

07/27/2018 – 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):

Chelan County P.U.D.
Battery Council International (BCI)
City of Tacoma
Adult Blood Lead Epidemiology and Surveillance (ABLES)
Associated General Contractors (AGC)
City of Seattle
University of Washington (UW)
Washington Poison Center
City of Everett
City of Marysville
Association of Washington Business (AWB)
Phillips Burgess Government Relations

WAC 296-857-800, Medical Protocols

Stakeholder Question/Comment: Is this section intended to be non-regulatory?

DOSH Response: Yes. DOSH does not regulate doctors, so this section is intended solely to provide information for medical staff, particularly those who may not be familiar with occupational lead standards.

Stakeholder Question/Comment: We're concerned that these guidelines could allow doctors to recommend medical surveillance or removal for workers with a "mystery illness" even when blood lead levels are below the Control Level (10µg/dL) or any other threshold.

Stakeholder Response: As a physician, I can tell you that it is entirely possible for patients with blood leads well below the thresholds tolerated under this draft to exhibit symptoms, and the causality, particularly with respect to cardiovascular disease, is well documented. Further, lead can remain in bodily tissue indefinitely while blood lead levels may register relatively low.

DOSH Response: Existing OSHA lead standards allow doctors the discretion to make decisions regarding blood lead monitoring and medical removal based on their own professional analysis of a worker's condition, regardless of thresholds in the standard.

While this section has been expanded in the current draft to include more information for doctors, there is no change to this basic provision.

Additionally, there are provisions within both the current rule and the draft for multiple physician opinions in cases where there is a dispute.

Stakeholder Question/Comment: Under the Qualifications section, second paragraph regarding dispute resolution, I recommend that a Board Certified Medical Toxicologist be added as an acceptable credential.

Stakeholder Follow-up: Is this a common specialty? Do we even have any of these in eastern Washington?

Stakeholder Response: I am only aware of seven Board Certified Medical Toxicologists in the Seattle area, and to my knowledge there are none in eastern Washington. Point taken; however, adding this would not preclude the use of any physician who is board certified in occupational medicine.

Stakeholder Question/Comment: Under the Worker Rights section, please make a note that employers may require compliance with blood lead requirements as a condition of employment. In other words, an employers can terminate employment for workers who refuse to comply with these rules.

Stakeholder Question/Comment: Under the Worker Rights section, fourth bullet, “permanent material impairment” should be changed to simply “material impairment.” Impairment need not be permanent to necessitate protection.

Stakeholder Follow-up: Why not just restate the intent that is included in the scope section? The intent of the rule is rephrased slightly differently in at least a couple of places throughout the rule and should be made the same for consistency.

Stakeholder Question/Comment: We sometimes find that new hires have a baseline blood lead of 15-20 µg/dL, and in these cases we educate the worker about hobbies such as smelting lead fishing sinkers that may contribute to elevated blood levels and how to limit exposure through hygiene, housekeeping, and engineering controls, but we’d still be responsible for working with doctors to ensure blood leads are reduced and potentially responsible for medical removal benefits under the rule and we can’t discriminate by screening potential worker’s blood levels.

DOSH Response: The Blood Lead Control Level contains a provision that when a worker’s pre-work blood lead level is above 5µg/dL, the Control Level for that worker is 5µg/dL above their pre-work result. For instance, a pre-work blood lead of 10µg/dL would result in a Control Level for that worker of 15µg/dL.

Stakeholder Question/Comment: Under the Content of Medical Examinations section, information regarding the use of glomerular filtration rate (GFR) should be added, as using type of calculation is a useful tool in the overall determination of lead in the body.

Stakeholder Question/Comment: Is zinc protoporphyrin (ZPP) no longer used?

Stakeholder Follow-up: While ZPP is more useful in assessing patients with elevated blood lead levels above the thresholds permitted under the draft, it can still be useful and should be allowed at the doctor's discretion.

Stakeholder Question/Comment: The third open bullet at the top of page 44 refers to "a second test with 12 months." This appears to be a typo and should in fact be 1 month instead.

Stakeholder Question/Comment: Under Medical Removal Recommendations, "Removing a worker from lead work for medical reasons..." should be changed to, "Removing a worker from lead work for lead-related medical reasons..."

Stakeholder Question/Comment: Under Medical Removal Recommendations, second paragraph, second sentence, what is meant by, "These levels are not no effect levels but recommendations or medical removal should not be based solely on blood levels, which may be elevated, but are below the medical removal criteria levels."

DOSH Response: If a blood lead level is below the medical removal level but a doctor has determined that the worker should be removed from work, then this decision must be based on a specific reason (e.g., a specific symptom or preexisting condition). The blood lead level alone does not justify the decision.

Stakeholder Question/Comment: The second paragraph under Medical Removal Recommendations references the Action Level, 10µg/dL where it should instead reference the Return to Work Level, 15µg/dL.

Stakeholder Question/Comment: The statement at the bottom of page 44, "This rule does not address reproductive or fetal development..." should be removed. While the agency may not have jurisdiction to establish special rules relating specifically to women, reproductive health is an occupational health concern for many workers, men and women included, and the rule needs to protect these workers.

Stakeholder Question/Comment: If this section is intended to inform physicians and medical staff, why are reporting requirements included here? Isn't this an employer responsibility?

DOSH Response: A common issue we've run into, particularly with smaller employers, is that they're not well equipped to maintain sensitive medical records and accordingly they'll contract with medical facilities to maintain records on their behalf.

WAC 296-857-900, Task and Industry Specific Compliance Protocols

WAC 296-857-90020 Gun Ranges

Stakeholder Question/Comment: What about private ranges used for law enforcement? This compliance protocol focuses on ranges open to the public, which operate somewhat differently. Additionally, the exposure for a law enforcement officer who is only required to shoot twice a year would be drastically different than an employee whose job is working at the range.

DOSH Response: We can review this section and consider additional language to address these concerns.

Stakeholder Follow-up: There should be a de minimis number of days per year below which a worker would be exempt from blood lead testing requirements.

Stakeholder Question/Comment: Based on the table on page 49 a range master would not have to undergo any kind of ongoing blood lead testing?

DOSH Response: Yes, no additional ongoing testing would be required if the employer is following the safe harbor provisions, which including air monitoring. If air monitoring results are above the Action Level the employer would not qualify for the safe harbor.

Stakeholder Follow-up: If that's the case, it should be stated more clearly in the rule.

Stakeholder Follow-up: The Department of Defense recognizes that it is not uncommon for military personnel to have blood leads in the range of around 20µg/dL. There should be continuous air monitoring requirements beyond the initial assessment as well as periodic blood lead testing for range masters and others who spend significant time at the range.

Stakeholder Question/Comment: The last open bullet on page 49 referencing separate entrance requirements isn't going to be feasible for many gun ranges due to security concerns.

DOSH Response: If separate entrances aren't feasible then we'd need some other provision to ensure adequate decontamination. We will review this section.

WAC 296-857-90030 Clean Areas

DOSH Statement: The intent of this section is to provide safe harbor, meaning that as long as an employer is complying with this section, other provisions of the rule could be disregarded.

Stakeholder Question/Comment: DOSH should make an effort to streamline the reporting requirements in this section. Quarterly surveying would be an onerous burden on employers.

DOSH Response: Because this section is a safe harbor provision, employers are not required to follow this section and can instead simply follow the rule.

Stakeholder Question/Comment: As a general statement, this rule as currently written would require that every employer in Washington develop its own lead plan, conduct blood lead testing, and test for free lead if any lead is present anywhere near a worksite. Surely this isn't the intent of the rule?

DOSH Response: As we refine the language for the next draft we will review to ensure that the words match our intent, with particular attention to the scope. Currently, many employers across the state don't realize that this rule does in fact apply to them, and the current draft seeks to clarify this.

Stakeholder Follow-up: The free lead sampling and blood testing should requirements should be limited to demolition, construction, manufacturing, etc. where lead-generating activities occur, not in office buildings or coffee stands. This needs to be clearly and explicitly stated in the rule.

Stakeholder Question/Comment: The sampling requirements are overly complicated and should be reviewed to see if they can be simplified.

WAC 296-857-90040 Well Managed Blood Levels

Stakeholder Question/Comment: Thank you for including this section in the draft. As a representative of the regulated community, we've asked for something of this nature and you've provided it.

One suggestion I'd make is to put the safe harbor language up front, rather than burying it several bullets down the page.

Stakeholder Question/Comment: As a physician with some understanding of how these types of regulations work, I see this section as problematic. The employer dictates who is sampled

and whose records are provided to the agency. Employers could potentially just send only favorable results and hide records indicating elevated blood levels.

DOSH Response: We will review this section for the next draft, and likely include language requiring employers to identify all workers potentially exposed and indicate who they are testing. Also, we will be adding a provision that allows the agency to follow-up with employers if the data provided by employers appears to be incomplete or inaccurate.

Stakeholder Question/Comment: Since the point of a safe harbor is to recognize that employers are doing something right, should language be included to ensure that technical violations aren't cited provided that blood leads are kept down?

Stakeholder Follow-up: If gross deficiencies are found that represent technical violations, how would employers be required to correct them? Even if blood leads are currently below acceptable levels these deficiencies could contribute to problems over the course of time.

DOSH Response: There is an existing mechanism by which DOSH can consider certain violations de minimis if no hazard is created. We will review how best to incorporate this into the rule, while ensuring that hazards are corrected appropriately. Throughout the process, we would treat this similarly to the way we would a consultation, under which employers would be notified of things to correct but would not be cited unless they fail to do so within a given period of time.

Stakeholder Question/Comment: Material exposure needs to be addressed more adequately if the department won't be conducting inspections or requiring compliance with PPE and hygiene requirements as indicated at the top of page 56.

Also, the secondary permissible exposure limit (SPEL) of $50\mu\text{g}/\text{m}^3$ is greater than the current OSHA Action Level of $30\mu\text{g}/\text{m}^3$, which requires medical removal in certain circumstances. This needs to be reconciled to ensure that the DOSH rule is as effective as OSHA.

Stakeholder Question/Comment: Are there at-home tests available for employers to conduct their own blood lead testing?

DOSH Response: The rule will require that all blood lead testing be performed by a licensed, board certified doctor.

WAC 296-857-90050, Maintenance and Repair Work

Stakeholder Question/Comment: How do employers know whether lead is being released?

DOSH Response: A previous negative exposure assessment (NEA) or objective data.

Stakeholder Question/Comment: The first and sixth bullet refer to “year” and “12 months” respectively. For the sake of consistency the same term should be used throughout the rule.

Stakeholder Question/Comment: The last bullet requires that waste material be put into an impermeable bag or be otherwise contained. Wood 2x4s, scrap metal, etc. wouldn’t necessarily fit into such a container.

DOSH Response: We can clarify that an approved dumpster would be sufficient. The intent is to ensure that lead is not dispersed as a result of disposal.

Stakeholder Question/Comment: Can employers pick which safe harbor provision to use?

DOSH Response: Yes, employers may choose a safe harbor that best suits their operations.

Stakeholder Question/Comment: The language should clarify that in order to qualify for the safe harbor hygiene, PPE, and other provisions must be met or citations will be issued.

DOSH Response: Yes, the safe harbor eliminates the exposure assessment requirements but hygiene and PPE would still be a requirement. We will review the draft language to make sure this is clear.

Stakeholder Question/Comment: Would eating, drinking, or open containers be permitted under the safe harbor?

DOSH Response: It is currently assumed that it would not, but we will add clarifying language.

General Comments:

Stakeholder Question/Comment: Requirements for aerosolizing lead containing material trigger requirements instantaneously, whereas a time-weighted average for other airborne lead is used to trigger the same requirements. This should be reviewed and reconciled.

Stakeholder Question/Comment: We look forward to a third draft that eliminates much of the duplication found in the current draft, and groups similar concepts together.