

09/13/2019 – 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):

BP (British Petroleum)
Seattle Public Utilities
City of Seattle
The Institute of Neurotoxicology and Neurological Disorders (INND)
Nucor
Northwest Laborers-Employers Training Trust Fund (NWLETT)
Batter Council International
National Rifle Association (NRA)
Associated General Contractors of Washington (AGC)
Washington Retail Association
O2Armor
Snohomish County
City of Tacoma
US Oil & Refining
EMB Consulting

Previously, an overview of the latest draft lead rule, including key changes from the existing rule and previous drafts, was provided and DOSH began a section-by-section review of the draft. Today's meeting began with WAC 296-857-42020 of the draft rule (page 29). Stakeholder comments have been summarized below.

WAC 296-857-42020, Hygiene—PEL Rules – Showering, changing, and eating facilities.

Stakeholder comment: (2) appears to contradict the Note in the middle of page 30. The note authorizes workers within the control area but the regulatory text prohibits this.

DOSH response: No, the intent is that the note clarifies that lunchrooms must be separate from exposure control areas, even if located within an exposure control area.

(2) and the note are saying the same thing from a different perspective but we will review the language to ensure it is clear.

Stakeholder comment: (2)(c) says “any clothing.” Would this include socks and underwear?

DOSH response: No, we could perhaps refine the language to say “exterior clothing” or something of the sort.

Stakeholder comment: (3) uses the phrase “make sure” which, as has been noted before, could be interpreted ambiguously. It would be better to simply state what is required of employers directly.

Stakeholder comment: (3)(b)(iii) redefines the action level. It would be preferable to include the action level only once and then refer back to it throughout the rule.

WAC 296-857-42030, Hygiene—SPEL Rules – Decontamination

Stakeholder comment: How does this section differ from WAC 296-857-42020? This appears to replicate the requirements for employers under the PEL Rules.

DOSH response: Under PEL rules (WAC 296-857-42020), employers are asked to provide showers for optional use by workers. Under SPEL rules (WAC 296-857-42030) requires employers to ensure that exposed workers decontaminate effectively by using the showers provided.

Stakeholder comment: Can we change the language to say something like, “Employers must require...” instead of current wording? Employers shouldn’t be held liable if an employee refuses to take a shower.

WAC 296-857-43010, Protective clothing and equipment – Basic Rules

Stakeholder comment: (2) should be more specific. Rather than “impermeable PPE” it should say “lead-impermeable PPE.”

Stakeholder comment: (3)(a) prohibits blowing but current best practice is the use of a down-draft shower system that blows air into a HEPA filter.

DOSH response: We will review this and consider appropriate changes to the draft.

WAC 296-857-43020, Protective clothing and equipment – Action Rules

No comments

WAC 296-857-43030, Protective clothing and equipment – PEL Rules

Stakeholder comment: (2) duplicates requirements under 43010(4). You need to be more specific; a small tear in clothing shouldn't automatically require the clothing to be laundered. Of course employers should be required to replace clothing that is torn in a manner that allows lead through it.

Stakeholder comment: Referring to (5), employers often aren't the ones handling contaminated bins. This work is more commonly contracted out.

DOSH response: The multi-employer worksite section (WAC 296-857-10040) would apply in cases where certain tasks are contracted out to other businesses.

Stakeholder comment: (4) requires a change room for workers to doff clothing but at most construction sites, as well as outdoor gun ranges, there aren't typically change rooms. Typically we wouldn't see PEL-level exposures in these areas currently, but possibly so under the provisions of the new rule.

Stakeholder comment: The note at the bottom of page 31 states that no blowing is allowed, but as previously commented there are current best practices that entail blowing (a down-draft shower system blowing into a HEPA filter).

DOSH response: The note is consistent with current federal OSHA requirements but we will review this.

Stakeholder comment: How does (6) apply to contracted services? This reads as if employers would have to reach out to inform "individuals" who work for someone else, who we have no control over.

DOSH response: The multi-employer worksite section (WAC 296-857-10040) would apply in cases where certain tasks are contracted out to other businesses. The intent is that the employer would share information regarding lead hazards with the contractor. Generally, businesses that perform this type of specific work would be well aware of the lead hazards, but it is possible that a lead work facility may contract services with a company that performs more general work and isn't necessarily aware of lead hazards and best practices for handling contaminated materials.

WAC 296-857-43040, Protective clothing and equipment – SPEL Rules

Stakeholder comment: (1) requires daily laundering but some activities are only performed sporadically. This should be amended to say, “when work is performed, launder daily.”

WAC 296-857-44010, Exposure control areas – Basic and Action Rules

No comments

WAC 296-857-44020, Exposure control areas – PEL Rules

Stakeholder comment: Regarding the exception at the bottom of page 32, would bottled water or Gatorade suffice at worksites where a hands-free fountain isn’t feasible?

DOSH response: There are existing standards pertaining to water accessibility and heat stress that we’d want to ensure we’re consistent with. We can review and consider appropriate changes.

WAC 296-857-44030, Exposure control areas – SPEL Rules

No comments

WAC 296-857-45010, Respirators – Basic Rules

No comments

WAC 296-857-45020, Respirators – Action Rules – Voluntary Use

Stakeholder comment: (1) states that, “Lead exposures below the permissible exposure limit can contribute to worker blood lead levels and use of respirators is generally appropriate.” This

is a matter of opinion, as respirator use is generally not appropriate at lower levels approaching the Action Level. (The same would apply to the Note in the middle of page 33.)

Stakeholder comment: This doesn't specify what type of respirator is permitted for voluntary use; half-face, full-face, etc.

DOSH response: Correct.

Stakeholder comment: Would an employee working at a gun range all day meet the threshold for voluntary respirator use?

DOSH response: It would depend on the air quality as determined by an initial assessment. If below the Action Level, voluntary respirator rules would apply. An employer could also implement requirements for respirator use below the Action Level.

Stakeholder comment: Would an N95 paper mask respirator be sufficient?

DOSH response: An N95 respirator would be fine under voluntary rules and wouldn't require medical clearance.

Stakeholder response: This might set a bad precedent. Less experienced employees might see these being used and think that they are ok, even in areas where this type of mask isn't sufficient or permitted under the rules.

DOSH response: This aspect of the draft rule is consistent with respirator requirements across all of our occupational safety and health rules. Training is required to ensure appropriate use and fit even when used voluntarily.

WAC 296-857-45030, Respirators – PEL Rules

Stakeholder comment: Regarding (1)(b), N100 series filtering face piece respirators are rated as 10 by OSHA, and accordingly should suffice.

Stakeholder comment: So, (1)(c) requires employers to pay for a PAPR even if they don't agree that it is necessary?

DOSH response: Yes, this is consistent with current rules.

Stakeholder response: We disagree with this provision. Every employee could request a PAPR without any good reason for doing so.

Stakeholder response: Well, the draft rule language states that, "workers... may request..." but this could be interpreted to mean employers don't have to comply with a

worker's request. They can ask, but we don't necessarily have to provide them based in the literal word of the rule.

DOSH response: We'll have to clarify this and will review to ensure we're consistent with WAC 296-841, which covers respirators.

Stakeholder comment: Is the intent to provide protection for employees with medical conditions or who have trouble with elastomeric negative pressure masks?

DOSH response: Yes, this is part of the rationale behind this requirement.

WAC 296-857-45040, Respirators – SPEL Rules

Stakeholder comment: How does this differ from the PEL rules (WAC 296-857-45030)?

DOSH response: Below the SPEL the requirement is for a half-face or full-face respirator. Here, at or above the SPEL, the appropriate respirator depends on exposure.

Stakeholder response: It would be clearer if there was a table that provide specific APF required at each level.

WAC 296-857-46010, Exposure control plan – Basic and Action Rules

No comments

WAC 296-857-46030, Exposure control plan – PEL and SPEL Rules

Stakeholder comment: Under (3)(b), employers should be able to simply include a job title, and possibly refer to other documents regarding roles and responsibilities under these job titles.

Stakeholder comment: We object to the inclusion of (3)(d). Worker input may be taken into consideration but operations should be left to professionals.

Stakeholder comment: (3)(c) should also include "other reliable sources of information." Employers shouldn't have to conduct air monitoring if the hazard is already well known.

Stakeholder comment: (3)(g) and (h) should be (i) and (ii) under (3)(f).

Stakeholder comment: (3)(j) would require a work plan to be updated more often than necessary.

Stakeholder comment: (4) and (5) should be moved to the Definitions section.

Stakeholder comment: (3) is a site-specific plan. It would be nice if the rule included a task-specific plan for mobile workers as well.

Stakeholder comment: We object to (6)(b). Employers shouldn't have to ask opinions of non-professionals.

DOSH response: Perhaps we can amend this to require input from an official safety committee.

Stakeholder comment: Under (7), to whom should the exposure control plan be made available? Certainly not just any member of the public.

DOSH response: The intent would be for this to be accessible for workers or worker representatives.

Stakeholder comment: (8) should allow employers a reasonable timeframe, and should permit employers to share information electronically.

WAC 296-857-47010, Exposure controls – Basic Rules

No comments

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WAC 296-857-47020, Exposure controls – Action Rules

No comments

WAC 296-857-47030, Exposure controls – PEL Rules

Stakeholder comment: What is (3)(b) referring to? Is there some sort of lead alarm available?

DOSH response: This comes from the current rule. Some HVAC systems automatically shut down based on dust levels, so this is essentially an indicator of HVAC system efficiency, not necessarily lead levels.

WAC 296-857-47040, Exposure controls – SPEL Rules

Stakeholder comment: The mechanical ventilation rules are included here under SPEL requirements, but at least some sort of basic requirements should be included under the PEL rules (WAC 296-857-47030) since mechanical ventilation is optional at that level.

Stakeholder comment: (2)(c)(e) should stipulate “performance indicators *impacting lead*.”

Stakeholder comment: We change production based on the market. This section would require us to be constantly taking measurements.

DOSH response: If the system is calibrated to maximum performance, then periodic spikes and lulls wouldn’t require constant measurement; “at least every three months” would apply.

WAC 296-857-500, Task and Industry Specific Compliance Protocols & Safe Harbor Provisions

Stakeholder comment: These safe harbors aren’t “rules” per se, correct?

DOSH response: These are guidelines, which may deviate from the main body of the rule in some cases, that if followed ensure an employer is in compliance and will not be cited. If the safe harbor guidelines aren’t followed, an employer would be cited from the main body of the rule.

Stakeholder response: “Safe harbor” should be clearly defined and added to the Definitions section.

WAC 296-857-50010, Handling lead containing articles in retail settings—Limited

Stakeholder comment: What finding has DOSH made that warrants regulating lead in retail settings?

DOSH response: We’ve had violations from retail establishments related to lead...

Stakeholder response: But gun ranges have aerosolized lead exposures that aren’t found in other retail settings. I would argue that DOSH would need evidence of an exposure hazard in another retail environment to justify regulation. OSHA defines a lead “article” such as a battery or fishing weight as something that poses no risk of harm. This whole section is suspect, and likely wouldn’t hold up to legal scrutiny.

DOSH response: This is an attempt to clarify rules that help determine when rules don't apply.

Stakeholder comment: No, this is imposing rules on employers that do not have any obligation currently under OSHA.

DOSH response: The current rules apply more broadly than is generally perceived. We believe we are well within our authority to regulate occupational lead exposure in retail settings, and theoretically could be enforcing even current rules more vigorously.

Stakeholder comment: The third open bullet under the "Important" table on page 37 refers to a "Clean Areas compliance protocol" but this isn't defined or explained anywhere.

Stakeholder comment: Lead is a component in all retail electronics. At what point is this considered de minimis?

Stakeholder comment: The second to last bullet at the bottom of page 37 states that "it is expected that lead will be generally well managed..." We'd appreciate it if DOSH could be more specific as to what this means.

Stakeholder comment: Why include housekeeping guidance if the hazard is "well managed"?

DOSH response: The intent is that under the safe harbor, a store such as Walmart or Fred Meyer could make the grocery section a clean area but the sporting goods section containing fishing equipment and ammunition would require greater attention.

Stakeholder comment: How are employers supposed to keep anything with lead segregated from the rest of the stock?

DOSH response: An employer should be able to track where inventory is located, and keep lead materials segregated from other goods.

Stakeholder response: Perhaps the rule could stipulate simply that lead-containing objects be stored in a manner that prevents exposure. This way a retail store could have more flexibility in where to store items while still providing adequate protection.

Stakeholder comment: How do employers know what has lead in it? "Articles" are exempt from SDS (Safety Data Sheet) requirements.

DOSH response: In practice, we find SDSs for many items considered articles, and overwhelmingly consumer goods that contain any significant portion of lead are labeled with warnings. We don't intend for retail establishments to have to sample retail products themselves, and the focus in this retail safe harbor is relatively simple housekeeping and handwashing.

Stakeholder comment: What if a customer picks up a lead fishing weight and later leaves it in the grocery section? Would the whole store then become a lead work area?

Stakeholder comment: The second bullet from the bottom of page 38 refers to “periodic” surface sampling. How often is this?

DOSH response: This is a recommendation. It is up to the employer to determine what is appropriate. Surface sampling is a good way to help employers ensure that their cleaning practices are sufficient.

WAC 296-857-50020, Managing lead paint in office and residential settings—Limited

Stakeholder comment: Is there any cutoff like HUD has (600ppm)? What specific content determines “lead-containing”?

DOSH response: Some of these triggers are based on HUD, as well as Department of Commerce and Department of Ecology guidelines.

Stakeholder response: If that’s the case DOSH should reference these other agency’s rules or guidelines.

Stakeholder comment: This section only applies to office and residential settings. We often work in unoccupied buildings. Would this safe harbor not apply?

DOSH response: We can look at broadening the scope of this section to include similar settings with similar potential exposures.

Stakeholder comment: Has DOSH adopted federal enforcement for telework policies?

DOSH response: We’ll have to look into that, but we believe Washington has a similar, if not more stringent, policy than the federal government.

Stakeholder comment: When you say that DOSH will “cite from the main body of the rule” does this mean that if a required poster accidentally falls off the wall but a business is otherwise in compliance, DOSH will cite for any and all violations?

DOSH response: No, that is not our intent but we will review the language to ensure we convey this accurately.

WAC 296-857-50030, Incidental Lead Paint in Construction/Renovation, Repair, and Painting (RRP) Work--Limited

Stakeholder comment: Regarding the Exposure Assessment at the bottom of page 42, what type of work will require this?

DOSH response: In most cases this would be for limited, short-term projects, in which case it would just be a pre- and post-work test. More regular exposures would likely fall back under the main body of the rule.

Stakeholder comment: Remote sites generally don't have plumbing so we use lead-off wipes. This should be supported by DOSH and included in the safe harbor.

Stakeholder comment: Would HEPA filtration be required on all tools even when the lead content is very low?

DOSH response: To meet the safe harbor requirements, yes. Although if the lead content is low enough you may be in compliance with the main body of the rule.

WAC 296-857-50040, Gun Range Work—Limited

Stakeholder comment: What if range owners contract for range cleaning? They don't have control over contractor's employees.

DOSH response: The range owner doesn't have to require a contractor to follow the safe harbor. As in other cases discussed, the Multiemployer worksite section would apply. HVAC specialists for gun ranges would likely already have a thorough lead program, but landscapers, for instance, might not.

Stakeholder comment: This safe harbor applies to gun range owners. What about those who have to shoot at gun ranges for their job, such as law enforcement?

DOSH response: We have heard from police and others representing this group and are considering adding another safe harbor specific to them. The associated exposures are fairly well documented and understood, and differ in many respects from range owners.

Stakeholder comment: What is a "lead control area" at a gun range?

DOSH response: This would be somewhere that lead exposures are expected, such as the range, as opposed to the associated retail shop or office.

Stakeholder comment: There's no mention of vegetation control. Mowing grass or using a weed whacker could stir up lead in the air.

DOSH response: This is a good point; we'll review and address this.

WAC 296-857-50050 Clean Areas—Limited

Stakeholder comment: The middle of page 48 refers to a “third sample” – what exactly is this?

DOSH response: Four sample testing is standardized procedure in which the third sample is taken after cleaning.

Stakeholder comment: Would this section apply to an office of a lead producing facility?

DOSH response: It could if sampling determines that it’s sufficiently clean.

WAC 296-857-50060, Well Managed Blood Lead Levels—Limited

Stakeholder comment: This reads as if a Consultation finding would suffice for DOSH to issue a citation, which is in violation of the principles behind Consultation and this safe harbor.

DOSH response: Consultation staff can identify hazards and violations, and can require issues to be fixed but cannot issue citations. Consultation is actually prohibited from sharing information with Compliance, and Compliance would have to open their own independent investigation and use their own findings to issue any citation.

Stakeholder comment: Under this safe harbor if any employee refuses to have a blood test the employer would no longer comply and subsequently have to follow the main body of the rule?

DOSH response: Yes.

Stakeholder response: If the safe harbor said that “baseline testing must be required” it would make it easier for employers.

Stakeholder comment: What if elevated baseline blood levels don’t drop as expected?

DOSH response: Employers are expected to remove workers with blood lead levels above 20 mg/dL from lead work and doctors are advised to educate these workers about other sources of lead exposure such as hobbies. We’re not sure how far we can go in permitting employers to let go workers with continued high blood levels.

Stakeholder comment: Employers wouldn’t necessarily have the information required under the second open bullet at the top of page 50.

DOSH response: We will specify that this applies only to workers in the control area, not delivery people, etc.

Stakeholder comment: It's not clear when DOSH wants this documentation. Please provide an annual submission deadline.

DOSH response: We intended for this to be one year from the date of the initial submission but we can review.