



## Lead Rulemaking RAC Meeting Minutes June 23, 2023, 9-11am

### Attendees:

- Linda Pressnell, Oregon OSHA
- Sarah Rew, Oregon OSHA
- Dave McLaughlin, Oregon OSHA
- Greig Lowell, Oregon OSHA
- Jennifer Ekdahl, Oregon OSHA
- Penny Wolf-McCormick, Oregon OSHA
- Lisa Appel, Oregon OSHA
- Steve Fisher, City of Portland Risk
- David Dreher, Oregon Health Authority
- Jason Dunton, Hoffman Construction
- Robert Snyder, ODOT
- Nicholas Reul
- Ryan Barker
- Shannon
- John Stebbins
- 971-258-5775

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**Linda Pressnell started the meeting at 9:05 am and reviewed the agenda.**

1. Linda shared the **general rulemaking process**:

- Meet with Rules Advisory Committee (RAC) – Develop rules, gain input on rules and fiscal impact.
- Propose rules with Secretary of State – open public comment period,
- Adopt rules – consider comments received, may file final version rules for adoption.

2. Linda shared **current Oregon OSHA rulemaking agenda**:

- **COVID-19** – COVID-19 repeal and amend work clothing rules giving employees right to wear a face mask on a voluntary basis.

- **Federal Minor Corrections** – Making corrections to rules in several divisions to correct typos, non-substantive.
- **Consultation** – Public entity serious hazard correction.
- **Non-entry firefighting** – Addressing rural fire departments needs to be able to manage a field burn without having to enter a structure.
- **Lead** – In 2016, an Oregon OSHA PEL Advisory committee identified Lead and Manganese as topics for rulemaking; the agency started with changes to Manganese rules, and amended rules are now in effect. The Lead PEL rulemaking was delayed due to COVID-19, the agency is now picking up that rulemaking again. The Lead PEL rulemaking is not under a specific deadline, the agency would like to make progress.
- **Ag Labor Housing** – A RAC has been meeting for years on this topic, this rulemaking was delayed to COVID-19; the RAC is now meeting monthly and expects have a proposal in early 2024.
- **SB 907** – Right to refuse work; clarifies language; Division 1 rulemaking
- **SB 592** – Under a tight deadline to adopt amended rules that trigger comprehensive inspections under certain conditions; a dramatic increase in penalties, and requires a report to the legislature. Division 1 rulemaking. Changes required by SB 592 and 907 are being managed in the same rulemaking.

Linda announced that the EPA is now working on revised rules for **Ethylene Oxide** and they are in process of hosting public meetings. These rules impact manufacturers that use Ethylene Oxide in their process and commercial sterilizers. This may have an impact on Federal OSHA rules. More information can be found here: <https://www.epa.gov/hazardous-air-pollutants-ethylene-oxide>

**3. Old business.** Linda reviewed questions that came from the last meeting. Linda shared her research/progress thus far:

- How many employees would be removed if Oregon adopts 15 ug/dl BLL
  - see Oregon Health Authority worker Blood Lead Level (BLL) report
- Non-compliance with current rule and why
  - Requested and received list of Oregon OSHA inspections, still need to do analysis
- Health impacts of BLL, other health-related issues
  - Looking for newer information- will review in a future stakeholder meeting
- Surface contamination, housekeeping and sanitation issues
  - Ongoing issue – will investigate health issues associated with these two separate topics
- Access to sampling data (air sampling and wipe sampling) and hazard letters
  - Requested and received air sampling data, inspections with wipe sampling, and hazard letters – these are under review.

#### 4. Linda reviewed current Oregon OSHA Lead rules in Division 2, Subdivision Z:

<https://osha.oregon.gov/OSHArules/div2/div2Z-1025-Lead.pdf>

Linda noted that Oregon OSHA has Lead rules in 3 divisions: General Industry (2), Construction (3) and Agriculture (4). The Ag rules refer back to Divisions 2 and 3 depending on the activity.

Linda reviewed the Division 2 Lead rules, and noted:

- (d) Exposure monitoring and pointed out that it defines what Oregon OSHA expects for sampling.
- (e) Methods of Compliance that has Engineering Controls and Work Practice Controls, and Personal Protective Equipment including Respiratory Protection.
- There is also OAR 437-002-1025 that is an Oregon rule, not federal.
- (h) Housekeeping and (i) Hygiene facilities and practices and stated the RAC will return to them.
- Medical Surveillance and Biological Monitoring, and that the committee could invite a medical professional or Doctor to share information on health effects and timeframes, as well as “return to work” issues.
- The standard has medical removal and medical removal protection.
- There are hazard communication requirements and training.

**Robert (chat):** Any employer protections for employees who refuse medical exam?

**Dave:** The rule says the employer is required to offer the exam, an employee can refuse it. It is similar to hearing tests. The employee needs to understand the ramifications of opting out, and employer must document it all.

**Linda:** We could require employers to provide more information to employees as we work through rule changes, but we can't require employee to act.

Appendix A has information on health hazard data, effects of overexposure to Lead; employers must provide Appendix A and B to employees. Appendix B summarizes the parts of the standard workers should be familiar with. Appendix C outlines Medical Surveillance Guidelines.

**Linda asked the group to comment on what they think should be changed?**

**Robert:** In the Silica rulemaking, there was discussion of employees who work for contractors that job hop around. There are some issues around that with their exposure, how to keep track of that, what does it mean? Are there issues with that in the Lead standard?

**Dave:** This is a larger area that there aren't necessarily good answers to; it relates to Silica, Lead, Asbestos, Ag work, and heat exposure, etc. The way our rule is written, an employer is responsible to do these things, they only can do these things for employees that are on their clock. The worker is putting themselves in a broader risk by doing to the same type of work with multiple employers on the same day.

**Linda:** Maybe OHA could put together information for employees on Blood Lead Levels in a less formal way as a public health issue.

**Dave:** It is important to note that the medial surveillance could detect this; if someone has firearms as a hobby they may have higher blood Lead levels, if their test comes back high they may not be able to qualify to do a job even if they didn't get the high blood level from their employer. There are ways of catching this but it is all very lagging.

**Robert:** If that is the case, for the employer - you would need a lot of exposure monitoring data to prove you were not the one who exposed them to it. There should be something that protects the employer, to establish that they weren't the cause of the high blood Lead levels.

**Dave:** In that case, the employer will still have to take off them off the job regardless, it doesn't matter where it comes from. If you are not the exposing employer, you can demonstrate that you are not responsible, but you still can't put them on that job. The employer would not be cited, but the employee still can't do the job.

**Ryan:** Under housekeeping, is there a requirement to use a HEPA vacuum. The EPA require their use during Lead-based paint removal.

**Linda:** We will keep this in our notes to revisit.

**Penny Wolf-McCormick:** When speaking of Safe Harbor are we thinking something like Safe Harbor requirements in lieu of initial monitoring? Or something else? More explanation or frame work around the question would be helpful.

**Linda:** We will keep this in our notes to revisit.

**Robert Snyder ODOT:** HEPA vac would be a good add to a Safe Harbor table for certain job tasks.

**Linda:** In California and Washington there are requirements for HEPA vacs.

**Linda:** When the workplace contribution is supplemented by home issues, another example is noise. It is typical that if employer contributes to exposure then we hold employer responsible

to what our standard says, unless you can prove that the exposure is not work-related. However, this does seem unlikely. It could be hard to remove the employer from the equation.

**Dave:** If you had a worker that started with high Blood Lead Levels, the employer may not be responsible for that exposure, but that employee still can't do a job that exposes them to Lead.

**Linda reviewed current Oregon OSHA Lead rules in Division 3, Subdivision D:**

<https://osha.oregon.gov/OSHARules/div3/div3D.pdf#1926-62>

**Linda:** Let's review construction rule and where we get into trigger tasks.

**Robert:** So, I have not read through these rules thoroughly. Is there a big difference between the construction and industry rule? Does it make sense to have a Safe Harbor table to include both general industry and construction type tasks that allows us to have one rule instead of two?

**Linda:** The significant differences between the two rules are the trigger tasks. In general industry rules we don't have trigger tasks, in the construction rule we do. The best potential for a place for Safe Harbor is with these trigger tasks. In the general industry rule we don't have trigger tasks, in the construction rule there are. In the construction rule, the trigger tasks are not in a nice table, they are not in an easy to read place, they are integrated into paragraph text. There could be room for modification for this as we revise the rules. Does anyone have comments on our ability to combine general industry and construction into one Lead rule?

**Robert:** For me, because our workers do a broad range of tasks. Whether they work in our facilities, or along roadsides in the Portland area where we know some soil have high levels of Lead from historic practices. There is a gray line between general industry and construction and at what point do they cross over one another? So, I would be an advocate of trying to come up with one rule, and put job tasks into a Safe Harbor table if we can do that.

**Linda:** This is something we will continue to look into.

**Ryan (chat):** Is there a good example of this in other states?

**Linda:** Right now, the only state I know of that has a new Lead rule on the books is the State of Michigan. They have separate general industry and construction standards. I will send a link and we can discuss at the next meeting.

**Robert:** Depending on what Federal OSHA does, lets' say they come out as separate. Would that prevent us from having one rule?

**Dave:** No. Using the Silica rule as an example. Federal OSHA has a general industry and construction rule for Silica, Oregon OSHA has one rule that applies to everybody. We just have to show our rule is as least as effective as, it can be different.

**Linda:** We have a whole range. Federal OSHA has a proposal to lower BLL, but the State of Michigan went ahead and adopted the lower BLL in general industry rule and construction rule - and that is all they did. The State of California lowered their PEL, and actionable amounts and lowered BLL. We have options. We can approach it thoughtfully for worker protection and clarity to increase an employer's ability to comply with it.

**Linda:** Let's delve more into Safe Harbor concept. In regards to Safe Harbor tables, if we were to develop one we have different situation than what we did with Silica and Manganese. In Lead we have exposure by inhalation and ingestion from surface contamination, this is not the case so much with Silica and Manganese. We have multiple standards within the Lead rule. We have biological monitoring of BLL that really tells the health effects the employee could experience. With air sampling we do our best to make this representative to what employee actually breathes, but we know this may not always represent the full exposure. The BLL is much more indicative. So those are things, if we choose to do Safe Harbor, we could make it different from Manganese or Silica.

**Linda:** Is there an interest in Safe Harbor in the group? And what parts of the rule do you think lends itself well to that?

**Lisa:** Could you explain the concept of Safe Harbor?

**Linda:** So, for example with Silica, there is Safe Harbor where employees can take certain protective actions like engineering controls and personal protective equipment. And they could do that without going through exposure assessment like air sampling.

**Dave:** For this particular one, we were really looking at short-term jobs, like window replacement or something like that. Where they will only be on the job for a short period of time and for monitoring they will only get results after the job is over. The rule still requires monitoring with trigger tasks, so with paint you are still required to follow specific monitoring, but you won't get feedback quick enough to make a meaningful difference.

**Linda:** Safe Harbor is meant to protect employees, and protect employer from a violation in regards to monitoring.

**Penny:** Safe Harbor in lieu of what? Dave - the interim measures are prior to monitoring - if we said monitoring wasn't required at all wouldn't that be ALAEA (at least as effective as)?

**Dave:** As far as an effectiveness measure, we would have to take a look at what that would look like. And probably have some earlier protocols on the other side of that, for example doing more frequent BLL to make sure its effective. Keep in mind because there are already Federal OSHA requirements in place there are going to be trade-offs on one side or the other.

**Linda:** Anyone else have comments on Safe Harbor?

**Robert:** Another desire I have is we build a Safe Harbor table and we are taking precautions and medical surveillance to show what you are doing is effective. In doing medical monitoring and industrial hygiene, it gets very expensive and there are issues with medical records to be secure, contracting that out – it gets complicated. That is why I would like to see us build Safe Harbor tables, particularly for tasks. Like window replacement, electrical work, employees that work on computers and circuit boards, mowing operations on roadsides and in Portland we know there is Lead in the soil, but if we know the distances and the soil with Lead is covered with clean soil to protect it may not be necessary. There are many different tasks where cost and logistics are a barrier to medical sampling. We can build tasks to let employees do that work safely without being overexposed.

**Linda:** In summary, what I am hearing is that you are looking at Safe Harbor, it would be to not have to do industrial hygiene sampling for certain tasks.

**Robert:** Yes, the same way the Silica rule is built.

**Jennifer (chat):** Yes, I think we should consider Safe Harbors for specific tasks and duration of tasks with regards to air monitoring requirements. Similar to the Silica rule. I agree with Robert.

**Robert:** Could we get a medical expert or in occupational health to chime in? I have been in Hazmat teams before; we would do medical surveillance every year, then we got to the point where we are not seeing anything. Ok, now we are doing it every 3 years because we have proven track record. Those sorts of things come to mind. I am speaking to this from my industry and agency perspective. I know there are other industries that may see this different.

**Linda:** One thing to consider from Silica rule, can we have trigger tasks in general industry? Does anyone have any feelings about that? Or, could we have trigger tasks from general industry? Or, is there so much variety in that that it is beyond we could do in the rule?



**Robert:** There is a gray line between construction and general industry. For example, if we send out a facilities tech to a building to replace a molding and there is a Lead paint – I don't see that as construction. I see that as maintenance activity, i.e. example is replace a window. As long as we do that job appropriately, there are many of these tasks that could be put into one table.

**Sarah:** We do get a lot of questions about that – is it maintenance or construction? It's a common source of confusion as-is.

**Robert:** We still have equipment with Lead-based paint that come into our shops, and we make repairs and upgrades and use new technology that is safer. So, technology has changed as well and we need to embrace that technology and use that, and not require employers into sampling and medical surveillance.

**Linda:** Let's take a look at the Silica rule

<https://osha.oregon.gov/OSHARules/div2/div2Z-437-002-0382-air-cont.pdf>

Dave, could you take us to the Safe Harbor table?

**Dave:** I don't think we are going to be able to do the same thing because Lead and Silica are so different. Plus, Silica does not have component of surface contamination like Lead does. It would have to look far different than how Silica did it. So, I don't know if Silica would be a good example for that. Now this rule gives a good example on what an all-inclusive Lead rule could look like in that it is separated into these sections that talk about specific things. To answer Robert's questions about the difference between the construction and general industry rule, there aren't that many. It is very much like Silica, there are some very similar to construction – the Table 1 tasks have their own section specific to construction. We could have something like that. In dealing with Lead, both Lead rules are weighted heavily towards airborne exposure and not so much surface contamination; that is probably an area that we could tackle and deal with that surface contamination as an issue and set up specific protocols for a regulated area. You have to regulate who goes in there, you have to demonstrate that your control measures are adequate, and have hand-washing like that. You need to have practices to prevent the Lead from leaving that area so whatever is there stays there. For a construction task like remodeling that could have a section, for example if we know you will be there for less than 5 days or whatever threshold makes sense and here are your specific protocols and have BLL monitoring to back that up so you know exposures aren't happening and the control measures are adequate. Something along those lines.

**Ryan:** I am wondering if you combine the two, with the construction industry - employers that already have confusion on what they are supposed to do and it seems like so many workers



that don't get this type of protection. If the two rules get combined will it increase confusion? I am looking at the OSHA guidance document on Lead in Construction; and many trainers point to this, if the two get combined will there still be guidance documents for specific industries or will they all combine together?

**Sarah:** The rules would direct each industry to the right rule as follows.

**Dave:** Any changes we would make, the guidance documents we provide would not necessarily change their focus to whom they are written. So, there would still be guidance for construction activities or general industry activities. The guidance documents would be based on the rules. Even though they would all be in the same rule, it would not materially change what we provide to employers and employees on what this looks like.

**Linda:** Good question, we will revisit this. We have the potential to clarify, so when you know you have blood Lead you need to go to this rule. There would be specific sections that apply to your industry type. For example, the Silica rule OAR 437-002-1056, the way this rule is laid it starts out with requirements for everyone, and discusses monitoring, and then on top of page 9, look at 437-002-1057, it points to construction only. Guidance documents are intended to help the employer comply with the rule, we will do these by industry type. So, I think there could be a way to work around this if we think there is benefit to one rule; we will have to weigh those options. When we get a few months down the road we will be proposing language, it will be easier to see this and look at different options.

**Linda:** Any other comments on one rule, two rule or Safe Harbor concept? Is there anyone who thinks we should not go to a Safe Harbor?

**Ryan:** Is there data for Safe Harbor for tasks? I am looking at California and I don't see this.

**Linda:** California is based it on modeling to project exposures. In contrast, Michigan based it on data.

**Dave:** I don't want us to get hung up on the term Safe Harbor. While conceptually similar, we are looking at short-term jobs where air monitoring data is not going to do much good because you are already two jobs away by the time you get results; in this case a specific process for establishing specific protocols, PPE, work practice, etc. and backed up by periodic BLL monitoring to demonstrate that whether those practices are working as you would think. Then set up a specific period to measure before you don't have to do it anymore, unless something changes – and then what kind of somethings would we talking about? So, this is a smaller segment of employers that have short-term jobs. If you are in a battery plant, you already know you have specific protocols in place - so a Safe Harbor would not do you any good, because

you have already established those practices and backed it up with BLL monitoring. There is periodic BLL monitoring that may occur. So, this is really looking towards those smaller short-term jobs where there may be exposure and how we deal with that moving forward.

**Linda:** So, whether or not we use the term Safe Harbor, we are looking for a way to address exposures for short jobs that then are going on to the next jobs. We are looking for a way beyond trigger tasks with additional protocols or increase BLL or set up a program for BLL testing.

**Linda:** Other comments or questions?

**Lisa (chat):** Do you want to plan future meetings?

**Linda:** Let's set up meeting dates for the rest of the year. I chose Fridays from 9-11 am as it seemed to work from polling, in the middle of the month and avoiding holidays. The proposed meeting dates are:

- **Friday July 14 (corrected to July 21<sup>st</sup>, so meetings are on the 3<sup>rd</sup> Friday)**
- **Friday August 18**
- **Friday September 15**
- **Friday October 20**
- **Friday November 17**
- **Friday December 15**

**Robert:** If there is a meeting we are going to miss, any chance the agenda comes out as soon as possible, so we can email in questions? What kind of notes or recordings that we can look into afterwards? That is an option in TEAMS. I don't want to miss important details. What updates are being done to the website?

**Linda:** We are in process in updating the website. We will be posting meeting minutes on the website. We will send out the agenda early or post on the website.

**Sarah:** We are not in the habit of posting every video, but you are welcome to request it. There are options.

**Linda:** Call me for documents and I will email them to you. Going forward I will send them as part of the invite. Any last comments? Thank you for attending and providing your time. We have flexibility to reschedule meetings as needed. (Note: Links to Lead rulemaking by other agencies are found on our website.)

**Meeting adjourned at 11:01 am**