

## **NOTICE OF PROPOSED RULEMAKING**

### **CHAPTER 414**

### **OREGON DEPARTMENT OF EDUCATION, EARLY LEARNING DIVISION**

**FILING CAPTION:** Administrative Rules requiring testing water for lead in licensed child care facilities.

**LAST DAY AND TIME TO OFFER COMMENT TO AGENCY:** 01/21/2018 5:00 PM

#### **NEED FOR THE RULE(S):**

Increasingly, information indicates lead is leaching into water through plumbing and piping. Young children are at greatest risk of health problems related to lead exposure. This rule will require all licensed and regulated child care facilities to test for lead in water using an OHA accredited laboratory, report results and require specific actions to mitigate against lead exposure if lead is present.

#### **DOCUMENTS RELIED UPON, AND WHERE THEY ARE AVAILABLE:**

Caring for Our Children. Standard 5.2.6.3. <http://cfoc.nrckids.org/StandardView/5.2.6.3>

Oregon Accredited Laboratory List:

<http://www.oregon.gov/oha/PH/LaboratoryServices/EnvironmentalLaboratoryAccreditation/Documents/dw-lead.pdf>

#### **FISCAL AND ECONOMIC IMPACT:**

Requiring testing for every licensed child care facility would require small businesses to develop a plumbing profile to understand the potential sources of lead in the facility. Rule would require 3 tests for a Certified Child Care Center, considered a small business for the purposes of the fiscal impact analysis. Based on a scan of statewide accredited laboratories, each tests costs approximately \$22.00 with a \$10.00 collection cost. Estimated costs to each Center would be approximately \$100.00.

#### **COST OF COMPLIANCE:**

(1) Identify any state agencies, units of local government, and members of the public likely to be economically affected by the rule(s). (2) Effect on Small Businesses: (a) Estimate the number and type of small businesses subject to the rule(s); (b) Describe the expected reporting, recordkeeping and administrative activities and cost required to comply with the rule(s); (c) Estimate the cost of professional services, equipment supplies, labor and increased administration required to comply with the rule(s).

(1) This rule will require the Early Learning Division and the Oregon Health Authority to work collaboratively to update and translate written materials as part of a training and outreach plan. (2a) Approximately 4,300 licensed facilities. (2b) Minimal impact due to added record keeping and posting notices for parents. (2c) The full impact is unknown at this time. Nationally, health agencies are learning more about the scope of the problem in existing infrastructure.

An outcome of the proposed testing requirement will be to provide a clearer understanding of the scope, scale and costs of mitigating and ultimately preventing exposure to lead contamination through

drinking water at Oregon's licensed and regulated child care facilities.

Costs of mitigation, e.g., supplying bottled water, replacing faucets and plumbing is unknown.

**DESCRIBE HOW SMALL BUSINESSES WERE INVOLVED IN THE DEVELOPMENT OF THESE RULE(S):**

In November 2016, the Early Learning Council directed Early Learning Division staff to form a workgroup of staff and stakeholders to examine strategies to reduce lead exposure in child care facilities. Stakeholders involved included Department of Human Services, Oregon Health Authority, Child Care Resources and Referral agencies, Washington County Environmental Health, as well as representatives of family child care providers, center-based child care, Oregon PreK and Head Start. The proposed rules reflect the Council's feedback based on reports from the work group.

**WAS AN ADMINISTRATIVE RULE ADVISORY COMMITTEE CONSULTED? YES**

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**RULES PROPOSED:**

414-205-0020, 414-205-0100, 414-205-0120, 414-205-0130

**AMEND:** 414-205-0020

**RULE TITLE:** Application for Registration

**RULE SUMMARY:** Lead in plumbing is prevalent. In the 1980's and 1990's laws curtailed use of lead. Today information is available to indicate lead leaching into water through plumbing and piping. Young children are at greatest risk of health problems related to lead exposure, including serious brain and kidney damage. Of the 4,300 licensed facilities, approximately 3,000 are operated in a home or small businesses setting. This rule will require all licensed and regulated child care facilities test for lead in water using an OHA accredited laboratory, and implement actions to mitigate against lead exposure through water when test results indicate lead levels reach or exceed those established by rule. Mitigation actions suitable to reduce risk of lead exposure through drinking water is identified in rule.

**RULE TEXT:**

- (1) The applicant must apply for registration on the form(s) supplied by OCC. The original form(s) must be submitted to OCC for processing.
- (2) Persons submitting new applications must attend a family child care overview session prior to submitting their application to OCC.
- (3) Persons interested in submitted an application must meet the training requirements outlined in OAR 414-205-0055.

- (4) An application for registration is required:
  - (a) For a new registration;
  - (b) For renewing a registration; and
  - (c) For reopening a registration.
- (5) There is a non-refundable filing fee of \$30 for each application. If the provider submits documentation that the provider's family income is below 100% of the Federal Poverty Level, the fee may be reduced.
- (6) An application for certificate shall be accompanied by lead testing results for drinking water.
- (7) An applicant must have all faucets and fixtures accessible to children or used to obtain water for preparing food, infant formula, drinking or cooking tested for lead;
- (8) An applicant must use an Oregon Health Authority accredited testing laboratory and in accordance with the United States Environmental Protection Agency 3T's for Reducing Lead in Drinking Water in Child Care Facilities: revised guidance dated December 2005.
- (9) All civil penalties must be paid in full.
- (10) To determine if requirements are met, the applicant/provider may be required to supply additional information or permit OCC, a fire marshal, or a public health official to assess the home and/or review child care records.
- (11) Providers must satisfactorily complete an on-site health and safety review conducted by OCC prior to issuance of a new, renewal or reopen registration. The review will ensure that the provider is in compliance with the rules related to health, safety and sanitation.
- (12) If an application for renewal is received by OCC at least 30 days prior to the expiration date of the current registration, the current registration, unless officially revoked, remains in effect until OCC has acted on the application for renewal and has given notice of the action taken.

STATUTORY/OTHER AUTHORITY: ORS 329A

STATUTES/OTHER IMPLEMENTED: ORS 329A.260, 329A.330, 329A.440

AMEND: 414-205-0100

RULE TITLE: Health

RULE SUMMARY: Lead in plumbing is prevalent. In the 1980's and 1990's laws curtailed use of lead. Today information is available to indicate lead leaching into water through plumbing and piping. Young children are at greatest risk of health problems related to lead exposure, including serious brain and kidney damage. Of the 4,300 licensed facilities, approximately 3,000 are operated in a home or small businesses setting. This rule will require all licensed and regulated child care facilities test for lead in water using an OHA accredited laboratory, and implement actions to mitigate against lead exposure through water when test results indicate lead levels reach or exceed those established by rule. Mitigation actions suitable to reduce risk of lead exposure through drinking water is identified in rule.

RULE TEXT:

- (1) All caregivers shall take appropriate precautions to prevent shaken baby syndrome and abusive head trauma.
- (2) The home must be a healthy environment for children.
  - (a) No person shall smoke or carry any lighted smoking instrument, including an e-cigarette or vaporizer in the family child care home or within ten feet of any entrance, exit, or window that opens or any ventilation intake that serves an enclosed area, during child care hours or when child care children are present. No person shall use smokeless tobacco in the family child care home during child care hours or when child care children are present. No person shall smoke, carry any lighted smoking instrument, including an e-cigarette, or vaporizer or use smokeless tobacco in motor vehicles while child care children are passengers.
  - (b) No one shall consume alcohol on the family child care home premises during child care hours or when child care children are present. No one shall be under the influence of alcohol on the family child care home premises during child care hours or when child care children are present.
  - (c) Notwithstanding OAR 414-205-0000(5), no one shall possess, use or store illegal controlled substances on the family child care home premises. No one shall be under the influence of illegal controlled substances on the family child care home premises.
  - (d) Notwithstanding OAR 414-205-0000(5), no one shall grow or distribute marijuana on the premises of the registered family child care home. No adults shall use marijuana on the registered family child care home premises during child care hours or when child care children are present.
  - (e) No adult under the influence of marijuana shall have contact with child care children.
  - (f) Notwithstanding OAR 414-205-0000(5), marijuana plants shall not be grown or kept on the registered family child care home premises.
  - (g) All medical marijuana must be kept in its original container if purchased from a dispensary and stored under child safety lock. All medical marijuana derivatives and associated paraphernalia must be stored under child safety lock.

- (h) Effective July 1, 2015, all marijuana, marijuana derivatives and associated paraphernalia must be stored under child safety lock.
- (i) There must be at least one flush toilet and one hand-washing sink available to children. Steps or blocks must be available to ensure children can use the toilet and sink without assistance.
- (j) The room temperature must be at least 68°F during the hours the child care business is conducted.
- (k) Rooms occupied by children must have a combination of natural and artificial lighting.
- (l) Floors must be free of splinters, large unsealed cracks, sliding rugs and other hazards.
- (3) The facility must have all faucets and fixtures accessible to children or used to obtain water for preparing food, infant formula, drinking or cooking tested for lead. The facility must use an Oregon Health Authority accredited testing laboratory.
- (4) Lead testing as required by (3) shall be conducted within six months of the effective date of this section and at least once every six years.
- (5) The test results must be kept on the facility premises at all times and a copy provided to the Office of Child care within 10 days of receiving the results.
- (6) If the test results are at or above 20 parts per billion (ppb), the facility must immediately:
  - (a) Prevent children from using or consuming water by supplying bottled or packaged water to meet the requirements of this section;
  - (b) Contact and advise the Office of Child Care (OCC) of the water test results and submit a plan of actions to protect enrolled children;
  - (c) Notify all parents and guardians of the test results within one business day.
- (7) Irrespective of results obtained in accordance with section (1)(c), actions to protect children from exposure to lead contamination in drinking water should be taken at all times, including:
  - (a) Flushing pipes by running the tap until the water is noticeably cooler.
  - (b) Running tap water for at least two minutes after water sits in the pipes for six hours or more.
  - (c) Using only cold water for drinking, cooking and making baby formula.
  - (d) Cleaning faucet screens and aerators frequently.
- (8) Boiling water is not considered an acceptable action to protect children from exposure to lead contamination in drinking water.

(9) First aid supplies and a chart or handbook of first aid instructions shall be maintained in one identified place and kept out of reach of children.

(a) The first aid supplies shall include: band aids, adhesive tape, sterile gauze pads, soap or sealed antiseptic towelettes or solution to be used as a wound cleaning agent, scissors, disposable plastic gloves for handling blood spills, a solution for disinfecting after a blood spill, a sanitary temperature taking device and CPR mouth guards.

(b) A first aid kit and a copy of each child's emergency medical information including a medical release form shall be taken any time the caregiver is transporting child care children or taking child care children on field trips.

(10) Infants must be laid on their backs on a flat surface for sleeping.

(11) Illness:

(a) A provider shall not admit or retain in care, except with the written approval of the local health office, a child who:

(A) Is diagnosed as having or being a carrier of a child care restrictable disease, as defined in Oregon Health Authority administrative rule; or

(B) Has one of the following symptoms or combination of symptoms or illness;

(i) Fever over 100°F, taken under the arm;

(ii) Diarrhea (more than one abnormally loose, runny, watery or bloody stool);

(iii) Vomiting;

(iv) Nausea;

(v) Severe cough;

(vi) Unusual yellow color to skin or eyes;

(vii) Skin or eye lesions or rashes that are severe, weeping or pus-filled;

(viii) Stiff neck and headache with one or more of the symptoms listed above;

(ix) Difficulty breathing or abnormal wheezing;

(x) Complaints of severe pain.

(b) A child, who, after being admitted into child care, shows signs of illness, as defined in this rule, shall be separated from the other children, and the parent(s) notified and asked to remove the child

from the provider's home as soon as possible.

(12) If a child has mild cold symptoms that do not impair his/her normal functioning, the child may remain in the provider's home and the parent(s) notified when they pick up their child.

(13) Parents must be notified if their child is exposed to an outbreak of a communicable disease.

(14) Prescription and non-prescription medication shall only be given to a child if the provider has written authorization from the parent, as required in OAR 414-205-0130(3).

(15) Prescription and non-prescription medications must be properly labeled and stored.

(a) Non-prescription medications or topical substances must be labeled with the child's name.

(b) Prescription medications must be in the original container and labeled with the child's name, the name of the drug, dosage, directions for administering, and the physician's name.

(c) Medication requiring refrigeration must be kept in a separate, tightly covered container, marked "medication," in the refrigerator.

(16) Sunscreen is considered a non-prescription medication and may be used for child care children under the following conditions:

(a) Providers must obtain written parental authorization prior to using sunscreen.

(b) One container of sunscreen may be used for child care children unless a parent supplies an individual container for their child. The sunscreen shall be applied in a manner that prevents contaminating the container.

(A) Parents must be informed of the type of product and the sun protective factor (SPF).

(B) Parents must be given the opportunity to inspect the product and active ingredients.

(c) If sunscreen is supplied for an individual child care child, the sunscreen must be labeled with the child's first and last name and must be used for only that child.

(d) Providers must reapply sunscreen every two hours while the child care children are exposed to the sun.

(e) Providers shall use a sunscreen with an SPF of 15 or higher and must be labeled as "Broad Spectrum".

(f) Providers shall not use aerosol sunscreens on child care children.

(g) Sunscreen shall not be used on child care children younger than six months.

(h) Child care children over six years of age may apply sunscreen to themselves under the direct supervision of the provider or staff member.

(17) Parents must be informed daily of any medications given to their child or any injuries their child has had.

(18) If a child with allergies is enrolled who needs a specific plan for caring for that child, such a plan shall be developed in writing between the provider, parents, and if necessary, outside specialists. All staff who come in contact with that child shall be fully aware of the plan.

(19) The provider must provide or ensure the availability of meals and snacks appropriate for the ages and needs of the children served.

(a) Meals and snacks must be based on the guidelines of the USDA Child Care Food Program.

(b) Foods must be stored and maintained at the proper temperature.

(c) Foods must be prepared and served according to the minimum standards for food handler certification.

(d) Infants must be held or sitting up for bottle feeding. Propping bottles is prohibited.

(e) Children shall not be laid down with a bottle for sleeping.

(20) Any animal at the family child care home shall be in good health and be a friendly companion for the children in care.

(a) Potentially aggressive animals must not be in the same physical space as the children.

(b) Dogs and cats must be vaccinated according to a licensed veterinarian's recommendations.

(c) Dogs and cats shall be kept free of fleas, ticks and worms.

(21) Animal litter boxes shall not be located in areas accessible to children or areas used for food storage or preparation.

(22) Caregivers must be physically present when children are interacting with animals.

(23) Exotic animals, including, but not limited to: reptiles (e.g. lizards, turtles, snakes) amphibians, monkeys, hook-beaked birds, baby chicks and ferrets are prohibited unless they are housed in and remain in a tank or other container which precludes any direct contact by children. Educational programs that include prohibited animals and are run by zoos, museums and other professional animal handlers are permitted.

(24) Parents must be made aware of the presence of any animals on the premises.

STATUTORY/OTHER AUTHORITY: ORS 329A.260

STATUTES/OTHER IMPLEMENTED: ORS 329A

AMEND: 414-205-0120

RULE TITLE: Sanitation

RULE SUMMARY: Lead in plumbing is prevalent. In the 1980's and 1990's laws curtailed use of lead. Today information is available to indicate lead leaching into water through plumbing and piping. Young children are at greatest risk of health problems related to lead exposure, including serious brain and kidney damage. Of the 4,300 licensed facilities, approximately 3,000 are operated in a home or small businesses setting. This rule will require all licensed and regulated child care facilities test for lead in water using an OHA accredited laboratory, and implement actions to mitigate against lead exposure through water when test results indicate lead levels reach or exceed those established by rule. Mitigation actions suitable to reduce risk of lead exposure through drinking water is identified in rule.

RULE TEXT:

(1) Pre-mixed sanitizers and disinfectants that are EPA registered and meet Oregon Health Authority criteria may be used in all areas of the home per manufacturer instructions.

(2) All caregivers and children must wash their hands with soap and warm, running water:

(a) Before handling food;

(b) Before assisting with feeding;

(c) Before and after eating;

(d) After diapering;

(e) After using the toilet;

(f) After assisting someone with toileting;

(g) After nose wiping;

(h) After playing outside; and

(i) After touching an animal or handling pet toys.

(3) Hand sanitizers shall not replace hand washing. If hand sanitizers are present in the home, they shall be kept out of children's reach and shall not be used on children.

(4) All toys, equipment and furniture used by children must be cleaned, rinsed and sanitized regularly and whenever soiled.

(5) Diaper changing surfaces must be either:

(a) Non-absorbent and easily disinfected;

(b) Disposed of after each use; or

(c) Laundered after each use.

(6) The diaper changing area shall be located so that hand washing can occur immediately after diapering without contacting other surfaces or children.

(7) The building and grounds must be maintained in a clean and sanitary manner.

(8) All garbage, solid waste, and refuse must be disposed of regularly, in a safe and sanitary manner.

(9) Bio-contaminants including but not limited to bodily fluids and blood shall be disposed of in a manner that prevents exposure to children.

(10) Wading pools are prohibited for wading.

STATUTORY/OTHER AUTHORITY: ORS 329A.260

STATUTES/OTHER IMPLEMENTED: ORS 329A.260

AMEND: 414-205-0130

RULE TITLE: Record Keeping

RULE SUMMARY: Lead in plumbing is prevalent. In the 1980's and 1990's laws curtailed use of lead. Today information is available to indicate lead leaching into water through plumbing and piping. Young children are at greatest risk of health problems related to lead exposure, including serious brain and kidney damage. Of the 4,300 licensed facilities, approximately 3,000 are operated in a home or small businesses setting. This rule will require all licensed and regulated child care facilities test for lead in water using an OHA accredited laboratory, and implement actions to mitigate against lead exposure through water when test results indicate lead levels reach or exceed those established by rule. Mitigation actions suitable to reduce risk of lead exposure through drinking water is identified in rule.

RULE TEXT:

- (1) The following records must be kept by the provider for at least one year and must be available at all times to OCC:
- (a) Information from the parent(s) for each child at the time of admission:
    - (A) Name and birth date of the child;
    - (B) Any chronic health problem(s), including allergies, the child has;
    - (C) Date child entered care;
    - (D) Names, work and home telephone numbers and addresses, and the work hours of the parent(s) or legal guardian(s);
    - (E) Name and telephone number of person(s) to contact in an emergency;
    - (F) Name and telephone number of person(s) to whom the child may be released;
    - (G) The name of the school attended by the child care child; and
    - (H) Name, address and telephone number of the child's doctor and dentist.
    - (I) Health history of any problems that could affect the child's participation in child care.
  - (b) Daily attendance records, including dates each child attended and arrival and departure times for each day. Times shall be recorded as the child care children arrive and depart;
  - (c) Medications administered, including the child's name, and the date and time of dosage and the dosage amount; and
  - (d) Injuries to a child.
  - (e) Lead testing results for drinking water

(2) Injuries to a child which require attention from a licensed health care professional, such as a physician, EMT or nurse, must be reported to OCC within seven days.

(3) The provider must have a written statement from the parent(s) regarding whether or not the provider is authorized to:

(a) Obtain emergency medical treatment for a child;

(b) Administer medications to a child;

(c) Take a child on a field trip or other activity outside the home or participate in any water activity;  
and

(d) Transport a child to or from school or allow a child to bus or walk to or from school or home.

STATUTORY/OTHER AUTHORITY: ORS 329A.260

STATUTES/OTHER IMPLEMENTED: ORS 329A.260

