

05/04/2018 – Lead Rulemaking Stakeholder Meeting

Washington State Department of Labor & Industries
12806 Gateway Drive South
Tukwila, WA 98168

Attendees included those representing the following organizations (in no particular order):

City of Tacoma
Washington Friends of Farms & Forests
Northwest Laborers-Employers Training Trust Fund (NWLETT)
Washington Poison Center
City of Everett
Champion Arms
Building Industry Association of Washington (BIAW)
National Rifle Association (NRA)
Battery Council International (BCI)
Institute of Neurotoxicology and Neurological Disorders (INND)
CenturyLink
AT&T
King County
Seattle Public Utilities
City of Seattle
Seattle Parks & Recreation
Associated Builders and Contractors, Inc., Western Washington (ABC)
National Shooting Sports Foundation (NSSF)
Association of Washington Business (AWB)
Alliance for Gun Responsibility

Chapter 296-857 WAC, LEAD

Stakeholder Question/Comment: We understand that an effort was made to implement “plain talk” principles in the draft, but this has resulted in information being repeated in multiple places throughout the rule, which in some cases creates multiple citable provisions for the same infraction. We would suggest that information be consolidated where appropriate and then reference back to a single point in the rule when it is necessary to explain something that has already been covered by a citable provision.

DOSH Response: This is a very complex rule and up to this point the primary focus has been to ensure we’re getting the major structural components right, but further

streamlining will occur. It is certainly not our intent to provide multiple citables for the same requirement.

Stakeholder Question/Comment: As the owner of a residential painting business, we book jobs up to eight months out. When will these new rules take effect?

DOSH Response: We are currently in the language development stage of rulemaking, which is relatively early in the process. It will likely be several months yet before we've finalized rule language and are ready to officially propose a new rule, which would mean that we wouldn't actually adopt the new rule for at least a few months after that. Additionally, we may delay the effective dates somewhat to allow businesses sufficient time to ensure compliance.

WAC 296-857-100, Scope and Exposure Criteria

Stakeholder Question/Comment: Why are pesticides included in the note on page 1? Haven't lead-based pesticides been out of use and illegal for many years?

DOSH Response: While we're not aware of any current use of lead-based pesticides this was added because of the historical use of lead-based pesticides. Pesticides used in the past still show up in contaminated soils, etc. which could potentially impact workers.

Stakeholder Question/Comment: WAC 296-857-10010(1) states that, "the Department finds there is no safe level of lead..." Isn't this a bit alarmist? What evidence is there to show that *any* amount of lead is harmful to humans? And further, is this even relevant? Why add this statement?

DOSH Response: This statement was added to clarify the intent of the rule. Lead is not a nutrient, and with significantly reduced background levels of lead present in people's blood since the rule was written in the 1970s when we were still using leaded gasoline, we're seeing that very small amounts of lead in the blood can be harmful.

Stakeholder Response: I agree with the statement that there is no safe level of lead in the human body, and this is consistent with statement made by the CDC and others. This is a great way to set the tone of the rule.

Stakeholder Response: While we don't think it is DOSH's intent to do so, we fear that this statement could be used to impose the general duty clause, allowing compliance inspectors to cite just about any employer activity related to lead.

DOSH Response: Imposing the general duty clause would require the absence of a sufficient rule, whereas this draft is 57 pages that explicitly cover the topic of lead in the workplace.

Stakeholder Question/Comment: Please add fishing sinkers to the bulleted list of lead containing products in the bulleted list within the note on page 1.

Stakeholder Question/Comment: Please change the opening sentence in the note on page 1 to read, "Working with any of the following material is *potentially* covered by the scope of the rule," as there may be circumstances in which the rule wouldn't apply.

Stakeholder Question/Comment: The second note, which begins on page 1 and continues to page 2 includes the requirement that respirators must be worn... Since this requirement appears later, it creates multiple citables.

DOSH Response: We do not cite rule notes. Notes are added to provide clarification only.

Stakeholder Question/Comment: Regarding the note in the middle of page 2 pertaining to exemptions from the rule, it would be helpful to add citation to the code provision that provides exemption for each bullet.

Table 1

Stakeholder Question/Comment: What if the employee declines blood lead testing?

DOSH Response: An employer wouldn't be able to force an employee to be tested, and if there is no record of blood lead levels than further requirements such those pertaining to medical removal wouldn't apply.

Stakeholder Question/Comment: Why not base the 'advisory level' on any significant increase in blood lead rather than making it 5µg/dL?

DOSH Response: The current structure is intended to catch significant increases in blood leads but we can review language to determine whether improvements can be made.

Stakeholder Question/Comment: What if a workers begins working with elevated blood lead levels due to personal hobbies or previous employment?

DOSH Response: This is one of the reasons why initial blood lead testing requirements were added in this draft.

Stakeholder Question/Comment: The current draft requires “at least monthly” testing at the Return to Work level, whereas the current draft just says “monthly.” This would limit employers’ ability to test more than monthly.

Stakeholder Question/Comment: What if an employee’s blood lead levels rise while they are off of work under medical removal provisions of the rule? As this would indicate lead exposure via a route that isn’t related to the workplace (like personal hobbies) shouldn’t there be some provision that provides an “off-ramp” for employers so that they don’t have to continue paying wages for the full 18 months?

DOSH Response: We can look into this. In a situation such as this it might be a good opportunity to provide educational material to workers regarding other routes of exposure, such as hobbies as well.

Stakeholder Response: We support educating workers, but there shouldn’t be an *obligation* for employers to address matters beyond the workplace. L&I does not have statutory authority beyond the workplace.

Stakeholder Response: This is also something that would be incumbent upon any physician to evaluate all routes of exposure, from work and otherwise, and provide medical advice to avoid or limit certain activities where appropriate.

Stakeholder Question/Comment: Will there be any sort of approved list of doctors or specific direction for medical providers added to the rule?

DOSH Response: The current draft requires workers to use the employer’s doctor but allows for workers to obtain a second opinion by a doctor of their choosing. We do not intend to establish a network of approved doctors.

Stakeholder Question/Comment: How does this draft differ in terms of requirements for ABLES staff to conduct outreach to workers?

DOSH Response: Currently ABLES staff conduct outreach to anyone reporting blood lead levels at 25 µg/dL or higher. This draft would require outreach by the employer at 5 µg/dL.

Stakeholder Question/Comment: What is the statistical probability that personal hobbies could contribute to elevated blood lead levels?

DOSH Response: We don’t have statistics per se, but some hobbies such as ammunition reloading and making fishing accessories can expose people to high enough levels if lead to significantly impact blood lead levels.

Stakeholder Question/Comment: Regarding the note in the middle of page 3, could you provide better explanation of the mathematical equation, or perhaps add some sort of guidance document?

DOSH Response: We can review for clarity, but generally the labs that do the testing do the math and are well versed with this equation, as it is the same as what's in the current rule.

Stakeholder Question/Comment: There should be a requirement for employers to review the lab results. Sometimes there could be errors.

Table 2

Stakeholder Question/Comment: What is the evidence/science behind the PEL at 20 $\mu\text{g}/\text{m}^3$ TWA_{8e}? Modelling suggests this should be lower?

DOSH Response: There is quite a bit of variation in the data, and the correlation between lead in the air and lead in the blood isn't exactly that clear. Changing the PEL alone wouldn't be particularly effective. This is why we're trying to take a more comprehensive approach, directly addressing secondary routes of exposure to more effectively reduce blood lead levels, which is the ultimate goal. This is consistent with ACOEM (American College of Occupational and Environmental Medicine) recommendations that emphasize hand washing, housekeeping, and general hygiene.

Stakeholder Response: Cal/OSHA recommends the PEL be reduced to 2 $\mu\text{g}/\text{m}^3$.

Stakeholder Response: California's recommendations are based on public health goals beyond the purview of OSHA, and even the authors of the studies and modelling used have admitted errors that haven't been corrected.

Stakeholder Question/Comment: The third bullet in the PEL row refers to "high" lead exposures. Please be more specific rather than using a relative term.

Stakeholder Question/Comment: Why did you use the novel concept of a SPEL (Secondary Permissible Exposure Limit) instead of using a SECAL (Separate Engineering Control Air Limit), which has been used in other industrial hygiene rules? In other words, why require anything other than respirators between 20 $\mu\text{g}/\text{m}^3$ and 50 $\mu\text{g}/\text{m}^3$?

DOSH Response: There are many simple, inexpensive, and most importantly effective measures that can be taken at this level in addition to respirators.

Table 3

No comments

Table 4

Stakeholder Question/Comment: In the Metals Action Level, where did you come up with 20%?

DOSH Response: Our research indicates metals begin to shed excess lead at about 20%, whereas there is not a significant concern for exposure below this level.

Stakeholder Question/Comment: These requirements will result in nearly every employer in the state having to develop a lead program. For example, office workers working around lead paint or using electronics that contain lead.

DOSH Response: The intent is that an employer would only be required to assess their workplace in a manner commensurate with the likely exposure to lead. In the case of an office worker in a building with lead paint, assuming the office worker isn't disturbing the paint in any way, the employer would simply have to notify workers that there is lead paint in the building.

WAC 296-857-10020, Implementation Dates

DOSH statement: We will have a conversation about implementation dates after we've finished reviewing the draft and have a better idea of when the rule might be adopted.

WAC 296-857-10030, Multi-employer worksites

Stakeholder Question/Comment: How would this apply at a shooting range, for instance?

DOSH Response: The owner of the range would have to explain and clarify exposures to any contractors on site. This would include HVAC contractors working on ventilation system, those doing soil remediation, etc.

Stakeholder Question/Comment: The owner of a commercial building can't always control the actions of their tenants. Could they be on the hook if their tenants fail to comply?

DOSH Response: DOSH wouldn't go that far unless we could clearly prove action or omission on the part of the building owner resulted in a violation.

Stakeholder Question/Comment: Regarding section (1)(b), the rule should spell out what is required in the survey.

General Comments/Questions

Stakeholder Question/Comment: Would it be acceptable for employers to rely on SDS (safety data sheets) rather than actually testing materials.

DOSH Response: Yes, an employer could use SDSs to assess potential exposure.

Stakeholder Question/Comment: It would be helpful to add a definitions section at the beginning rather than having definitions scattered throughout the rule.

DOSH Response: Yes, we intend to add a definitions section.

Stakeholder Question/Comment: 15µg/dL is too high for a pregnant woman to return to work.

DOSH Response: The intent of the rule is to bring blood lead levels down to the 'Control Level' of 10µg/dL or below. As we've stated below, we cannot create separate requirements for special classes of workers, but the draft does contain provisions that allow healthcare providers to customize protections for vulnerable populations such as those who are pregnant.