Public Testimony Received for the following rule sets:

414-180 (Regulated Subsidy)

414-205 (Registered Family)

414-300 (Certified Family)

414-350 (Certified Center)

Public Comment Period: December 5, 2017 – January 21, 2018

From:	Celeste Meiffren-Swango
To:	alyssa.chatterjee@state.or.us
Subject:	Comments re: lead testing in licensed and regulated child care facilities
Date:	Tuesday, January 9, 2018 3:10:38 PM
Attachments:	EO comments on proposed lead rule.pdf

Hi Alyssa,

I am submitting the attached public comments on behalf of Environment Oregon regarding the proposed rules for lead testing in licensed and regulated child care facilities.

If there's an easy way to include the following resources with my comments, I'd like to include:

https://www.epa.gov/sites/production/files/2016-06/documents/filter_challenge_assesment_field_report_-_epa_v5.pdf

https://www.ewg.org/tapwater/water-filter-guide.php#.WlVK1N-nHIU

I am also wondering if a time and location have been determined for the meeting on 1/25?

Thank you.

--
Celeste Meiffren-Swango
State Director
Environment Oregon
503.231.1986 x318
@pdxceleste
http://environmentoregon.org/
http://www.environmentoregoncenter.org/

January 9, 2018

Sue Miller, Chair
Early Learning Council
Oregon Department of Education

Re: Lead Testing in Licensed and Regulated Child Care Facilities

Chair Miller and Members of the Early Learning Council,

Environment Oregon urges you to take strong action to ensure that child care centers are providing Oregon's children with lead-free drinking water. The rules that you have proposed are a step in the right direction, but more must be done to protect Oregon's most vulnerable kids from the dangers of lead.

Lead is a potent neurotoxin and especially damaging to children – impairing how they learn, grow and behave. We have known for some time that high levels of lead can cause severe health impacts – including anemia, kidney disease, abnormal brain function and even death.

Yet the medical science now confirms that even low levels of lead can cause permanent damage to our children. According to EPA, "In children, low levels of [lead] exposure have been linked to damage to the central and peripheral nervous system, learning disabilities, shorter stature, impaired hearing, and impaired formation and function of blood cells."[1]

The science now makes clear that there is no safe level of lead exposure for our children.

We realize that the Council's initial charge was framed around testing for lead. But lead testing, even when properly done, often fails to capture the lead contamination or its full extent. Moreover, testing simply confirms a serious health threat; only preventative action will protect Oregon's children from that threat.

Accordingly, we urge the Council to require the following three measures to eliminate lead exposure via water at child care centers. First, because contamination is inherent wherever there is lead, the most health-protective policy is simply to "get the lead out" of water delivery systems at our child care centers. Most critically, we know that lead service lines are such a major source of lead contamination that they have been replaced throughout the entire city of Portland. Children in the rest of Oregon

[1] U.S. Environmental Protection Agency, "Basic Information about Lead in Drinking Water," EPA.gov, updated December 2016, accessible at https://www.epa.gov/ground-water-and-drinking-water/basic-information-about-lead-drinking-water

deserve no less protection. Moreover, lead-bearing faucets and fixtures also pose an inherent contamination risk and should be replaced as soon as possible.

Second, child care centers must begin protecting our children from lead immediately by installing filters that are certified to remove lead at taps used for drinking or cooking.

Installing filters is an effective, affordable step that child care providers can take immediately to begin reducing the threat of lead in drinking water. In 2016, the Environmental Protection Agency did a study documenting the efficacy of certified filters in removing lead. The Agency for Toxic Substances and Disease Registry (ATSDR), who analyzed the results, concluded that, "the Brita and Pur filters distributed in Flint are effective in consistently reducing the lead in tap water, in most cases to undetectable levels, and in all cases to levels that would not result in a significant increase in overall lead exposure… the ATSDR also reported that the filter test data supports the conclusion that the use of filtered water would protect all populations, including pregnant women and children, from exposure to lead-contaminated water."[2]

We urge you to consider requiring the installation of certified filters at all taps used for drinking or cooking at child care facilities in Oregon. According to the "Water Filter Buying Guide" from Environmental Working Group, these certified filters range from $20 - $500, depending on the brand and type.[3]

Finally, given the science on the health impacts of lead exposure for children, the Early Learning Council should establish a one part per billion standard for lead in water at child care facilities. The American Academy of Pediatrics is urging adoption of this 1 ppb standard for elementary and secondary schools,[4] and pre-school-aged children are even more vulnerable to damage by lead.

Furthermore, we recommend that child care centers should test their water annually, not once every six years, with sampling methods that are designed to capture the full extent of lead contamination, and provide parents with easy access to all testing data and the status of remediation plans, regardless of the test results.

We urge you to encourage preventative measures to limit lead exposure, require annual testing of water outlets used for drinking and cooking, and adopt a standard of one part per billion.

These important and protective steps will have an immediate positive impact on the health of our children and their development.

Thank you for your time and consideration.

Celeste Meiffren-Swango
State Director, Environment Oregon

---

[2] Agency for Toxic Substances and Disease Registry; https://www.epa.gov/sites/production/files/2016-06/documents/filter_challenge_assesment_field_report_-_epa_v5.pdf

[3] Environmental Working Group, Water Filter Buying Guide, July 2017, available at https://www.ewg.org/tapwater/water-filter-guide.php#.WlUglt-nHIU

[4] American Academy of Pediatrics, Prevention of Childhood Lead Toxicity, (policy statement), July 2016, page 11, available at http://pediatrics.aappublications.org/content/pediatrics/early/2016/06/16/peds.2016-1493.full.pdf

From:	Messier, Sarah
To:	CHATTERJEE Alyssa - ELD
Cc:	Wanner, Chris; Akagi, Yone; Bradway, Scott; Bourdon, Logan
Subject:	Lead Testing Rules Comments from PWB
Date:	Friday, January 19, 2018 11:21:11 AM
Attachments:	Early Learning Council Lead Testing Rules - PWB comments_FINAL.pdf

Dear Alyssa,

On behalf of the Portland Water Bureau, I am submitting the attached comments on the rule revisions for lead testing in licensed and regulated child care facilities. The Portland Water Bureau appreciates the opportunity to review and comment on these proposed rules. Please let me know if you have any questions.

Sarah

Sarah Messier
Program Specialist
Water Quality Information
Portland Water Bureau
(503) 823-1547
sarah.messier@portlandoregon.gov
www.portlandoregon.gov/water

PORTLAND WATER BUREAU
FROM FOREST TO FAUCET

Nick Fish, Commissioner
Michael Stuhr, P.E., Administrator

1120 SW 5th Avenue, Room 600
Portland, Oregon 97204-1926
Information: 503-823-7404
www.portlandoregon.gov/water

January 19, 2018

Alyssa Chatterjee
Early Learning Council Administrator
Early Learning Division
775 Summer Street NE #300
Salem, Oregon 97301

Subject: Rule revision for lead testing in licensed and regulated child care facilities

Submitted electronically to: alyssa.chatterjee@state.or.us

Dear Alyssa Chatterjee,

The Portland Water Bureau (PWB) is writing in response to the proposed revisions to Oregon Administrative Rules to regulate lead-in-water testing for licensed and regulated child care facilities. PWB supports the new rule revisions that require licensed and regulated child care facilities to test their water for lead and appreciates the opportunity to review and comment on the proposed rules.

PWB serves water to 20 percent of child care providers in Oregon and is committed to reducing exposure to lead for all the communities it serves. As part of this commitment, PWB has provided free lead-in-water testing to its customers since the 1970s, and has specifically worked with and tested water for child care facilities in a targeted manner since 2016. Due the experiences gained from testing water in both home and center child care facilities, PWB is able to provide technical and practical insights for the development of these rules that will regulate testing and mitigation efforts. PWB supports the intent of the rule revisions, but has a number of concerns with lack of specifics of the proposed language contained in the following OARs: 414-180-0015; 414-180-0045; 414-205-0020; 414-205-0100; 414-205-0130; 414-300-0010; 414-300-0060; 414-300-0180; 414-350-0020; 414-350-0080; and 414-350-0160. PWB offers the following considerations and summary of comments, as well as the attached redline edits, for the Early Learning Council's and Early Learning Division's consideration.

Coordination with Rule-Making for Schools

The Oregon Health Authority (OHA) is currently developing lead-in-water testing requirements for schools in Oregon. PWB suggests the Early Learning Division coordinates with OHA to ensure testing requirements for both schools and child care facilities are consistent with each other.

Testing Laboratories

PWB suggests changing instances of "Oregon Health Authority accredited testing laboratory" or "OHA accredited laboratory" to "ORELAP accredited drinking water laboratory". This provides more specific and narrow guidance as to the correct laboratories that should be used for this testing. ORELAP (Oregon

Environmental Laboratory Accreditation Program) is the Oregon accrediting program for laboratories, and testing for lead in drinking water must be conducted by a lab that has drinking water accreditation for lead in water. This change is reflected in the attached redline edits.

Limiting Testing in Centers to 3 Samples

PWB suggests removing the 3-test limitation for child care centers from the FISCAL AND ECONOMIC IMPACT section. This section states:

> *Rule would require 3 tests for a Certified Child Care Center, considered a small business for the purposes of the fiscal impact analysis.*

This statement is not consistent with the rules as written. Proposed OARs 414-300-0010(14)(a) and 414-300-0180(1)(c) state:

> *The [applicant/facility] must have all faucets and fixtures accessible to children or used to obtain water for preparing food, infant formula, dinking or cooking tested for lead.*

PWB supports testing all the fixtures in a center used for consumption. Since 2016, PWB has tested drinking water for lead from 43 child care centers in its service area. PWB policy, based on EPA's 3Ts guidance, is to limit testing to only outlets used for consumption, which includes kitchen sinks, drinking fountains, and other outlets that are used to obtain water for drinking, preparing or cooking food, or making infant formula. There were, on average, 10 drinking water outlets tested at the centers tested by the Portland Water Bureau, with a range of 1 to 36 outlets per center that are used for consumption. Test results from these centers show that 44% of the elevated lead results (above 20 ppb) are contributed by the fixture, 38% of elevated results were contributed to material built up on the aerator, and the remaining 18% were ambiguous. Plumbing was not identified as the source of lead in samples that had initial results above 20 ppb. Limiting testing in centers to just three outlets could under-test some centers and miss some fixtures that are contributing elevated levels of lead to water. Testing all outlets used for consumption at centers is most protective of health.

Clarification of Testing Locations and Restriction of Use after Elevated Results

PWB has concerns with how the rules define the faucets and fixtures that will be tested, the restriction of use of any water in a facility after an elevated test result, and the lack of a process for child care providers to follow that allows them to resume consumption of water in their facility.

As written, these rules require child care providers to test all water outlets that are accessible to children (including outdoor hose bibs, bath tubs, etc), and if any one result is elevated, the provider can no longer use any water in that facility for drinking/cooking/infant formula and must rely solely on bottled water indefinitely. This is a large financial burden on providers, from paying for extra testing for non-drinking water outlets to providing only bottled water with no process for ending the bottled water use.

The next three sections – **Faucets and Fixtures to be Tested, Preventing Children from Consuming Water in Response to an Elevated Test Result, Resuming Use of a Faucet or Fixture that Tested High** – address these concerns.

Faucets and Fixtures to be Tested

As written, the rules that outline the faucets and fixtures to be tested is too broad since it includes non-drinking water outlets that children have access to. PWB suggests that the rules follow EPA 3T guidance, which states providers should test all of the drinking water outlets used for consumption in their facility.

Under the rules as written, non-drinking water outlets, such as utility sinks, hose bibs, bath tubs and showers, accessible to children would have to be tested and would place undue financial burden on child

care providers. First, they would have to pay for more testing than needed since drinking water is not obtained from these types of outlets. Second, if one of these outlets were to have elevated lead levels, this would trigger purchasing bottled water and conducting additional actions for an outlet that is not used for consumption. Most problematic are outdoor hose spigots, since they are not rated for drinking water and may have brass that contains lead.

To address this, PWB suggests the following:

- Clearly define the drinking water faucets and fixtures in the facility;
- Restrict the use of handwashing, bathroom, diaper changing, or bathing faucets and fixtures for consumption; and
- Require testing at only defined drinking water fixtures used for consumption.

PWB also requests the rules provide further clarification for the following two points:

1. PWB commonly receives water samples from customers for filtered outlets, such as refrigerator spouts or a separate spigot at the kitchen sink, ice machines, or hot water outlets, such as an instahot spigot at the sink or a water cooler that heats and chills water. Will the rule require testing from these types of faucets and fixtures?

2. Will centers that are located within or attached to a building used for purposes other than child care be required to test drinking water faucets or fixtures that are not within the official child care area, but are accessible to the children in their care? One example of this is drinking water fountains that are located in hallways or common areas of the building.

Preventing Children from Consuming Water in Response to an Elevated Test Result

PWB supports the immediate restriction of use of drinking water faucets and fixtures that have an elevated test result for lead. However, as written, the proposed rules are too restrictive and would place undue burden on families and child care providers.

In OAR 414-180-0015(6)(a), PWB is concerned that the requirement to close just the Regulated Subsidy Family Child Care Homes is excessive and is not equitable since it places an undue burden on low-income families. These families would have to find alternate care or not work during the duration of the facility's closure. The attached redline edits removes this requirement to close the facility in response to an elevated lead-in-water result.

In OARs 414-180-0015(6)(a), 414-205-0100(6)(a), 414-350-0160(1)(e)(i), and 414-300-0180(1)(f)(i), PWB is concerned that the requirement to provide only bottled or packaged water to children if any result is elevated is excessive. PWB suggests the attached redline edits that specify that children should be prevented from using water from faucets or fixtures that test at or above 20 ppb, and in addition to bottled or packaged water, child care providers can provide and use water from faucets or fixtures that test below 20 ppb or that have a certified filter. This allows child care providers to reduce the financial burden of only providing bottled or packaged water indefinitely, as the proposed rules currently require.

Resuming Use of a Faucet or Fixture that Tested High

PWB is concerned with the noticeable omission from the rules that would allow a child care provider to resume using water from a faucet or fixture that previously had an elevated lead result. PWB suggests a new line item that allows OCC to approve the use of faucets or fixtures that tested high after the provider implemented corrective actions and follow-up sampling test results are below 20 ppb. PWB's suggested redline edits are in new OARs 414-180-0015(6)(d); 414-205-0100(6)(d); 414-300-0180(1)(f)(iv); and 414-350-0160(1)(e)(iv).

Testing Results Specifications

OARs 414-205-0020(6), 414-350-0020(12), and 414-300-0010(14) all require providers to submit lead test results with an application for certificate. PWB suggests the attached redline edits for these rules, which includes language that specifies that the results should be from all the identified drinking water faucets and fixtures identified in the above suggestion, and, to be consistent with the proposed testing frequency, that the results are from the past six years.

PWB also requests the rules provide further clarification as to additional information that the laboratory should include with the test results. Currently, the PWB results letter for child care centers includes:

- name of child care provider;
- business name (if applicable);
- facility address;
- date water samples were collected;
- name and ORELAP ID of the lab that analyzed the samples;
- the testing method used by the lab
- the method reporting limit (MRL) for the test; and
- a table that includes:
    - lab sample ID;
    - sample location description provided by the child care provider;
    - date and time the sample was collected; and
    - lead results.

Additional information that can be included in results letters is:

- child care provider license number;
- volume of the sample collected;
- length of time the provider let the water sit before collecting the sample; or
- the type of faucet or fixture (kitchen sink/drinking fountain/etc), if provided by child care provider.

Further clarification of the information included with lead results will be useful to labs that are analyzing lead samples and reporting data to child care providers, and will help with tracking and ensuring child care providers' testing compliance.

Testing Method Consistency

To ensure that application and testing requirements are consistent, PWB suggests the attached redline changes in OARs 414-180-0015(3), 414-205-0100(3), and 414-350-0160(1)(b) to include testing in accordance with EPA 3T's for Reducing Lead in Drinking Water for Child Care Facilities, and OAR 414-300-0180(1)(c) to include testing in accordance with EPA 3T's for Reducing Lead in Drinking Water for Schools.

Initial Testing Deadline

To reduce the financial burden on child care providers who have already tested according to the proposed testing method within the past six years, PWB suggests the attached redline edits to OARs 414-180-0015(4), 414-205-0100(4), 414-350-0160(1)(c), and 414-300-0180(1)(d). These redline edits include testing conducted within the past six years of the effective date and no later than 6 months after the effective date.

This is important since beginning in 2016, the public conversation about lead in schools in Oregon triggered some child care providers to independently test their water for lead. PWB alone has tested 372 faucets or fixtures in 43 child care centers according to the EPA 3T's method which, when using the estimated $32 per sample cost of testing that is specified in the FISCAL AND ECONOMIC IMPACT

section of the rules, amounts to $11,902. Requiring those centers, plus other centers in Portland and throughout Oregon that tested using a private lab, to test again less than 2 years later would be a financial burden on these small businesses.

Additionally, in 2016 the private labs became so inundated with lead-in-water samples that they stopped accepting samples. Requiring all 4,300 licensed facilities to test within six months may inundate the labs and delay sampling. Allowing test results from prior to the effective date of the rules will reduce the workload burden on the labs and provide a staggered approach to testing so they are not inundated within the first six months, and then every six years, with water samples from child care providers.

PWB also suggests further clarification of which date will be used for compliance with the initial 6-month deadline. The water testing process includes a sample collection date, the date samples are received by the lab, and results notification date. The sample turnaround time of the labs can be highly variable and may have a delay of a month or two, or even more, between the sample collection date and results notification date. Further clarification will help providers plan their testing schedule appropriately.

20 ppb Action Level

Since the majority of the proposed rules are written in accordance with the EPA 3T's for Reducing Lead in Drinking Water in Child Care Facilities, PWB would like to point out that the action level defined in these rules – at or above 20 ppb – is not consistent with the EPA guidance of only above 20 ppb. However, PWB supports these rules in being more stringent and protective of public health than federal guidance.

Plan of Actions for Elevated Results

PWB suggests the redline edits in OARs 414-180-0015(6)(b); 414-205-0100(6)(b); 414-300-0180(1)(f)(ii); and 414-350-0160(1)(e)(ii) to include more guidance as to what should be included in the action plan, including immediate corrective actions, follow-up testing and long-term corrective actions according to the EPA 3T's, and that the plan should be implemented. PWB's testing of centers shows that roughly 8 percent of initial samples are above 20 ppb. Despite PWB's recommendation, only about half of the centers with elevated initial results chose to conduct follow-up sampling. None of these centers conducted post-remediation sampling. This highlights the need for the rules to require follow-up testing and corrective actions.

Parent/Guardian Notification of Elevated Results

PWB supports the immediate notification of parents and guardians of elevated test results. However, the rules are too vague and missing guidance from the EPA 3T's on how to communicate lead results. PWB suggests the redline edits in OARs 414-180-0015(6)(c); 414-205-0100(6)(c); 414-300-0180(1)(f)(iii); and 414-350-0160(1)(e)(iii) to provide more specific communication guidance to child care providers.

PWB also requests the rules provide further clarification for the following two points:

- How will part-time families be notified of the elevated results if they are not present the day the announcement is made?
- How will OCC track and ensure compliance with this one-business day requirement? The rules do not include any recordkeeping or reporting of this action.

Lead Reduction Actions to Take at All Times

PWB supports and appreciates that the rules outlining easy steps for child care providers to take to reduce exposure to lead in water on a daily basis. However, as written, the rules in OARs 414-180-0015(7), 414-205-0100(7), 414-300-0180(1)(g), and 414-350-0160(1)(f) say these actions "should" be

taken, which is not enforceable. If these rules are meant to be a more binding requirement for these actions, PWB suggests changing "should" to "shall".

Flushing Guidance

Flushing taps before use is one of the primary recommendations PWB provides customers and supports the inclusion of this action in these rules. However, there are two line items related to flushing that seem to be in conflict and duplicative with each other. PWB suggests the redline edits to OARs 414-180-0015(7)(a)-(b), 414-205-0100(7)(a)-(b), 414-300-0180(1)(g)(i)-(ii), and 414-350-0160(1)(f)(i)-(ii) to provide clarity of flushing requirements.

Cold Water Use Guidance

PWB also strongly recommends to its customers to only use water from the cold water tap for cooking, drinking, and preparing infant formula and supports the inclusion of this action in these rules. However, PWB suggests redline edits in new OARs 414-180-0015(7)(b), 414-205-0100(7)(b), 414-300-0180(1)(g)(ii), and 414-350-0160(1)(f)(ii) to reiterate that providers must only use cold water from faucets and fixtures that are identified as drinking water outlets and tested below 20 ppb.

Cleaning Screens and Aerators

PWB suggests that the rules provide guidance as to the frequency that providers should clean their screens and aerators to reduce the ambiguity of this action. As written, this action will be interpreted differently by each provider and providing guidance as to whether this is a weekly, monthly, or annual action will help inform providers. One method to determine if the cleaning frequency is adequate is to test immediately before cleaning the aerator to ensure the lead concentration is below 20 ppb.

Boiling Water Guidance

PWB suggests the redline edits in OARs 414-180-0015(8), 414-205-0100(8), 414-300-0180(1)(h), and 414-350-0160(1)(g) to provide outright clarification that boiling water should not be used to reduce lead.

Record Keeping

PWB is concerned that the current recordkeeping requirements range from one to two years; however, child care providers must test every six years. Therefore, PWB suggests the redline edits in OARs 414-180-0075(1), 414-180-0075(1)(e), 414-205-0130(1), 414-205-0130(1)(e), 414-300-0060(1), 414-300-0060(1)(e), 414-350-0080(1), and 414-350-0080(1)(j) to maintain lead test results records for at least 6 years.

Thank you again for this opportunity to review and comment on these rules.

Sincerely,

Scott Bradway
Water Quality Information Manager

cc: Chris Wanner, Yone Akagi, Sarah Messier, Logan Bourdon

NOTICE OF PROPOSED RULEMAKING

CHAPTER 414
OREGON DEPARTMENT OF EDUCATION, EARLY LEARNING DIVISION

FILING CAPTION: Administrative Rules requiring testing water for lead in licensed and regulated 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~~ ORELAP accredited drinking water 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:
414-180-0015, 414-180-0020, 414-180-0045

AMEND: 414-180-0015
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~~ ORELAP accredited drinking water 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 child care facility must be a healthy environment for children.

(2) There must be at least one flush toilet and one hand-washing sink available to children. Drinking water for preparing food, infant formula, drinking or cooking shall not be obtained from hand-washing sinks.

(3) The facility ~~must have~~shall identify the location of all drinking water faucets and fixtures accessible to children or used to obtain water for preparing food, infant formula, drinking or cooking and shall test~~ed~~ these faucets and fixtures for lead. The facility shall test in accordance with United States Environmental Protection Agency 3T's for Reducing Lead in Drinking Water in

Child Care Facilities: revised guidance dated December 2005 and shall ~~must~~ use an ~~Oregon Health Authority~~ORELAP accredited drinking water ~~testing~~ laboratory.

(4) Lead testing as required by (3) shall be conducted within the past six years of the effective date of this section and no later than six months ~~of~~ after the effective date of this section and at least once every six years.

(5) The test results ~~must~~ shall 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~~ shall immediately:

(a) ~~Close the facility to p~~Prevent children from using or consuming water from faucets or fixtures that have test results at or above 20 ppb by~~, or~~ supply~~y~~ing water from drinking water faucets or fixtures that have test results below 20 ppb or a certified filter installed, or 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 and implement a plan of actions for any faucet or fixture that has test results at or above 20 ppb. ~~t~~To protect enrolled children, this plan shall include follow-up sampling and corrective actions in accordance with United States Environmental Protection Agency 3T's for Reducing Lead in Drinking Water in Child Care Facilities: revised guidance dated December 2005;

(c) Notify all parents and guardians verbally, in writing, or by email ~~-~~of the test results and post results in a prominent place in the facility where they will be seen by parents and guardians within one business day. Information provided to parents and guardians shall be in accordance with United States Environmental Protection Agency 3T's for Reducing Lead in Drinking Water in Child Care Facilities: revised guidance dated December 2005.

~~(c)~~(d) With approval by OCC, the facility may resume use of faucets or fixtures that previously tested at or above 20 ppb once corrective actions or remedies have been implemented and follow-up testing results from that faucet or fixture are below 20 ppb.

(7) Irrespective of results obtained in accordance with section (3~~1~~)~~(c~~), actions to protect children from exposure to lead contamination in drinking water should be taken at all times, including:

(a) Flushing pipes before using to prepare food, infant formula, drinking or cooking by running the tap each time before use 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)~~(b) Using only cold water from drinking water faucets and fixtures identified in OAR 414-180-0015(3) that have lead test results below 20 ppb for ~~drinking, cooking and making baby formula~~preparing food, infant formula, drinking or cooking.

~~(d)~~(c) Cleaning faucet screens and aerators frequently.

(8) Boiling water does not remove lead from water and is not ~~considered~~ an acceptable action to protect children from exposure to lead contamination in drinking water.

(9) The provider must comply with local, state and federal laws related to immunizations, child care restrictable diseases, child safety systems and seat belts in vehicles, bicycle safety, civil rights laws, and the Americans with Disabilities Act.

(10) Infants shall have a crib, portable crib or playpen with a clean, non-absorbent mattress. All cribs must comply with current Consumer Product Safety Commission (CPSC) standards. There shall be no items in the crib with the infant (e.g. toys, pillows or stuffed animals).

(11) If the parent(s) so request, siblings may share the same bed.

(12) The upper level of bunk beds shall not be used for children under ten years of age.

(13) If an infant uses a blanket, the blanket may not cover the infant's head or face.

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

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

(16) 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.

(17) 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, a solution for disinfecting after a blood spill, a sanitary temperature taking device.

(18) Illness:

(a) Except for mild cold symptoms that do not impair a child's daily functioning, sick children shall not be in care.

(b) 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) Difficult breathing or abnormal wheezing; or

(x)) Complaints of severe pain.

(c) A child who, after being admitted into child care, shows signs of illness, as defined in this rule, whenever possible will be separated from the other children, and the parent(s) notified and asked to remove the child from the child care facility as soon as possible.

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

(19) Section 18 of this rule does not apply when the provider is caring only for children from the same family and no other unrelated child care children are present, except that the provider shall notify the parent if a child who, after being admitted into child care, shows signs of illness.

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

(21) No person shall smoke or carry any lighted smoking instrument, including an e-cigarette or vaporizer in the child care facility 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.

(22) No person shall use smokeless tobacco in the child care facility during child care hours or when child care children are present.

(23) 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.

(24) No one shall consume alcohol on the child care facility premises during child care hours or when child care children are present.

(25) No one shall be under the influence of alcohol on the child care facility premises during child care hours or when child care children are present.

(26) No one shall possess, use or store illegal controlled substances on the child care facility premises. No one shall be under the influence of illegal controlled substances on the child care facility premises.

(27) No one shall grow or distribute marijuana on the premises of the child care facility. No adults shall use marijuana on the child care facility premises during child care hours or when child care children are present.

(28) Child care providers and any individual supervising, transporting, preparing meals, or otherwise working in the proximity of child care children and those completing daily attendance and billing records shall not be under the influence.

(29) “Under the influence" means observed abnormal behavior or impairments in mental or physical performance leading a reasonable person to believe the individual has used alcohol, any controlled substances (including lawfully prescribed and over-the-counter medications), marijuana (including medical marijuana), or inhalants that impairs their performance of essential job function or creates a direct threat to child care children or others. Examples of abnormal behaviors include, but are not limited to hallucinations, paranoia, or violent outbursts. Examples of impairments in physical or mental performance include, but are not limited to slurred speech as well as difficulty walking or performing job activities.

(30) All marijuana, marijuana derivatives and associated paraphernalia must be stored under child safety lock.

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

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

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

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

(35) 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.

(36) Prescription and non-prescription medication shall only be given to a child if the provider has written authorization from the parent.

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

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

(39) 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.

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

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

(42) Sunscreen may be used with written parental authorization.

(a) In instances where parent has provided written permission to use sunscreen, providers must reapply sunscreen every two hours while the child care children are exposed to the sun.

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

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

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

(43) Parents must be given the telephone number so they can contact the provider if needed.

STATUTORY/OTHER AUTHORITY: ORS 326.425(7)
STATUTES/OTHER IMPLEMENTED: ORS 329A.505

AMEND: 414-180-0020
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~~ ORELAP accredited drinking water 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) Clean toys, equipment and furniture used by children when 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 building, grounds, any toy, equipment, and furniture are maintained in a clean, sanitary, and hazard free condition.

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

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

STATUTORY/OTHER AUTHORITY: ORS 326.425(7)
STATUTES/OTHER IMPLEMENTED: ORS 329A.505

AMEND: 414-180-0045
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~~ ORELAP accredited drinking water 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, except those specified in OAR 414-180-0075(1)(e), ~~must~~shall be kept by the provider for at least one year. These records shall ~~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) 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.

(d) Injuries to a child.

(e) Lead testing results for drinking water for the past six years.

(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 obtain emergency medical treatment for a child.

STATUTORY/OTHER AUTHORITY: ORS 326.425(7)
STATUTES/OTHER IMPLEMENTED: ORS 329A.505

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~~ ORELAP accredited drinking water 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:
414-205-0020, 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~~ ORELAP accredited drinking water 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 applicant shall identify the location of drinking water faucets and fixtures used to obtain water to prepare food, infant formula, drinking or cooking, and dish washing, and the location of bathroom, diaper changing, bathing, and handwashing faucets and fixtures that are not used for drinking water.

~~(6)~~(7) An application for certificate shall be accompanied by lead testing results for drinking water at all drinking water faucets and fixtures identified in OAR 414-205-0020(6). Results shall be from within the past six years.

~~(7)~~(8) An applicant ~~must~~ shall have all drinking water faucets and fixtures identified in OAR 414-205-0020(6) ~~accessible to children or used to obtain water for preparing food, infant formula, drinking or cooking~~ tested for lead;

~~(8)~~(9) An applicant ~~must~~ shall use an ~~Oregon Health Authority~~ORELAP accredited drinking water ~~testing~~ laboratory and shall test 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)~~(10) All civil penalties must be paid in full.

~~(10)~~(11) 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)~~(12) 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)~~(13) 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~~ ORELAP accredited drinking water 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. Drinking water for preparing food, infant formula, drinking or cooking shall not be obtained from hand-washing sinks.

(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~~ shall have all drinking water faucets and fixtures identified in OAR 414-205-0020(6) ~~accessible to children or used to obtain water for preparing food, infant formula, drinking or cooking~~ tested for lead. The facility shall test in accordance with United States Environmental Protection Agency 3T's for Reducing Lead in Drinking Water in Child Care Facilities: revised guidance dated December 2005 and shall ~~must~~ use an ~~Oregon Health Authority~~ORELAP accredited drinking water ~~testing~~ laboratory.

(4) Lead testing as required by (3) shall be conducted within the past six years of the effective date of this section and no later than six months ~~of~~ after the effective date of this section and at least once every six years.

(5) The test results ~~must~~ shall 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~~ shall immediately:

(a) Prevent children from using or consuming water from faucets or fixtures that have test results at or above 20 ppb by supplying water from drinking water faucets or fixtures that have test results below 20 ppb or a certified filter installed, or 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 and implement a plan of actions for any faucet or fixture that has test results at or above 20 ppb. ~~t~~To protect enrolled children, this plan shall include follow-up sampling and corrective actions in accordance with United States Environmental Protection Agency 3T's for Reducing Lead in Drinking Water in Child Care Facilities: revised guidance dated December 2005;

(c) Notify all parents and guardians verbally, in writing, or by email of the test results and post results in a prominent place in the facility where they will be seen by parents and guardians within one business day. Information provided to parents and guardians shall be in accordance with United States Environmental Protection Agency 3T's for Reducing Lead in Drinking Water in Child Care Facilities: revised guidance dated December 2005;

~~(c)~~(d) With approval by OCC, the facility may resume use of faucets or fixtures that previously tested at or above 20 ppb once corrective actions or remedies have been implemented and follow-up testing

results from that faucet or fixture are below 20 ppb.

(7) Irrespective of results obtained in accordance with section (3~~1)(c~~), actions to protect children from exposure to lead contamination in drinking water should be taken at all times, including:

(a) Flushing pipes before using to prepare food, infant formula, drinking or cooking by running the tap each time before use until the water is noticeably cooler.

(b) Using only cold water from drinking water faucets and fixtures identified in OAR 414-205-0020(6) that have lead test results below 20 ppb for preparing food, infant formula, drinking~~,~~ or cooking ~~and making baby formula~~.

(c) Cleaning faucet screens and aerators frequently.

(8) Boiling water does not remove lead from water and 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~~ ORELAP accredited drinking water 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~~ ORELAP accredited drinking water 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, except those specified in OAR 414-205-0130(1)(e), ~~must~~ shall be kept by the provider for at least one year. These records shall ~~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 for the past six years.

(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

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~~ ORELAP accredited drinking water 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:
414-300-0010, 414-300-0060, 414-300-0180

AMEND: 414-300-0010
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~~ ORELAP accredited drinking water 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) Unless exempted by Oregon laws governing child care facilities, no person or organization shall operate a child care center without a valid certificate issued by the Child Care Division.

(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 the certificate; and

(c)) Whenever there is a change of owner, operator or location.

(4) The applicant shall complete and submit an application to OCC at least:

(a)) 45 days before the planned opening date of a new center; and

(b) For renewal of certification, 30 days prior to the expiration of the certificate.

(A) If an application for renewal and payment of the required fee is received by OCC at least 30 days prior to the expiration date of the current certificate, 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.

(5) An application for a certificate shall be accompanied by a non-refundable filing fee.

(a) For the initial application, a change of owner/operator, the reopening of a center after a lapse in certification, or a change of location (except when a facility is forced to move due to circumstances beyond the control of the operator), the fee is $100 plus $2 for each certified space (e.g., the fee for a child care center certified to care for 30 children is $60 + $100 = $160).

(b) For a renewal application, the fee is $2 for each certified space.

(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 must submit a new application for a certificate.

(7) All civil penalties must be paid in full.

(8) A floor plan shall be submitted with the initial application and/or when a facility is being constructed or remodeled. The floor plan shall show dimensions of all rooms to be used (length and width), the planned use of each room, the placement and number of toilets, bathroom, diaper changing, and handwashing sinks not used for drinking water, and diaper changing tables, ~~and~~ the location of the fixtures and plumbing in the kitchen, and the location of all drinking water faucets and fixtures used to obtain water to prepare food, infant formula, drinking or cooking. Similar plans shall be submitted to the environmental health specialist, the fire marshal and the buildings department prior to initial construction or remodel.

(9) If the facility is located within or attached to a building used for purposes other than child care, the floor plan shall describe the other activities which are carried out in adjoining rooms or buildings.

(10) If the applicant is a firm, association, corporation, public agency, or governmental entity, the application shall be signed by the chief executive officer or a person designated in writing to have the authority to sign for the applicant. If the applicant is a partnership, the application shall be signed by each partner.

(11) A management list shall be submitted with the application and updated annually. The list must specify who is responsible for each of the following:

(a) Financial management;

(b) Maintaining records;

(c) Budgeting;

(d) Policy Development;

(e) Staff management, orientation and training;

(f)) Maintenance of building and grounds;

(g) Meal planning and preparation;

(h) Transportation of children, if provided; and

(i) Ensuring the appropriateness of program activities according to age and development of the children.

(12) An operator shall provide verification to OCC that the center meets all applicable building codes and zoning requirements that apply to child care facilities:

(a) Before the initial certificate is issued; and

(b) Whenever the facility is remodeled.

(13) The center shall be approved by an environmental health specialist registered under ORS chapter 700, or an authorized representative of the Health Division, and by a state or local fire marshal, before a certificate is issued by OCC.

(a) If structural, emergency or permit problems occur, OCC may request that the operator have the center inspected by the appropriate authority; and

(b) The operator is responsible for payment of any applicable fees for fire safety and sanitation inspections.

(14) An application for certificate shall be accompanied by lead testing results for drinking water at all drinking water faucets and fixtures identified in OAR 414-300-0010(8). Results shall be from within the past six years.

(a) An applicant ~~must~~ shall have all drinking water faucets and fixtures identified in 414-300-0010(8) ~~accessible to children or used to obtain water for preparing food, infant formula, drinking or cooking~~ tested for lead;

(b) An applicant ~~must~~ shall be tested by an ~~Oregon Health Authority~~ORELAP accredited drinking water ~~testing~~ laboratory and shall test in accordance with the United States Environmental Protection Agency 3T's for Reducing Lead in Drinking Water in Schools: revised technical guidance dated October 2006.

(15) Upon receipt of a completed application, a representative of OCC shall evaluate the center and all aspects of the proposed operation to determine if the center meets certification requirements (OAR 414-300-0000 through 414-300-0415).

STATUTORY/OTHER AUTHORITY: ORS 329A.260
STATUTES/OTHER IMPLEMENTED: ORS 329A.260

AMEND: 414-300-0060
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~~ ORELAP accredited drinking water 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 operator shall keep all records, except those specified in OAR 414-300-0060(1)(d)(F) and 414-300-0060(1)(e), for at least two years, and staff and children's records for two years after termination of employment or care. These records shall be available at all times to OCC:

(a)) Complete and current information on each child as required in OAR 414-300-0040(4) and (6);

(b) Records of daily attendance showing:

(A) The date of employment, time of arrival and departure, and room assignment for each staff; and

(B) The date, name of each child in attendance, and time of arrival and departure. The record must show the children in attendance at any given time;

(C) The current day's attendance record shall be maintained in the child's classroom in paper format.

(c) Personnel record for each staff, which shall include:

(A) Name, address and telephone number of staff;

(B) Position in center;

(C) Written verification (such as transcripts, payroll records, time sheets, documented resumes, notes regarding telephone conversations, etc.) that the person possesses the qualifications for the position;

(D) Verification that the staff is currently enrolled in the Central Background Registry;

(E) Statement of the staff's duties;

(F)) Record of current health-related training, such as CPR, Life Support, Life Saving, and First Aid, and current food handler certifications, as appropriate;

(G) Driving record, driver's license number and expiration date if the person is to transport children; and

(H) Documentation of dates and participation in orientation, training, and staff development activities, as required in OAR 414-300-0120.

(d) A written record of:

(A) A death of or injury to a child, as specified in OAR 414-300-0030(3);

(B) Dates and times of the practices of emergency procedures;

(C) Child abuse reports made to the Department of Human Services Child Welfare (DHS) or a law enforcement agency;

(D) Authorizations to administer medication to a child, as specified in OAR 414-300-0230(1)(a);

(E) Medications dispensed, as specified in OAR 414-300-0230(1)(d);

(F) Meals and snacks provided by the center for the previous three weeks;

(G) The program of activities for each group of children, as specified in OAR 414-300-0300; and

(H) The daily schedule for each group of children, as specified in OAR 414-300-0290.

(e) Lead testing results for drinking water for the past six years.

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

STATUTORY/OTHER AUTHORITY: ORS329A.260
STATUTES/OTHER IMPLEMENTED: ORS 329A.260

AMEND: 414-300-0180
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~~ ORELAP accredited drinking water 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 center's water supply shall be continuous in quantity and from a water supply system approved by the Health Division.

(b) There shall be safe drinking water available to children that is supplied in a sanitary manner. Drinking water for preparing food, infant formula, drinking or cooking shall not be obtained from bathroom sinks or diaper changing sinks.

(c) The facility ~~must~~ shall have all drinking water faucets and fixtures identified in OAR 414-300-0010(8) ~~accessible to children or used to obtain water for preparing food, infant formula, drinking or cooking~~ tested for lead. The facility shall test in accordance with United States Environmental Protection Agency 3T's for Reducing Lead in Drinking Water in Schools: revised technical guidance dated October 2006 and shall use an ~~Oregon Health Authority~~ORELAP accredited ~~testing~~ drinking water laboratory.

(d) Lead testing as required by 414-300-0180(1)(c) shall be conducted within the past six years of the effective date of this section and no later than six months of the effective date of this section and at least once every six years.

(e) The test results ~~must~~ shall 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.

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

(i) Prevent children from using or consuming water from faucets or fixtures that have test results at or above 20 ppb by supplying water from drinking water faucets or fixtures that have test results below 20 ppb or a certified filter installed, or 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 and implement a plan of actions for any faucet or fixture that has test results at or above 20 ppb. ~~t~~To protect enrolled children, this plan shall include follow-up sampling and remedy actions in accordance with the United States Environmental Protection Agency 3T's for Reducing Lead in Drinking Water in Schools: revised technical guidance dated October 2006;

(iii) Notify all parents and guardians verbally, in writing, or by email of the test results and post results in a prominent place in the facility where they will be seen by parents or guardians within one business day. Information provided to parents and guardians shall be in accordance with United States Environmental Protection Agency 3T's for Reducing Lead in Drinking Water in Child Care Facilities: revised guidance dated December 2005;

~~(iii)~~(iv) With approval by OCC, the facility may resume use of faucets or fixtures that previously tested at or above 20 ppb once corrective actions or remedies have been implemented and follow-up testing results from that faucet or fixture are below 20 ppb.

(g) 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 before using to prepare food, infant formula, drinking or cooking by running the tap each time before use 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)~~(ii) Using only cold water from drinking water faucets and fixtures identified in OAR 414-300-0010(8) that have lead test results below 20 ppb for preparing food, infant formula, drinking~~,~~ or cooking ~~and making baby formula~~.

~~(iv)~~(iii) Cleaning faucet screens and aerators frequently.

(h) Boiling water does not remove lead from water and is not ~~considered~~ an acceptable action to protect children from exposure to lead contamination in drinking water.

(2) Heat and Ventilation:

(a) The center shall be ventilated, by natural or mechanical means, and shall be free of excessive heat, condensation, and obnoxious odors.

(b) Room temperature shall be at least 68° F. (20 C.) and not so warm as to be dangerous or unhealthy in the center when children are present.

(c) After painting or laying carpet, the building must be aired out completely for at least 24 hours with good ventilation before children are allowed to return.

(3) Insect and Rodent Control:

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

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

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

(4) Maintenance:

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

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

(B) The isolation area shall be thoroughly cleaned after each use and all bedding laundered before it is used again;

(C) Door knobs and cabinet pulls in toilet rooms and diaper changing areas shall be sanitized daily;

(D) All clean linen shall be stored in a sanitary manner;

(E) Soiled bed linen and clothing shall not be stored in food preparation or food storage areas, and shall be inaccessible to children;

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

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

(H)) Cribs, mats, and cots shall be sanitized with a sanitizing solution at least once a week and upon

change of occupant. If visibly soiled, items must be cleaned prior to sanitizing.

(I) Bedding shall be cleaned when soiled, upon change of occupant and at least once a week;

(J)) Water tables and toys used in water tables shall be emptied and sanitized daily;

(K)) When a chemical, such as chlorine, is used for sanitizing, a test kit that measures the parts per million concentration of the solution shall be used to ensure the proper concentration; and

(L)) 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.

(b) The center shall be kept hazard-free, in good repair, and free of litter or rubbish and unused or inoperable equipment and utensils.

(5) Infant and Toddler Care:

(a) The following shall be sanitized immediately after each use. If visibly soiled, items must be cleaned prior to sanitizing:

(A) A bathtub or other receptacle used for bathing a child;

(B) A diaper-changing table;

(C) High chairs, tables and chairs;

(D) Toys that infants and toddlers put in the mouth; and

(E) Toilet training seat inserts.

(b) Pacifiers must be labeled, stored individually and sanitized after contamination. The health department must approve methods of sanitation.

(c) A sanitizing solution shall be kept in each diaper changing area ready for immediate use. This solution need not be stored in a locked cabinet but must be out of children's reach.

(6) Hand washing:

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

(b) Staff 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 or wiping the nose.

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

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

(e)) When hand washing is not possible, e.g. on field trips and on the playground, moist towelettes shall be used.

(7) Waste Disposal:

(a) All sewage and liquid wastes shall be collected, treated, and disposed of in compliance with the requirements of the Department of Environmental Quality.

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

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

(d) Diaper disposal containers shall be approved by the environmental health specialist.

(e) All garbage storage areas and garbage containers shall be kept clean.

(f) All rubbish and 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.

STATUTORY/OTHER AUTHORITY: ORS 329A.260
STATUTES/OTHER IMPLEMENTED: ORS 329A.260

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~~ ORELAP accredited drinking water 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~~ ORELAP accredited drinking water 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, identifying which are drinking water faucets and fixtures used to obtain water to prepare food, infant formula, drinking or cooking, and which are bathroom, diaper changing, bathing, and handwashing faucets or fixtures that are not used for drinking water.

(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 at all drinking water faucets and fixtures identified in OAR 414-350-0020(7). Results shall be from within the past six years.

(a) An applicant ~~must~~ shall have all drinking water faucets and fixtures identified in OAR 414-350-0020(7) ~~accessible to children or used to obtain water for preparing food, infant formula, drinking or cooking~~ tested for lead;

(b) An applicant ~~must~~ shall use an ~~Oregon Health Authority~~ORELAP accredited drinking water ~~testing~~ laboratory and shall test 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~~ ORELAP accredited drinking water 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 for the past six years.

(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, except for those specified in OAR 414-350-0080(1)(j), 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~~ ORELAP accredited drinking water 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~~ shall have all drinking water faucets and fixtures identified in OAR 414-350-0020(7) ~~accessible to children or used to obtain water for preparing food, infant formula, drinking or cooking~~ tested for lead. The facility shall test 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 and shall ~~must~~ use an ~~Oregon Health Authority~~ORELAP accredited drinking water ~~testing~~ laboratory.

(c) Lead testing as required by (1)(b) shall be conducted within the past six years of the effective date of this section and no later than six months ~~of~~after the effective date of this section and at least once every six years.

(d) The test results ~~must~~ shall 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~~ shall immediately:

(i) Prevent children from using or consuming water from faucets and fixtures that have test results at or above 20 ppb by supplying water from drinking water faucets or fixtures that have test results below 20 ppb or a certified filter installed, or 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 and implement a plan of actions for any faucets or fixtures that have test results at or above 20 ppb. ~~t~~To protect enrolled children, this plan shall include follow-up sampling and corrective actions in accordance with United States Environmental Protection Agency 3T's for Reducing Lead in Drinking Water in Child Care Facilities: revised guidance dated December 2005;

(iii) Notify all parents and guardians verbally, in writing, or by email of the test results and post results in a prominent place in the facility where they will be seen by parents and guardians within one business day. Information provided to parent and guardians shall be in accordance with United States Environmental Protection Agency 3T's for Reducing Lead in Drinking Water in Child Care Facilities: revised guidance dated December 2005;

~~(iii)~~(iv) With approval from OCC, the facility may resume use of faucets or fixtures that previously tested at or above 20 ppb once corrective actions or remedies have been implements and follow-up testing results from that faucet or fixture are below 20 ppb.

(f) Irrespective of results obtained in accordance with section (1)(~~c~~b), actions to protect children from exposure to lead contamination in drinking water should be taken at all times, including:

(i) Flushing pipes before using to prepare food, infant formula, drinking or cooking by running the tap each time before use 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)~~(ii) Using only cold water from drinking water faucets and fixtures identified in OAR 414-350-0020(7) that have lead test results below 20 ppb preparing food, infant formula, ~~for~~ drinking~~,~~ or cooking~~. and making baby formula.~~

~~(iv)~~(iii) Cleaning faucet screens and aerators frequently.

(g) Boiling water does not remove lead from water and 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 d~~Drinking water for preparing food, infant formula, drinking or cooking shall not be ~~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 and shall not be used to obtain drinking water for preparing food, infant formula, drinking or cooking.

(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 preparing food, infant formula, drinking or cooking, ~~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

From:	Celeste Meiffren-Swango
To:	CHATTERJEE Alyssa - ELD
Subject:	Public comments re: lead testing
Date:	Friday, January 19, 2018 8:46:25 AM
Attachments:	Comments on proposed lead rule.pdf Env groups letter on proposed lead rules.pdf

---

Alyssa,

Attached is a petition and coalition letter for the Early Learning Council in response to the proposed rules on lead testing in licensed and regulated child care facilities.

Is there any update on the ELC meeting on this rule?

Thank you for all your help!

--
Celeste Meiffren-Swango
State Director
Environment Oregon
503.231.1986 x318
@pdxceleste
http://environmentoregon.org/
http://www.environmentoregoncenter.org/

January 19, 2018

Dear Early Learning Council,

We are writing to urge you to take strong action to ensure that child care centers are providing Oregon's children with lead-free drinking water.

Lead is a potent neurotoxin and especially damaging to children – impairing how they learn, grow and behave. We have known for some time that high levels of lead can cause severe health impacts – including anemia, kidney disease, abnormal brain function and even death.

Yet the medical science now confirms that even low levels of lead can cause permanent damage to our children. According to EPA, "In children, low levels of [lead] exposure have been linked to damage to the central and peripheral nervous system, learning disabilities, shorter stature, impaired hearing, and impaired formation and function of blood cells."[1]

The science now makes clear that there is no safe level of lead exposure for our children.

We realize that the Council's initial charge was framed around testing for lead. But lead testing, even when properly done, often fails to capture the lead contamination or its full extent. Moreover, testing simply confirms a serious health problem; only preventative action will protect Oregon's children.

Given the high toxicity of lead to children, the most health-protective policy is simply to "get the lead out" of the water delivery systems at our child care centers. Most critically, we know that lead service lines are such a major source of lead contamination that they have been replaced throughout the entire city of Portland. Children in the rest of Oregon deserve no less protection. Moreover, lead-bearing faucets and fixtures also pose an inherent contamination risk and should be replaced over time. In the meantime, child care centers must begin protecting our children from lead immediately - by installing filters certified to remove lead at taps used for drinking or cooking.

Finally, given the science on the health impacts of lead exposure for children, the Early Learning Council should follow the American Academy of Pediatrics recommendation of one part per billion standard for lead in children's drinking water.[2] Child care centers should test their water annually with sampling methods that are designed to capture the full extent of lead contamination. Additionally, child care centers should provide parents with easy access to all testing data and the status of remediation plans.

---

[1] U.S. Environmental Protection Agency, "Basic Information about Lead in Drinking Water," EPA.gov, updated December 2016, accessible at https://www.epa.gov/ground-water-and-drinking-water/basic-information-about-lead-drinking-water

[2] American Academy of Pediatrics, Prevention of Childhood Lead Toxicity, (policy statement), July 2016, page 11, available at http://pediatrics.aappublications.org/content/pediatrics/early/2016/06/16/peds.2016-1493.full.pdf

We urge you to encourage preventative measures to limit lead exposure, require annual testing of water outlets used for drinking and cooking, and adopt a standard of one part per billion.

These important and protective steps will have an immediate positive impact on the health of our children and their development.

Thank you for your consideration.

Sincerely,

Lisa Arkin
Executive Director
Beyond Toxics

Celeste Meiffren-Swango
State Director
Environment Oregon

Rhett Lawrence
Conservation Director
Oregon Chapter, Sierra Club

Angela Crowley-Koch
Legislative Director
Oregon Environmental Council

Paige Spence
Oregon Conservation Network Director
Oregon League of Conservation Voters

Kelly Campbell
Executive Director
Oregon Physicians for Social Responsibility

Charlie Fisher
State Director
Oregon State Public Interest Research Group (OSPIRG)

January 19, 2018

Dear Early Learning Council,

Our children deserve clean drinking water, especially at the places they go to learn and play every day. While your proposed rules around lead in drinking water at child care facilities are a step in the right direction, stronger rules are needed to truly protect Oregon's kids from the threat of lead in drinking water.

Specifically, the proposed rules require child care centers to take action to limit lead exposure above 20 parts per billion, yet the conclusion of public health experts and agencies is unanimous: there is no safe level of lead for our children. We can and should do better.

The good news is that removing lead from drinking water is achievable. Over time, child care centers can replace lead service lines and lead bearing faucets and fixtures. But more immediately, child care centers can install filters that are certified to remove lead at taps used for drinking or cooking, that are both affordable and effective.

Please consider following the American Academy of Pediatrics recommendation of one part per billion standard for lead in children's drinking water, and encourage child care facilities to adopt the above short term and long term solutions. Only then will our children be truly protected from this potent health threat.

Sincerely,

Lois White
Grants Pass, OR 97527

Michael Brown
Eugene, OR 97405

Alexander Schwarzkopf
Eugene, OR 97405

Sandra Holmes
Portland, OR 97221

Annie McCuen
Salem, OR 97302

Mustafa Radheyyan
Portland, OR 97221

Lisbeth Gieszler
Portland, OR 97224

Julie Durkheimer
Portland, OR 97210

Susan G Rives-Denight
Pendleton, OR 97801

Nora Polk
Portland, OR 97206

Ian Shelley
Portland, OR 97225

Norma Cordry
Hood River, OR 97032

Locke Bielefeldt
Eugene, OR 97405

Alan Humbard
Lake Oswego, OR 97035

Gina Norman
Portland, OR 97213

Tim Leahy
Portland, OR 97203

Wendy Gehring
Portland, OR 97217

Cliff and Charmane Rone
Tigard, OR 97223

Chloe Hagerman
Portland, OR 97214

Bob Thomas
Myrtle Creek, OR 97457

Lawrence Nagel
Ashland, OR 97520

Austin Hayes
Portland, OR 97225

Leah Gonzalez
Springfield, OR 97477

Ken Humke
Portland, OR 97215

Teresa McFarland
Portland, OR 97219

Alexander McDonell
Bend, OR 97703

John Brinkley
Eugene, OR 97405

Helen Henry
Portland, OR 97206

Susanne Woelbing
Eugene, OR 97405

Joan Levine
Portland, OR 97211

Sandra Percival
Portland, OR 97204

Sandy Bushberg
Hood River, OR 97031

Craig Emerick
Corvallis, OR 97330

Bethany Taft
Oregon City, OR 97045

Dianna Stirpe
Portland, OR 97214

John Gale
Portland, OR 97239

Charlene Whiting
Silverton, OR 97381

James Meyer
Portland, OR 97222

Leslie Chester
Portland, OR 97213

Georgianna Lukens
Portland, OR 97219

Robert Saul
Portland, OR 97206

Angie Kirschman
Portland, OR 97229

Shoshana Alexander
Ashland, OR 97520

Lindsay Schuelke
Portland, OR 97223

Marsha Barr
Eugene, OR 97405

Angela Davis
Portland, OR 97211

Christopher Hilton
Eugene, OR 97404

Patrick Donaldson
Portland, OR 97213

Frank Alfano
Portland, OR 97215

Celeste Davis
Portland, OR 97206

Ted LaPage
Corvallis, OR 97330

Debbie Finney
Portland, OR 97219

Dana Bleckinger
Yachats, OR 97498

Amanda Bradley
Albany, OR 97321

Edwin Johnson
Ashland, OR 97520

Ray Neff
Eugene, OR 97404

Gail Accuardi
Portland, OR 97201

Alexandria Gamboa
Portland, OR 97214

Brandi Welch
Portland, OR 97203

Donna Reynolds
Hillsboro, OR 97124

Marguery Lee Zucker
Eugene, OR 97403

Cindy Sessa
Bend, OR 97702

Cynthia DeVore
Milwaukie, OR 97222

Rebecca Picton
Corvallis, OR 97330

Tamara Wecker
Portland, OR 97223

Susan Kruse
Tualatin, OR 97062

John Nettleton
Portland, OR 97202

Gail Ohara
Portland, OR 97206

Barbara Belzer
Bend, OR 97702

Addi Booth
Portland, OR 97211

Mary Kogen
Portland, OR 97225

Chris Cooper
Portland, OR 97214

Josh Mayer
Portland, OR 97206

Jamie Wenger
Portland, OR 97214

Maquette Gann
Portland, OR 97211

Wendy Holzman
Bend, OR 97703

Clivonne Corbett
Roseburg, OR 97471

Mats White
Eugene, OR 97401

Laura Hanks
Milwaukie, OR 97222

Sarah Wiebenson
Portland, OR 97227

Mary Thiel
Portland, OR 97218

Heather Stein
Portland, OR 97211

Dorinda Kelley
Portland, OR 97213

Eileen Sleva
Hillsboro, OR 97123

Lorraine Foster
Portland, OR 97202

Ann Hollyfield
Seal Rock, OR 97376

Leland Hall
Portland, OR 97202

Erica Lyon
Eugene, OR 97402

Lucas Martin
Portland, OR 97219

Jan Renee
Portland, OR 97206

Victoria Koch
Eugene, OR 97402

Linda Bradley
Eugene, OR 97404

Leah Caron
Bend, OR 97702

Stephen Couche
Portland, OR 97202

Steven Christian
Hillsboro, OR 97123

Bonnie Bailey
Portland, OR 97229

Audra Mote
Corvallis, OR 97330

Michael Peterson
Eugene, OR 97404

Ann Bass
Ashland, OR 97520

Maxine Sheets-Johnstone
Yachats, OR 97498

Mika Stanard
Portland, OR 97212

Cathy Bledsoe
Portland, OR 97225

Jeff Bender-Baird
Lake Oswego, OR 97035

Alberta Mayo
Portland, OR 97214

Michael Wherley
Eugene, OR 97402

Mark Darienzo
Portland, OR 97213

Steve Aydelott
Bend, OR 97701

Janet Hagge
North Bend, OR 97459

Geraldine Foote
Portland, OR 97219

John Ardner
Gresham, OR 97080

Jennifer Thomas
Corvallis, OR 97330

Mary Ellen Colwell
Portland, OR 97214

Kimberly Beeler
Lake Oswego, OR 97034

Peggy Covert
Portland, OR 97219

Honora-Bright Aere
Blodgett, OR 97326

Greg Black
Portland, OR 97202

Barbie Scott
Portland, OR 97219

Marilyn Cohen
Portland, OR 97219

David and Judith Berg
Eugene, OR 97405

Joyce Green
Milwaukie, OR 97267

Mark Lee
Corvallis, OR 97330

James Strickler
Eugene, OR 97402

April Brenneman
Portland, OR 97224

Gheen Abbott
Lake Oswego, OR 97035

Bruce Gardner
Portland, OR 97229

Susan McCurdy
Portland, OR 97212

Karen Heinemann
Hood River, OR 97031

Eileen Misslin
Tigard, OR 97224

Henry Bennett
Portland, OR 97214

Celeste Howard
Hillsboro, OR 97124

Polly Habliston
Eugene, OR 97404

Julie Shivley
Canby, OR 97013

Coralie Russell
Portland, OR 97221

Gregory Ellsworth
Portland, OR 97223

Marilyn Costamagna
Medford, OR 97504

Frances O'Neal
Portland, OR 97223

Elizabeth Fairlamb
Eugene, OR 97405

Josh Chapman
Portland, OR 97223

Robin Esterkin
Portland, OR 97219

Cheryl Babb
Corvallis, OR 97330

Ellen Saunders
Manning, OR 97125

Hiram Li
Corvallis, OR 97330

Elizabeth Fujii
Salem, OR 97302

Dana and Laurie Sewall
Gresham, OR 97030

W. Loren
Eugene, OR 97405

Alan Bickett
Bend, OR 97702

Sarah Wolstenholme Witter
Portland, OR 97202

Bruce Bauer
Medford, OR 97501

Susan Horky
Portland, OR 97212

Lauren Titchener
Portland, OR 97213

Patricia Collins
Lebanon, OR 97355

Betsy McMahon
Manzanita, OR 97130

Mark Rochester
Sutherlin, OR 97479

Joseph Breazeale
Ashland, OR 97520

Babette Jones
Eugene, OR 97403

Vince O Alexander
Wilsonville, OR 97070

Matthew Moore
Portland, OR 97206

Stephen Bachhuber
Portland, OR 97202

Joan Maiers
Marylhurst, OR 97036

Lynnette Chiotti
St. Helens, OR 97051

Dimitri Begeor
Milwaukie, OR 97222

S. Fogel
Clackamas, OR 97015

Stephanie Stephan
Beaverton, OR 97007

Susan Grider
Salem, OR 97302

Eileen Chieco
Ashland, OR 97520

Michelle Hoff
Cheshire, OR 97437

Laura Cifelli
Seaside, OR 97138

Debra Poscharscky
Portland, OR 97233

Alona Kvitky
Portland, OR 97229

Chris Smith
Portland, OR 97202

Gail Harris
Eugene, OR 97405

Phil Hanson
Milwaukie, OR 97222

Susan Fernald
Hillsboro, OR 97124

Paul Portlock
Portland, OR 97214

Maya Robey
Eugene, OR 97403

Addie Streeter
Portland, OR 97212

Jack Herbert
Portland, OR 97225

Christine Mason
Portland, OR 97225

Mike LaPorte
Portland, OR 97223

Jamie Fillmore
Portland, OR 97224

Marlene Tucker
Salem, OR 97304

Diana Anderson
Roseburg, OR 97471

Cristy Murray
Oregon City, OR 97045

J Stufflebeam
Oregon City, OR 97045

Kyle Rolnick
Lorane, OR 97451

Chase Dun
Eugene, OR 97401

Betty Abadia
Durham, OR 97224

Alvey Seeyouma
Beaverton, OR 97006

Mary Pritchard
Eugene, OR 97401

Patricia Jolly
Beaverton, OR 97003

Katherine Wolfe
Ashland, OR 97520

Tammy Bittler
Portland, OR 97206

Donna Myers
Milwaukie, OR 97267

Kacey Donston
Westlake, OR 97493

Laurie Perry
Beaverton, OR 97005

Jay Richards
Bend, OR 97701

Leslee Dillon
Portland, OR 97225

Jane Civiletti
Oak Grove, OR 97267

David Grant
Medford, OR 97504

Nicole Staudinger
Portland, OR 97211

Cheryl Lohrmann
Portland, OR 97233

Jean Dodier
Portland, OR 97211

Mike Renfrow
Portland, OR 97213

Theresa Evans
Philomath, OR 97370

Craig Soule
Terrebonne, OR 97760

Lorissa Davies
Newberg, OR 97132

Cindy Allen
Hood River, OR 97031

Phyllis Jaszkowiak
Portland, OR 97212

Bob Linnell
Portland, OR 97225

Patricia Wickman
Corvallis, OR 97330

John Schenck
Eugene, OR 97401

Joan Liberman
Portland, OR 97223

Mai-Lee Yap
Portland, OR 97223

Siochai Oconnor
Eugene, OR 97401

Benjamin Horner-Johnson
Milwaukie, OR 97222

Valerie Snyder
Forest Grove, OR 97116

Paul Keough
Beaverton, OR 97007

Darrell Stewart
Portland, OR 97211

David Tvedt
Eugene, OR 97404

Joyce Peck
Portland, OR 97206

Erin Reed
Tigard, OR 97224

Susanne Bily
Portland, OR 97203

Dave Stahlke
Albany, OR 97321

David Shochat
Portland, OR 97212

Jaime Ciecalone
Eugene, OR 97402

Barbara McCown
Bend, OR 97702

Megan Petrucelli
Portland, OR 97230

Brooks Withem
Corvallis, OR 97330

From:	Raymond Pardee
To:	alyssa.chatterjee@state.or.us
Cc:	Faye Stewart
Subject:	Rule Revision: Lead Testing in Licensed and Regulated Child Care Facilites
Date:	Friday, January 19, 2018 3:34:36 PM

Hello Alyssa,

As a public water provider, The City of Cottage Grove takes its responsibility of providing safe drinking water seriously. Any information concerning the quality of the drinking water supplied by a provider to its customers should be shared with the provider.

This is especially true in the case of Lead testing at Child Care Facilities as it concerns the health of children who could be affected from consuming water if it was found to contain any amounts of lead.

I would propose the Rule language to include required Lead test results obtained from Licensed and Regulated Child Care Facilities to be submitted to the facilities' water providers within the same time period as they are required to report those results to the Oregon Department of Education - Early Learning Division.

Please let me know of there is any other information you would require from me.

Please let me know if my comments were accepted or rejected as part of the Rule Revision.

Thank you,

Ray Pardee
Water Production Superintendent
Cottage Grove, Oregon
water@cottagegrove.org
541.228.0179

From: Jeffrey A. Strang
To: alyssa.chatterjee@state.or.us
Subject: Rules concerning lead in water in day care facilities
Date: Saturday, January 20, 2018 7:04:12 AM

I happened to read an article in The Oregonian today concerning possible increased standards for lead testing at day care centers and remediation with filters if elevated levels of lead are found.

I'm an Oregon Lead Risk Assessor and Environmental Health Specialist, and closely followed the recent concern with the finding of lead in Portland Public Schools. After testing hundreds of school children for lead in their blood, no child was found with elevated lead levels in their bodies as a result of lead in Portland Public Schools water. This is probably because children typically don't drink much water directly from the fixtures after it has sat overnight, and any elevated lead in the first water from kitchen fixtures, after water has sat in the pipes and fixtures overnight, if used, is diluted by water that contains low levels of lead upstream from the building's pipes.

For testing purposes, water is drawn from fixtures after it has sat in them and the building's distribution pipes overnight. This shows the worst-case scenario for lead in a building's water, and can give us important information, but that information should be put in proper perspective. Ideally, several tests are performed -- testing a building's drinking or cooking water fixtures, and testing of the distribution pipes. If elevated lead is found in the building's distribution pipes, water can be drained after it has sat in the pipes overnight, before use for drinking or cooking, by running each fixture used for drinking or cooking until the water gets to the coldest stable temperature, indicating it has come from the unheated pipes outside the structure, to reach low levels of lead in the water supplier's distribution pipes. If elevated lead is found at a fixture but not in the building's water distribution pipes, a small amount of water can be drained after it sits in the fixture overnight, before drinking or cooking, in order to reach lower lead-containing water upstream. Of course, replacing a fixture or the building's water distribution pipes would change the amount of lead found in the water.

I don't think a requirement to test water more than once every six years is necessary. It would be important to test if a new drinking or cooking water fixture is installed, or if the building's water distribution pipes are replaced. Filtering water, which can reduce the lead, is undoubtedly a much more costly solution than simply requiring water from fixtures or distribution pipes with elevated lead used for drinking or cooking to be drained after it has sat overnight.

Establishing a threshold of 1 part per billion (ppb) of lead in water, rather than 15 or 20 ppb, would make sense for water from the water supplier, rather than the day care, since the day care depends on the supplier for the base level of lead in its water.

Thank you for considering my comments.

Jeffrey A. Strang
HouseGeek Home Inspection
503-752-9494
www.housegeek.biz

From:	Scott Fernandez
To:	alyssa.chatterjee@state.or.us; Scott Fernandez
Subject:	Scott Fernandez Lead in Drinking Water Memo- Daycare and children
Date:	Sunday, January 21, 2018 1:39:33 PM

January 21, 2018

Ms. Chatterjee,

Good afternoon. Current drinking water testing is showing Portland and supporting institutions are the greatest lead levels among all large US cities. Appointed by Mayor Katz to 2 terms in the Portland Water Quality Advisory Committee, I / we saw little to no advancement in drinking water lead mitigation. My graduate work in drinking water at Washington State University also included lead mitigation research.

EPA standards for lead in drinking water are currently showing 15ppb as of 12-2017. Now we see 20ppb may be acceptable with a 33% increase of exposure. This is unacceptable and cannot fit a “one size fits all” approach, especially for children of all ages going through anatomy and physiology developmental stage milestones.

With EPA acknowledging “there is no safe level” of lead in drinking water, we need to adopt this as a principle standard for drinking water exposure to daycare facilities and all other children.

Please listen to the community asking for much stricter levels, such as preferably zero lead ppb. Thank you.

Scott Fernandez M.Sc. Biology biochemistry/microbiology

From:	Dee White
To:	"CHATTERJEE Alyssa - ELD"
Subject:	TESTIMONY for Rules committee hearing RE: No lead testing in day care centers
Date:	Saturday, January 20, 2018 9:14:17 AM

Dear Alyssa,
I am forwarding you the email string that we exchanged this past October on lead testing in child care facilities. I would like for this to be placed into the public record. I have just read Brad Schmidt's article in the Oregonian this AM and am writing to support the 6 environmental organizations' recommendation to reduce all lead in child care facilities with an action level of 1.

I have not had the time to try and find the documentation on how, when and why the action level was raised by the Oregon Health Authority to 20 when the EPA's recommended action level is 15 AND the EPA says no level of lead is safe. How in the world did the Oregon Health Authority arrive at the conclusion that they needed to raise the action level to 20? Where can I find this information? Could you please send me a link?

I applaud these 6 environmental organizations. Someone needs to look after the health of all Oregonians, including our most valuable asset, our children. It seems that relying on the Oregon Health Authority's rules and recommendations are at the very least, problematic. Lead is a neurotoxin that accumulates. How is raising the action level from 15 to 20 beneficial to our children and ALL Oregonians? Portland has the highest level of lead of any large city in the US. How is raising the level from 15 to 20 square with this designation and benefit our health?

Please heed the advice of OLCV, OEC, OSPIRG, Sierra Club, Physicians for Social Responsibility, and Beyond Toxics.

Sincerely,
Dee White
Portland OR

Dear Alyssa,

https://oregonearlylearning.com/early-learning-system-director-steps-up-safety-improvements/

Fifth, Governor Brown has directed the Early Learning Council to reverse its decision and to require state licensed child care facilities to undergo lead testing.

All of the day care centers in the Portland metro area who are served by the City of Portland's water bureau (and who pay extravagant prices for this public service) should receive free lead testing and the results should be published online and in print newspapers.

LEAD IS A NEUROTOXIN THAT ACCUMULATES and all of you city and state government workers are empty vessels when it comes to protecting our children's health and well-being. It's very maddening

and frustrating among those of us who are informed on water quality and water management issues in Portland. When I read oblique emails like the one you wrote below, it just really frustrates me.

Have a nice day,
Dee White

From: CHATTERJEE Alyssa - ELD [mailto:alyssa.chatterjee@state.or.us]
Sent: Tuesday, October 10, 2017 9:04 AM
To: Dee White
Cc: Sue Miller (suemiller500@gmail.com)
Subject: RE: No lead testing in day care centers

Ms. White,

Thank you for your email response on the decision made by the Early Learning Council regarding testing water for lead in child care.

As you are aware, the Early Learning Council took an important action last month to enhance its regulations for all types of child care settings overseen by the Early Learning Division in order to reduce the exposure of lead in water. The new rules will now require providers to follow practices based on the guidance of the Oregon Health Authority to immediately reduce exposure to lead in water. We understood that requiring providers to follows these actions would mitigate 99% of the risk of lead exposure in water. In addition, providers will now have to meet new training requirements on the dangers of lead exposure, including a recommendation that they test water for lead, and guidance on how to determine the potential for other risks for lead exposure (paint, cookware). The Early Learning Council also directed the Division to partner with Oregon Health Authority to develop outreach materials in multiple languages and promote these materials so that providers and the families they serve will be better informed about the risks, and the steps they can take to mitigate risk of exposure. These resources will also promote testing for lead in water as a recommendation.

While these are all very necessary actions that must be taken to protect children, lead testing the drinking water is the only way to determine the presence of lead in any licensed child care facility, and more broadly, the extent of the problem across our more than 4000 licensed child care facilities, 80% of which are in private homes. We also know many families will want to know this information, and be able to take their own actions as a result. Getting the results of lead testing in a child care facility is also an important component of what we need to do.

We know we have a lot more work to do. We are committed to engaging our partners - the Oregon Health Authority, local water districts, accredited laboratories and environmental health experts - to continue to work on the issue of testing so that it works for our child care providers and the families that entrust their children in their care.

We hope you will stay engaged with us and continue to give us input. The Early Learning Division is responsible for regulating the health and safety of children in licensed child care settings on a number of environmental health issues, including lead. Please know that public testimony is a

regular part of the development of any regulation, and is encouraged at council meetings, regardless of the topics on the agenda.

More information on the recommendations the Council received, as well as opportunities to provide public testimony, can be found on our website: https://oregonearlylearning.com/early-learning-council/meeting-calendar/?term=82. You can also sign up for the Early Learning Division newsletter at http://eepurl.com/bVjXjP, and continue to write us with your ideas.

Thank you for reaching out, and we look forward to staying in touch on this important issue.

Alyssa Chatterjee | Early Learning Council Administrator
EARLY LEARNING DIVISION | OREGON DEPARTMENT OF EDUCATION
OFFICE 503.373.0066 | MOBILE 971.701.1535
Like us on Facebook!

From: Dee White [mailto:deewhite1@mindspring.com]
Sent: Sunday, October 1, 2017 5:50 PM
To: alyssa.chatterjee@state.or.us
Subject: No lead testing in day care centers

Dear Ms Chatterjee and council members,

I read Brad Schmidt's excellent article in the Oregonian this morning.
http://www.oregonlive.com/pacific-northwest-news/index.ssf/2017/09/oregon_says_day_cares_cant_aff.html

I am completely against your decision to not require day care centers to test for lead in their drinking water. Did you know in Portland the latest testing for lead by the water bureau yielded 14.5 ppb and the federal action level is 15.0??? They were under orders from the EPA and OHA to immediately reduce the levels of lead as of late 2016 because they had surpassed the action level of 15.0. This is the best they can do – because they too, believe that all one needs to do is "let your tap run". One day and I hope it is soon, both your agency and the Portland water bureau will have to face reality and probably the law.

Since when does your authority allow this process independent from oversight or approval from OHA AND the governor's office??

The Portland Water Bureau offers free testing. If there is high lead in the water, the facility should be shut down until it is corrected. Period. This is THE MOST VULNERABLE age for levels of lead to high much higher impact. It is a neurotoxin. You all know this, correct?? Or are you ignorant?

Lead in Oregon's drinking water, primarily due to old, dirty, unmaintained pipes, is a very serious issue and I believe that all of you are putting yourselves in jeopardy of losing the public trust on this

stupid decision. Quite frankly, I am appalled but not surprised.

Dee White
Portland OR 97206

From: STEVE BUEL
To: alyssa.chatterjee@state.or.us
Subject: YES, DO STRICT RULES
Date: Saturday, January 20, 2018 2:13:37 PM

As one of the school board members who pushed Portland Public Schools to fix their lead tainted water faucets, I urge your committee to write rules which make any faucet that might be used for water that is ingested in day cares be tested for lead. The burden could be lifted if some ordinary exemptions might be made after the initial testing, but those exceptions should be narrowly drawn. Keep up the good work.
Steve Buel

From: Lawrence Rossini
To: alyssa.chatterjee@state.or.us
Subject: Public Comment Regarding Rules for Lead Testing in Licensed and Regulated Day Care Centers
Date: Sunday, January 21, 2018 6:24:41 AM

January 20, 201.

Sue Miller, Chair

Early Learning Council

Oregon Department of Education

Re: Rules for Lead Testing in Licensed and Regulated Child Care Facilities

To the Chair and Members of the Council:

I write as a retired consulting psychologist who left my native Oregon for college and graduate school, receiving a PhD in psychology from Harvard University, and going on to a consulting career with an emphasis in later years on work with health care research and policy institutes in Washington, DC.

More important, I write as a father and grandfather. My children were cared for in day care centers from the time they were toddlers, and my granddaughter before she was a year old. And they truly were – and are -- cared for. Love, language, laughter, and life skills all nourished in a social environment by caretakers who can be proud of their contribution to the development of these wonderful people. I write to you as a friend and ally.

My purpose is to share some of the research on the psychological effects of elevated lead levels in children, and lead-bearing drinking water as an important source, with the hope that day care centers in Oregon will all come to adopt water quality standards and intervene to prevent any lead from being present in the water that our children consume.

Psychological Effects

In 1979 a research team headed by pediatrician Herbert Needleman, MD, and later joined by psychologist David Bellinger, PhD, exposed how dangerous even a little lead exposure can be,

negatively affecting IQ levels, verbal competence, speech processing, and attention span.

Lead was also found to affect the children's behavior: teachers consistently judged the high-lead children to have more difficulty following directions, to be more hyperactive, and to have lower overall functioning than the low-lead children. Needleman's and his colleagues' results clearly showed that even relatively small amounts of lead were associated with significant cognitive and behavioral problems.

In 2012, the US National Toxicology Program of the National Institutes of Health reported that extensive and compelling evidence now indicates that lead-associated cognitive deficits and behavioral problems can occur at very low blood lead concentrations—concentrations strongly associated with intellectual deficits, diminished academic abilities, attention deficits, and problem behaviors

The studies cited here can be found in the references at the end of this letter.

Cognitive Functioning

The American Academy of Pediatrics and the American Psychological Association both agree: the most common and long-lasting effects of lead occur within the central nervous system, at young ages, and are especially seen in cognitive impairment as measured by IQ tests.

Both Associations tell their membership that students with elevated lead levels are more inattentive, hyperactive, disorganized, less able to follow directions at school, and having higher drop-out rates and reading disabilities.

Measurable lead concentrations are also associated with a higher risk for attention-deficit/hyperactivity disorder (ADHD). The higher the lead level the greater number of ADHD symptoms appeared. In normal populations ADHD was reported at 5%. For kids with measurable levels, reports jumped to 13%.

Behavioral Problems

Antisocial behaviors can result from a variety of risk factors but studies show that adolescents with high bone lead level had higher scores for delinquency and aggression, and that lead exposure was a risk factor for conduct disorder.

Proposed Rules

Risky lead levels are still being found in children and adolescents in spite of significant declines of lead in the environment. Water is one of the last remaining, and a common source of lead toxicity in children. Following the advice of the American Academy of Pediatricians and the American Psychological Association, reducing tap water lead levels to zero is the only standard that ensures safe and healthy lead-free drinking water.

The EPA's action level of 15 ppb of lead in water is an administrative tool, which is used to regulate water systems in the United States. It is routinely (but erroneously) used as a health-based standard; it was not intended as a health-based standard, nor does it adequately protect children or pregnant women from adverse effects of lead exposure. The maximum contaminant level goal, the value the EPA deems acceptable for health, is 0.

Obviously, in day care centers located in private homes or in multi-unit buildings, replacing water lines is not possible. It is a good idea to test the water that comes into the day care center through drinking fountains or water spigots.

But it is not necessary to know the level of lead in order to stop the lead from infiltrating the drinking water. There are water filters that are certified by the National Sanitation Foundation for lead removal can effectively reduce water lead concentrations

Both professional associations warn that all studies of lead in children lead to one conclusion: it is important to control or eliminate all sources of lead in children's environments to prevent exposure. In children, there is no identified threshold or "safe" blood lead level below which no risk of poor developmental or intellectual function is expected.

Economic Costs

A word about cost. The economic costs of childhood lead toxicity are substantial. Despite the historical reductions in blood lead concentrations, it has been estimated that the annual cost of childhood lead exposure in the United States is $50 billion. For every $1 invested to reduce lead hazards in housing units, society would benefit by an estimated $17 to $221, a cost–benefit ratio that is comparable with the cost–benefit ratio for childhood vaccines.

Many day care centers are also small businesses and worry about cost. Cost is concern for all businesses, and operating in the social service arena can be a challenge. But the benefit of providing lead free water is worth the cost. We don't question the need, and so we pay for

safety gates at the head of stairs, and child locks on drawers and cupboards, and plugs for electric outlets, and safe toys, and protective playpens, and plastic sippy cups. And now, lead filters for the water taps.

In the end it means creating a lead-free environment that gives their growing brains the best chance of reaching their highest mental, behavioral, and social potential. Please set down rules that make that happen.

Thank you for your attention.

Respectfully submitted:

Lawrence A. Rossini, PhD

111 SW Harrison St.

Unit 17H

Portland, OR 97201

617-240-5674

References:

American Academy of Pediatrics. Lead Exposure in Children.

https://www.aap.org/en-us/advocacy-and-policy/aap-health-initiatives/lead-exposure/Pages/Lead-Exposure-in-Children.aspx. 2016.

American Psychological Association. Even a Bit of Lead is Bad for Kids' Development. http://www.apa.org/action/resources/research-in-action/lead.aspx. Feb. 2014

On Environmental Health. Prevention of Childhood Lead Toxicity. *Pediatrics*. 2016;38(1):e20161493. Bruce Perrin Lanphear, MD, MPH, FAAP

Needleman, H. L., Gunnoe, C., Leviton, A., Reed, R., Peresie, H., Maher, C., & Barrett, P. (1979). Deficits in psychological and classroom performance of children with elevated dentine lead levels. *The New England Journal of Medicine, 300,* 689-695.

World Health Organization. Childhood Lead Levels. 2010. http://www.who.int/ceh/publications/leadguidance.pdf

Additional Sources

Bellinger, D., Leviton, A., Waternaux, C., Needleman, H., & Rabinowitz, M. (1987). Longitudinal analyses of prenatal and postnatal lead exposure and early cognitive development. *The New England Journal of Medicine, 316,* 1037-1042.

Brown MJ, Margolis S; Centers for Disease Control and Prevention. *Lead in drinking water and human blood lead levels in the United States. MMWR Suppl. 2012;61(4 suppl 1):1–9pmid:22874873*

Needleman, H. L., & Gatsonis, C. A. (1990). Low-level lead exposure and the IQ of children. A meta-analysis of modern studies. *Journal of the American Medical Association, 263,* 673-678.

Needleman, H. L., Riess, J. A., Tobin, M. J., Biesecker, G. E., & Greenhouse, J. B. (1996). Bone lead levels and delinquent behavior. *Journal of the American Medical Association, 275,* 363-369.

Triantafyllidou S, Edwards M. *Lead (Pb) in tap water and in blood: implications for lead exposure in the United States. Crit Rev Environ Sci Technol. 2012;42(13):1297–1352*

From:	Lindsay McCormick
To:	alyssa.chatterjee@state.or.us
Cc:	Tom Neltner
Subject:	EDF Comment Submission on Oregon Proposed Lead Testing Rule
Date:	Sunday, January 21, 2018 2:33:51 PM
Attachments:	image001.jpg Oregon Childcare Lead Testing_EDF Comments Final.pdf

---

Ms. Chatterjee,

Good afternoon. I am submitting comments on behalf of Environmental Defense Fund on Oregon's proposed rule on testing water for lead in licensed and regulated child care facilities.

Could you please confirm receipt of these comments?

Best regards,
Lindsay

Lindsay McCormick
Project Manager, Chemicals and Health
Health Program

Environmental Defense Fund
1875 Connecticut Ave, NW
Washington DC 20009
T 202 572 3245

lmccormick@edf.org
edf.org

January 21, 2018

Alyssa Chatterjee
Early Learning Council Administrator
Oregon Department of Education
Early Learning Division
775 Summer Street NE #300
Salem, Oregon 97301

Re: Lead testing in licensed and regulated childcare facilities

Ms. Chatterjee,

The Environmental Defense Fund (EDF) appreciates the opportunity to submit comments to Oregon Department of Education, Early Learning Division as it finalizes its rule for lead testing in licensed and regulated childcare facilities.

EDF's mission is to preserve the natural systems on which all life depends. We have more than two million members and a staff of 700 scientists, economists, policy experts, and other professionals around the world. Guided by science and economics, we find practical and lasting solutions to the most serious environmental problems. This has drawn us to areas that span the biosphere: climate, oceans, ecosystems and health. Our Health Program seeks to safeguard human health by reducing exposure to toxic chemicals and pollution, including lead in drinking water.

We fully support Oregon's decision to establish mandatory lead and water testing in childcare facilities. Even at low levels, lead exposure can harm the brain development of young children – resulting in learning and behavioral problems for the rest of their lives.[1]

Last summer, the Pew Charitable Trusts (Pew) and the Robert Wood Johnson Foundation (RWJF) released a report on the costs of lead and the impact of various policy solutions to protect children from lead exposure.[2] One of their major recommendations is to:

> **Reduce lead in drinking water in homes built before 1986 and other places children frequent.** States and municipalities, with support from federal agencies, should fully replace lead service lines, from street to structure, that provide drinking water to homes built before the EPA banned their use. . . . States and localities should investigate and mitigate drinking water hazards in schools and child care facilities.

While the recent national attention on lead and drinking water has spurred action to address lead in schools, fewer states have addressed lead in water in childcare settings – despite the fact that children

[1] National Toxicology Program, 2012. "NTP Monograph: Health Effects of Low-Level Lead." Available at: https://ntp.niehs.nih.gov/ntp/ohat/lead/final/monographhealtheffectslowlevellead_newissn_508.pdf.

[2] Robert Wood Johnson Foundation & Pew Charitable Trusts, 2017. 10 Policies to Prevent and respond to Childhood Lead Exposure. Available at: http://www.pewtrusts.org/~/media/assets/2017/08/hip_childhood_lead_poisoning_report.pdf.

under the age of six are most vulnerable to the detrimental impacts of lead exposure.[3] Five states – Connecticut, Illinois, New Jersey, Rhode Island, and Washington – have childcare lead in water testing requirements. EDF has detailed each of these programs, including testing frequency, action level/standard, corrective action, and notification requirements, on our website.[4] The table below provides a summary; see our website for additional detail.

State Requirements Regarding Lead in Drinking Water in Childcare Centers

State	Testing Frequency	Standard	Corrective Action	Parent and Staff Notifications
Connecticut (Feb. 2017)	License application and every 2 years thereafter.	None.	None.	None.
Illinois (December 2017)	Licensed facilities constructed after 2000, six months after lead detected, and every year thereafter.	If lead is detected (by approved laboratory).	Mitigation and implementation plan.	Lead testing information, results, and mitigation efforts provided in enrollment materials.
New Jersey (March 2017)	Initial or renewal application, relocation, as requested by state.	Elevated as defined by NJDEP (currently 15 parts per billion (ppb)).	Stop using all drinking water sources, provide bottled water for drinking and food preparation.	Results posted in building. Notify parents if elevated levels found.
Rhode Island (Nov. 2013)	Prior to licensing and after renovations or after property alterations.	Lead-safe (5-15 ppb in a first draw sample or less than 15 ppb in a flushed sample) or lead-free (less than 5 ppb in first sample draw).	Water source must be lead-free or lead-safe.	None.
Washington (May 2017)	Prior to licensing and every 6 years thereafter.	Levels above EPA Lead Action Level (90^{th} percentile above 15 ppb).	Close the program or supply bottled water and consult with WADOH, notify state licensing agency.	Notify parents if above action level and again when levels below action level.

We commend Oregon for being a leader in this space and provide the following comments for consideration.

[3] U.S. EPA, 2017. "Learn about Lead." Available at: https://www.epa.gov/lead/learn-about-lead.

[4] EDF Health Blog: http://blogs.edf.org/health/2017/08/17/protecting-the-most-vulnerable-lead-in-drinking-water-testing-requirements-for-child-care-centers/.

Incorporate lead service line investigation

We recommend that the requirements include investigation and removal of lead service lines (including goosenecks[5]), if identified. While lead service lines – lead pipe connecting the water main in the street to the building – were banned by Congress in 1986,[6] there are still an estimated 6-10 million in use in the U.S. today.[7] When present, lead service lines contribute an estimated 50-75% of the lead in water at a given property.[8] Furthermore, lead service lines can unpredictably release particulate lead into the water, which can complicate testing for lead sources at fixtures. As recommended by the Lead Service Line Replacement Collaborative – a joint effort of 25 national public health, water utility, environmental, labor, consumer, housing, and state and local governmental organizations – the best long-term solution to address lead service lines is to remove them.[9]

Furthermore, the RWJF/Pew analysis concluded that removing leaded drinking water service lines from the homes of children born in 2018 would protect more than 350,000 children and yield $2.7 billion in future benefits, or about $1.33 per dollar invested.[10] Within the context of a childcare facility – where many more children are present than home settings – we expect that the economic benefits of lead service line replacement would be much greater.

According to a 2016 study conducted by the American Water Works Association, there are an estimated 14,000 lead service lines in Oregon.[11] Large childcare centers are unlikely to have lead service lines since their water needs exceeds the 2" maximum diameter typically used for lead pipes; however, lead service lines are more commonly found at smaller properties, such as home-based childcare. The proposed rule suggests that many of the childcare centers that would be subject to the rule are located in smaller facilities: "Of the 4,300 licensed facilities, approximately 3,000 are operated in a home or small businesses setting" (Rule Summary). Therefore, there may be some licensed childcare centers in Oregon with lead service lines – but not enough that this requirement would be overly burdensome. Those facilities with lead service lines can work with their local water utility to develop a plan and implement replacement.

---

[5] Though the Lead and Copper Rule does not currently define a lead service line to include service lines that only have lead pipe in a gooseneck or pigtail, EPA's National Drinking Water Advisory Council recommended modifying the definition to include lead a service line where any portion, including a lead pigtail, gooseneck, or other fitting, is made of lead. See: NDWAC, 2015. Report of the Lead and Copper Rule Working Group to the National Drinking Water Advisory Council. Available at: https://www.epa.gov/sites/production/files/2016-01/documents/ndwaclcrwgfinalreportaug2015.pdf.

[6] U.S. EPA. 2017. "Use of Lead Free Pipes, Fittings, Fixtures, Solder and Flux for Drinking Water." Available at: https://www.epa.gov/dwstandardsregulations/use-lead-free-pipes-fittings-fixtures-solder-and-flux-drinking-water.

[7] Cornwell, D., et al. (2016). National Survey of Lead Service Line Occurrence. *Journal AWWA*, 108(4): 182-191.

[8] Sandvig, A., et al. (2008). "Contribution of Service Line and Plumbing Fixtures to Lead and Copper Rule Compliance Issues." Prepared for the American Water Works Research Foundation, Report 91229. Available at: http://www.waterrf.org/PublicReportLibrary/91229.pdf.

[9] Lead Service Line Replacement Collaborative. "About Us." Available at: https://www.lslr-collaborative.org/about-us.html.

[10] RWJF/Pew, 2017. 10 Policies to Prevent and respond to Childhood Lead Exposure. Available at: http://www.pewtrusts.org/~/media/assets/2017/08/hip_childhood_lead_poisoning_report.pdf.

[11] Cornwell, D., et al. (2016). National Survey of Lead Service Line Occurrence. *Journal AWWA*, 108(4): 182-191.

We recommend that the rule takes the following approach to address lead service lines in childcare centers:

1. For all properties built before 1986, both review historical records (i.e., facility records, utility records) and have a licensed plumber conduct a physical inspection.
2. If a lead service line is identified, work with the local water utility to remove the lead service line prior to conducting fixture testing, following the best practices to minimize lead exposure identified in the American Water Works Association's flushing procedures.[12]

Finally, the proposed rule requires: "Flushing pipes by running the tap until the water is noticeably cooler" (section 7(a)) and "Running tap water for at least two minutes after water sits in the pipes for six hours or more" (section 7(b)). Neither of these strategies is sufficient if there is a lead service line present. In fact, flushing until the water is cooler or flushing for two minutes may actually draw water that has been setting in the service line – resulting in higher lead levels. We recommend increasing the flush time to 5 minutes, especially if a lead service line is present and has not yet been removed.

Use a more protective action level – 20 ppb is not based on science or health

The rule proposes an action level of 20 ppb (section 6). We expect that this number was selected based on EPA's 2006 technical guidance, "3Ts for Reducing Lead in Drinking Water in Schools," which relies on 20 ppb to trigger action.[13] However, 20 ppb is neither based on health nor a rigorous review of the science.

In 2017, EPA released a draft report, "Proposed Modeling Approaches for a Health-Based Benchmark for Lead in Drinking Water."[14,15] While there is no safe level of lead, the vision of such a health-based benchmark is to help parents and public health officials know when lead in the drinking water reaches a level likely to produce an "elevated blood lead level." EPA's draft report provided a range of potential values. EDF conducted its own analysis of the data EPA provided, and concluded that a conservative health-based benchmark for individual action on lead in drinking water would be 3.8 ppb.[16]

We are currently conducting a pilot project on testing and remediation of lead in water at twelve childcare centers in four states: Illinois, Michigan, Mississippi, and Ohio. Our results to date demonstrate that

[12] American Water Works Association, 2017. C810-17 Standard for Replacement and Flushing of Lead Service Lines. Available at: https://www.awwa.org/store/productdetail.aspx?productid=65628258.

[13] U.S. EPA, 2006. "3Ts for Reducing Lead in Drinking Water in Schools and Child Care Facilities: Revised Technical Guidance." Available at: https://www.epa.gov/dwreginfo/3ts-reducing-lead-drinking-water-schools-and-child-care-facilities.

[14] U.S. EPA, 2017. "Proposed Modeling Approaches for a Health-Based Benchmark for Lead in Drinking Water." Available at: https://www.epa.gov/sites/production/files/2017-01/documents/report_proposed_modeling_approaches_for_a_health_based_benchmark_for_lead_in_drinking_water_final_0.pdf.

[15] The analysis was also analysis was published in an Environmental Health Perspectives article. See: Zartarian, V., et al. (2017). Children's Lead Exposure: A Multimedia Modeling Analysis to Guide Public Health Decision-Making. *Environmental Health Perspectives*, DOI:10.1289/EHP1605. Available at: https://ehp.niehs.nih.gov/ehp1605/.

[16] See EDF's full analysis here: http://blogs.edf.org/health/2017/02/28/health-based-action-level-for-lead-in-drinking-water/.

<10% (22 of 225) of fixtures tested had any readings higher than 3.8 ppb. This evidence demonstrates that 3.8 ppb is an achievable action level.

Furthermore, the state of Illinois, which required mandatory lead in water testing at childcare centers under SB-550 last January, recently released its policy guide to conduct such testing (2017.13).[17] The guide requires a mitigation and implementation plan "if lead is present" (i.e., any lead is detected) based on testing results from an Illinois Environmental Protection Agency (IEPA) approved laboratory.

In sum, EDF does not believe that the proposed 20 ppb action level is sufficiently protective. We highly recommend that the value is lowered at least to 3.8 ppb, which we believe is achievable both based on our data and the precedent set by the state of Illinois.

Provide for additional lead remediation options

The rule, as proposed, requires the childcare facility to either shut down the facility or provide bottled water if a single fixture has a lead level above 20 ppb while the facility simultaneously submits a plan of action to the Office of Child Care. Shutting down the school is likely to cause disruption and turmoil, and may be avoidable in most cases. Unless there is a lead service line present, the problem may well be isolated to a few fixtures across the center. In these cases, the facility could shut off service to those select fixtures, while more permanent solutions are developed (e.g., fixture replacement). We recommend a tiered approach to corrective action, such that stricter action is triggered by higher and more frequent lead readings. For example, if a significant number of fixtures have lead readings well above the action level, it may be appropriate to shut down the facility.

Require follow-up testing following corrective action

The rule currently requires testing only every six years. We recommend that the rule include a requirement for follow-up testing and results submission to the Office of Child Care within three months at those locations where the initial results were above the established action level. Without such follow-up testing, the facility will have no way to know if the corrective actions taken were successful. Furthermore, we recommend that the frequency of testing be tiered based on the lead levels detected. Facilities with high lead levels should be required to conduct more frequent testing – more frequent than a six-year basis – to create an incentive to reduce lead levels.

Thank you for your consideration of these comments.

Sincerely,

Lindsay McCormick, MPH
Project Manager, Chemicals and Health

Tom Neltner, JD
Chemicals Policy Director

[17] Illinois Department of Children and Family Services, Policy Guide 2017.13. Lead Testing of Water in Licensed Day Care Facilities. December 6, 2017. Available at: https://www.illinois.gov/dcfs/aboutus/notices/Documents/Policy_Guide_2017.13.pdf.