

## **09/20/2019 – 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):**

Associated General Contractors of Washington (AGC)  
Stiffarm Safety  
Washington Retail Association  
The Institute of Neurotoxicology and Neurological Disorders (INND)  
Batter Council International  
US Oil & Refining  
Association of Washington Business (AWB)

**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 296-857-50070 of the draft rule (page 51). Stakeholder comments have been summarized below.**

### **WAC 296-857-50070, Maintenance and Repair Work—Limited**

**Stakeholder comment:** Does this section apply to contractors on site less than 30 days a year?

**DOSH response:** This protocol doesn’t specify, so a contractor could use this if it relates to their work. A lead-specific contractor, however, would likely fall more appropriately under another protocol or the main body of the rule.

**Stakeholder comment:** The first bullet and the second to last bullet on page 51 refer to “30 days per year” and “30 days in any 12 month period” respectively. This should be one or the other for the sake of consistency.

**Stakeholder comment:** The third bullet on page 51 states that, “blood lead tests must be conducted,” but employers aren’t typically the ones actually performing the tests. This should say instead, “blood lead tests must be made available.”

**Stakeholder comment:** Employers shouldn’t be disqualified from a safe harbor just because an employee refuses blood lead testing.

**Stakeholder comment:** The word “impermeable” is used throughout the rule but should be changed to “lead impermeable.”

**Stakeholder comment:** The last bullet on page 51 redefines the action level. As stated previously, we’d prefer that the various threshold levels are stated once at the beginning and then referred back to throughout the rule.

**Stakeholder comment:** At the top of page 52 in parentheses it says, “Work which would be limited by other action levels is not allowed under this protocol.” Why?

**DOSH response:** This was specifically to address blasting, cutting, and grinding operations.

**Stakeholder comment:** The second to last bullet at the top of page 52 should specify “lead dust” rather than just “dust.”

#### **WAC 296-857-600, Lead Sampling and Analysis**

#### **WAC 296-857-60010, Surface Sampling—General**

**Stakeholder comment:** Under (1), “This is lead that can be picked up on clothing...” seems like more of an opinion than fact.

**Stakeholder comment:** The four sample method referred to under (5) provides ineffective feedback due to the time it takes to get the results.

**Stakeholder comment:** Can employers use an XRF (x-ray fluorescence gun)?

**DOSH response:** It wouldn’t work to use the XRF directly on the dust but you could take a wipe sample and use the XRF to get a reading.

**Stakeholder comment:** Is the intent of the rule to limit testing to laboratories (and disallow the use of XRF technology by employers)?

**DOSH response:** No, the current rule language was created before XRFs existed and the draft hasn’t diverged significantly from the current language. The intention wasn’t to limit the ability of employers to perform testing on their own.

**WAC 296-857-60020, Air Sampling—General**

No comments

**WAC 296-857-700, Medical Protocols & Information for Physicians—**

**WAC 296-857-70010, Blood lead testing protocols—General**

**Stakeholder comment:** Is this section rule or guidance?

**DOSH response:** The numbered sections are intended as codified rule whereas the rest is informational guidance.

**Stakeholder comment:** (4) refers to “control blood lead level.” This should be “blood lead control level.”

**Stakeholder comment:** It seems that there is a contradiction between qualifications for respirators and for blood lead testing. Physicians Assistants (PAs) and Nurse Practitioners (NPs) can fit test respirators but only physicians can perform blood lead tests?

**DOSH response:** Only a medical lead assessment must be performed by a physician. The blood lead test, as well as respirator fit testing can be performed by any qualified practitioner.

**Stakeholder comment:** Regarding the Worker Rights section, it’s not clear what workers are permitted to opt out of. Can employees choose not to be medically removed?

**DOSH response:** The intention is that workers can opt out of medical services, but not medical removal.

**Stakeholder comment:** L&I’s workers comp system allows PAs and NPs to perform medical assessments for lead, so why isn’t this allowed under the rule? In some rural parts of the state workers might not even have access to a physician.

**DOSH response:** Page 26 refers to “licensed healthcare professionals opinions.” The rule needs to be consistent throughout.

**DOSH response:** This was a recommendation from internal medical staff acknowledging that the level of medical expertise required for a thorough assessment should be greater. However, we will review this to determine what is appropriate.

**Stakeholder comment:** The second paragraph under Blood Lead Testing (page 57) requires employers to provide information but it’s not specific what this entails.

**DOSH response:** DOSH intends to provide a poster.

**Stakeholder response:** Then the rule should state “information provided by DOSH.”

**Stakeholder comment:** Why is ZPP included at the bottom of page 57? I thought this was no longer used.

**DOSH response:** This isn’t required for ongoing monitoring but a doctor can include this in their assessment if they want to.

**Stakeholder comment:** This list at the bottom of page 57, while not “codified rule” creates a situation in which an employer could be held liable for failure to follow these guidelines despite use of “should” rather than “must.”

**DOSH response:** This section states “at the physicians discretion” but we will review to ensure clarity.

**Stakeholder comment:** Under the Recordkeeping section, we’re concerned about HIPAA (Health Insurance Portability and Accountability Act) requirements. The rule is now so extensive and covers nearly every employer in the state. These are employers who typically don’t have medical records and may not understand all that is required to maintain them.

**Stakeholder response:** A little fishing boat rental in eastern Washington that sells fishing sinkers will now have to maintain medical records of their staff? There is a huge knowledge gap there, and would require extensive outreach and training.

### **WAC 296-857-800, Safe Harbor Initial Assessments**

**Stakeholder comment:** Is this rule or guidance?

**DOSH response:** This is a safe harbor, which can be used in lieu of specific scientific inspection or sampling.

**Stakeholder response:** This needs to be made clearer. If the intent is for employers to be able to follow this instead of the main body of the rule, state it clearly like at the beginning of other safe harbor sections.

**WAC 296-857-80010, Safe Harbor Initial Assessment -- Building Use, Maintenance, and Renovation**

**Stakeholder comment:** I'm confused by "Activities not typically covered..." How do I know if I'm covered?

**Stakeholder comment:** The last sentence under "Activities not typically covered..." is incomplete. It should say, "...damage that needs repair."

**Stakeholder comment:** When you open the rule to employers that have never been covered by the rule before, you need to be very clear. "Typically" is an ambiguous word. Many of these employers don't "typically" concern themselves with lead at all.

**Stakeholder comment:** The safe harbors, or at least reference to them, should be included at the very beginning of the rule. Employers don't want to read 60+ pages to get to the part that pertains to them.

**DOSH response:** Because the safe harbors are optional alternatives, they were included at the back of the rule, and references were included at the beginning. However, we will review to see if this can be made clearer.

**WAC 296-857-80030, Safe Harbor Initial Assessment – Renovation, Repair, and Painting Work (EPA RRP program)**

No comments

**WAC 296-857-80040, Safe Harbor Initial Assessment – Primary Metal Work, Metal Casting and Manufacturing**

No comments

**WAC 296-857-900, Building Inspections—General**

**Stakeholder comment:** What does it mean that employers, "must communicate potential hazards, even when not covered by this guideline?"

**DOSH response:** This section was intended to provide guidance to building owners regarding the most common things to look for, but if they're aware of some other exposure issue they're not permitted to hide this from contractors, etc.

**Stakeholder response:** Are you asking building owners to perform lead testing on their buildings if they suspect that it *might* be present? This is confusingly written.

**Stakeholder response:** Would it be sufficient to simply advise contractors on site that a building is pre-1978 (when lead paint was permitted and commonly used)?

**DOSH response:** If a building owner is making a worst-case assumption, such as assuming that lead paint is likely on the building, then no testing would be expected or required and the owner could simply advise the contractor that the paint likely contains lead and appropriate action in compliance with the rule needs to be taken by the contractor.

**Stakeholder comment:** What if I purchase on old building and all I am aware of is what is on the real estate disclosure form?

**DOSH response:** Lead is well-known, common issue with older buildings and we'd expect some cognizance of this.

**Stakeholder response:** I agree that the onus should be on the building owner to disclose hazards to contractors.

**Stakeholder comment:** "They must communicate" is ambiguous. It needs to be clear that DOSH isn't instructing employers to communicate with the employees of other employers.

**Stakeholder comment:** **This whole section is guidance rather than rule, but there are several instances of the word "must." This should be examined.**

### **In closing**

**Stakeholder comment:** Will there be another draft and more stakeholder meetings before the CR-102 is filed. We feel that we've made many substantive comments and would like the opportunity to review a next draft to see what and how our concerns have been addressed before any formal public comment period.

**DOSH response:** We're going to take the comments received and work through them over the next couple of months, trying to incorporate suggestions where feasible. We haven't decided whether another draft will be released or additional stakeholder meetings will be scheduled but we recognize that there could be value to that approach.

**Stakeholder response:** I feel that adequate comments have been made, the Department has listened to these comments, and there is no need to prolong this

rulemaking. The longer we wait, the more workers are going to be exposed to unsafe working conditions. I'd encourage DOSH to address comments as best they can via a final draft and file the CR-102 as soon as possible.