

WISHA Lead Rule 3rd Draft – Key Changes in Response to Stakeholder Concerns

Stakeholder Concerns with 2 nd draft rule and existing rule	Addressed in 3 rd draft by...	Section(s)
<p>This rule, if adopted as drafted, would greatly increase the number of employers in the state covered under the lead rule.</p>	<p>The new rule would contain a slightly expanded scope and more stringent requirements, which would increase the number of employers covered under the rule, but likely not as greatly as some stakeholders have suggested. A significant number of employers with low-level workplace exposures are already covered under the existing rule but are simply unaware that basic requirements apply to them. The revised rule seeks to address this problem and increase both worker health and employer compliance by making requirements clear and easy to understand.</p> <p>The vast majority of employers covered under the new rule would fall under the Basic Rules, which focus on simple and inexpensive requirements like awareness training, handwashing, and appropriate cleaning techniques.</p> <p>Additionally, Task Industry Specific Compliance Protocols & Safe Harbor Provisions have been added to make it easy for those in certain, well-understood industries to understand exactly what is required of them and comply accordingly.</p>	<p>100, 500, throughout</p>
<p>The 2nd draft would require nearly every employer in the state, including simple retail operations, to conduct blood lead testing for every worker. This is an onerous requirement that constitutes government overreach.</p>	<p>The blood lead testing requirements have been revised. While employers would have to make blood lead testing available at no cost for any worker doing lead work, testing would not be mandatory unless workers are exposed at any of the Action Levels indicated in the rule.</p> <p>Additionally, Task and Industry Specific Compliance Protocols & Safe Harbor Provisions have been added. In some cases these provisions eliminate blood lead testing requirements, and in other cases they clarify blood lead testing requirements (which workers are required to be tested, at what intervals, etc.)</p>	<p>300, 500</p>

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<p>Requiring employers to report all blood leads, or blood leads at lower levels such as 5µg/dL, to ABLES would be an onerous, costly requirement that goes too far.</p>	<p>Blood lead reporting requirements have been revised with the 3rd draft. Under the 3rd draft employers would report blood leads at 10µg/dL or higher. This strikes a balance between the extremes held by stakeholders on this issue, and is consistent with ACOEM recommendations that blood leads for the general population be kept below 10µg/dL.</p>	<p>30020(8)</p>
<p>In order to adequately ensure that businesses are keeping blood leads down, all employers performing lead work should be required to report <u>all</u> blood leads to ABLES or DOSH.</p>		
<p>The 2nd draft isn't organized in a logical way that can easily be followed. To determine what I'm required to do I have to flip back and forth through the rule.</p>	<p>The 3rd draft has been reorganized with users in mind. Categories have been created for employers based on assessed exposures: Basic Rules, Action Rules, PEL Rules, and SPEL Rules. Specific types of requirements (i.e., all hygiene requirements, all training requirements, etc.) that were previously located in various places throughout rule have been put together.</p>	<p>throughout (see table of contents)</p>
<p>Redundant information in the 2nd draft resulting from "plain talk" could create multiple citeables for a single infraction.</p>	<p>We have reorganized the rule, consolidated information, and added references throughout to single citeable sections.</p>	<p>throughout</p>
<p>Employers could potentially have to pay medical removal benefits for workers who have elevated blood lead levels resulting from personal hobbies rather than occupational exposures.</p>	<p>Blood lead testing and medical removal requirements for employers have been revised in order to significantly reduce or eliminate this possibility. Initial baseline blood lead testing must be made available upon request from any worker with any lead exposure and is required at Action Level exposures. Workers with preexisting elevated blood leads can be identified and the blood lead control level is adjusted for workers with pre-work blood leads over 5µg/dL.</p> <p>Medical Protocols for physicians have been updated to direct doctors to talk with patients in order to ascertain route of exposure and educate workers on minimizing lead hazards outside of work.</p>	<p>30050</p>

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<p>Permissible Exposure Limits (PELS) are still too high at 20 µg/m³.</p>	<p>While PELs are one important component used to keep workers healthy, the correlation between airborne lead exposure and specific blood lead levels isn't definitive (although we know that greater exposure increases the likelihood of greater blood lead levels generally). Compliance data and anecdotal evidence indicate that simple hygiene and housekeeping are perhaps equally important in many work environments. The new rule takes a comprehensive approach with a focus on keeping blood lead levels down. This includes, among other less burdensome requirements, a PEL of less than half the current level.</p>	<p>10030(2)(c) Table 3</p>
<p>Permissible Exposure Limits (PELS) of 20 µg/m³ are not feasible for some businesses; costly ventilation systems would have to be installed to achieve these levels.</p>	<p>Additionally, a Secondary Permissible Exposure Limit (SPEL) of 50 µg/m³ (which is the current PEL) has been added. Beyond this threshold all feasible engineering and administrative controls would be required.</p>	
<p>As currently written, employers could be cited for not conducting blood lead testing even if a worker refuses.</p>	<p>Language has been modified to clarify that blood lead testing is not mandatory at the Basic Rules level, meaning workers covered under these rules who do not wish to have blood drawn would not be required to do so.</p> <p>At the Action Rules level and beyond blood lead testing is critical to ensure worker safety and would be required without exemptions.</p>	<p>300</p>
<p>Employers overseeing multi-employer worksites could be held liable for the actions of subcontractors based on current draft.</p>	<p>In the latest draft we've codified our approach to dealing with violations at a multi-employer worksite based on settled case law in Washington. The host employer would be required to share information related to lead in the workplace, but ultimately they wouldn't be cited for their subcontractors' violations unless there was clear evidence that they were aware of violations and failed to do anything to ensure they were corrected.</p>	<p>10040</p>
<p>The current rule doesn't address material exposures and instead focuses exclusively on airborne lead.</p>	<p>The current draft expands our comprehensive approach by incorporating surface contamination and material content Action Levels, as well as an overall emphasis on</p>	<p>10030(1) 10030(3) 10030(4)</p>

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	housekeeping and hygiene as a first line of defense.	
Given the disproportionate potential for harm that lead has on pregnant women and children, the rule needs to provide more stringent protections for these members of the population.	While DOSH cannot legally create separate rules for particular demographic groups and our authority covers only occupational lead exposure (as opposed to jurisdiction over the public at large) an employer is required to provide benefits in cases when a physician has recommended medical removal due to the potential for complications with underlying health conditions (i.e., pregnancy, renal issues, hypertension, etc.). Additionally, any worker can request to voluntarily use a respirator.	30050(1)(a) 45020
The exemptions aren't clear; employers who are not covered under the rule have to read through the whole thing in order to find out they don't have to follow it.	A new section titled "Determining work is not covered by this rule" has been added at the beginning of rule to make it easy for employers to know when these rules do not apply.	20010