

06/28/2019 – 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):

Argus Pacific
Building Industry Association of Washington (BIAW)
Battery Council International
King County
City of Everett
National Rifle Association (NRA)
Champion Arms
American Bridge
Seattle Parks and Recreation
Western States Petroleum Association

This meeting was intended to provide an overview of the latest draft lead rule, including key changes from the existing rule and previous drafts. The presentation slides and handouts from the meeting have been made available on our DOSH Lead Rulemaking webpage.

While DOSH expects to discuss the draft in greater detail with stakeholders at subsequent meetings, there were a few initial comments and questions regarding the draft.

General Comments Regarding the Draft

Stakeholder: Are you working with any industry groups to make rule revisions, and if so who?

DOSH: We have sought public input through our stakeholdering process, which includes these meetings. We have also been contacted outside of these meetings by a few organizations whose representatives were unable to attend meetings. In these cases they were seeking clarity regarding draft rule provisions and our intent, and offered suggestions for improvements which have largely been consistent with those of other stakeholder comments we have received. We are not, however, working with any one particular organization to complete the draft rule.

While these stakeholder meetings help to ensure transparency and inclusivity, we are open to the idea of meeting with any organization that is interested in discussing draft

rule provisions and potential implications specific to them. Please contact us if you'd like to schedule something.

Stakeholder: Why are you using units that are currently not the industry standard ($\mu\text{g}/\text{dm}^2$ vs. $\mu\text{g}/\text{ft}^2$)?

DOSH: HUD and EPA use $\mu\text{g}/\text{ft}^2$ which comes from their sampling protocol which specifies wiping a one square foot area. In occupational monitoring wipe sampling is usually based on a 100 square centimeter sampling area. The unit equivalent to 100 square centimeters is a square decimeter. The advantage of having standards based on the unit area sampled is that the lab results, usually reported in ug or mg, are directly comparable to the standard.

Stakeholder: Why isn't the [ASTM standard](#) for wipe sampling referenced in the draft?

DOSH: We will review to determine if it would be appropriate to include.

Stakeholder: The OSHA rule applies to "any lead" whereas this draft contains minimal thresholds (i.e. airborne lead concentrations below $1.5 \mu\text{g}/\text{m}^3$ or molten metals containing less than 1 ppm lead). Given that state plans are required to be "as effective as" OSHA, would OSHA accept this rule as drafted?

DOSH: While the current OSHA rule and our rule do cover all exposure to lead (with the exception of organic lead compounds such as tetraethyl lead) we're confident that OSHA will see this rule as being at least as effective given the comprehensive approach we're taking and enhanced compliance provisions at lower exposure levels.

Stakeholder: This is a large, complicated document that we've only had a couple of weeks to review. To help stakeholders understand how this draft has been revised could you provide a redlined version of the draft or perhaps an annotated version of your PowerPoint presentation with references to specific draft rule sections?

DOSH: We are concerned that a redlined version at this point would likely be even more confusing for stakeholders given that the draft has evolved over three major iterations and has been reorganized extensively. While we understand that stakeholders want to see that their suggestions have been either implemented or at least thoughtfully considered, we feel that the focus should be on differences between the existing rule and the current draft rather than previous drafts. However, we can certainly annotate the PowerPoint presentation with references to specific draft rule sections.

Stakeholder: We feel that "recreating the wheel" with this draft is unnecessary. Rather than change the rule structure entirely, why not simply change Blood Lead Level (BLL) thresholds and Permissible Exposure Limits and leave the rest alone? By making these changes, it creates a burden on employers who operate nationally and would have to train workers to a set of rules in Washington that are entirely different than anywhere else in the country. There is an

inherent incentive for employers to keep BLLs down, so why not let businesses achieve this in whatever manner is suitable to them?

DOSH: BLLs are a lagging indicator, meaning that if a worker has elevated levels they've already been endangered. We are taking a more comprehensive approach to address lead exposure before it becomes a problem. Particularly at the lower end of exposure, employers have been unclear about what was required of them leading to compliance issues. We have responded to stakeholder concerns by providing additional direction where it wasn't clear previously what was required of employers in specific scenarios, and tried to balance that by providing flexibility in the way of safe harbors.

Stakeholder: This draft would just make it harder for those employers following the rules, while the bad actors wouldn't abide the rules anyhow. This is compliance and enforcement issue, plain and simple. Why not enhance enforcement efforts rather than rewriting the rule?

DOSH: The rule hasn't been updated in over 40 years, when the average BLL in the general population was about ten times what it is today, largely due to leaded gasoline and residential paint. Studies now show potential for significant harm at BLLs much lower than previously thought, making the need for rule updates imperative. Additional enforcement efforts may be considered as well.

Stakeholder: Why is blood lead reporting only required at 10 µg/dL when 5 µg/dL and above is considered elevated?

DOSH: Between 5 µg/dL and 10 µg/dL workers have to be notified so that they can take proactive measures to protect themselves, but at 10 µg/dL employers are required to respond through specific action in the rule.

Stakeholder: What can employers do about non-occupational lead exposures? It seems similar to hearing loss, where employers can be on the hook despite workers shooting guns without hearing protection and listening to loud music in their personal time.

DOSH: The draft rule addresses this by allowing for the Blood Lead Control level to be adjusted for those initially testing over 5 µg/dL. It would be a legitimate practice for employers to monitor these elevated BLLs but not necessarily change work practices in these circumstances.

Stakeholder: The "Determining work not covered" section should be reviewed, as it essentially tells employers what is *not* not covered rather than what isn't covered. Accordingly, it may not provide the direction you've intended.

DOSH: We will take a look at this section to see if improvements can be made.