

8/9/2017 – 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):

Northwest Laborers-Employers Training Trust Fund (NWLETT)
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)
EnerSys
Washington State Department of Health (DOH)
Pacific Rim Environmental
Battery Council International (BCI)
International Lead Association (ILA)
Association of Washington Business (AWB)
Seattle Parks and Recreation
Oregon OSHA
Pacific Northwest Regional Council of Carpenters
National Electrical Contractors Association (NECA) Puget Sound Chapter
University of Washington – Environmental Health & Safety
Washington State Dept. of Transportation (WashDOT)
University of Colorado School of Medicine – Department of Environmental and Occupational Health
CenturyLink
City of Everett
Atkinson Construction
Washington Poison Center
Foushée & Associates Company, Inc.
U.S. Dept. of Housing and Urban Development (HUD)
Phillips Burgess Government Relations
WA State Legislature, Office of Program Research - House Labor and Workplace Standards Committee
King County
Seattle Public Utilities
Washington State Dept. of Ecology
Associated Builders and Contractors, Inc. – Western Washington
Associated General Contractors of Washington (AGC)

Chapter 296-857-400 WAC, Characterizing and Tracking Employee Exposure

Sections 40010, 40020, 40030, 40040

Stakeholder Question/Comment: Following up from our last meeting, we'd like to reiterate that if DOSH's goal is to achieve reduced BLLs, let industry determine the best method for doing so rather than creating such a prescriptive rule.

Stakeholder Question/Comment: From an industry perspective, it's all about HYGIENE, HYGIENE, HYGIENE. No matter what the rules are it won't matter if workers aren't following basic hygiene practices.

Stakeholder Question/Comment: Is DOSH prepared at this time to provide the data and research it has relied on to justify the rule changes being considered? And what if some of the studies you reference aren't accessible to the public?

DOSH Response: DOSH is gathering resources to establish a detailed bibliography citing the studies and information we have used to inform our decisions to potentially change requirements. Most studies should be readily available to the public, but if this is not the case we will work to ensure that anyone interested will have access.

Stakeholder Question/Comment: Is DOSH open to additional information, and if so, are you only considering peer-reviewed research?

DOSH Response: We are definitely open to looking at any additional studies, research, raw data, or other pertinent information, including information from both academic and "real world" sources. While peer-reviewed research is particularly valuable we will consider any relevant information brought to our attention.

Stakeholder Question/Comment: Can you explain what is meant by "sampling must also provide sufficient information to select appropriate personal protective equipment" in subsection 40010(2)?

DOSH Response: Different respiratory protection is needed at different levels of exposure. The assessment has to be thorough enough not only to determine whether the exposure is above or below the PEL, but specifically what the exposure is to determine appropriate personal protective equipment (PPE).

Stakeholder Question/Comment: 40010(2) is too vague. It would benefit businesses if you could be more specific here. Further, we fear that the grey area will lead to too much subjectivity in interpreting the rule by inspectors resulting in citations that aren't applied objectively.

DOSH Response: DOSH will review the language to see if we can provide more specificity or reword the section to eliminate ambiguity.

Stakeholder Question/Comment: What is the "criteria" referenced in 40010(3)?

DOSH Response: This refers to the Permissible Exposure Limit (PEL) and monitoring level.

Stakeholder Follow-up: This is one example of many throughout the rule where you're using multiple terms to describe the same thing. It would be helpful to use the consistent terms throughout, and provide a definitions section so that anyone reading the rule can look up words that they're not clear about.

DOSH Response: We appreciate you pointing out areas of the discussion draft that are unclear and will make an effort to harmonize the terminology we use throughout the rule. We will also add a definitions section, but plan to do so after our initial stakeholder meetings when we'll have a better understanding of what words and sections within the discussion draft stakeholders are finding unclear.

Stakeholder Question/Comment: It appears that 40010(4) just reiterates what is said in 40010(3), but with more detail. Can you eliminate section (3) or consolidate the two?

DOSH Response: This does appear to be an area that we can revise and possibly remove a section or consolidate two sections into one. We will review the language and make an effort to improve it.

Stakeholder Follow-up: We'd appreciate that because as it currently reads it would be possible for an employer to receive multiple citations for a single infraction.

Stakeholder Question/Comment: 40010(5) appears to be a definition, not a requirement.

DOSH Response: 40010(5) provides detail on how exposure is assessed, but we will review and it could possibly be included in the definitions when we add that section.

Stakeholder Question/Comment: The reduced PEL and monitoring requirements within 40020 will pull in many small businesses that currently aren't subject to the rule. The reporting requirements and necessary training will be cumbersome and costly.

Stakeholder Question/Comment: What is the value of monitoring employees every three months [40020(1)] when we already know that they're working in an area with lead at or above the PEL?

DOSH Response: The intention is to assess monitoring controls over time, and the purpose is to ensure that a worker with an already elevated Blood Lead Level (BLL) doesn't end up with a much higher BLL over time.

Stakeholder Follow-up: This will only have an adverse impact on small businesses, many of which will now be required to perform monitoring for the first time because of the more stringent standards. This will be a significant legislative rule, and the agency must conduct a thorough economic analysis.

Stakeholder Question/Comment: Too much of the monitoring and BLL analysis is based on air lead levels alone given that we know that handling or disturbing lead-containing materials is a significant source of exposure. Where is the rule language that requires evaluations of workers who do not have airborne exposures but handle or disturb lead materials?

DOSH Response: We have draft language pertaining to this type of exposure and related monitoring later in the chapter within the housekeeping and hygiene section.

Stakeholder Question/Comment: How much of the discussion draft is new and what is the same as the existing rule? A comparison document or red-lined version of the current rules would be helpful for stakeholders to see the differences.

DOSH Response: DOSH always provides stakeholders with a comparison document prior to filing a CR-102 (the official rule proposal) but we are working on creating such a document to provide stakeholders earlier in this case, probably concurrent with the release of the next draft rule.

Stakeholder Question/Comment: 40040(3) states that employers are required to keep exposure records for at least 30 years but HazCom rules stipulate 30 years from last day of employment.

DOSH Response: We will review HazCom and other pertinent rules to ensure they are aligned.

Stakeholder Question/Comment: Why does 40040(1)(f) ask employers to include the type of respirator used when the monitoring is supposed to be used to determine the type of respirator? Isn't this putting the cart before the horse?

DOSH Response: We will review. This is the result of trying to align recordkeeping requirements for employers that are required to adhere to multiple standards so that requirements are easier to follow.

Stakeholder Question/Comment: If DOSH could include templates for exposure records in the rule it would make compliance, particularly for smaller employers, much easier.

DOSH Response: Thank you for the suggestion. We will see if we can incorporate a template that would apply broadly to all employers in the rule.

Chapter 296-857-500 WAC, Lead Sampling and Analysis

Sections 50010, 50020

Stakeholder Question/Comment: One of the most significant changes related to surface sampling is the shift from qualitative criteria to a specific, quantitative threshold (4.3 µg/dm²). What is the rationale behind this shift?

DOSH Response: The current rule focuses mostly on airborne lead, so in rewriting the rule we've acknowledged the significant exposure resulting from surface contamination and created requirements to protect workers from this exposure. Specific limits are necessary to ensure adequate housekeeping to protect workers and objective enforcement of the rule.

Stakeholder Question/Comment: Industry finds this aspect of the rule most problematic. Surface sampling is notoriously inconsistent – even the baseboards in the room here likely contain 17% lead to make the material malleable and if tested would indicate levels above what the discussion draft stipulates. We don't see how this correlates to exposure given PPE requirements for areas where we know there is lead. There is no value to this requirement, it won't better protect workers, and will only cost businesses significantly. Where is this figure of 4.3 µg/dm² coming from?

DOSH Response: The threshold stipulated in the discussion draft is to ensure effective housekeeping, prohibiting excessively dangerous buildup of lead particles in a workspace. If industry implements particular protocols that it feels are effective DOSH would certainly be willing to review and consider as an alternative.

Stakeholder Question/Comment: To apply the HUD standard of “clean” ($4.3 \mu\text{g}/\text{dm}^2$) in an occupational health rule doesn’t make sense. HUD pertains to places where children live, whereas lead is intentionally and necessarily used within industrial contexts. Again, this appears to simply serve to generate revenue for the agency through issuance of citations.

DOSH Response: THE HUD standard is included in the discussion draft only in “clean” work areas that are supposed to be free, or relatively free of lead.

Stakeholder Follow-up: The agency is statutorily required to justify why additional requirements *are* necessary. The onus isn’t on industry to justify why requirements *aren’t* necessary.

Stakeholder Question/Comment: Going back to the PEL, there is a valid argument to go lower than what is being proposed in the discussion draft in order to keep BLLs below $10 \mu\text{g}/\text{dL}$, based on the research available. This is why Cal/OSHA has proposed a PEL of $10 \mu\text{g}/\text{m}^3$ and an action level of $2 \mu\text{g}/\text{m}^3$.

Because DOSH’s discussion draft proposes a PEL of $20 \mu\text{g}/\text{m}^3$, which could be considered too great of an airborne exposure, there at least needs to be a strong counterbalance regarding how surface contamination is addressed, and this section does that through quantitative measurements with a defined threshold. If we’re going to go to a qualitative approach, it better be proven to be effective at maintaining safe BLLs.

DOSH Response: Surface sampling has been used as a primary enforcement tool and the idea behind the changes we’re considering to surface sampling requirements here is to provide objective, clear regulations that adequately protect workers and that employers can easily follow. We appreciate that in areas where employers know and expect lead to be, the focus should ultimately be on the effectiveness of housekeeping and an employer’s ability to keep workers safe, perhaps rather than specific numbers. We will review this section thoroughly.

Stakeholder Question/Comment: Has DOSH considered providing training using XRF lead detection devices?

DOSH Response: We are not sure that XRF devices have the sensitivity to detect levels at the “clean end” of the range.

Stakeholder Follow-up: There are XRF devices calibrated to HUD standard levels.

DOSH Response: Yes, but that only pertains to lead paint, not surface dust.

Stakeholder Follow-up: We’ve had success using an XRF for air sampling within the 95% confidence interval.

Chapter 296-857-600 WAC, Blood Lead, Medical Monitoring, and Medical Removal

Sections 60010, 60020, 60030, 60040, 60050, 60070, 60080, 60090

Stakeholder Question/Comment: We are concerned that providing blood testing using a mass spectrometer would be cost prohibitive and overly burdensome for employers, and we aren't sure that the margin of error would be small enough to warrant using this method.

Stakeholder Question/Comment: Because of the relatively small intervals between Advisory, Action, and Removal levels, we are concerned that there isn't enough standard deviation apart between them to effectively comply with the requirement.

Stakeholder Response: Because of technological advancements in the past decade or so we have no problem at all assessing BLLs confidently at the intervals stipulated in the discussion draft using a graphite furnace detection.

Stakeholder Question/Comment: Regarding 60010(6), where did the "20% lead content" come from?

DOSH Response: 20% is the level where metals may shed lead based on preliminary research, but we are open to any additional information.

Stakeholder Follow-up: 20% lead content is absolutely insufficient. We've done research and in California we determined that the threshold for requiring monitoring when workers are handling or disturbing materials containing lead should be 0.5% lead content to trigger monitoring requirements.

We would encourage you to review how Cal/OSHA has addressed this issue, including specific verbiage regarding "handling or disturbing" of any lead-containing material.

Stakeholder Question/Comment: Please define "handle" in the rule. Is it skin to metal contact, or would a forklift driver moving lead ingots, for instance, be considered to be "handling" lead?

Stakeholder Question/Comment: Regarding 60010(7), there needs to be follow-up monitoring requirements for those handling lead materials, such as brass polishing, in addition to the PEL exposure limits. This appears to only address airborne exposure.

Stakeholder Question/Comment: If a worker is altering or disturbing lead at a de minimis level (0.5% or less) then the frequency of monitoring should be determined by the BLL.

Stakeholder Question/Comment: Does the rule address situations in which a worker has an elevated BLL as a result of a personal hobby, such as shooting or reloading?

DOSH Response: 60010(6) includes initial blood testing requirements to establish a baseline, and employers are directed to educate workers with BLLs over the advisory level (5 µg/dL) and encourage these workers to follow-up with prior employers.

Stakeholder Question/Comment: Section 60010(7)(f) should say "at least monthly" so as to not prohibit more frequent testing if an employer chooses to do so.

Stakeholder Question/Comment: Our understanding is that the half-life of lead is about 21 days. If this is the case then why does 60010(8)(e) ask for retesting after just two weeks?

Stakeholder Response: The half-life depends on an individual's particular body burden of lead, but 30 days would be a more appropriate interval between testing.

DOSH Response: This section is intended for employers to have the opportunity to retest to verify results in cases when the initial elevated results may have been based on spurious causes.

Stakeholder Question/Comment: Is blood testing the only way to measure lead in the body, or are there accurate urine or other tests that could be used?

DOSH Response: Blood testing is the standard because of its accuracy and existing infrastructure available. While testing the lead content in a subject's bones may actually be more instructive, this would be a much more intrusive procedure and not cost effective.

Stakeholder Question/Comment: Are the requirements under 60020 the same as what is reported to ABLES?

DOSH Response: 60020(2) includes what labs are required to report, but only if information is readily available.

Stakeholder Follow-up: This provides a more efficient manner of reporting than requiring ABLES to track down information from labs, medical providers, and individuals. The end result of this efficiency is that ABLES can then act on the information in timely manner to educate workers, reduce or eliminate further exposure, and encourage them to seek medical attention when appropriate

Stakeholder Question/Comment: From industry's perspective, this is a duplicative requirement and therefore unnecessarily and overly burdensome. It should not be industry's responsibility to facilitate intragovernmental efficiencies. If data sharing is an issue between governmental agencies, this should be resolved between the agencies involved rather than asking businesses to report the same information multiple times to multiple agencies.

Stakeholder Question/Comment: Additionally, this reporting would cost employers and would represent another example of why this is a significant legislative rule requiring economic analyses.

Stakeholder Response: The National Institute for Occupational Safety and Health (NIOSH), which runs the ABLES program, is a research organization and has no statutory authority to require reporting. This section of the rule is an opportunity for employers to demonstrate compliance with the rule, potentially exempting them from further testing requirements.

Stakeholder Follow-up: Industry is concerned that this would shift from a consultation relationship with government to a compliance relationship, which could result in increased citations.

Stakeholder Question/Comment: Please revise 60030(5) to clarify that this section of the rule only applies to employees who have been medically removed *under this rule*. As it currently reads it would apply to any worker medically removed for any reason.

Stakeholder Question/Comment: I'm concerned that 60070 medical removal criteria is only focused on airborne lead levels. Language should be included in the rule that ensures that workers who are medically removed do not handle or disturb lead-containing materials as well.

Stakeholder Question/Comment: What research supports these levels? Please provide this in the bibliography you have promised.

Stakeholder Question/Comment: Has DOSH considered adding language to protect pregnant women?

Stakeholder Response: Adding language covering "medically sensitive" workers would encompass pregnant women, as well as others.

Stakeholder Follow-up: Industry is prohibited from asking employees about pregnancy status. We would encourage the agency to review the federal guidelines for handling radioactive material as an example of how to approach this issue.