

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

CONTACT:

Alyssa Chatterjee
971-701-1535
alyssa.chatterjee@state.or.us
775 Summer St NE
Suite 300
Salem,OR 97301

RULES PROPOSED:

414-350-0020, 414-350-0080, 414-350-0160

AMEND: 414-350-0020

RULE TITLE: Application for a Child Care Certificate

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) No person, unless exempted by Oregon laws governing child care facilities, shall operate a certified family child care home without a valid certificate issued by OCC.
- (2) Application for a certificate shall be made on forms provided by OCC.
- (3) A completed application is required:
 - (a) For the initial certificate;

- (b) For the annual renewal of a certificate; and
- (c) Whenever there is a change of provider or location.
- (4) The applicant shall complete and submit an application to OCC at least:
 - (a) 45 days before the planned opening date of the certified family child care home; and
 - (b) For renewal of a certificate, 30 days prior to the expiration of the certificate.
- (A) The expiration date of the current certificate, unless officially revoked, remains in force until OCC has acted on the application for renewal and has given notice of the action taken.
- (B) If an application for renewal and payment of the required fee is not received by OCC at least 30 days prior to the expiration date of the current certificate, the certificate will expire as of the date stated on the certificate and child care must cease at the facility, unless the renewal is completed before the expiration date.
- (C) An application for a certificate shall be accompanied by a non-refundable filing fee.
- (D) For the initial application, a change of provider, the reopening of a facility after a lapse in the certificate, or a change of location, the fee is \$25 plus \$2 for each certified space (e.g., the fee for a certified family child care home certified to care for 12 children is $\$24 + \$25 = \$49$).
- (E) For a renewal application, the fee is \$2 for each certified space.
- (5) All civil penalties must be paid in full.
- (6) An application for a certificate must be completed by the applicant and approved by OCC within 12 months of submission or the application will be denied. If an application is denied, an applicant will be required to submit a new application for a certificate.
- (7) The applicant shall submit with the initial application or when the home is being remodeled a drawing showing the dimensions of all rooms to be used (length and width), the planned use of each room, the location of required exits, the placement of the kitchen and bathrooms, and the location of plumbing fixtures.
- (8) The applicant shall provide verification to OCC that the home meets all applicable building codes and zoning requirements that apply to certified family child care homes:
 - (a) Before the initial certificate is issued; and
 - (b) Whenever the home is remodeled.
- (9) The home shall be approved by an environmental health specialist registered under ORS Chapter

700 or an authorized representative of the Department of Human Services before a certificate is issued by OCC.

(10) The home may be inspected by the local fire jurisdiction when local ordinances require a fire life safety survey as part of a business license or when OCC determines there is a need to do so.

(11) If the provider applies to care for more than 12 children, the provider must complete a fire life safety self evaluation. OCC staff and the provider will review the self evaluation. If fire safety concerns are identified, OCC staff may consult with the fire marshal and after consultation, may request that the fire marshal complete a fire life safety inspection.

(12) An application for certificate shall be accompanied by lead testing results for drinking water.

(a) 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;

(b) 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.

(12) Upon receipt of a completed application, a representative of OCC shall evaluate the home and all aspects of the proposed operation to determine if certification requirements (OAR 414-350-0000 through 414-350-0405) are met.

STATUTORY/OTHER AUTHORITY: ORS 329A.260

STATUTES/OTHER IMPLEMENTED: ORS 329A.260, 329A.270, 329A.280, 329A.310

AMEND: 414-350-0080

RULE TITLE: Records

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 provider shall keep the following records:
 - (a) Complete and current information on each child, as required in OAR 414-350-0060(3) and (4);
 - (b) Daily attendance record for each child, including dates each child attended and arrival and departure times each day;
 - (c) Daily attendance record for the provider and each caregiver, including dates worked and arrival and departure times each day;
 - (d) Medication administered, as specified in OAR 414-350-0180(8)(d);
 - (e) Emergency plan practice sessions and evacuations, as specified in OAR 414-350-0170(15);
 - (f) An injury to or death of a child, as specified in OAR 414-350-0180(7);
 - (g) Child abuse reports made to the Department of Human Services Child Welfare (DHS) or a law enforcement agency;
 - (h) The general routine, as specified in OAR 414-350-0220(2);
 - (i) Verification of the provider's and each caregiver's:
 - (A) Qualifications for the position, as specified in OAR 414-350-0100 and 414-350-0110;
 - (B) Current health-related training, such as CPR and First Aid, as specified in OAR 414-350-0100(3) and 0100(6);
 - (C) Training as required in OAR 414-350-0115;
 - (D) Current enrollment in the Central Background Registry;
 - (E) Current food handler's certification pursuant to ORS 624.570, when required; and

(F) Caregiver participation in an orientation to the provider's policies and practices and these administrative rules.

(j) Lead testing results for drinking water.

(2) A provider shall allow custodial parent(s), upon request, to review all records and reports, except for child abuse reports, maintained on their own children.

(3) Records shall be kept for at least two years, and caregivers' and children's records for two years after termination of employment or care. These records shall be available at all times to OCC.

STATUTORY/OTHER AUTHORITY: ORS 329A.260

STATUTES/OTHER IMPLEMENTED: ORS 329A.260, 329A.290

AMEND: 414-350-0160

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) Water Supply:

(a) The home's water supply shall be continuous in quantity and from a water supply system approved by the Department of Human Services.

(b) 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.

(c) Lead testing as required by (1)(b) shall be conducted within six months of the effective date of this section and at least once every six years.

(d) 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.

(e) If the test results are at or above 20 parts per billion (ppb), the facility must immediately:

(i) Prevent children from using or consuming water by supplying bottled or packaged water to meet the requirements of this section;

(ii) Contact and advise the Office of Child Care (OCC) of the water test results and submit a plan of actions to protect enrolled children;

(iii) Notify all parents and guardians of the test results within one business day.

(f) 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:

(i) Flushing pipes by running the tap until the water is noticeably cooler.

(ii) Running tap water for at least two minutes after water sits in the pipes for six hours or more.

(iii) Using only cold water for drinking, cooking and making baby formula.

(iv) Cleaning faucet screens and aerators frequently.

(g) Boiling water is not considered an acceptable action to protect children from exposure to lead contamination in drinking water.

(h) If drinking water is from a private source, the provider shall provide evidence of bacterial and chemical analysis which establish safety of the water;

(i) The tests shall be conducted by the local health department, the Department of Human Services, or an approved commercial laboratory;

(j) The bacterial analysis shall be done quarterly;

(k) The chemical analysis shall be done only once for a well and yearly for other water sources;

(l) If drinking water is obtained from bathroom sinks or sinks used for handwashing after changing a diaper, the sink must be sanitized after each handwashing.

(2) Hand Washing:

(a) Caregivers and children shall wash their hands with soap and warm running water after nose wiping, after using the toilet, and before and after eating;

(b) Caregivers shall wash their hands with soap and warm running water before and after changing a diaper, before and after feeding a child or handling food, and after assisting a child with toileting and nose wiping;

(c) Infants' and children's hands shall be washed with soap and warm running water after diaper changing;

(d) Staff shall immediately and thoroughly wash their hands after handling animals or cleaning cages;

(e) Commercial products labeled "hand sanitizers" shall not replace hand washing. If hand sanitizers are present in the home, they shall be kept under child-proof lock and shall not be used by children;

(f) When hand washing is not possible, e.g., on field trips or the neighborhood park, moist towelettes shall be used.

(3) Maintenance:

(a) The building, toys, equipment, and furniture shall be maintained in a clean, sanitary, and hazard-free condition:

(A) Kitchen and bathrooms shall be cleaned when soiled and at least daily;

(B) Floors, walls, ceilings, and fixtures of all rooms shall be kept clean and in good repair;

(C) All kitchen counters, shelves, tables, refrigeration equipment, sinks, drain boards, cutting boards, and other equipment or utensils used for food preparation shall be kept clean and in good repair;

(D) All food storage areas shall be kept clean and free of food particles, dust, dirt and other materials;

(E) Cloths, both single use and multiple use, used for wiping food spills on utensils and food-contact surfaces shall be kept clean and used for no other purpose. Cloths that are reused shall be stored in a sanitizing solution between uses.

(F) The isolation area shall be thoroughly cleaned after use and all bedding laundered after each use;

(G) A diaper-changing table shall:

(i) Have a surface that is non-absorbent and easily cleaned;

(ii) Be cleaned and sanitized after each use;

(iii) Not be used for any purposes other than diapering, including food or drink preparation or storage, dish washing, storage of food service utensils, arts and crafts supplies or products, etc.; and

(iv) Comply with the requirements for diaper changing area specified in OAR 414-350-0235(2)(b).

(H) Bathtubs, showers, sinks, bathinettes, or other receptacles used for bathing children shall be cleaned and sanitized after each use.

(I) Bedding shall be cleaned when soiled, with change of occupant, or at least once a week.

(b) Tableware, kitchenware (pots, pans and equipment), and food-contact surfaces of equipment shall be washed, rinsed, sanitized, and air-dried after each use. The cleaning and sanitizing of tableware and kitchenware shall be accomplished by using:

(A) A dishwasher that is operated according to the manufacturer's instructions; or

(B) A three-step manual process as follows:

(i) Washing in the first compartment;

(ii) Rinsing in a second compartment; and

(iii) Immersion in a third compartment or large dishpan or tub for at least two minutes in a sanitizing solution containing at least 2 teaspoons of household chlorine bleach in each gallon of warm water.

(c) A sink used for diapering or bathing activities shall not be used for any part of food or drink preparation or dish washing.

(d) Soap, paper towels dispensed in a sanitary manner, and mixing faucets with hot and cold running water shall be provided at each hand washing sink.

(e) The home and grounds shall be kept clean and free of litter or rubbish and unused or inoperable equipment, utensils, and vehicles.

(f) All garbage, solid waste, and refuse shall be disposed of at least once a week.

(A) All garbage shall be kept in watertight, non-absorbent, and easily washable containers with close-fitting lids;

(B) All garbage storage areas and garbage containers shall be kept clean; and

(C) All garbage storage shall be inaccessible to children.

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

(4) Insect and Rodent Control:

(a) The home shall be in such condition as to prevent the infestation of rodents and insects.

(b) Doors and windows which are opened for ventilation shall be equipped with fine-meshed screens.

(c) Automatic insecticide dispensers, vaporizers, or fumigants shall not be used.

STATUTORY/OTHER AUTHORITY: ORS 329A.260

STATUTES/OTHER IMPLEMENTED: ORS 329A.260, 329A.280, 329A.290, 320A.400, 329A.420

