

**STATE BOARD OF EDUCATION  
ADMINISTRATIVE CODE  
COMMENT/RESPONSE FORM**

This comment and response form contains comments from the May 3, 2017, meeting of the State Board of Education when the draft regulations were considered at Second Discussion Level.

<b>Topic:</b>	Educational Facilities	<b>Meeting Date:</b>	June 7, 2017
<b>Code Citation:</b>	N.J.A.C. 6A:26	<b>Level:</b>	Proposal
<b>Division:</b>	Field Services	<b>Completed by:</b>	Office of Project Management

**Summary of Comments and Agency Responses:**

The following is a summary of the comments received from State Board of Education members and members of the public and the Department's responses. Each commenter is identified at the end of the comment by a letter or number that corresponds to the following list:

1. John Burns, Counsel, New Jersey School Boards Association
2. Anna Hanzes, Associate Director of Government Relations, New Jersey Education Association

1. **COMMENT:** The commenter stated the proposed rules will help school districts to identify problems of lead exposure of water that comes into schools, while the \$10 million authorized to reimburse district boards of education for costs associated with the required testing will assist school districts in beginning to address this serious health concern. (1)

**RESPONSE:** The Department thanks the commenter for the support.

2. **COMMENT:** The commenter asked if there is a deadline for school districts to submit reimbursement requests if they tested their drinking water in 2017. (1)

**RESPONSE:** There is no firm deadline for submitting reimbursement requests. The Department will continue to encourage all school districts to submit their requests as soon as possible after completion of their testing.

3. **COMMENT:** The commenter asked when district boards of education can expect to receive the reimbursement for testing their drinking water. The commenter also asked whether school districts can be expected to be reimbursed for 100 percent of the eligible costs or if the Department anticipates that the reimbursement will be based on a *pro rata* share of the funds available. (1)

**RESPONSE:** At this time, the Department does not have adequate information to determine whether the \$10 million appropriated for reimbursement will be enough to cover all eligible expenses for all school districts required to complete the testing. Since the Department will not process reimbursements on a first-come, first-served basis, the reimbursement process will remain on hold until the Department has sufficient information.

4. **COMMENT:** The commenter questioned whether the Department expects the \$10 million authorized will cover the next round of required testing in six years or if the future testing will require additional legislative action to made more funds available. (1)

**RESPONSE:** The \$10 million dollars was included in the fiscal year 2017 budget to cover the cost of testing during the current fiscal year. The funding will cover only the initial round of testing. Any additional funding for future testing is at the discretion of the Legislature.

5. **COMMENT:** The commenter stated it is important for school districts to test for lead in drinking water, but also for remediation measures to be addressed and for adequate funding to be made available to ensure safe drinking water is provided in schools. As stated above in Response 4, any additional funding for future testing or remediation is at the discretion of the Legislature. (2)

**RESPONSE:** Decisions regarding the appropriate steps for remediation are at the discretion of each school district. Each building and water outlet is potentially unique and remediation decisions must be made on a case-by-case basis.

6. **COMMENT:** The commenter asked if the Department is aware of any funds currently available to help school districts address the challenges of remediating lead-contaminated water in schools. The commenter also asked if the Department anticipates future funding to cover remediation costs. (1)

**RESPONSE:** The Department is not aware of any funds available to help school districts with remediation efforts. Any decision about future funding is at the discretion of the Legislature.

7. **COMMENT:** The commenter recommended the Department amend N.J.A.C. 6A:26-12.4(c), which establishes the steps school districts must take within 24 hours after the district board of education has reviewed the final laboratory results, to include additional provisions at the beginning of the rule. The commenter suggested that the Department requires a district board of education, or its designee, to review the laboratory results within 72 hours of receipt. The commenter also suggested the Department prohibit school districts from waiting until the testing deadline to perform the review or to provide written notification to staff and parents. (2)

**RESPONSE:** The Department agrees and proposes an additional amendment at N.J.A.C. 6A:26-12.4(e), which establishes the steps district boards of education must take within 24 hours of reviewing final laboratory results, to also require district boards of education to review laboratory results within 72 hours of receipt.

- (e) **The district board of education, or its designee, shall complete a review of final laboratory results within 72 hours of receipt.** Within 24 hours after the district board of education, or its designee, has reviewed [and verified] the final laboratory results, the district board of education shall:

8. **COMMENT:** The commenter also stated results that are elevated but not over the limit should also be provided along with all supporting documentation. The commenter

suggested the Department amend N.J.A.C. 6A:26-12.4(c)1, which requires district boards of education to make the test results of all water samples publicly available at the school facility and on the district board of education's website within 24 hours after the district board of education has reviewed the final laboratory results, to require the public posting to also include "complete copies of all related reports from laboratories and other consultants, the plumbing survey, the Quality Assurance Project Plan (QAPP), and remediation plans." (2)

**RESPONSE:** The plumbing profile, QAPP, and other similar items are technical documents utilized in the planning process. Each school district is required to submit annually to the Department a statement of assurance signed by the chief school administrator or school business administrator attesting to the thoroughness of their water testing programs.

9. **COMMENT:** The commenter stated school districts should be required to use plain, clear language when reporting on sample results and sample locations and to put the results and locations in one document. The commenter stated school districts sometimes report sample results and sample locations in different documents that require cross-referencing or deciphering codes, which can be difficult for staff and parents to interpret.

The commenter also suggested the Department amend N.J.A.C. 6A:26-12.4(c)2, which, as amended, requires school districts to provide written notification to the parents/guardians of all students attending the facility, facility staff, and the Department if any testing result exceeds the permissible lead action level and establishes the notification's required content, to add additional provisions at the end of the rule. The commenter suggested the Department require the location of each elevated lead level to be described in such a way that the staff and parents can recognize it. The commenter further recommended the Department require that elevated results and their locations be provided in the same document in a way that no cross-referencing is needed. The commenter lastly suggested the Department require the provision of written notification of the existence of the documents available under N.J.A.C. 6A:26-12.4(c)1 and where they are available for review, regardless of whether any of the results exceed the permissible lead action level. (2)

**RESPONSE:** The Department has made available to all school districts a template for a letter to parents and staff communicating any test results above the action level designated by the New Jersey Department of Environmental Protection. The template includes a section for identifying the specific location of each outlet with an exceeding test result, the actual test result, and steps taken by the school district to remediate the outlet. The template was designed to put all of the most important information into a single document in a clear and concise format.

#### **Agency-initiated Change:**

1. The Department proposes an additional amendment at N.J.A.C. 6A:26-12.4(j), which currently sets the starting date for eligibility for reimbursement at July 13, 2016. On May 11, 2017, Governor Christie enacted A-4284, which moves to January 1, 2016, the testing beginning date for reimbursement eligibility. Therefore, the Department proposes the following amendments:
  - (j) All district boards of education are eligible to be reimbursed for the water supply testing and analysis conducted pursuant to (d) above after [[July 13]] **January 1**,

2016. To receive reimbursement, the district board of education shall complete and submit to the Department a reimbursement application on a form or in a format supplied by the Department. The Department will make the reimbursement application available on its website. Nonpublic schools [choosing to conduct] **that conducted** testing in accordance with (d) above **between** ~~[[July 13]]~~ **January 1, 2016, and July 13, 2017,** may submit a reimbursement application to the Department, approval of which is subject to available funds.



**State of New Jersey**  
DEPARTMENT OF EDUCATION  
PO Box 500  
TRENTON, NJ 08625-0500

**Proposal Level**  
**June 7, 2017**

CHRIS CHRISTIE  
*Governor*

KIM GUADAGNO  
*Lt. Governor*

KIMBERLEY HARRINGTON  
*Acting Commissioner*

TO: Members, State Board of Education

FROM: Kimberley Harrington  
Acting Commissioner

SUBJECT: N.J.A.C. 6A:26, Educational Facilities

AUTHORITY: P.L. 2016, c. 10 and P.L. 2017, c. 76

REASON  
FOR ACTION: Readoption with Amendments

SUNSET DATE: June 30, 2017

### **Summary**

The Department of Education (Department) proposes to readopt with amendments the specially adopted rules at N.J.A.C. 6A:26 promulgated by the State Board of Education, effective July 13, 2016, to require immediate testing for lead in the drinking water of all New Jersey school districts, charter schools, renaissance schools, jointure commissions, educational services commissions, approved private schools for students with disabilities, State-funded early childcare facilities pursuant to N.J.A.C. 6A:13A, and receiving schools as defined by N.J.A.C. 6A:14-7.1(a) (collectively referenced as “district board of education”).

The adoption of the rules was authorized by the Fiscal Year 2017 State budget (P.L. 2016, c. 10), which also appropriated \$10 million to reimburse district boards of education for costs associated with the required testing. The rules were scheduled to expire June 30, 2017. As the Department submitted this notice of proposal to the Office of Administrative Law prior to that date, the expiration date is extended 180 days to December 27, 2017, pursuant to N.J.S.A. 52:14B-5.1.c(2).

The health, safety, and welfare of the children in the State are of utmost importance to the Department. The potential exposure to lead-contaminated drinking water poses serious health problems, particularly for children, as well as for teachers and school personnel, since the risk of lead contamination can come from pipe and plumbing fixtures in educational facilities. The risk of lead contamination also can come from a public water supplier, which has independent testing requirements. The specially adopted rules proposed for readoption with amendments institute drinking water testing at all drinking water outlets and food preparation sources in all applicable education facilities in the State.

### **Subchapter 1. General Provisions**

## **N.J.A.C. 6A:26-1.2 Definitions**

This section establishes the chapter's definitions.

The Department proposes to readopt without amendment the definitions for “certified laboratory,” “drinking water outlet,” and “lead action level” that were specially adopted July 13, 2016.

The Department proposes a new definition for “24-hour school facilities” to mean facilities that host residents on-site year round, require the availability of water at all hours, employ staff on site 24 hours a day, and/or are care facilities such as hospitals with educational programs provided at the facilities. Proposed N.J.A.C. 6A:26-12.4(d)iii(1)(A) addresses drinking water testing at 24-hour school facilities.

## **Subchapter 12. Safety Requirements for School Facilities**

### **N.J.A.C. 6A:26-12.4 Safe drinking water**

The section requires a district board of education to conduct lead sampling and analysis in all drinking water outlets to which a student or staff member has access in each school facility by July 13, 2017. The testing and analysis must be done in accordance with a lead sampling plan developed by a district board of education in accordance with the section's requirements and based on technical guidance developed by the Department, in consultation with the Department of Environmental Protection (DEP). The section also establishes the requirements for how sample analysis is to be conducted by a certified laboratory.

The section also requires a district board of education to immediately make publicly available the results of all testing conducted by posting the results at the school facility and on the district board of education's website, if applicable. District boards of education are also required to notify parents or guardians of school children attending the facility and the Department of elevated lead levels, the measures taken to immediately end use of each drinking water outlet exhibiting elevated lead levels, and the remedial actions taken to provide alternate sources of drinking water.

The section further requires district boards of education to conduct lead testing of all drinking water outlets at least every six years following the initial testing to ensure district boards of education continue to monitor and assess the quality of the drinking water in their buildings and to ensure the health, safety, and welfare of the children throughout the State. Each district board of education also is required to annually submit to the Department a statement of assurance that it is compliant with the subchapter's requirements.

The section also provides an exemption from testing in limited circumstances. A district board of education can seek an exemption from the initial testing requirement if the district board of education can demonstrate it complied with or exceeded the section's testing requirements. The section also requires a district board of education exempt from the initial testing to conduct follow-up testing in accordance with the section. The rule also requires a district board of education receiving an exemption under N.J.A.C. 6A:26-12.4(h) to either begin testing within six years of receiving the exemption or seek another exemption.

The section further allows a district board of education to seek an exemption from testing if the district board of education can demonstrate it does not use any drinking water outlets for consumption or food preparation in any of its facilities. District boards of education that seek an

exemption because they do not use drinking water outlets must submit to the Department an application documenting no drinking water outlets are used in the facilities and the provision(s) for an alternative drinking water source. A district board of education that is granted this type of exemption must either begin testing procedures within six years of receiving the exemption or reapply for it.

The section also allows district boards of education to apply for reimbursement for the costs of any water supply testing and analysis conducted after July 13, 2016. A district board of education seeking reimbursement must submit to the Department a reimbursement application available on the Department's website.

Finally, the section allows a nonpublic school choosing to conduct water testing in accordance with the rules to submit a reimbursement application to the Department, approval of which will be subject to available funds.

The Department proposes amendments at N.J.A.C. 6A:26-12.4(d), which, in part, requires a district board of education to conduct lead sampling and analysis in all drinking water outlets to which a student or staff member has access in each school facility as soon as practicable, but no later than July 13, 2017, and allows district boards of education to apply for a deadline extension of up to one year upon written demonstration that there is no laboratory available to conduct the testing by July 13, 2017. The Department proposes to delete "as soon as practicable, but no later than July 13, 2017" and the provision allowing district boards of education to seek an extension if there is no laboratory available to conduct the testing. The Department also proposes to delete the provision that requires the extension request to include evidence the district board of education requested testing from at least three certified laboratories and the laboratories' response indicating the testing could not be completed within the designated time frame. Instead, the Department proposes to require any district board of education that was granted a time extension to conduct initial testing beyond the July 13, 2017, deadline to complete initial testing no later than July 13, 2018. The Department also proposes to require district boards of education that completed initial testing prior to July 13, 2017, to perform follow-up testing in accordance with N.J.A.C. 6A:26-12.4(f). The proposed amendments are necessary because district boards of education are required to have completed their initial testing, or to have requested and received an extension, before July 13, 2017.

The Department proposes N.J.A.C. 6A:26-12.4(d)1iii(1)(A) to require 24-hour school facilities to collect first-drawn samples at drinking water outlets following a stagnation time that would likely result in the longest standing time. The proposed provision will allow applicable 24-hour facilities to test their drinking water when the longest standing time occurs, since the nature of the facilities makes it impossible to take a sample after water has stagnated for between eight and 48 hours.

The Department proposes amendments at N.J.A.C. 6A:26-12.4(e), which requires a district board of education to complete certain reporting requirements within 24 hours after it has reviewed and certified the final laboratory results, to add "; or its designee," after the first mention of "district board of education" and to delete "and verified." The proposed amendments will allow the district board of education to designate someone to review the final laboratory results without the need to verify the results, which cannot be done without utilizing the services of another laboratory.

The Department proposes additional amendments at N.J.A.C. 6A:26-12.4(e) to add "The district board of education, or its designee, shall complete a review of final laboratory results within 72 hours of receipt." This sentence will be added at the beginning of the subsection.

The Department proposes amendments at N.J.A.C. 6A:26-12.4(e)2, which, in part, requires the district board of education to provide written notification to the parents/guardians of all students attending the facility and to the Department if any results exceed the permissible lead action level, to also require the notification to be provided to facility staff. The Department also proposes to add “, or its designee,” after “district board of education” in the provision that requires the notification to include a description of the measures taken by the district board of education to immediately end use of each drinking water outlet where water quality exceeds the permissible lead action level and to ensure alternate drinking water has been made available to all students and staff members and information regarding the health effects of lead. The proposed amendments will ensure facility staff are made aware of testing results that exceed the permissible lead action level.

The Department proposes amendments at N.J.A.C. 6A:26-12.4(g), which requires all district boards of education to submit to the Department on an annual basis a statement of assurance that lead testing was completed in accordance with this “subchapter,” that notifications were provided consistent with this “subchapter,” and that alternate drinking water continues to be made available to all students and staff. The Department proposes to replace “on an annual basis” with “by June 30 each year” to specify an annual submission deadline. The Department also proposes to replace both references to “subchapter” with “section” because the testing requirements are contained in N.J.A.C. 6A:26-12.4 and not throughout Subchapter 12.

The Department proposes to delete the first two sentences of N.J.A.C. 6A:26-12.4(h), which allow a district board of education to seek an exemption from the initial testing requirement if the district board of education can demonstrate it previously completed testing that complied with or exceeded the section’s testing requirements and require a district board of education to provide the Department information regarding the testing activities conducted. The provisions are proposed for deletion because the Department will no longer be accepting exemption requests for initial testing.

The Department also proposes amendments to the last sentence of N.J.A.C. 6A:26-12.4(h), which requires a district board of education that receives an exemption pursuant to this subsection to make available for public inspection at the school facility and on the district board of education’s website, if applicable, the results of any prior testing. The provision also requires district boards of education exempt from the initial testing to conduct testing within six years of the prior testing. The Department proposes to replace “[a] district board of education that receives an exemption from the Department from initial testing pursuant to this subsection” with “[a] district board of education that received an exemption from the Department from initial testing because the district board of education had tested in the previous five years.” The proposed amendments reflect that district boards of education no longer will be eligible for an exemption based on prior testing while maintaining the requirements for district boards of education that have approved exemptions.

The Department proposes to recodify current N.J.A.C. 6A:26-12.4(i) and (j) as new N.J.A.C. 6A:26-12.4(h) and (i), respectively.

The Department proposes an additional amendment at N.J.A.C. 6A:26-12.4(j), which currently sets the starting date for eligibility for reimbursement at July 13, 2016. On May 11, 2017, Governor Christie signed and enacted P.L. 2017 c. 86, which moves to January 1, 2016, the testing beginning date for reimbursement eligibility. The Department proposes to replace July 13, 2016 with January 1, 2016.

The Department proposes amendments at recodified N.J.A.C. 6A:26-12.4(j), which, in part, allows nonpublic schools choosing to conduct testing in accordance with N.J.A.C. 6A:26-12.4(d) to submit a reimbursement application to the Department and states approval is subject to available funds, to replace “choosing to conduct” with “that conducted.” The Department also proposes to add “between January 1, 2016, and July 13, 2017,” after “testing in accordance with (d) above.” The proposed amendments will allow nonpublic schools that chose to have their drinking water tested after the effective date of the initial rules, but prior to July 13, 2017, which is the deadline for initial testing, to be eligible for reimbursement if funds are available.

As the Department has provided a 60-day comment period on this notice of proposal, this notice is excepted from the rulemaking calendar requirement, pursuant to N.J.A.C. 1:30-3.3(a)5.

### **Social Impact**

The specially adopted rules proposed for readoption with amendments will positively impact students, educators, school districts, and families by ensuring safe drinking water is available in school facilities. As exposure to lead can pose a hazardous threat to students, particularly in preschool and early grades, the specially adopted rules proposed for readoption with amendments will ensure school facilities are properly tested for elevated lead levels in water available to students and employees for drinking or other consumption.

### **Economic Impact**

The specially adopted rules proposed for readoption with amendments establish a mechanism for reimbursement for the costs associated with water supply testing and analysis conducted pursuant to the rules after July 13, 2016. Although the cost per district board of education varies and is dependent on a number of factors, including the number of schools operated and the number of drinking water outlets in each school, the Fiscal Year 2017 State budget appropriated \$10 million for reimbursement. Any cost not covered by the reimbursement issued by the Department will be the district board of education’s responsibility.

### **Federal Standards Analysis**

The specially adopted rules proposed for readoption with amendments exceed provisions of the Federal Safe Drinking Water Act (42 U.S.C. §§ 300f et seq.) that require some of the drinking water outlets in schools to be tested. The specially adopted rules proposed for readoption with amendments require all drinking water outlets in schools to be tested because the need to ensure students and school staff are not exposed to lead in drinking water is of paramount importance to the Department. Testing every drinking water outlet in school facilities is achievable under current technology and the Fiscal Year 2017 budget appropriated \$10 million to reimburse district boards of education for the costs associated with testing every drinking water outlet.

### **Jobs Impact**

The specially adopted rules proposed for readoption with amendments will not result in the creation or loss of jobs.

### **Agriculture Industry Impact**

The specially adopted rules proposed for readoption with amendments will have no impact on the agricultural industry.

### **Regulatory Flexibility Analysis**

The specially adopted rules proposed for readoption with amendments impose reporting, recordkeeping, or other compliance requirements on approved private schools for students with disabilities (APSSDs), private providers of State funded preschool programs, and nonprofit organizations that operate renaissance schools, all of which could be considered small businesses as defined in the Regulatory Flexibility Act, N.J.S.A. 52:14B-16 et seq. There are approximately 470 entities that fall into the three categories.

The specially adopted rules proposed for readoption with amendments require the entities to do the following: conduct a plumbing survey; follow specific procedures to collect water samples; have the samples analyzed according to established procedures; and make the test results publicly available. The specially adopted rules proposed for readoption with amendments also require the entities to provide written notification to parents of all students and staff members if any result exceeds the permissible lead action level and to include a description of the measures taken to immediately end use of each drinking water outlet where results exceed the permissible lead action level, to provide alternate drinking water sources, and to provide information regarding the health effects of lead. The specially adopted rules proposed for readoption with amendments further require the entities to retest all drinking water outlets every six years and to annually submit to the Department a statement of assurance that testing, notifications, and provision of alternative drinking water, if necessary, all occurred in accordance with the rules. The rules also provide exceptions from testing under certain circumstances and provides for reimbursement in the same manner as provided to school districts, charter schools, and all other applicable public education agencies.

The need to ensure all students educated with public funds have access to clean drinking water outweighs any burden placed on the entities by the specially adopted rules proposed for readoption with amendments.

The cost per entity varies and is dependent on a number of factors, including the number of schools operated and the number of drinking water outlets in each school. To minimize the economic impact, the Fiscal Year 2017 State budget appropriated \$10 million for reimbursement for all public and private entities subject to the testing requirements. Any cost not covered by the reimbursement issued by the Department will be the entity's responsibility.

### **Housing Affordability Impact Analysis**

The specially adopted rules proposed for readoption with amendments will have an insignificant impact on the affordability of housing in New Jersey. There is an extreme unlikelihood the specially adopted rules proposed for readoption with amendments would evoke a change in the average costs associated with housing because the specially adopted rules proposed for readoption with amendments govern the testing of drinking water in schools for lead.

### **Smart Growth Development Impact Analysis**

The specially adopted rules proposed for readoption with amendments will have an insignificant impact on smart growth. There is an extreme unlikelihood the specially adopted rules proposed for readoption with amendments would evoke a change in housing production in

Planning Areas 1 or 2, or within designated centers, under the State Development and Redevelopment Plan in New Jersey because the specially adopted proposed for readoption with amendments govern the testing of drinking water in schools for lead.

**Full text** of the rules proposed for readoption and the proposed amendments follows (additions indicated in boldface **thus**; deletions indicated in brackets [thus]):

## CHAPTER 26. EDUCATIONAL FACILITIES

### SUBCHAPTER 1. GENERAL PROVISIONS

#### 6A:26-1.2 Definitions

The following words and terms shall have the following meanings when used in this chapter unless the context clearly indicates otherwise:

**“24-hour school facilities” mean facilities that host residents on-site year round, require the availability of water at all hours, employ staff on site 24 hours a day, and/or are care facilities, such as hospitals with educational programs provided at the facilities.**

...

“Certified laboratory” means a laboratory certified pursuant to the provisions of N.J.A.C. 7:18.

...

“Drinking water outlet” means any location at a school facility, other facility, or temporary facility, as those terms are defined in this section, where water is expected to be used for consumption or food preparation.

...

“Lead action level” means the lead action level established by the United States Environmental Protection Agency at 40 CFR 141.80 for lead in drinking water.

...

## **SUBCHAPTER 12. SAFETY REQUIREMENTS FOR SCHOOL FACILITIES**

### **6A:26-12.4 Safe drinking water**

- (a) The rules in this subchapter for the provision of safe drinking water shall apply to all New Jersey public school districts, charter schools, renaissance schools, jointure commissions, educational services commissions, approved private schools for students with disabilities acting under contract to provide educational services on behalf of New Jersey public school districts, State-funded early childcare facilities pursuant to N.J.A.C. 6A:13A, and receiving schools as defined by N.J.A.C. 6A:14-7.1(a). Throughout this subchapter, “district board of education” refers to the governing authority for all of the entities identified in this subsection, unless otherwise indicated.
- (b) District boards of education shall assure the availability of potable drinking water through sanitary means in school facilities or upon school grounds in accordance with the Safe Drinking Water Act, N.J.S.A. 58:12A-1 et seq., the rules promulgated pursuant thereto, N.J.A.C. 7:10 and 6A:26-6, Planning and Construction Standards for School Facilities.
- (c) Testing of school drinking water quality shall be in accordance with the Safe Drinking Water Act, N.J.S.A. 58:12A-1 et seq., the rules promulgated pursuant thereto, N.J.A.C. 7:10 and 6A:26-6, Planning and Construction Standards for School Facilities.
- (d) All district boards of education shall conduct lead sampling and analysis, as described in (d)1 and 2 below, in all drinking water outlets to which a student or staff member has or

may have access, in each school facility, other facility, or temporary facility, as those terms are defined in this chapter.[, as soon as practicable, but no later than July 13, 2017. District boards of education may apply to the Department for an extension of this deadline of up to one year, upon written demonstration that there is no certified laboratory available to conduct testing by July 13, 2017. The extension request shall include evidence that the district board of education requested testing from at least three certified laboratories and the responses from the laboratories showing that the testing could not be completed within the designated time period.] **Any district board of education granted an extension of time to conduct initial testing beyond the July 13, 2017, deadline shall complete the initial testing no later than July 13, 2018. District boards of education that completed initial testing prior to July 13, 2017, shall perform follow-up testing in accordance with the schedule in (f) below.**

1. Sampling shall be conducted in accordance with a lead sampling plan, which shall include:
  - i. A plumbing survey for each facility that identifies how water enters and flows through each facility, the types of plumbing materials used in the facility, such as the service line, piping, solder, fixtures, drinking water outlets where students or staff have or may have access, and point of use treatment, such as drinking water filters;
  - ii. The names and responsibilities of all individuals involved in sampling;  
and
  - iii. The following sampling procedures:
    - (1) Samples shall be taken after water has sat, undisturbed in the school pipes for at least eight hours but no more than 48 hours before the sample is taken.

**(A) 24-hour school facilities shall collect first-draw samples at drinking water outlets following a stagnation time that would likely result in the longest standing time;**

- (2) At least eight hours prior to sampling, signs shall be posted to indicate that water shall not be used and access to the buildings subject to the sampling shall be restricted to all but authorized staff members;
- (3) Existing aerators, screens, and filters shall not be replaced or removed prior to or during sampling; and
- (4) All samples shall be collected in pre-cleaned high-density polyethylene (HDPE) 250 milliliter (mL) wide-mouth single-use rigid sample containers that are properly labeled.

2. Analysis of samples shall be conducted as follows:

- i. Analysis shall be conducted by a certified laboratory to analyze for lead in drinking water;
- ii. The laboratory shall use an approved analytical method pursuant to the Federal Safe Drinking Water Act at 40 CFR 141.23(k)(1); and
- iii. Sample analysis shall be conducted in accordance with a Quality Assurance Project Plan (QAPP), which shall be signed by the district board of education, the certified laboratory, and the individual responsible for conducting sampling. The QAPP shall include the identification of analytical methods, chain of custody procedures, data validation and reporting processes, detection limits, reporting to three significant figures, field blanks, and quality control measures required by the certified method.

3. The Department, in consultation with the Department of Environmental Protection (DEP), will develop a technical guidance manual to assist district boards of education in complying with the sampling and analysis requirements of this subchapter.

(e) **The district board of education, or its designee, shall complete a review of final laboratory results within 72 hours of receipt.** Within 24 hours after the district board of education, **or its designee**, has reviewed [and verified] the final laboratory results, the district board of education shall:

1. Make the test results of all water samples publicly available at the school facility and on the district board of education's website; and
2. If any results exceed the permissible lead action level, provide written notification to the parents/guardians of all students attending the facility, [as well as to] **facility staff, and** the Department. This notification shall include a description of the measures taken by the district board of education, **or its designee**, to immediately end use of each drinking water outlet where water quality exceeds the permissible lead action level, the measures taken to ensure that alternate drinking water has been made available to all students and staff members, and information regarding the health effects of lead.

(f) Notwithstanding the results of any prior testing, all district boards of education shall continue to test drinking water outlets as provided below:

1. Within six years following the initial testing set forth in (d) above and every six years thereafter, all district boards of education shall test all drinking water outlets. Sampling shall be prioritized, such that buildings and facilities that previously had outlets with results above the action level or identified in the plumbing profile as high risk for lead shall be sampled first in accordance with the sampling plan; and

2. All district boards of education shall sample for lead after the replacement of any drinking water outlet or any other alteration to plumbing or service lines that may impact lead levels at the outlet.
- (g) All district boards of education shall submit to the Department [on an annual basis] **by June 30 each year** a statement of assurance that lead testing was completed in accordance with this [subchapter] **section**, that notifications were provided consistent with this [subchapter] **section**, and that alternate drinking water continues to be made available to all students and staff.
- (h) [A district board of education may apply to the Department for an exemption from the initial testing if the district board of education can demonstrate that it complied with or exceeded the testing requirements set forth in (d) above, including any required public notifications, by July 13, 2011. The district board of education shall provide to the Department information regarding the testing activities conducted, including the lead sampling plan and an analysis of the samples taken.] A district board of education that [receives] **received** an exemption from the Department from initial testing [pursuant to this subsection] **because the district board of education had tested in the previous five years** shall make available for public inspection at the school facility and on the district board of education's website, if applicable, the results of any prior testing and shall conduct testing within six years of the prior testing in accordance with (f) above.
- (i) District boards of education may request an exemption from the testing requirements set forth in (d) above if they can demonstrate that they do not use any drinking water outlets for consumption or food preparation in any of their facilities. District boards of education seeking an exemption pursuant to this provision shall submit an application to the Department documenting that no drinking water outlets are used in their facilities and the provisions for an alternative source of drinking water. A district board of education that receives an exemption from the Department from testing pursuant to this subsection shall

make available for public inspection at the school facility and on the district board of education's website, if applicable, confirmation that the district board of education is exempt from testing. Within six years of receiving an exemption pursuant to this subsection, a district board of education shall either begin testing procedures in accordance with (f) above or reapply for an exemption under this subsection.

- (j) All district boards of education are eligible to be reimbursed for the water supply testing and analysis conducted pursuant to (d) above after [[July 13]] **January 1**, 2016. To receive reimbursement, the district board of education shall complete and submit to the Department a reimbursement application on a form or in a format supplied by the Department. The Department will make the reimbursement application available on its website. Nonpublic schools [choosing to conduct] **that conducted** testing in accordance with (d) above **between** [[July 13]] **January 1, 2016, and July 13, 2017**, may submit a reimbursement application to the Department, approval of which is subject to available funds.