperable and thus affords no protection to employees against excessive exposure to airborne lead dust and fumes. For example, should a dust collector need repair, and such repair not be forthcoming because of the unavailability of adequately trained maintenance personnel, excessive lead dust and fume could permeate the work area, thus adversely affecting the safety and health of employees. Likewise, if an inexperienced maintenance man fails to repair a water jacket rupture around a blast furnace immediately, water could leak into the lead pot and cause a violent explosion with a high probability of employee injury or death.

III. Conclusions

OSHA's analysis of the evidence resulted in the following conclusions:

1. Approximately 10 percent or more of the total lead-exposed skilled workforce at each of the plants to which variances are granted would be on continuous temporary medical removal at the 50 $\mu\text{g}/100\text{g}$ removal trigger.

2. The removal of 10 percent or more of the lead-exposed skilled workforce of each plant would seriously and adversely affect the ability of each plant to continue to operate.

3. A firm conclusion cannot be drawn from the estimates in the variance records concerning the length of time necessary for the blood lead of a removed employee to drop to the 40 $\mu\text{g}/100\text{g}$ level of the return trigger, because the evidence to substantiate the employers' estimates are inadequate.

4. The time needed to train fully competent employees to replace the experienced supervisory, maintenance, and skilled employees who would be subject to removal under the 50 removal trigger varies from periods of six months to three years or more for supervisory employees, one to four years for maintenance employees and three to 16 months or more for skilled production employees. The number of experienced replacements both inside and outside of the plants is extremely limited.

5. Adverse safety and health consequences would result from removing experienced and highly skilled employees and replacing them with

inexperienced personnel. These consequences might include subjecting the replacements, as well as other employees, to: (a) excessive lead exposure from process and ventilation equipment breakdown caused by inadequate preventive maintenance, improper work and hygiene practices and improper use of protective devices such as respirators; (b) possible injury or death from explosions caused by failure to repair water jackets around blast furnaces or by improper handling of explosives used to blast aerations from the furnace shaft; (c) possible burns from materials that splash or drop during transfer of molten lead; and (d) other injuries and illnesses resulting from employees' inability to protect their own safety and health due to reduced or ineffective safety and health training applicable to their job functions.

6. OSHA cannot draw firm conclusions of the dollar losses that would be incurred if 10 percent or more of the employees in each plant are placed on MRP since cost data were incomplete and were submitted by only three employers, but the costs appear to be substantial.

7. Based on air lead data, the number of available positions located in areas below the 30 μm^3 action level are grossly inadequate to accommodate the numbers of employees placed on MRP because of elevated blood leads. Such positions are almost nonexistent in primary smelters, and vary from one to five positions in most of the secondary smelters, battery manufacturing and other plants.

IV. Decision

The variance record demonstrates that immediate compliance with the 50 $\mu\text{g}/100\text{g}$ MRP removal trigger level presents severe feasibility problems for the 28 employers in four major areas: (1) The applicants would have to remove between 10 percent to 100 percent of their total skilled workforce from lead exposure; (2) experienced employees who would be removed could not easily be replaced because the employers are unable either to recruit other employees with comparable skill levels or to quickly train replacements; (3) removal of highly skilled and experienced employees would diminish the health and safety of the remaining employees at the affected plants, with a resulting higher probability of work-related injuries, illnesses, and deaths; and (4) sufficient transfer opportunities do not exist and extensive removals from the workplace would result in greatly increased MRP costs. Based on the above, OSHA concludes that the 28

employers have demonstrated that immediate compliance with 50 $\mu\text{g}/100\text{g}$ MRP removal trigger level is infeasible. Each, thus, merits a temporary variance, effective until September 1, 1985.

V. Summary and Explanation of the Final Variance Order Requirements

The primary purpose of the requirements contained in the interim order and in this order of variance is to provide significantly increased protection to supervisory, maintenance and skilled employees with elevated blood lead levels between 50–59 $\mu\text{g}/100\text{g}$ who, because of the relief afforded to employers by this or the interim order, need not be removed from lead exposure. In the absence of this relief the employer would have to remove such employees in compliance with 50 $\mu\text{g}/100\text{g}$ removal trigger. Because the orders temporarily deny the affected employees that particular form of protection, OSHA, in fulfillment of its statutory obligations under section 6(b)(6)(A) of the Act, mandates further safeguards including enhanced medical surveillance to protect against any adverse health effects from the hazards of lead exposure for employees with blood lead levels between 50 and 59 $\mu\text{g}/100\text{g}$ of whole blood.

The following is a discussion of the individual requirements of the variance order, including OSHA's rationale for each specific provision.

Paragraph 1 requires that the employers perform blood lead and zinc protoporphyrin (ZPP) testing bi-monthly on all employees with blood leads over 40 $\mu\text{g}/100\text{g}$ who are exposed to lead above the 30 $\mu\text{g}/\text{m}^3$ action level. This requirement imposes no additional burden upon employers. Section 1910.1025(j)(2) of the lead standard presently requires such monitoring.

Paragraph 2 requires that the employer provide for a consultation with a physician every two months and a comprehensive medical examination every six months (or sooner, at the discretion of the consulting or examining physician) for employees with blood lead averages between 50–59 $\mu\text{g}/100\text{g}$ who are not removed because of the interim order or this order. By contrast the lead standard requires medical examinations and consultations annually for any employee whose blood lead level during the preceding 12 months is at or above 40 $\mu\text{g}/100\text{g}$ (§ 1910.1025(j)(3)).

Paragraph 3 requires a written medical opinion by the physician as to whether the employee who need not be removed because of the relief afforded to employers by the interim or variance orders has a detected medical condition

that places the employee at increased risk of material impairment to health from exposure to lead. Section 1910.1025(k)(1)(ii) of the lead standard already requires removal of an employee from lead exposure at or above 30 $\mu\text{g}/\text{m}^3$ on each occasion when a final medical determination indicates that the employee has a detected medical condition that places the employee at increased risk of material impairment to health from exposure to lead. To more fully implement the preventive aspects of the medical consultations and examinations required by this order, OSHA is requiring a physician's written medical opinion after each visit. This paragraph also requires the employer to submit to OSHA after each consultation and medical examination a written statement from the physician concerning each affected employee who need not be moved from his or her job, stating that it is medically appropriate for the employee to continue to work at his or her present job. This requirement will enable OSHA to monitor compliance with this provision.

Paragraph 4 requires the employer to remove an employee with blood leads at 60 $\mu\text{g}/100\text{g}$ or above to areas where lead exposure is below 30 $\mu\text{g}/\text{m}^3$, and allows the employer to return the employee when the blood lead level has diminished to 40 $\mu\text{g}/100\text{g}$ or below. This is already required by the lead standard (Paragraphs (k)(1)(i)(C) and (k)(1)(iii)(A)(3)).

Paragraph 5 requires that the employer provide OSHA with the name, job classification, and position of each employee who is subject to MRP as a result of either a blood lead level at or above 60 $\mu\text{g}/100\text{g}$ or the recommendation of the examining physician. Requiring these data will enable OSHA to confirm employer compliance with the applicable removal provisions of the lead standard.

Paragraph 6 requires full-shift respirator usage for employees with blood lead levels at or above 50 $\mu\text{g}/100\text{g}$ who are working in areas with air lead levels at or above the 30 $\mu\text{g}/\text{m}^3$, and who because of this or the interim order are not removed. OSHA has concluded that requiring full shift respirator usage at the 30 $\mu\text{g}/\text{m}^3$ action level in lieu of the more limited respirator usage at or above the 50 $\mu\text{g}/\text{m}^3$ permissible exposure limit required by § 1910.1025(e)(2) of the lead standard, will provide needed increased protection.

Paragraph 7 requires that the employer make an immediate inspection and evaluation of the conditions and work practices of employees with blood

lead levels between 50–59 $\mu\text{g}/100\text{g}$ who need not be removed under this or the interim order, and take all reasonable and appropriate corrective steps necessary to reduce employee lead absorption. This paragraph also requires the employer to make periodic inspections and evaluations of the work conditions and practices until the affected employees blood lead levels are below 50 $\mu\text{g}/100\text{g}$.

Paragraph 8 requires that the employer provide OSHA with blood lead, ZPP, and air lead data as accumulated bi-monthly for all skilled lead-exposed employees. OSHA has concluded that the data will assist in determining the employer's compliance with the lead standard and terms of the variance order.

Paragraph 9 requires that the employer agree to allow OSHA (or, where relevant, State) health and safety inspections related to its temporary variance. OSHA, in granting this relief, must be assured that it can readily monitor compliance with the requirements of the order.

V. Order

It appears from the applications for temporary variance, the supporting data, and the variance investigations that, within the meaning of section 6(b)(6)(A) of the Act, the employers listed below were unable to comply with the requirements of 29 CFR 1910.1025(k)(1)(i)(D) by the date required by the standard because of the unavailability of professional or technical personnel. It further appears that the variance is necessary to prevent undue hardship to the employers and their employees. Therefore, pursuant to the authority in section 6(b)(6)(A) of the Occupational Safety and Health Act of 1970, in the Secretary of Labor Order No. 9–83 (48 FR 35736), and in 29 CFR Part 1905, it is ordered that the 28 plants listed below are authorized to comply with the requirements of the order set forth below with respect to their lead-exposed supervisory, maintenance and skilled production employees, in lieu of complying with the requirements of 29 CFR 1910.1025(k)(1)(i)(D). All other provisions of the lead standard are unaffected by this order and, therefore, must be complied with in conjunction with the terms of this order.

Temporary variances are being issued to the following 28 plants, whose addresses appear above:

Abex Corporation
American Cyanamid Company
Associated Lead, Inc.
Battery Manufacturing Company, Inc.
Eagle-Picher Corporation

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Exide Corporation (2 plants)
Logansport, Indiana Plant
Racine, WI Plant
Franklin Smelting & Refining
Corporation
GNB Batteries Inc. (2 plants)
Frisco, TX Secondary Smelter
Kankakee, IL Battery Plant
General Battery Corporation (4 plants)
Hamburg, PA Plant
Reading, PA Battery Manufacturing
Plant
Reading, PA Industrial Battery Plant
Reading, PA Secondary Smelter
Gulf Coast Lead Company
Hamilton Brass & Aluminum Casting
Company
ILCO, Inc.
Inland Metals, Inc.
K W Battery Corporation
Master Metals
Miami Battery Manufacturing Company
Non-Ferrous Processing Corporation
Prestolite Battery Division
Red Diamond Battery Company
Sanders Lead Company
Seitzinger, Inc.
Standard Industries
Tonolli Corporation

The conditions and requirements of the order are:

(1) As presently required by 29 CFR 1910.1025(j)(2) of the lead standard, employers shall perform blood lead and zinc protoporphyrin (ZPP) tests every two months on each employee whose last blood test indicated a blood lead level at or above 40 $\mu\text{g}/100\text{g}$ and who is exposed to lead at or above the 30 $\mu\text{g}/\text{m}^3$ action level.

(2) For employees whose last three blood tests or all blood tests for the previous six months (whichever is longer) average 50 $\mu\text{g}/100\text{g}$ or above who work in jobs having airborne lead exposure at or above 30 $\mu\text{g}/\text{m}^3$ and who are not removed because of the interim order or this order, the employer shall provide:

(a) A personal consultation with a licensed physician every two months; and

(b) A comprehensive medical examination by a licensed physician every six months, or sooner, as determined by a physician.

(3) After each such personal consultation and comprehensive medical examination, the physician shall make a written medical determination as to whether the employee has a detected medical condition that places the employee at increased risk of material impairment to health from exposure to lead.

(a) If the employee is determined to have such a condition, the employee shall be removed from work having an exposure to lead at or above 30 $\mu\text{g}/\text{m}^3$;

(b) If the employee is determined not to have such a condition, the employer shall submit to the Office of Variance Determination a written statement from the physician stating that it is medically appropriate for the employee to continue to work at the employee's present job.

(4) Employers shall remove each employee with blood lead levels at or above 60 $\mu\text{g}/100\text{g}$ and return the employee when the employee's blood lead level is at or below 40 $\mu\text{g}/100\text{g}$, in accordance with the provisions of § 1910.1025(k)(1)(i)(C) and 1910.1025(k)(1)(iii)(A)(3) of the lead standard.

(5) The name and job classification of each employee on MRP and the area where the employee is assigned shall be submitted to the Office of Variance Determination each time an affected employee is placed on medical removal protection as a result of either a blood lead level at or above 60 $\mu\text{g}/100\text{g}$ or the recommendation of a physician.

(6) For employees with blood lead levels at or above 50 $\mu\text{g}/100\text{g}$ who are working in areas with air-lead levels at or above 30 $\mu\text{g}/\text{m}^3$, respirator usage shall be mandatory during the entire workshift.

(7) For all employees with blood lead levels between 50–59 $\mu\text{g}/100\text{g}$, who need not be removed under the terms of the interim or this order, the employer shall make immediate inspections and evaluations of:

(a) The lead-related work practices affecting the employees;

(b) The employee's respirator usage;

(c) The use and availability of hygiene facilities, and the employee's relevant personal hygiene habits; and

(d) The existing engineering controls, to determine whether they are maintained properly.

Based on that inspection and evaluation, the employer shall take all reasonable and appropriate corrective steps to reduce the employee's absorption of lead. The employer shall submit to the Office of Variance Determination a written report (within 45 days after the effective date of this order) documenting when and where the evaluation took place, any corrective actions that were necessary, any corrective actions that were taken and the name and job classification of the affected employee. Periodic inspections and evaluations shall be conducted until the employee's blood lead level is below 50 $\mu\text{g}/100\text{g}$.

(8) For the duration of the variance order, every two months the employer shall submit to the Office of Variance Determination blood lead, ZPP and air lead data, as accumulated for all skilled lead-exposed employees.

(9) The employer shall agree to allow OSHA or, where relevant, State safety and health officials to inspect its facilities in connection with this variance application and this order.

As soon as possible after the effective date of this order, the employers listed above shall give notice to their affected employees of the conditions and requirements of this order by the same means required to inform them of the application for a variance.

EFFECTIVE DATES: This order becomes effective March 7, 1985.

Expiration date: The order shall remain in effect until September 1, 1985, unless modified or revoked in accordance with Section 6(b)(6)(A) of the OSH Act.

Signed at Washington, D.C., this 7th day of March 1985.

Robert A. Rowland,

Assistant Secretary of Labor.

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Office of Pension and Welfare Benefit Programs

[Application No. D-5439, et al.]

Proposed Exemptions; Arnett Brokerage Profit-Sharing Plan, et al.

AGENCY: Pension and Welfare Benefit Programs, Labor.

ACTION: Notice of Proposed Exemptions.

SUMMARY: This document contains notices of pendency before the Department of Labor (the Department) of proposed exemptions from certain of the prohibited transaction restrictions of the Employment Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1954 (the Code).

Written Comments and Hearing Request

All interested persons are invited to submit written comments or requests for a hearing on the pending exemptions, unless otherwise stated in the Notice of Pendency, within 45 days from the date of publication of this Federal Register — Notice. Comments and requests for a hearing should state the reasons for the writer's interest in the pending exemption.

ADDRESS: All written comments and requests for a hearing (at least three copies) should be sent to the Office of Fiduciary Standards, Pension and Welfare Benefit Programs, Room C-4526, U.S. Department of Labor, 200 Constitution Avenue, NW, Washington,

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