

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

Section 67-4.2 is amended to read as follows:

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

(a) *Action level* means [15]5 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.]

\* \* \*

Subdivision (c) of section 67-4.3 is repealed and subdivisions (d) and (e) are re-lettered as (c) and (d), respectively, and amended to read as follows:

[(d)] (c) [Continued] [m]Monitoring. Schools shall collect first-draw samples in accordance with subdivision (b) of this section [again in 2020]by December 21, 2025 or at an earlier time as determined by the commissioner. Schools shall continue to collect first-draw samples at least every [5] three 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. For buildings put into service after

December 22, 2022, initial first-draw samples shall be performed in accordance with subdivision (b) of this section prior to occupancy.

[(e)] (d) 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 is amended to read as follows:

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

\* \* \*

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

\* \* \*

(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.]

Subdivision (a) of section 67-4.5 is repealed and subdivision (b) is re-lettered and amended to read as follows:

[(b)](a) Public Notification of testing and remediation plans.

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

Subdivision (a) of section 67-4.6 is repealed and subdivision (b) is re-lettered as (a).

Subdivision (a) of section 67-4.8 is amended to read as follows:

(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;

\* \* \*

## **REGULATORY IMPACT STATEMENT**

### **Statutory Authority:**

Section 1110 of the Public Health Law (PHL) requires the Department to promulgate regulations that require school districts and boards of cooperative education services (BOCES) to test for lead in potable water, respond when test results are above the lead action level, report analytical results for lead testing and notify the public of lead test results.

### **Legislative Objective:**

The legislative objective of PHL § 1110 is to protect children by requiring schools to test their potable water systems for lead contamination. The proposed amendments meet the legislative objective by requiring school districts and BOCES to test for lead in potable water every three years, respond when test results are above the lead action level, report analytical results for lead testing, and notify the public of lead test results.

### **Needs and Benefits:**

The proposed amendments reflect changes added to PHL section 1110. These changes lower the action level for lead in school drinking water from 15 parts per billion (ppb) to 5 ppb; strengthen reporting requirements by requiring school districts to post lead test reports provided by environmental laboratories; establish a set monitoring period of three (3) years for school lead testing; and require initial monitoring for school buildings placed into service after September, 2022. Additionally, the changes clarify that, when remediation is required, schools will be obligated to provide their students, faculty and staff with access to potable water at no charge. These amendments are

intended to reduce childhood exposure to lead from drinking water in the educational setting and improve transparency.

## **Costs**

### **Costs for the Implementation of and Continuing Compliance with the Regulation to the Regulated Entity:**

The proposed amendments will increase costs to regulated entities by increasing the frequency of monitoring and requiring corrective action for outlets with lead results greater than 5 ppb rather than 15 ppb. The New York State Department of Health neither receives nor tracks lead test data in a form or fashion that directly provides information for results greater than 5 ppb. The League of Conservation Voters Education Fund (LCVEF), through its efforts to track and compile available lead testing results, estimates that 17.2% of outlets in New York State, approximately 63,400 outlets, have yielded sample results between 5 ppb and 15 ppb. This is consistent with assessments from other states including Vermont, which reports that 19% of outlets tested are above that State's action level of 4 ppb (<https://leadresults.vermont.gov/summary>).

Corrective action includes but is not limited to removing outlets from service, replacing fixtures, or providing filters. Schools will incur costs for remediation of outlets with lead results between 5 ppb and 15 ppb. Compliance costs will vary greatly depending on the type of outlet or type of corrective action selected by the regulated entity. The installation of filters and/or other effective measures for immediate remediation are potentially eligible for state funding from the New York State Education Department in cases where a finding of lead contamination is made. Remedial measures

that are aidable expenses must be permanently installed devices, as opposed to costs associated with control of access. Based on their research, the LCVEF estimates that the cost to replace fountains and faucets with lead results above 5 ppb will be approximately \$30M. The New York State Education Department reports that remediation costs were \$3,141,336 for school year 2015-16, \$9,915,326 for school year 2016-17, \$15,094,692 for 2017-18 and \$8,165,210 for 2018-2019. Remedial cost reports are only available through the 2018-2019 school year, when changes to Chapter 53 of the laws of 2019 provided that, beginning in the 2019-20 school year, only expenditures for water testing are aidable under this provision. Remediation expenditures are no longer reported. Amendments to PHL section 1110 identify funding under the Clean Water Infrastructure Improvement Act (CWIA), administered by the New York State Department of Environmental Conservation, as a mechanism to reimburse remediation costs for school districts.

The costs associated with testing in all occupied buildings owned or leased by a school district or BOCES are eligible for aid. The costs associated with testing for lead in water outlets located on the site of a school district or BOCES building, such as outlets in a concession building or an exterior drinking fountain, are also considered an approved expense for aid. School districts and BOCES are currently required to monitor for lead in potable water every five (5) years. This regulation reduces the frequency to every three (3) years. The New York State Education Department reports that since the onset of the program, testing costs have totaled \$60M. Collectively, testing costs reimbursed through State Aid were \$15,541,090 for school year 2015-2016, \$22,749,267 for school year 2016-2017, \$1,950,470 for school year 2017-2018, \$9,280,542 for school year 2018-

2019, \$3,486,576 for school year 2019-20, \$7,091,083 for school year 2020-21, and \$1,425,049 for school year 2021-22. During 2020, the most recent compliance year, 319,353 outlets were sampled.

Based on costs of the existing program, compliance with the first three-year monitoring period under the proposed amendments is estimated to be \$40 million for testing based on previous expenditures, and \$45 million for remediation based on an estimated 17% of outlets between 5 and 15 ppb. The total cost of the program is estimated to be \$85 million for the first three-year compliance period. The cost of testing is expected to escalate at the rate of inflation for subsequent monitoring periods and the cost of remediation is expected to decrease as outlets are remediated or removed from service.

**Costs to State and Local Governments:**

Costs will be limited to the State, school districts and BOCES. Costs are outlined in the section titled “Costs for the Implementation of and Continuing Compliance with the Regulation to the Regulated Entity” in this Regulatory Impact Statement.

**Costs to the Department of Health:**

The Department of Health will need to make improvements to and maintain the existing data management systems to accommodate new testing data. This cost is expected to be approximately \$200,000. In addition, two full time staff will be needed to administer the program, at an annual cost of \$212,000. Total cost to the Department of Health is expected to be approximately \$412,000 per year.

**Local Government Mandates:**

This regulation affects school districts and BOCES. There are no other local government impacts.

**Paperwork:**

This regulation requires that school districts and BOCES make laboratory reports available to the public, which increases the paperwork burden. Since most regulated entities receive laboratory reports electronically and will post this information on websites, the additional paperwork burden is expected to be minimal.

**Duplication:**

These amendments do not duplicate any state or federal requirements.

**Alternatives:**

Since these amendments are required by Public Health Law, no other alternatives were considered.

**Federal Standards:**

There are no federal requirements for school districts to test for lead in drinking water. Public water supplies will be required to sample for lead in schools beginning October 16, 2024, in accordance with 40 CFR 141.92.

**Compliance Schedule:**

This proposed rule will become effective immediately upon adoption. School districts and BOCES will be required to monitor within three years of December 22, 2022



or by December of 2025. Regulated entities can collect all samples within a single year or collect samples throughout the three-year monitoring period. Once sample results are received, water systems must take corrective actions immediately to remove the tap from service or replace the tap as appropriate.

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## **REGULATORY FLEXIBILITY ANALYSIS FOR SMALL BUSINESSES AND LOCAL GOVERNMENTS**

### **Effect of Rule:**

The rule requires school districts and Boards of Cooperative Education Services (BOCES) to test for lead every three years, instead of every five years and lowers the level at which action is required from fifteen (15) parts per billion (ppb) to five (5) ppb. Small businesses are not required to comply with this rule.

### **Compliance Requirements:**

Compliance is limited to school districts and BOCES. Regulated entities will be required to collect lead samples every three years; remediate all outlets where test results indicate lead levels above 5 ppb; provide notification when results are above 5 ppb; and make laboratory reports available for all tests taken. Currently, regulated entities must collect samples every 5 years, remediate all outlets where test results indicate levels above 15 ppb, and provide notification when outlets are above 15 ppb.

### **Professional Services:**

Some laboratories that provide analytical services are considered small businesses. These laboratories may see an increase in requests for services due to the increase in monitoring frequency. There is anticipated to be sufficient laboratory capacity.

Some corrective actions may require the services of engineering or specialty consultants with experience in drinking water treatment or building water management. There is anticipated to be sufficient engineering and consulting capacity.

**Compliance Costs:**

Compliance is limited to school districts and BOCES. There are no costs to small businesses as a result of this regulation. The total cost of the program is estimated to be \$40M for testing and \$45M for remediation in first three-year monitoring period. The cost of testing is expected to increase each subsequent compliance period at the rate of inflation, while remediation costs are expected to decrease over time. Amendments to PHL section 1110 identify funding under the Clean Water Infrastructure Improvement Act (CWIA), administered by the New York State Department of Environmental Conservation (NYSDEC), as a mechanism to reimburse remediation costs for school districts. Testing expenses are building aidable and eligible for reimbursement in accordance with New York State Education Law, through the New York State Education Department (NYSED).

**Economic and Technological Feasibility:**

Lead may still be present in fixtures that are labeled “lead free”. In accordance with regulatory requirements, lead free fixtures may still contain up to 0.25% lead on the wetted surface. As such, fixtures that have been replaced during previous compliance periods may need to be replaced again because of the more stringent action level of 5 ppb. Similarly, leaded brass or solder commonly used in plumbing may contribute to lead levels above the action level. Since complete plumbing replacement is impractical, school

districts or BOCES may elect to install filtration or corrosion control treatment.

Corrosion control treatment usually involves addition of a corrosion inhibitor such as orthophosphate to all water entering the building.

With respect to economic feasibility, reimbursement for compliance costs is available through funds administered by NYSDEC and NYSED for eligible testing and remediation. In addition, the Department's General Public Health Work program provides State Aid for related local health department activities.

**Minimizing Adverse Impact:**

These amendments are required by public health law. However, reimbursement is available through funds administered by NYSDEC and NYSED for eligible testing and remediation.

**Small Business and Local Government Participation:**

These amendments impact school districts and BOCES and are required by amendments to public health law. Small business did not participate in crafting the proposed amendments to the regulation, since they are not affected by the amendments. The Department participated in the New York State School Environmental Health Conference in October of 2022 as well as an April 2023 installment of the School Environmental Health Program's regional seminar series. Participants consisted of school superintendents, building maintenance superintendents and program managers involved in the lead testing program for one or more school districts or BOCES. The Department sent several correspondences through the Integrated Health Alert Notification System to

superintendents and designated lead testing reporters regarding amendments to PHL 1110 which would require amendments to regulation.

## RURAL AREA FLEXIBILITY ANALYSIS

### Types and Estimated Numbers of Rural Areas:

This rule applies uniformly throughout the state, including rural areas. Rural areas are defined as counties with a population less than 200,000 and counties with a population of 200,000 or greater that have towns with population densities of 150 persons or fewer per square mile. The following 43 counties have a population of less than 200,000 based upon the United States Census estimated county populations for 2020 ([https://www.health.ny.gov/statistics/vital\\_statistics/2020/table02.htm](https://www.health.ny.gov/statistics/vital_statistics/2020/table02.htm)). The number of school districts in each County is in parentheses. Source:

<https://data.nysed.gov/lists.php?type=county>.

Allegany (12)	Greene (6)	Schoharie (6)
Broome (12)	Hamilton (7)	Schuyler (2)
Cattaraugus (13)	Herkimer (12)	Seneca (4)
Cayuga (7)	Jefferson (11)	St. Lawrence (17)
Chautauqua (18)	Lewis (5)	Steuben (13)
Chemung (3)	Livingston (8)	Sullivan (8)
Chenango (8)	Madison (10)	Tioga (6)
Clinton (8)	Montgomery (6)	Tompkins (7)
Columbia (7)	Ontario (9)	Ulster (10)
Cortland (5)	Orleans (5)	Warren (9)
Delaware (13)	Oswego (9)	Washington (11)
Essex (12)	Otsego (12)	Wayne (11)
Franklin (7)	Putnam (6)	Wyoming (5)
Fulton (7)	Rensselaer (12)	Yates (2)
Genesee (8)	Schenectady (6)	

The following counties have a population of 200,000 or greater or towns with population densities of 150 persons or fewer per square mile. Data is based upon the United States Census estimated county populations for 2020. The number of school

districts in each County is in parentheses. Source:

<https://data.nysed.gov/lists.php?type=county>.

Albany (12)	Monroe (18)	Onondaga (18)
Dutchess (13)	Niagara (10)	Orange (17)
Erie (29)	Oneida (15)	Saratoga (12)

The following BOCES cover at least one rural county.

Albany-Schoharie-Schenectady-Saratoga BOCES  
Broome-Delaware-Tioga BOCES  
Cattaraugus-Allegany-Erie-Wyoming BOCES  
Cayuga-Onondaga BOCES  
Clinton-Essex-Warren-Washington BOCES  
Delaware-Chenago-Madison-Otsego BOCES  
Erie2-Chautauqua-Cattaraugus BOCES  
Franklin-Essex-Hamilton BOCES  
Genessee Valley BOCES  
Hamilton-Fulton-Montgomery BOCES  
Herkimer-Fulton-Hamilton-Otsego BOCES  
Jefferson-Lewis-Hamilton-Herkimer-Oneida BOCES  
Madison-Oneida BOCES  
Oneida-Herkimer-Madison BOCES  
Onondaga-Cortland-Madison BOCES  
Ontario-Seneca-Yates-Cayuga-Wayne BOCES  
Orange-Ulster BOCES  
Orleans-Niagara BOCES  
Oswego BOCES  
Otsego-Delaware-Schoharie-Greene BOCES  
Putnam-Westchester BOCES  
Rensselaer-Columbia-Greene BOCES  
Rockland BOCES  
Saint Lawrence -Lewis BOCES  
Schuyler-Steuben-Chemung-Tioga-Allegany BOCES  
Sullivan BOCES  
Tompkins-Seneca-Tioga BOCES  
Ulster BOCES  
Washington-Saratoga-Warren-Hamilton-Essex BOCES

**Reporting, Recordkeeping and Other Compliance Requirement:**

The reporting, recordkeeping and compliance requirements impact rural areas equally to other areas of the State. Since rural areas were required to comply with lead testing and reporting requirements previously, it is expected that school districts and BOCES in rural areas will be able to comply with these amendments. It is not expected that lowering the action level from 15 ppb to 5 ppb will disproportionately impact rural areas.

**Costs:**

State wide school districts and BOCES are expected to incur approximately \$45M in remediation costs and between \$40M per monitoring period in analytical costs. These costs will be reimbursable by the State.

According to the New York State Department of Education, 80% of expenditures for remediation were in New York City where costs to remediate outlets are significantly higher than in other areas of the State. It is not expected that costs of monitoring, reporting or remediation because of lowering the action level from 15 ppb to 5 ppb will disproportionately impact rural areas.

**Minimizing Adverse Impacts:**

Amendments to PHL section 1110 identify funding under the Clean Water Infrastructure Improvement Act (CWIA), administered by the New York State Department of Environmental Conservation (NYSDEC), as a mechanism to reimburse remediation costs for school districts. Testing expenses are building aid able and eligible for reimbursement in accordance with New York State Education Law, through the New



York State Education Department (NYSED). Minimizing adverse impacts to rural areas is the same as minimizing adverse impacts in other areas of the State.

**Rural Area Participation:**

These amendments are required by the amendments to Public Health Law § 1110. Rural areas were not specifically consulted or invited to participate in the rulemaking process, since existing testing and remediation data indicates that these areas will be impacted less than areas such as New York City. The Department participated in the New York State School Environmental Health Conference in October of 2022. Participants consisted of school superintendents, building maintenance superintendents and program managers involved in the lead testing program for one or more school districts or BOCES. The participants included school and BOCES representatives from rural areas.

**STATEMENT IN LIEU OF  
JOB IMPACT STATEMENT**

A Job Impact Statement for these amendments is not being submitted because it is apparent from the nature and purposes of the amendments that they will not have a substantial adverse impact on jobs and/or employment opportunities.

## ASSESSMENT OF PUBLIC COMMENT

The New York State Department of Health (Department) received one comment from a Boards of Cooperative Educational Services (BOCES) representative on the proposed rulemaking amending Subpart 67-4 of Title 10 of the New York State Codes, Rules and Regulations (NYCRR). A summary of the comment and the Department's response are included below.

**Comment:** Commenter requested justification for the decision to lower the lead action level from 15 parts per billion (ppb) to 5 ppb, given that the Federal action level that applies to public drinking water systems remains 15 ppb. Commentor asserted that regulated schools will be forced to employ expensive treatment technologies to provide a level of public health protection not required, and that students will not benefit from, outside the school environment.

**Response:** Subpart 67-4 derives its statutory authority from Public Health Law § 1110, which was amended to reduce the action level from 15 ppb to 5 ppb. In establishing the 5 ppb standard in law, New York joined three other states and the District of Columbia with the lowest allowable lead levels in school drinking water in the nation. The proposed revisions to Subpart 67-4 align the regulation with the statute from which it derives its authority. According to the Centers for Disease Control and Prevention, protecting children from exposure to lead is important to lifelong good health. No safe blood lead level in children has been identified. Even low levels of lead in blood have been shown to

negatively affect a child's intelligence, ability to pay attention, and academic achievement. (<https://www.cdc.gov/nceh/lead/prevention/health-effects.htm>). No changes were made to the proposed regulation in response to this comment.