

7/18/2017 – 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):

Communication Workers of America (CWA)
Northwest Laborers-Employers Training Trust Fund (NWLETT)
Head Start Program
Public Health – Seattle & King County
Public Health – Seattle & King County - Local Hazardous Waste Management Program
Institute of Neurotoxicology and Neurological Disorders (INND)
Labor & Industries - Safety and Health Assessment & Research for Prevention (SHARP)
Labor & Industries – Adult Blood Lead Epidemiology & Surveillance (ABLES)
Building Industry Association of Washington (BIAW)
National Rifle Association (NRA)
Vigilant
University of Washington (UW)
EnerSys
Washington State Department of Health (DOH)
Pacific Rim Environmental
National Shooting Sports Foundation (NSSF)
Battery Council International (BCI)
AECOM
International Lead Association (ILA)
Association of Washington Business (AWB)
City of Seattle
Seattle Parks and Recreation
Oregon OSHA
Pacific Northwest Regional Council of Carpenters
National Electrical Contractors Association (NECA) Puget Sound Chapter
Bellevue Gun Club
West Coast Armory
University of Washington – Environmental Health & Safety
Washington State Department of Transportation (WashDOT)
University of Colorado School of Medicine – Department of Environmental and Occupational Health

Chapter 296-857-100, Scope, Exposure Criteria, and Initial Assessment

Sections 10010, 10020, 10030, 10040, and 10050

Stakeholder Question/Comment: What was the rationale behind specific numbers included in the table, particularly the PEL and BLL?

DOSH Response: Best available data/studies support these numbers. Focus on PEL will aid in allowing employers to achieve compliant BLLs.

Stakeholder Question/Comment: We need to know specifically which studies DOSH is using and what research has been done to justify more stringent standards.

Stakeholder Question/Comment: How does airborne lead relate to BLLs? We do not believe that the science is consistent on this matter.

DOSH Response: We will make the studies used to inform our decisions available.

Stakeholder Question/Comment: If the ultimate goal is to achieve lower BLLs for workers, then why make the rule so prescriptive with regard to PELs? Our experience has shown that BLLs can be reduced significantly to safe levels through increased focus on hygiene (handwashing, vacuuming, showering, etc.) and other methods, while the draft rule would limit employers' flexibility in addressing BLLs.

Stakeholder Question/Comment: If the ultimate goal is to achieve lower BLLs, why not just lower the BLLs and leave rule the same otherwise?

DOSH Response: Employers will likely have trouble complying with the new BLL standards without the reduced PEL but we are open to hearing about other specific methods of achieving lower BLLs.

Stakeholder Question/Comment: The PEL requirements within the draft rule are particularly onerous and would cost employers greatly because of additional engineering, architectural investments, lease/rental costs, and other regulatory permitting (e.g., Hazardous Waste permits resulting from increased airborne lead).

DOSH Response: Typically when adopting rules and implementing new requirements such as those being considered here, the agency will delay compliance requirements for small businesses for a period of six months to a year. Individual businesses can also apply to the agency for a temporary variance to allow more time to come into compliance.

Stakeholder Question/Comment: Aside from BLLs, what about the current rule is unsafe? Aren't you required to show how changes improve safety and health?

DOSH Response: In addition to reducing PEL and BLL, the rewrite is intended to clarify housekeeping requirements and make it easier for businesses to understand what is expected of them.

Stakeholder Question/Comment: I applaud the efforts being made to improve worker health and safety with regard to lead. However, I would argue that the PEL is still too high in the draft rule because there

is no safe level of lead in the body, and multiple peer-reviewed studies indicate PELs of 20 $\mu\text{g}/\text{m}^3$ TWA_{8h} would not achieve BLLs below 10 $\mu\text{g}/\text{dL}$ based on the O'flaherty model, and other reputable studies with substantially similar results.

Further, to respond to previous stakeholder comments regarding the correlation between PEL and BLL, occupational safety and health/industrial hygiene is predicated upon the "hierarchy of controls" paradigm, in which the environment is considered first and biological monitoring is only conducted as an adjunct to a more comprehensive understanding of exposure. In other words, we don't wait until workers have been poisoned to address lead exposure problems.

Stakeholder Question/Comment: Changing rules will not increase compliance, and doing so is like lowering the speed limit to get people to stop speeding rather than targeting speeders and issuing citations to them.

Stakeholder Question/Comment: This is a significant legislative rule per RCW 34.05.328 (Administrative Procedures Act) and will pull in employers that previously were not subject to this rule, requiring the agency to conduct a Small Business Economic Impact Study per Chapter 19.85 RCW (Regulatory Fairness Act).

DOSH Response: The current rule applies to all employers and the draft rule includes language to clarify for employers what constitutes de minimis lead exposure. The agency is also aware of its obligations under the APA and RFA.

Stakeholder Question/Comment: L&I lead-related claims history has changed very little over the past several years and represents only a tiny percentage of overall claims, so why the emphasis on changing the rule?

DOSH Response: The claims history, and particularly incidences of acute lead poisoning, doesn't necessarily reflect the inherent hazard and related long-term effects of lead exposure.

Stakeholder Question/Comment: We all need to keep in mind the state's obligation to protect its most vulnerable members of the population. In addition to direct worker exposure, the take home exposure is significant and can affect children, whose bodies take up lead more readily than adults.

Stakeholder Question/Comment: AECOM recommends more stringent workplace removal standards for pregnant women. Why does the draft rule not include anything specifically for pregnant women?

DOSH Response: By and large, DOSH rules must apply to all workers and we cannot carve out exceptions for specific demographic groups.

Stakeholder Question/Comment: The current rule allows workers' medical providers to request medical removal for workers at levels lower than those included in the standard in cases such as pregnancy but the draft does not include any such language. In order to be at least as effective as OSHA it would have to include this language.

DOSH Response: This was overlooked during drafting and will be reviewed for future drafts of the rule.

Stakeholder Question/Comment: The terms "acute" and "chronic" included in the BLL table under (2)(b)(i) are not based on toxicology or other science. I would recommend changing them.

DOSH Response: We will consider changes to these terms.

Stakeholder Question/Comment: We would recommend changing the "Action Shift" for a change in BLL from 5 µg/dL to 10 µg/dL.

Other Stakeholder response: Analysis of blood leads is accurate enough to distinguish a 5 µg/dL

DOSH Response: Current scientific consensus, including ACOEM recommendations, consider a shift in BLL of 5 µg/dL or greater to be elevated.

Stakeholder Question/Comment: BLL requirements under the draft rule presume that employers are responsible without accounting for hobbies that may elevate BLLs. The rule language stating "the employer must" should not be used if the elevated BLL is not a result of employment.

DOSH Response: We will discuss monitoring triggers later in the chapter, which should address this concern.

Stakeholder Question/Comment: We need to see data supporting "Advisory Level" in table.

Other Stakeholder response: Advisory and Medical Removal Levels included in these tables are consistent with the findings of several organizations and are in fact lenient in favor of employers given that evidence shows impairment including cardiovascular disease at BLLs in the teens. Prospective Cohort Human Studies have shown that that margin of safety should be below 10 µg/dL.

Stakeholder Question/Comment: The increased emphasis on surface contamination and hygiene in the draft rule is important because airborne lead is not the only source of exposure.

Stakeholder Question/Comment: We need to see the science behind supporting more stringent requirements regarding surface contamination. We've heard that these are based on HUD requirements but occupational scenarios are very different than domestic scenarios where children are living and putting things into their mouths.

Stakeholder Question/Comment: HUD requirements shouldn't apply here, as their purview differs drastically from that of DOSH. In the case of shooting ranges, for instance, people are intentionally using lead products (ammunition) with the awareness that lead particles are vaporized when shooting a firearm, whereas HUD is protecting children from eating lead paint chips.

Stakeholder Question/Comment: Is these value to surface sampling or is it just a source of revenue by providing citations?

DOSH Response: Surface sampling is intended to determine "safe harbor" areas where the additional components of the rule would not apply.

Stakeholder Question/Comment: Please define or quantify what "no lead" means.

Stakeholder Question/Comment: How were tasks under 296-857-10040(4)(d)(i) determined?

Stakeholder Question/Comment: What is the rationale behind the monitoring requirements for the various tasks? It appears that some tasks with similar presumed exposure levels have different monitoring requirements.

DOSH Response: Tasks and monitoring requirements were determined based on our experience and understanding of activities performed within a specific industry but we are open to feedback from experts within these industries.

WAC 296-857-200 Basic Rules

Sections 20010, 20020, 20030, 20040

Stakeholder Question/Comment: Why is DOSH setting standards for inaccessible areas within buildings?

Stakeholder Question/Comment: Regulating inaccessible areas could have the unintended consequence of deterring businesses from having inaccessible spaces.

DOSH Response: Inaccessible areas could contain surface lead that is stirred up in the event of an earthquake or other natural disaster, and there could be maintenance activities that require workers to access these areas of a building.

Stakeholder Question/Comment: Why is the metric system used in this draft?

DOSH Response: DOSH typically uses the metric system in its rules but will either provide a reference table or include Imperial measurements parenthetically. We will ensure that the draft rule is updated accordingly.

Stakeholder Question/Comment: Is the wipe standard used elsewhere?

DOSH Response: We are not aware of anywhere else where this is used.

Stakeholder Question/Comment: Thank you for including mention of children in your training section [0020(3)(iv)]

Stakeholder Question/Comment: Cleaning requirements could result in businesses that previously did not have to obtain hazardous waste permits to do so.

DOSH Response: The draft rule language is intended largely to clarify what “clean” means. The current rule is ambiguous.

Stakeholder Question/Comment: **How often must employers provide training?** Annually, more frequently?

DOSH Response: The draft rule does not specify but the current rule requires annual training. We will update the draft rule accordingly.

Stakeholder Question/Comment: Will the rule require training be provided in appropriate language to all employees?

DOSH Response: The expectation is that employers will train workers in a manner that they can understand, but we can refine the rule language to ensure that this requirement is more explicit. Additionally, HazCom rules require training to be provided in a workers native language.

WAC 296-857-300 Exposure Controls

Sections 30010, 30020, 30030, 30040, 30050, 30060

Stakeholder Question/Comment: The most important three things in maintaining a lead-safe environment are: hygiene, hygiene, and hygiene. In my experience pre-work and pre-break hand swiping has been a very effective and relatively inexpensive tool to cleanliness and safety.

Stakeholder Question/Comment: Certain respirators require medical testing. Do the voluntary respirator requirements in the draft rule intend to require employers to establish and maintain medical testing for the benefit of workers who merely desire to be tested, even when a business is maintaining BLLs below the threshold for action?

DOSH Response: Yes.

Stakeholder Question/Comment: Regarding the note under 30010(1), could you please explain why exposure control areas and plans are required even when levels are kept below the PEL?

DOSH Response: This is intended for controlled areas that have a potential for failure that would result in higher levels than the PEL.

Stakeholder Question/Comment: Please provide clarification for 30010(2). Does this mean employers are required to use labels or placards?

DOSH Response: Yes, that was the intent. We can clarify the draft language.

Stakeholder Question/Comment: Regarding the note under 30010(1),

Stakeholder Question/Comment: We would like a comparison document so that we can see how this draft differs from current rule.

DOSH Response: DOSH generally provides a comparison document for all of its rulemaking projects, but does so later in the process. We hope to have a document comparing the current rule and the draft language within the next few weeks. The comparison document will be shared with stakeholders and posted to the Lead Rulemaking webpage as soon as it is available.

Stakeholder Question/Comment: Given the importance of take-home lead exposure, I think that section 30040(2)(c) should be made its own section.

Stakeholder Question/Comment: The showering requirements in the draft would cost employers greatly employers would have to pay workers for the additional time necessary to put on and take off clothing before and after each of at least three breaks a day.

Stakeholder Question/Comment: The rule would have to accommodate hydration stations in order to comply with other OSHA/DOSH rules.

Stakeholder Question/Comment: Section 30050(6) should explicitly include mention of shoes/boots, as this is a big source of take-home lead.

DOSH Response: DOSH will review this language to see if it can be improved upon.