



DATE: April 5, 2023
TO: PRR Lead Task Force
FROM: Helen Cleary
RE: Lead Task Force Meeting Summary – March 28, 2023

On March 28, 2023, eight (8) members of the Phylmar Regulatory Roundtable – PRR Lead Task Force met to discuss PRR's written comments and recommendations to the Occupational Safety and Health Standards Board (OSHSB) on the proposed amendments to Cal/OSHA's Lead in General Industry and Construction standards. The audio and video of the Planning Committee meeting can be found [here](#). See below for links to rulemaking documents.

Many thanks to the members of the 2023 Phylmar Regulatory Roundtable Lead Task Force: Bonnie Burns, Breanna Skinner, Brian Anzelc, Claude Golden, Dave Fearer, Dave Woodard, Edna Lehnert, Hillary Thomas, Jamie Carlile, Jim Weber, Jo Forchione, John Malone, Justin Singh, Marc Hendon, Michelle Stewart, Mike Cooper, Nan Cargile, Ofelia Perez, Paul Costa, Peter Sarmicanic, Richard Parr, Rod Collins, Roxana Ramirez, and Sandy Tran. To all of you, your service is much appreciated.

Please review the Task Force's Action Items. We will use this information to draft our comments and recommendations:

ACTION ITEM: Lead Task Force (TF) members to provide examples of worker tasks that may fall under this regulation (meet the AL of $2\mu\text{g}/\text{m}^3$) and require interim measures but most likely not reach the PEL ($10\mu\text{g}/\text{m}^3$).

ACTION ITEM: TF members to provide examples and data of the exposure levels for soil disruption and background exposure levels (i.e., being exposed to leaded paint in an old building). In addition to other regulatory and government agencies that will be impacted by this rule.

ACTION ITEM: TF members to provide examples on how to reduce exposures and other mitigation measures that can be put in place instead of automatic interim measures. Examples that can be used in a table. (i.e., When a worker is exposed/doing Task A, employers should follow this mitigation measure. Example:

ACTION ITEM: TF members to provide examples of tasks that cannot be easily simulated but would trigger requirements.

ACTION ITEM: TF members to provide recommendation for exemptions that consider frequency and time of exposure.

ACTION ITEM: TF members to provide information on the impact of a negative initial determination on the workplace and the assumptions of what the results will be.

ACTION ITEM: Brianna Skinner to forward to PRR Staff several Occupational Lead Exposure Levels studies that have not yet been considered by the Agencies.

Completed: Attached and linked: [Sweeney 2015](#); [Sweeney 2019](#); [Sweeney 2021](#)

Rulemaking Status

On March 3, 2023, the OSHSB [noticed](#) the proposed amendments to the lead standard and the 45-Day Public Comment period opened. Written comments are due and the hearing is scheduled for April 20, 2023.

The following rulemaking documents can be accessed by clicking on their link:

- [Notice / Informative Digest](#)
- [Proposed Regulation](#)
- [Initial Statement of Reasons](#)

Task Force Meeting Highlights

PRR Staff explained that PRR typically doesn't engage in construction industry issues, but the Lead Standard is a very important issue to several of PRR members. PRR Staff stated that any data the Task Force members provide to PRR for comments has to be very specific because the OSHSB will be hesitant to make changes to the existing standard due to the length of time it has been considered.

PRR Staff reminded the Task Force that the standard is in the 45-day comment period which closes April 20th. At that time, the Division will review all comments received and make any amendments they deem necessary. If changes are made to the text, another 15-day notice will be issued.

Following California Government Code [§11346.4\(b\)](#), the Agency has one year from notice (March 3, 2023) to amend the regulation. Therefore, the last opportunity for the OSHSB to vote, adopt, and submit the rulemaking package to the Office of Administrative Law (OAL) will be at its February 2024 Board meeting.

At the March 16th Board Meeting, PRR shared member concerns and requested amendments be made to the proposed text. Other stakeholders asked for both, an additional Advisory Committee Meeting and additional time for comments. In response, Christina Shupe reminded the attendees that the official rulemaking period has begun and Advisory Committee Meetings are a pre-rulemaking activity. With regards to extending the comment period, she stated that the Board can consider that at the end of the initial comment period. She cautioned the Board that extensions and amendments will take time and if the one-year time limit to complete the rulemaking runs out, there is a risk of losing the rule. She was not clear to the Board that the rule would not be lost forever. The rule can be noticed again.

PRR Staff asked if PRR members think their current lead programs are effectively managing and reducing the risk to acceptable levels of exposure. Is there an actual risk in the field that requires the triggers to be as low as Cal/OSHA and CDPH recommend?

Also, PRR Staff reminded the Task Force that FedOSHA is working on its rule and a possible recommendation to the Board is to wait until the FedOSHA rule was published.

One member asked for clarification on “losing the rule”. PRR staff explained that if the Board does not vote to adopt a rule in the designated one-year period, the rulemaking process would start over from the beginning with another notice, 45-day comment period, and hearing.

PRR Staff asked the Task Force how the proposed amendments impact their current operations. One member suggested their number one issue is the weakness of the frequency and duration of exposure exemptions. Another member mentioned a number of employees wouldn’t be exposed for the ten days in the exemption but would have to do the blood test. The company would then have to do a risk assessment and produce interim procedures at which time the employees would meet the exemption. One member explained that if an employee is exposed twelve days a year, it is highly unlikely their exposure will be eight hours each of the twelve days. Exposure would be limited to one or two hours.

One member suggested separating the Construction Standard issues from General Industry Standard. Some issues are applicable to both standards but most issues are unique to one or the other.

Another member mentioned the levels of monitoring that are required versus the task since the frequency is now task-based. In order for an employer to implement the new standard, they have to track each employee trigger level with the corresponding task. With the trigger levels, the monitoring frequency will change and will be overwhelmingly complex for the employer.



One Task Force member cited that if an employee is above the action level but below the PEL, an employer will need to monitor annually. However, if an employer is below the action level, you can document a negative initial determination, exempting the employer from exposure monitoring for that task. He commented that it was impossible to sample all tasks due to the improbability of simulating all tasks.

Another Task Force member suggested the standard is causing employers to default to the more stringent levels to avoid a possible violation. The standard mistakenly makes the assumption that exposure is for eight hours. The consensus is exposure is no more than one – two hours.

One member suggested proposing that prior to any work, in lieu of exposure monitoring, a lead management plan to reduce exposure for that activity be written.

One member brought up FedOSHA's Crystalline Silica Standard and how it helped small business identify a way to implement the procedures versus burdening them with complicated requirements and red tape. Another member suggested going back to look at the development of that standard to see if it was put in place after the initial standard was drafted to benefit small businesses.

PRR Staff asked for examples of the impact a negative initial determination would present on the workplace, as well as the assumption of what the results will be. PRR Staff also requested examples or data of the exposure levels for soil disruption as well as examples on how to reduce exposures and other mitigation measures can be put in place.

Email Helen with feedback or questions (hcleary@phylmar.com).

Adjournment: 11:00 am

Next Meeting: April 11, 2023; 10am – 11am pacific