DEPARTMENT OF FINANCE
GAVIN NEWSOM - GOVERNOR
915 L STREET ■ SACRAMENTO CA ■ 95814-3706 ■ WWW.DOF.CA.GOV

Juliann Sum
Department of Industrial Relations
Division of Occupational Safety & Health
1515 Clay St., Ste. 1900
Oakland, CA 94612

June 12, 2019

Dear Ms. Sum:

Thank you for submitting the Standardized Regulatory Impact Assessment (SRIA) and the summary (Form DF-131) for the Division of Occupational Safety and Health proposed regulations to revise Title 8 occupational exposure to lead standards in construction and general industry as required in California Code of Regulations, title 1, section 2002(a)(1). As proposed regulations were not submitted with the SRIA, these comments are solely based on the SRIA.

The proposed regulations require employers to monitor and mitigate employees' exposure to lead, with airborne exposure limits of 50 µg/m3 lowered to 10 µg/m3, and medical removal for employees with blood lead levels at or above 30 µg/dL rather than 50 µg/dL. The average blood lead level concentration among working-age U.S. adults is around 1 µg/dL, while blood lead levels above 5 µg/dL are considered elevated and are associated with increased risks of hypertension, heart-attack, depression, and premature death. The SRIA estimates that approximately 228,000 California employees are exposed to lead at their workplace, with 85,000 in construction (around 10 percent of all 2018 construction jobs) and 143,000 in general industry (around 1 percent of general industry employees). Out of all exposed employees, 41,000 are estimated to have a blood lead level above 10 µg/dL, including 15,000 employees in construction, and 1,200 are determined to have a blood lead level above 30 µg/dL, all in general industry. Based on these estimates, the proposed regulations impose direct monitoring and mitigation costs to employers of $250 million in the first year, with $195 million annual ongoing that are assumed to be passed on to consumers. By industry, construction bears around 40 percent of all compliance costs. Furthermore, 87 percent of all private sector costs are borne by small businesses. Because very few workers (none in the construction industry) are assumed to have elevated blood lead levels, these do not include the costs of shifting job assignments or potential career costs to workers from medical removal. Due to the cumulative health effects of lead exposure, benefits from avoided mortality and morbidity due to the regulations grow by around $30 million every year and surpass the costs after around seven years.

Finance generally concurs with the methodology used to estimate impacts of proposed regulations, with the following exceptions.

First, the SRIA must incorporate the costs of medical removal, consistent with data on blood lead levels. The SRIA assumes that no construction workers have a blood lead level above 30 µg/dL, but a California Department of Public Health report based on laboratory blood test results from California workers showed that in 2012, 13 out of a sample of 2000 construction employees demonstrated blood lead levels above 30 µg/dL. This is not surprising given that construction is one of the most lead-exposed industries. With around 930,000 construction workers projected in 2020, similar rates would imply more than 6,000 medical removals. Assuming those workers are not laid off (if laid off, they would lose wages), construction firms would have to absorb the lower productivity costs of assigning them to other tasks. An upper bound for those costs would be the wages of the construction worker through the medical removal period – at the average industry wage in 2020, a six-month removal would be around $40,000. Moreover, given that the

medical removal threshold in the second year is lowered to 20 µg/dL, blood lead levels decline slowly, and given current data, many construction workers are expected to be subject to medical removal protection in the second year. The additional medical removals would also yield larger health benefits for the workers.

Second, the SRIA should include the fiscal costs of enforcing medical removals and employee protections. Since most affected entities are small businesses, and given the large potential compliance costs incurred by employers, there are incentives to ignore testing results or lay off affected workers. Small specialized businesses are particularly unlikely to have other tasks or positions available within the firm, and could have to send employees home with pay to comply with the regulations. To protect against this, additional enforcement efforts are likely to be required, and these costs must be included in the SRIA and fiscal estimates in the STD. 399.

Finally, since the baseline is not a valid alternative, the SRIA must add and analyze a second alternative.

These comments are intended to provide sufficient guidance outlining revisions to the SRIA. The SRIA, a summary of Finance's comments, and any responses must be included in the rulemaking file that is available for public comment. Finance understands that the proposed regulations may change during the rulemaking process. If any significant changes to the proposed regulations result in economic or fiscal impacts not discussed in the SRIA, please note that the revised impacts must be reflected on the Standard Form 399 for the rulemaking file submittal to the Office of Administrative Law. Please let us know if you have any questions regarding our comments.

Sincerely,

Irena Asmundson
Chief Economist
Department of Finance

cc: Mr. Lenny Mendonca, Director, Governor's Office on Business and Development
Ms. Debra Cornez, Director, Office of Administrative Law
Ms. Julie A. Su, Secretary, Labor and Workforce Development Agency
Ms. Victoria Hassid, Chief Deputy Director, Department of Industrial Relations
Ms. Christina Shupe, Executive Officer, Department of Occupational Standards and Health