

Small Business Economic Impact Statement

Proposed WAC 170-300-0235 A rule concerning safe water sources

Date: February 1, 2017

1. Describe the proposed rule, including:

- a brief history of the issue
- an explanation of why the proposed rule is needed
- a brief description of the probable compliance requirements and the kinds of professional services that a small business is likely to need in order to comply with the proposed rule

Lead and copper pose serious health risks, particularly to young children. According to the EPA, lead can affect almost every organ and system in the human body and “children six years old and younger are most susceptible to the effects of lead.” Lead and copper enter drinking water mainly through plumbing materials, and exposure may cause health problems that range from stomach complications to brain damage. Lead affects the central and peripheral nervous systems, cardiovascular system, kidney, blood, gastrointestinal system, immune system, and reproductive system. Even low levels of lead can result in behavior and learning problems, lower IQ, hyperactivity, slowed growth, hearing problems, and anemia.

In response to Governor Inslee’s directive 16-06, the Department of Health issued recommendations for the Department of Early Learning and other agencies that are intended to reduce exposure to lead and other environmental hazards where children live, learn, and play. While the governor’s directive requires testing in buildings built before 1978, the Departments of Early Learning and Health have determined that water quality testing for lead and copper in all licensed buildings is needed to achieve health and safety goals and protect young children who are the most vulnerable demographic. The proposed rule was developed using science-based, cost-effective recommendations for reducing lead consumption in young children.

Proposed WAC 170-300-0235 would require both center and family home child care providers to:

1. Determine the lead and copper levels of any water source used for food or infant formula preparation or drinking water and remediate when unsafe levels are detected. Providers must conduct an initial test within six months of the rule’s effective date and test at least once every six years thereafter. Water testing would also be required as part of the application process for prospective providers; and
2. Test private well water for coliform bacteria and nitrates and remediate when unsafe levels are detected.

The proposed rule reduces the risk of children enrolled in licensed child care from being exposed to dangerous substances by requiring testing and dictating steps that will protect enrolled children in the event testing reveals unsafe levels of lead or copper at or above the standards set by the U. S. Environmental Protection Agency or unsafe bacteria and nitrate levels.

Both of the tests required under proposed WAC 170-300-0235 must be performed by a Washington State certified water laboratory, certified by the Washington State Department of Ecology. These labs are located around the state. The lab provides a test kit that includes sampling instructions and water bottles. Licensed providers and license applicants draw water samples and deliver them to the lab for testing. The lab issues written test results, which must be kept on the licensed premises.

2. Identify which businesses are required to comply with the proposed rule using the North American Industry Classification System (NAICS) codes and what the minor-cost thresholds are.

NAICS code (4, 5 or 6 digit)	NAICS business description	# of businesses in WA	Minor-cost threshold = 1% of average annual payroll	Minor-cost threshold = 0.3% of average annual receipts
624410	Child day care services	2228*	\$1,548	937.9591562

*This data was formulated using the SBEIS calculator provided by the Washington State Auditor, which uses data from the 2012 U.S. Census. As of December 2016, 3,604 family homes and 1,578 centers were licensed in Washington State, for a total of 5,182 child care providers.

3. Analyze the probable cost of compliance. Identify the probable costs to comply with the proposed rule, including: cost of equipment, supplies, labor, professional services and increased administrative costs. Based on input, describe how compliance with the rule may cause lost sales or revenue.

Water testing costs vary across Washington State. Nine labs were contacted around the state to determine a range of \$25 to \$112 with an average cost of \$47 to test for lead and copper. Testing private well water for bacteria ranged from \$45 to \$71, with an average cost of \$56.

Testing is not expected to exceed the minor cost threshold for any provider. For the majority of licensed center and family home providers, the only ongoing costs would be those associated with buying kits to test faucets and private wells, where applicable, between one and six years. The majority of family homes will be testing one faucet for lead and copper. The 600 largest centers in the state will bear an average cost of \$188 to test an assumed two faucets and two drinking fountains. This cost does not take into account follow-up testing to identify potential “false-positive” readings.

Remediation costs are indeterminate should any test reveal unsafe levels of levels of lead or copper in drinking water or bacteria or nitrates in drinking water. Remediation costs may include repairing plumbing systems or private wells, or providing bottled or packaged water to meet the safety needs for preparing food or infant formula, drinking, and cooking. These would be one-time or short-term costs. Remediation is not a new requirement – current rules require centers and family home child care providers to maintain safe water sources.

4. Explain how you determined the rule may impose more-than-minor costs on businesses in the industry.

The testing requirement does not impose more-than-minor costs on businesses in the industry. This statement is supplied since any remediation costs would likely exceed the minor threshold. However, as explained above, those costs are variable and indeterminate. Furthermore, current rules require remediation of unsafe water sources, so this should not be considered a new cost.

5. Determine whether the proposed rule may impose a disproportionate impact on small businesses compared to the 10 percent of businesses that are the largest businesses required to comply with the proposed rule.

Use one or more of the following as a basis for comparing costs:

- Cost per employee
- Cost per hour of labor
- Cost per \$100 of sales

The proposed rule impacts only small businesses, however the new costs imposed do not exceed the minor cost threshold.

6. If the proposed rule is likely to impose a disproportionate impact on small businesses, identify the steps taken to reduce the costs of the rule on small businesses. Include consideration of each of the following cost mitigation strategies:

- (a) Reducing, modifying, or eliminating substantive regulatory requirements
- (b) Simplifying, reducing, or eliminating recordkeeping and reporting requirements
- (c) Reducing the frequency of inspections
- (d) Delaying compliance timetables
- (e) Reducing or modifying fine schedules for noncompliance
- (f) Any other mitigation techniques suggested by small businesses or their advocates

If the costs cannot be reduced, provide a clear explanation of why.

The proposed lead and copper test complies with current EPA testing standards to determine whether any faucet supplying water has an unsafe concentration of lead or copper, or whether a private well has unsafe levels of bacteria or nitrates. The Department of Early Learning believes imposing this minor cost is necessary to ensure the safety of children who participate in the programs DEL regulates. The one-time and short-term costs identified above necessary to remediate any unsafe water source to reduce the risk of children's exposure to harmful toxins could not be mitigated.

7. Describe how small businesses were involved in the development of the proposed rule.

A working draft of the rule was distributed to licensees on January 12, 2017 with a solicitation for comment. Since January 10, the working draft has also been available on the Department of Early Learning's website with an opportunity to comment. Thirteen comments were received and revisions were made based on those comments. Family home licensees are represented by the Service Employees International Union (SEIU), Local 925. DEL has a statutory obligation to negotiate proposed rules that impact family home licensees with SEIU and other affected parties. The SEIU has the additional option to bargain on behalf of its members any rule impacts.

8. Identify the estimated number of jobs that will be created or lost as the result of compliance with the proposed rule.

The requirement of testing faucets and, where applicable, private wells would most likely not impact a licensee's hiring decision. The need to repair or replace plumbing may impact a licensee's decision to employ paid staff, or the number of hours that the licensee uses paid staff in a given year. As explained above, remediation is required by current rules.

9. Summarize the results of the analysis, including the determination if costs are disproportionate.

Proposed WAC 170-300-0235 requires center and family home child care providers to regularly test faucets for unsafe levels of lead and copper and test private well water for unsafe levels of bacteria and nitrates. The cost of testing is not expected to exceed the minor cost threshold. Repairs are required or an alternative source of water must be provided when the tests reveal that the water is unsafe for children. Current rules require remediation of unsafe water sources, so the cost to repair water systems should not be considered a new cost imposed by the proposed rule.