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NOTICE OF PROPOSED RULEMAKING
INCLUDING STATEMENT OF NEED & FISCAL IMPACT

CHAPTER 333
OREGON HEALTH AUTHORITY
PUBLIC HEALTH DIVISION

FILED
09/17/2018 4:05 PM
ARCHIVES DIVISION
SECRETARY OF STATE

FILING CAPTION: Reducing lead in school drinking water

LAST DAY AND TIME TO OFFER COMMENT TO AGENCY: 10/26/2018 5:00 PM

The Agency requests public comment on whether other options should be considered for achieving the rule's substantive goals while reducing negative economic impact of the rule on business.

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Filed By:
Brittany Hall
Rules Coordinator

HEARING(S)

Auxiliary aids for persons with disabilities are available upon advance request. Notify the contact listed above.

DATE: 10/24/2018

TIME: 1:00 PM

OFFICER: Brittany Hall

ADDRESS: Portland State Office

Building

800 NE Oregon St. Room 1E

Portland, OR 97232

NEED FOR THE RULE(S):

The Oregon Health Authority, Public Health Division (OHA) is adopting this rule in coordination with the Oregon Department of Education (ODE). This rule will require public schools and education service districts to test taps used for drinking or food preparation for lead. If tests indicate lead is elevated at a tap, mitigation activities must be completed. This rule is being adopted as a result of the passage of SB 1062 (Oregon Laws 2017, chapter 700) by the Oregon Legislature in 2017.

DOCUMENTS RELIED UPON, AND WHERE THEY ARE AVAILABLE:

- SB 1062 (Oregon Laws 2017, chapter 700):
<https://olis.leg.state.or.us/liz/2017R1/Downloads/MeasureDocument/SB1062>
- Oregon Administrative Rules chapter 333, division 061 and Oregon Revised Statutes chapter 448 are available for inspection at the Oregon Health Authority, Drinking Water Services, 800 NE Oregon Street, Suite 640, Portland, OR 97232 or by calling 971-673-0405.

Supporting information and documents are also available from the internet at:

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<https://www.oregon.gov/oha/PH/HealthyEnvironments/HealthyNeighborhoods/HealthySchoolFacilities/Pages/index.aspx>.

Oregon Administrative Rules and Oregon Revised Statutes are also available from the internet at:

- OAR chapter 333, division 61: http://arcweb.sos.state.or.us/pages/rules/oars_300/oar_333/333_061.html;
- Oregon Laws 2017, chapter 700: https://www.oregonlegislature.gov/bills_laws/lawsstatutes/2017orlaw0700.pdf;
- ORS chapter 332: https://www.oregonlegislature.gov/bills_laws/ors/ors332.html.
- ORS chapter 448: https://www.oregonlegislature.gov/bills_laws/ors/ors448.html

FISCAL AND ECONOMIC IMPACT:

An estimated 130,000 tests will be required at an approximate cost of \$25 per test but the testing required by this rule is not expected to have any fiscal impact upon schools or education service districts because ODE will reimburse schools and districts for related costs.

A report for one district indicates the cost of replacing a tap could be as high as \$2,628 or \$6,708 if partial pipe replacement is necessary. This figure will vary depending on the plumbing materials used or contractor hired to perform the work. Mitigation activities other than tap replacement may be less costly if plumbing configuration allows for other mitigation options. For example, an affected tap may be taken out of service for little or no cost. Data from mitigation work at eight different districts indicates an average cost of \$338 per tap.

As much as 15% of taps may require mitigation according to the report conducted for one school district in Oregon. Data from approximately 50,000 taps tested at 1,000 schools across Oregon indicates 10% of taps or less may require mitigation. A smaller percentage of taps may require mitigation at districts with recently constructed facilities. As an example, one school district conducted remediation activities at eight schools for a cost of \$306,420.

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) ODE, a state agency, will incur administrative costs to track monitoring and ensure mitigation takes place according to this rule and is also responsible for the approximately \$3,250,000 cost for testing required by this rule. OHA, a state agency, is not expected to incur any administrative costs. School districts and education service districts will incur costs to comply with this rule as personnel plan for and conduct the monitoring required by this rule and facilitate mitigation if necessary. ODE will also incur operating or administrative costs and potentially mitigation costs to comply with the rule because it operates the Oregon School for the Deaf. There is no anticipated cost of compliance impact on the public.

(2)(a) No small businesses are required to comply with this rule. All public charter schools must be operated by a non-profit organization.

(b) Not applicable.

(c) Not applicable.

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

No small businesses were involved in the development of this rule because small businesses are not subject to this rule

WAS AN ADMINISTRATIVE RULE ADVISORY COMMITTEE CONSULTED? YES

ADOPT: 333-061-0400

RULE SUMMARY: OAR 333-061-0400 adopts definitions of terms used within the rule; details requirements for testing school drinking water taps for lead, including requirements for on-going testing; provides sample criteria; and details requirements for mitigation should a water sample include lead detection over the established threshold. The rule specifies testing to identify drinking water taps where high concentrations of lead are present and prescribes mitigation activities, if necessary, to remove, repair or replace those taps.

CHANGES TO RULE:

333-061-0400

Reducing Lead in School Drinking Water

(1) For the purposes of this rule, the following definitions apply: ¶

(a) "School" means a school district, education service district, or public charter school. ¶

(b) "Tap": ¶

(A) Means any plumbing fixture in a building or on property owned or leased by a school where students or staff are present on a regular basis and where water is used for drinking or food preparation. ¶

(B) Does not include any of the following classes of plumbing fixtures:¶

(i) Restroom sinks;¶

(ii) Shower heads;¶

(iii) Pipes used to convey water to systems for building heat;¶

(iv) Dedicated eye wash stations and emergency showers;¶

(v) Fixtures in areas with no student access used exclusively for building sanitation purposes by staff; ¶

(vi) Fixtures used exclusively for irrigation, unless it is reasonable to believe that students or staff will use water from that fixture for drinking; and¶

(vii) Fixtures in science and technical education classrooms that provide education to grades 6 through 12 exclusively where the fixtures:¶

(I) Have signs indicating they are not sources of drinking water; and¶

(II) Are not intended to be used for drinking or food preparation as part of the curriculum.¶

(2) Initial testing. ¶

(a) Schools must test for lead in the water from each tap at least once between January 1, 2016 and June 30, 2020, or prior to occupancy for taps added after these dates. If testing was conducted and mitigation completed within this timeframe following EPA's 3Ts for Reducing Lead in Drinking Water in Schools, Revised Technical Guidance from October 2006, adopted by reference, initial testing does not need to be repeated. ¶

(b) Samples must be collected "first draw," before any water is used from a tap the day it is tested.¶

(3) On-going testing. Schools must collect a first draw sample as described in subsection (2)(b) of this rule from each tap at least once every six years starting on July 1, 2020 unless the following exemption applies:¶

(a) The tap was installed after January 4, 2014 and meets the lead-free standard of no more than 0.25 percent lead by weight and the piping feeding the tap is a material other than copper or was installed after January 4, 2014 and the solder and flux meets the lead-free standard of no more than 0.2 percent lead; and¶

- (b) The tap was tested as required in section (2) and no more than 1 part per billion (ppb) of lead was detected.
- (4) All samples from taps must meet the following criteria:
- (a) Sample bottles must be 250 milliliters (mL) in volume.
 - (b) Sample bottles must be assigned a unique identification number and the following information about the sample must be recorded:
 - (A) The date and time of sample collection;
 - (B) The name of the person that collected the sample; and
 - (C) The location or a description of the tap from which the sample is collected.
 - (c) Samples must be collected on a day when school was in session the previous day.
 - (d) Samples must be analyzed by a laboratory accredited by the Oregon Laboratory Accreditation Program according to OAR chapter 333, division 64.
- (5) If a test result from a sample shows 15 or more parts per billion (ppb) of lead, a school must prevent access to the tap as soon as possible after receiving the sample test result and in no case more than 48 hours after receiving the test results. A school must prevent access to the tap until testing and mitigation is completed according to section (6) of this rule.
- (6) Following receipt of results that show a tap has 15 or more ppb of lead, a school must:
- (a) Collect a flushed sample from that tap. This sample must meet all the criteria specified in section (4) of this rule and be collected after water has flowed from the tap for 30 seconds as described in Section 4.4.2 of EPA's 3Ts for Reducing Lead in Drinking Water in Schools, Revised Technical Guidance from October 2006; and
 - (b) Complete an appropriate permanent mitigation in accordance with Section 5.3 of EPA's 3Ts for Reducing Lead in Drinking Water in Schools, Revised Technical Guidance from October 2006; and
 - (c) Test the tap after mitigation is complete, demonstrating lead is less than 15 ppb before access to the tap is resumed. If flushing is used as a mitigation measure, the sample must be taken after documented routine flushing protocols are followed. For all other mitigations, a first-draw sample as described in subsection (2)(b) must be collected and analyzed.

Statutory/Other Authority: OL 2017, ch. 700

Statutes/Other Implemented: OL 2017, ch. 700, ORS 332.331