

Pursuant to the authority vested in the Commissioner of Health by Public Health Law sections 1370-a and 1110, Subpart 67-4 of Title 10 (Health) of the Official Compilation of Codes, Rules and Regulations of the State of New York is added, to be effective upon publication of a Notice of Adoption in the New York State Register, to read as follows:

SUBPART 67-4: Lead Testing in School Drinking Water

Section 67-4.1 Purpose.

This Subpart requires all school districts and boards of cooperative educational services, including those already classified as a public water system under 10 NYCRR Subpart 5-1, to test potable water for lead contamination and to develop and implement a lead remediation plan, where applicable.

Section 67-4.2 Definitions.

As used in this Subpart, the following terms shall have the stated meanings:

(a) *Action level* means 15 micrograms per liter ($\mu\text{g/L}$) or parts per billion (ppb). Exceedance of the action level requires a response, as set forth in this Subpart.

(b) *Building* means any structure, facility, addition, or wing of a school that may be occupied by children or students. The terms shall not include any structure, facility, addition, or wing of a school that is lead-free, as defined in section 1417 of the Federal Safe Drinking Water Act.

(c) *Commissioner* means the State Commissioner of Health.

(d) *Department* means the New York State Department of Health.

(e) *Outlet* means a potable water fixture currently or potentially used for drinking or cooking purposes, including but not limited to a bubbler, drinking fountain, or faucets.

(f) *Potable water* means water that meets the requirements of 10 NYCRR Subpart 5-1.

(g) *School* means any school district or board of cooperative educational services (BOCES).

Section 67-4.3 Monitoring.

(a) All schools shall test potable water for lead contamination as required in this Subpart.

(b) First-draw samples shall be collected from all outlets, as defined in this Subpart. A first-draw sample volume shall be 250 milliliters (mL), collected from a cold water outlet before any water is used. The water shall be motionless in the pipes for a minimum of 8 hours, but not more than

18 hours, before sample collection. First-draw samples shall be collected pursuant to such other specifications as the Department may determine appropriate.

(c) Initial first-draw samples.

(1) For existing buildings in service as of September 6, 2016, schools shall complete collection of initial first-draw samples according to the following schedule:

- (i) for any school serving children or students in any of the levels prekindergarten through grade five, collection of samples is to be completed by September 30, 2016;
- (ii) for any school serving children or students in any of the levels grades six through twelve that are not also serving children or students in any of the levels prekindergarten through grade five, and all other applicable buildings, collection of samples is to be completed by October 31, 2016.

(2) For buildings put into service after September 6, 2016, initial first-draw samples shall be performed prior to occupancy; provided that if the building is put into service between the effective date of this regulation but before October 31, 2016, the school shall have 30 days to perform first-draw sampling.

(3) Any first-draw sampling conducted consistent with this Subpart that occurred after January 1, 2015 shall satisfy the initial first-draw sampling requirement.

(d) Continued monitoring. Schools shall collect first-draw samples in accordance with subdivision (b) of this section again in 2020 or at an earlier time as determined by the

commissioner. Schools shall continue to collect first-draw samples at least every 5 years thereafter or at an earlier time as determined by the commissioner. All such sampling shall be conducted according to procedures as determined by the commissioner.

(e) All first-draw samples shall be analyzed by a laboratory approved to perform such analyses by the Department's Environmental Laboratory Approval Program (ELAP).

Section 67-4.4 Response.

If the lead concentration of water at an outlet exceeds the action level, the school shall:

(a) prohibit use of the outlet until:

(1) a lead remediation plan is implemented to mitigate the lead level of such outlet; and

(2) test results indicate that the lead levels are at or below the action level;

(b) provide building occupants with an adequate supply of potable water for drinking and cooking until remediation is performed;

(c) report the test results to the local health department as soon as practicable, but no more than 1 business day after the school received the laboratory report; and

(d) notify all staff and all persons in parental relation to children or students of the test results, in writing, as soon as practicable but no more than 10 business days after the school received the laboratory report; and, for results of tests performed prior to September 6, 2016, within 10 business days after September 6, 2016, unless such written notification has already occurred.

Section 67-4.5 Public Notification.

(a) List of lead-free buildings. By October 31, 2016, the school shall make available on its website a list of all buildings that are determined to be lead-free, as defined in section 1417 of the Federal Safe Drinking Water Act.

(b) Public notification of testing results and remediation plans.

(1) The school shall make available, on the school's website, the results of all lead testing performed and lead remediation plans implemented pursuant to this Subpart, as soon as practicable, but no more than 6 weeks after the school received the laboratory reports.

(2) For schools that received lead testing results and implemented lead remediation plans in a manner consistent with this Subpart, but prior to September 6, 2016, the school shall

make available such information, on the school's website, as soon as practicable, but no more than 6 weeks after September 6, 2016.

Section 67-4.6 Reporting.

(a) As soon as practicable but no later than November 11, 2016, the school shall report to the Department, local health department, and State Education Department, through the Department's designated statewide electronic reporting system:

(1) completion of all required first-draw sampling;

(2) for any outlets that were tested prior to September 6, 2016, and for which the school wishes to assert that such testing was in substantial compliance with this Subpart, an attestation that:

(i) the school conducted testing that substantially complied with the testing requirements of this Subpart, consistent with guidance issued by the Department;

(ii) any needed remediation, including re-testing, has been performed;

(iii) the lead level in the potable water of the applicable building(s) is currently below the action level; and

(iv) the school has submitted a waiver request to the local health department, in accordance with Section 67-4.8 of this Subpart; and

(3) a list of all buildings that are determined to be lead-free, as defined in section 1417 of the Federal Safe Drinking Water Act.

(b) As soon as practicable, but no more than 10 business days after the school received the laboratory reports, the school shall report data relating to test results to the Department, local health department, and State Education Department, through the Department's designated statewide electronic reporting system.

Section 67-4.7 Recordkeeping.

The school shall retain all records of test results, lead remediation plans, determinations that a building is lead-free, and waiver requests, for ten years following the creation of such documentation. Copies of such documentation shall be immediately provided to the Department, local health department, or State Education Department, upon request.

Section 67-4.8 Waivers.

(a) A school may apply to the local health department for a waiver from the testing requirements of this Subpart, for a specific school, building, or buildings, by demonstrating in a manner and pursuant to standards determined by the Department, that:

- (1) prior to the publication date of these regulations, the school conducted testing that substantially complied with the testing requirements of this Subpart;
- (2) any needed remediation, including re-testing, has been performed; and

(3) the lead level in the potable water of the applicable building outlets are currently below the action level.

(b) Local health departments shall review applications for waivers for compliance with the standards determined by the Department. If the local health department recommends approval of the waiver, the local health department shall send its recommendation to the Department, and the Department shall determine whether the waiver shall be issued.

Section 67-4.9 Enforcement.

(a) Upon reasonable notice to the school, an officer or employee of the Department or local health department may enter any building for the purposes of determining compliance with this Subpart.

(b) Where a school does not comply with the requirements of this Subpart, the Department or local health department may take any action authorized by law, including but not limited to assessment of civil penalties as provided by law.

REGULATORY IMPACT STATEMENT

Statutory Authority:

The statutory authorities for the proposed regulation are set forth in Public Health Law (PHL) §§ 1110 and 1370-a. Section 1110 of the PHL directs the Department of Health (Department) to promulgate regulations regarding the testing of potable water provided by school districts and boards of cooperative education services (BOCES) (collectively, “schools”) for lead contamination. Section 1370-a of the PHL authorizes the Department to establish programs and coordinate activities to prevent lead poisoning and to minimize the risk of exposure to lead.

Legislative Objective:

The legislative objective of PHL § 1110 is to protect children and students by requiring schools to test their potable water systems for lead contamination. Similarly, PHL § 1370-a authorizes the Department to establish programs and coordinate activities to prevent lead poisoning and to minimize the risk of exposure to lead. Consistent with these objectives, this regulation adds a new Subpart 67-4 to Title 10 of the New York Codes, Rules, and Regulations, establishing requirements for schools to test their potable water outlets for lead contamination.

Needs and Benefits:

Lead is a toxic material that is harmful to human health if ingested or inhaled. Children and pregnant women are at the greatest risk from lead exposure. Scientists have linked lead exposure with lowered IQ and behavior problems in children. It is also possible for lead to be stored in

bones and it can be released into the bloodstream later in life, including during pregnancy. Further, during pregnancy, lead in the mother's bloodstream can cross the placenta, which can result in premature birth and low birth weight, as well as problems with brain, kidney, or nervous system development, and learning and behavior problems. Studies have also shown that low levels of lead can negatively affect adults, leading to heart and kidney problems, as well as high blood pressure and nervous system disorders.

Lead is a common metal found in the environment. The primary source of lead exposure for most children is lead-based paint. However, drinking water is another source of lead exposure due to the lead content of certain plumbing materials and source water.

Laws now limit the amount of lead in new plumbing materials. However, plumbing materials installed prior to 1986 may contain significant amounts of lead. In 1986, the federal government required that only "lead-free" materials be used in new plumbing and plumbing fixtures.

Although this was a vast improvement, the law still allowed certain fixtures with up to 8 percent lead to be labeled as "lead free." In 2011, amendments to the Safe Drinking Water Act appropriately re-defined the definition of "lead-free." Although federal law now appropriately defines "lead-free," some older fixtures can still leach lead into drinking water.

Elevated lead levels are commonly found in the drinking water of school buildings, due to older plumbing and fixtures and intermittent water use patterns. Currently, only schools that have their own public water systems are required to test for lead contamination in drinking water.

In the absence of federal regulations governing all schools, the Department's regulations require all schools to monitor their potable drinking water for lead. The new regulations: establish an action level of 15 micrograms per liter (equivalent to parts per billion, or ppb) for lead in the drinking water of school buildings; establish initial and future monitoring requirements; require schools to develop remedial action plans if the action level is exceeded at any potable water outlet; conduct public notification of results to the school community; and report results to the Department. The Environmental Protection Agency's "3Ts for Reducing Lead in Drinking Water in Schools, Revised Technical Guidance" will be used as a technical reference for implementation of the regulation.

Compliance Costs:

Costs to Private Regulated Parties:

This regulation only applies to public schools. No private schools are affected.

Costs to State Government and Local Government

This regulation applies to schools, which are a form of local government. There are approximately 733 school districts and 37 BOCES in New York State, which include over 5,000 school buildings that will be subject to this regulation.

The regulation requires schools to test each potable water outlet for lead, in each school building occupied by children or students, unless the building is determined to be lead-free pursuant to federal standards. The cost for a single lead analysis ranges from \$20 - \$75 per sample. Initial monitoring requires one sample per outlet. The number of outlets will vary from building to building.

If lead is detected above 15 ppb at any potable water outlet, the outlet must be taken out of service and a remedial action plan must be developed to mitigate the lead contamination, at the school's initial expense. Remediation costs can vary significantly depending on the plumbing configuration and source of lead. The school will also incur minor costs for notification of the school community and local health department, posting the information on their website, and reporting electronically to the Department. Recently enacted legislation authorizes schools to receive State Aid through the State Education Department ("SED") to defray these costs.

Local health departments will also incur some administrative costs related to tracking local implementation, reviewing waiver applications, and compliance oversight. These activities will be eligible for State Aid through the Department's General Public Health Work program.

Local Government Mandates:

Schools, as a form of local government, are required to comply with the regulations, as detailed above.

Paperwork:

The regulation imposes recordkeeping requirements related to: monitoring of potable water outlets; notifications to the public and local health department; and electronic reporting to the Department.

Duplication:

There will be no duplication of existing State or Federal regulations.

Alternatives:

There are no significant alternatives to these regulations, which are being promulgated pursuant to recent legislation.

Federal Standards:

There are no federal statutes or regulations pertaining to this matter. However, the Department's regulations are consistent with the United States Environmental Protection Agency's guidance document titled *3Ts for Reducing Lead in Drinking Water in Schools, Revised Technical Guidance* (available at: https://www.epa.gov/sites/production/files/2015-09/documents/toolkit_leadschools_guide_3ts_leadschools.pdf). EPA's document will serve as guidance to schools for implementing the program.

Compliance Schedule:

Schools should already be compliant with the regulation, pursuant to an identical emergency regulation filed by the Department on September 6, 2016, which established compliance deadlines of September 30, 2016, and October 31, 2016, for elementary and higher-level grades, respectively. Further, both the emergency and these permanent regulations require schools to perform testing for purposes of monitoring in 2020, and at least every 5 years thereafter.

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REGULATORY FLEXIBILITY ANALYSIS FOR SMALL BUSINESS AND LOCAL GOVERNMENTS

Effect on Small Business and Local Governments:

This regulation applies to schools, which are a form of local government. As explained in the Regulatory Impact Statement, the new regulations: establish an action level of 15 micrograms per liter (equivalent to parts per billion, or ppb) for lead in the drinking water of school buildings; establish initial and future monitoring requirements; require schools to develop remedial action plans if the action level is exceeded at any potable water outlet; conduct public notification of results to the school community; and report results to the Department. The Environmental Protection Agency's *3Ts for Reducing Lead in Drinking Water in Schools, Revised Technical Guidance* will be used as a technical reference for implementation of the regulation. Local health departments will also incur some administrative costs related to tracking local implementation and oversight of the regulation.

Additionally, the regulations require the services of a laboratory certified by the Department under its Environmental Laboratory Approval Program (ELAP). Some schools may also wish to hire environmental consultants to assist with compliance. Some labs and environmental consultants qualify as small businesses and, at least initially, their services will be in greater demand due to the new regulation.

Compliance Requirements:

As noted above, the new regulations: establish an action level of 15 micrograms per liter (equivalent to parts per billion, or ppb) for lead in the drinking water in school buildings; establish initial and future monitoring requirements; require schools to develop remedial action plans if the action level is exceeded at any potable water outlet; conduct public notification of results to the school community; and requiring reporting of results to the Department.

Reporting and Recordkeeping:

The regulation will impose new monitoring, reporting, and public notification requirements for schools.

Professional Services:

As noted above, the regulation requires the services of a laboratory certified by the Department under its ELAP. Some schools may also wish to hire environmental consultants to assist with compliance.

Compliance Costs:

The regulation will require schools to test each potable water outlet for lead, in each school building occupied by children or students. The cost for a single lead analysis ranges from \$20 - \$75 per sample. Initial monitoring requires one sample per outlet. The number of outlets will vary from building to building.

If lead is detected above 15 ppb at any potable water outlet, the outlet must be taken out of service and a remedial action plan must be developed to mitigate the lead contamination, at the

school's expense. Remediation costs can vary significantly depending on the plumbing configuration and source of lead. The school will also incur minor costs for notification of the school community and local health department, posting the information on their website, and reporting electronically to the Department. Recently enacted legislation authorizes schools to receive State Aid through the State Education Department ("SED") to defray these costs.

Local health departments will also incur some administrative costs related to tracking local implementation, reviewing waiver applications, and compliance oversight. These activities will be eligible for State Aid through the Department's General Public Health Work (GPHW) program.

Cost to Private Parties:

There are no costs to private parties.

Economic and Technological Feasibility:

The technology for lead testing of drinking water is well-established. With respect to schools' costs of compliance, State Aid will be available through the SED to ensure that compliance is feasible. Local health department activities will be eligible for State Aid through the Department's GPHW program.

Minimizing Adverse Impact:

Any school that has already performed testing in compliance with these regulations, as far back as January 1, 2015, does not need to perform sampling again. Further, consistent with the

requirements of PHL § 1110, if a school has performed testing that substantially complies with the regulation, the school may apply to the Department for a waiver, so that additional testing is not required. In either case, the requirement to report sample results, and other requirements, remain in place.

School buildings that are determined to be “lead-free,” as defined in section 1417 of the Federal Safe Drinking Water Act, do not need to test their outlets. Schools will be required to make available on their website a list of all buildings that are determined to be lead-free.

Small Business and Local Government Participation:

Although small businesses were not consulted on this specific regulation, the dangers of lead in school drinking water has garnered significant local, state, and national attention. The New York State School Board Association (NYSSBA) requested a meeting with the Department to discuss the impacts of the enabling legislation. NYSSBA provided feedback on testing, prior monitoring, and other matters. The Department took this feedback into consideration when drafting the regulation. The Department also conducted public outreach following the emergency regulation, and provided an opportunity to comment on the proposed permanent regulations. The Department has prepared an assessment of all public comments received.

RURAL AREA FLEXIBILITY ANALYSIS

Pursuant to Section 202-bb of the State Administrative Procedure Act (SAPA), a rural area flexibility analysis is not required. These provisions apply uniformly throughout New York State, including all rural areas. The proposed rule will not impose an adverse economic impact on rural areas, nor will it impose any disproportionate reporting, recordkeeping or other compliance requirements on the regulated entities in rural areas.

JOB IMPACT STATEMENT

The Department expects there to be a positive impact on jobs or employment opportunities. Some school districts will likely hire firms or individuals to assist with regulatory compliance. Schools impacted by this amendment will require the professional services of a certified laboratory to perform the analyses for lead, which will create a need for additional laboratory capacity.

Categories and Numbers Affected:

The Department anticipates no negative impact on jobs or employment opportunities resulting from the proposed regulation.

Regions of Adverse Impact:

The Department anticipates no negative impact on jobs or employment opportunities in any specific region of the state.

Minimizing Adverse Impact:

Not applicable.

ASSESSMENT OF PUBLIC COMMENT

Public comments were submitted to the New York State Department of Health (Department) on the Emergency and the proposed permanent Regulation, Subpart 67-4 of title 10 of the New York State Codes, Rules and Regulations (NYCRR), which requires public schools and boards of cooperative educational services (BOCES) to test all potable water outlets for lead contamination and take responsive actions to remediate outlets that exceeded the lead action level. The Department received comments from a school organization, a private citizen, a County Health Department, and an advocacy organization. These comments and the Department's responses are summarized below.

COMMENT: One commenter requested that education about the hazard of the potential of increased lead caused by using "hot water" for drinking/cooking purposes be better communicated.

RESPONSE: Detailed information regarding ways to reduce exposure to lead in drinking water is provided on the Department's webpage.

COMMENT: Two commenters requested that the final regulation be expanded to include private (non-public) schools and daycare operations.

RESPONSE: A statutory amendment would be required to include private schools, in the definition of school in the regulation. However, the Department encourages voluntary

compliance with this regulation for all organizations and facilities that serve children, whenever possible.

COMMENT: One commenter stated that better guidance is needed to define the term “outlet” to reduce the possibility of inconsistent application of the regulation between schools and school districts.

RESPONSE: The Department will evaluate the benefit and consider development of additional guidance to further clarify what constitutes an outlet, in advance of the next sampling event in 2020.

COMMENT: One commenter suggested that the public notification of test results and remediation plans on the school’s website may limit the amount of people viewing the results, especially those disenfranchised; and that notification of lead levels at or exceeding the action level should be made available on the school’s website in accessible form for persons with disabilities, in addition to the required hard copy.

RESPONSE: The regulation only requires the school to publish test results and remediation plans on the school website. The school may provide written copies to ensure that the parents of children attending such school have access to the information. Also, it is the school’s responsibility to ensure that its website is compliant with the Americans with Disabilities Act.

COMMENT: One commenter suggested adding a provision to allow enforcement of the regulation through a citizen suit.

RESPONSE: The proposed regulation allows for the Department and Local Health Departments to take adequate action authorized by law against a school that does not comply with the proposed regulation.

COMMENT: One commenter stated that the regulation should indicate that the same response is required whether the presence of lead is at the action level or exceeds the action level.

RESPONSE: The proposed regulation defines the action level to mean "...15 micrograms per liter... Exceedance of the action level requires a response, as set forth in this Subpart." If schools decide to use a more conservative approach and initiate remediation at a lower lead concentration than what is required by the regulation, they are free to do so.

COMMENT: One commenter stated that the regulation is unclear when it discusses whether a building is below the action level and suggested only referring to action levels in terms of outlets.

RESPONSE: The text of the regulation will be clarified by adding the word "outlets" to section 67-4.8(a)(3).

COMMENT: One commenter stated that the term “compliant” should be consistently used throughout the regulation, and not confused with “substantially compliant,” specifically citing the use of the term “substantially complied” in clause 67-4.6(a)(2)(i).

RESPONSE: The use of the term “substantially complied” in the regulation specifically pertains to waiver criterion, and is defined in the waiver application form.

COMMENT: One commenter requested a more consistent use of terms throughout the regulation when referring to the student population in a school (“children or students” vs. “students” vs. “children”), to maintain internal consistency.

RESPONSE: Use of the term “children or students” has been standardized throughout the regulation.

COMMENT: Two commenters requested more specification in the “Continued Monitoring” section. Specifically, one commenter suggested that deadlines for future sampling be staggered throughout the year to limit laboratories capacity concerns and one commenter suggested that continued monitoring dates be specific to assist regulated parties in planning for cost of compliance.

RESPONSE: In advance of the next sampling event in 2020, consideration will be given to designating specific dates for when schools will be required to conduct their sampling, taking into consideration laboratory capacity concerns. School districts should plan accordingly as part

of the annual budgetary process for sampling and remediation costs associated with regulatory compliance.

COMMENT: Two commenters requested that the regulation provide more information about the action level including: a justification why the 0.15 mg/L action level was selected; information to ensure that the public is not misled to believe that the action level is a “safe level” of lead exposure; and information that distinguishes this regulation from the tests and purpose of the Lead and Copper Rule.

RESPONSE: The Department chose the 0.15 mg/L action level for lead testing in school drinking water to be consistent with the Environmental Protection Agency’s action level for the Lead and Copper Rule, as required by Public Health Law. The Department also has information on its website (<https://www.health.ny.gov/publications/2508/>) dedicated to educating and explaining the harmful effects of lead in drinking water.

COMMENT: One commenter requested that the testing protocol be better explained to ensure that the public does not mistakenly rely on the test results as a determinant of health risks.

RESPONSE: Explanatory information is not typically in regulation; the Department will explore issuing guidance or updating its website regarding health risks associated with lead in drinking water.

COMMENT: One commenter requested that the regulation be amended to include stagnation time as part of the monitoring and reporting data, to help in comparing results.

RESPONSE: The legislation and regulation requires that the water shall be motionless in the pipes for a minimum of 8 hours, but not more than 18 hours (stagnation time), before sample collection. If schools choose to keep records of the stagnation times prior to the sampling event, they are free to do so.

COMMENT: One commenter stated that the “first draw” sample collection methodology is predisposed to identifying contamination from fixture materials and adjacent plumbing, thereby potentially overlooking potential contamination from “upstream sources.”

RESPONSE: A two-step sampling process (first draw, followed by a flush sample) helps to identify the actual source(s) of lead. In Step 1, (first draw) initial samples are collected to identify the location of outlets providing water with elevated lead levels. In Step 2, a follow-up flush sample is taken only from outlets identified as problem locations to determine the lead level of water that has been stagnant in upstream plumbing, but not in the outlet fixture. Sample results are then compared to determine the sources of lead contamination and to determine appropriate corrective measures.

COMMENT: One commenter stated that the testing protocol insufficiently characterizes the mechanism of release of lead, “dissolved lead” versus “particulate lead,” stating that the mechanism could be important in determining the appropriate remedial action.

RESPONSE: Determining the mechanism of release of lead into the drinking water was not the intent of the legislation. The objective of the legislation is to remove potential sources of lead, when the lead concentration at an outlet is determined to exceed the action level, regardless of whether or not the lead was dissolved or particulate in nature.

COMMENT: One commenter stated that the regulation should require an effective response to lead in school drinking water and include clear guidance as to what constitutes acceptable remediation.

RESPONSE: There are many and varied acceptable remedial actions that a school can undertake to reduce the concentration of lead in the drinking water. The intent of the regulation is to remove sources of lead from the drinking water and not dictate how the remediation is accomplished.

COMMENT: One commenter requested that the regulation include information on each school's compliance with their response and public notification responsibilities, and that the reports be compiled to create a publicly available record of test results, remediation and schools' compliance.

RESPONSE: The Department will consider the feasibility of making a public database of information reported for this regulation.

COMMENT: One commenter stated that only one agency should have primary responsibility for enforcement.

RESPONSE: The Department will enforce the regulation in those geographic jurisdictions where county health departments do not deliver environmental health services, and may initiate enforcement, as appropriate, in any local jurisdiction of the state.

COMMENT: One commenter stated that the regulation package should include the costs of continued monitoring, remediation implementation, and notification and reporting.

RESPONSE: Costs associated with compliance for this regulation are detailed in the State Administrative Procedure Act (SAPA) documents that accompany the regulation.

COMMENT: One commenter requested that guidance or best management practices be developed for the use of “Point-of-Use” (POU) filters to ensure that they are installed and maintained properly to minimize lead exposures.

RESPONSE: Consideration will be given to the development of guidance and best management practices for the use of POU filters to standardize the use and maintenance of these devices.

COMMENT: One commenter stated the use of multiple references to the effective date was confusing, and suggested changing the regulation to reflect the effective date of the emergency regulation.

RESPONSE: Specific date references have been inserted, where appropriate, throughout the regulation.

COMMENT: One commenter requested clarification on what outlets need to be sampled, and which outlets do not.

RESPONSE: In recognition of the fact that each school district has its own unique characteristics that are specific to their jurisdiction and authority, each school district is responsible for conducting a thorough evaluation of their school buildings' plumbing system and identify those outlets that need to be sampled in each building.

COMMENT: One commenter asked if controls such as placarding, policy and education can be regarded as adequate control instead of sampling all outlets.

RESPONSE: Signage used at outlets that exceed the action level are a temporary measure for remediation and cannot be used as a permanent measure. If the school has evaluated and determined that an outlet is not currently or potentially used for cooking or drinking purposes, then sampling is not required under this regulation.

COMMENT: One commenter stated that sending out physical written notification is antiquated, expensive and somewhat ineffective, and suggested that the law consider requiring

such notification in accordance with each district's current policy, or include a more efficient method of notification.

RESPONSE: Public Health Law requires written notification be made to the parents or persons in parental relation to a child attending a school that had findings of lead concentration(s) that exceeds the action level.

COMMENT: A commenter requested that the law clarify whether a response is necessary for only the initial sampling in 2016, or is this response required for all future sample events, in 2020 and beyond.

RESPONSE: The legislation and regulation specifically require an appropriate response when the lead concentration in the drinking water outlet exceeds the action level for initial sampling, re-testing after remediation, as well as in future continued monitoring events.

COMMENT: One commenter requested clarification as to whether any newly installed outlets must be sampled and test results revealed at or below the action level prior to use.

RESPONSE: The regulation requires all newly installed outlets be tested to ensure that they meet the requirements under this regulation, unless the building's plumbing materials are deemed to be "lead-free" as defined by section 1417 of the Federal Safe Drinking Water Act.

COMMENT: One commenter requested that the law clarify procedures to ensure that the water is not motionless for more than 18 hours prior to sampling.

RESPONSE: In advance of the next sampling event in 2020, consideration will be given to providing guidance on stagnation times and recommended preparation practices to ensure that the water is motionless for 8 to 18 hours prior to sampling.