

Estimate of Economic Impact

The proposed action has no economic impact.

Economic Impact on Small Businesses

The proposed action has minimal or no economic impact on small businesses.

Impact on Individuals with Disabilities

The proposed action has no impact on individuals with disabilities.

Opportunity for Public Comment

Comments may be sent to Michael D. Kurman, Regulations Coordinator, Radiological Health Program, Air and Radiation Management Administration, Maryland Department of the Environment, 1800 Washington Boulevard, Suite 750, Baltimore, Maryland 21230, or email to michael.kurman@maryland.gov, or call 410-537-3208, or fax to 410-537-3198. Comments will be accepted through March 5, 2018. A public hearing has not been scheduled.

The proposed regulation may be viewed on the MDE Website at http://mde.maryland.gov/programs/Air/RadiologicalHealth/Documents/www.mde.state.md.us/assets/document/air/RH_comar/Supp.29Redline.pdf or at official depository libraries throughout the State. A listing of these depository libraries is available at <http://www.dsd.state.md.us/Depositories.html> or call 410-974-2486 or 800-633-9657.

Editor's Note on Incorporation by Reference

Pursuant to State Government Article, §7-207, Annotated Code of Maryland, the Regulations for the Control of Ionizing Radiation (1994), Supplement 29, has been declared a document generally available to the public and appropriate for incorporation by reference. For this reason, it will not be printed in the Maryland Register or the Code of Maryland Regulations (COMAR). Copies of this document are filed in special public depositories located throughout the State. A list of these depositories was published in 45:1 Md. R. 8 (January 5, 2018), and is available online at www.dsd.state.md.us. The document may also be inspected at the office of the Division of State Documents, 16 Francis Street, Annapolis, Maryland 21401.

26.12.01 Radiation Protection

Authority: Environment Article, §§8-106, 8-301, and 8-304, Annotated Code of Maryland

.01 Incorporation by Reference.

All provisions of the "Regulations for the Control of Ionizing Radiation (1994)" as amended by Supplement 1 through Supplement [28] 29 are incorporated by reference.

26.12.02 Inspection and Certification

Authority: Environment Article, §§8-104(a), 8-106, 8-301, 8-304, and 8-306, Annotated Code of Maryland

.02 State Certification of Radiation Machines.

A. Applicability. This regulation does not apply to persons using the following radiation machines:

(1) — (2) (text unchanged)

(3) Those used for mammography diagnostic or screening purposes;

[3] (4) — [4] (5) (text unchanged)

B. — E. (text unchanged)

BENJAMIN H. GRUMBLES
Secretary of the Environment

Subtitle 16 LEAD

26.16.07 Lead in Drinking Water — Public and Nonpublic Schools

Authority: Environment Article, §§6-1501 — 6-1502, Annotated Code of Maryland

Notice of Proposed Action

[18-038-P]

The Secretary of the Environment proposes to adopt new Regulations .01 — .12 under a new chapter, COMAR 26.16.07 Lead in Drinking Water — Public and Nonpublic Schools.

Statement of Purpose

The purpose of this action is to comply with Ch. 386 (H.B. 270), Acts of 2017, by requiring public and nonpublic schools to test drinking water outlets for lead contamination and establishing an ongoing program to minimize the risk of exposure to lead in the school's drinking water.

Comparison to Federal Standards

There is no corresponding federal standard to this proposed action.

Estimate of Economic Impact

I. Summary of Economic Impact. As was noted in the fiscal note for Ch. 386 (H.B. 270), Acts of 2017, this regulation will have a fiscal impact on the Department and on both public and nonpublic schools. Private laboratories may benefit from an increase in the demand for their services.

II. Types of Economic Impact.	Revenue (R+/R-)	Magnitude
	Expenditure (E+/E-)	
A. On issuing agency:	(E+)	\$700,000
B. On other State agencies:	NONE	
C. On local governments:	(E+)	Indeterminable
	Benefit (+) Cost (-)	Magnitude
D. On regulated industries or trade groups:	NONE	
E. On other industries or trade groups:	NONE	
F. Direct and indirect effects on public:	NONE	

III. Assumptions. (Identified by Impact Letter and Number from Section II.)

A. The fiscal note for Ch. 386 (H.B. 270), Acts of 2017, estimated that in FY 18 the Department would expend approximately \$500,000. Of that total, \$100,000 was estimated for a data tracking system. However, after researching similar programs implemented in other states, it is now estimated that the data tracking system could cost as much as \$700,000. The ongoing expenses for the Department that were detailed the fiscal note for H.B. 270, will be between \$320,000 and \$365,000 annually.

C. The magnitude of any increase in costs for public school systems depends on a number of variables and cannot be reliably estimated at this time. To the extent any schools are found to test positive for lead in drinking water, local expenditures increase

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further, and potentially significantly, to implement the required follow-up actions.

Economic Impact on Small Businesses

The proposed action has minimal or no economic impact on small businesses.

Impact on Individuals with Disabilities

The proposed action has no impact on individuals with disabilities.

Opportunity for Public Comment

Comments may be sent to Christina Ardito, Regulatory Compliance Engineer, Maryland Department of the Environment, 1800 Washington Blvd., Baltimore, MD 21230, or call 410-537-3729, or email to comments.hb270regulation@maryland.gov, or fax to 410-537-3157. Comments will be accepted through March 5, 2018. A public hearing will be held on February 28, 2018, 4 — 6 p.m., at Maryland Department of the Environment, 1800 Washington Blvd., Baltimore, MD 21230.

.01 Purpose.

This chapter requires public and nonpublic schools to test their drinking water outlets for lead contamination and establishes an ongoing program to minimize the risk of exposure to lead in the school's drinking water and establishes an action level of 20 parts per billion (ppb) for lead in drinking water in school buildings.

.02 Scope.

This chapter establishes requirements and standards for lead monitoring in occupied public and nonpublic school buildings serving prekindergarten through grade 12 students where drinking water to the building is provided by a public water system. This chapter does not apply to a public or nonpublic school that is regulated as a public water system in accordance with the requirements of COMAR 26.04.01.

.03 Definitions.

A. In this chapter, the following terms have the meanings indicated.

B. Terms Defined.

(1) "Action level" means the level of lead which, if exceeded, requires the school to complete steps including remedial action, notification, and follow-up sampling.

(2) "Bottled water" means water that is intended for human consumption and that is sealed in bottles or other containers and meets the National Primary Drinking Water regulations for all regulated contaminants.

(3) "Certified laboratory" means a laboratory certified by the Maryland Department of the Environment to analyze drinking water samples for lead.

(4) "Department" means the Maryland Department of the Environment.

(5) "Designated responsible person" means an individual identified by the school to serve as the point of contact for implementation of and compliance with this regulation, including documentation, proper sampling and follow up, and timely reporting.

(6) Drinking Water Outlet.

(a) "Drinking water outlet" means a potable water fixture that is used for drinking or food preparation.

(b) "Drinking water outlet" includes:

(i) A drinking fountain, including both bubbler and water cooler styles;

(ii) An ice-making machine;

(iii) A hot drink machine;

(iv) A kitchen sink;

(v) A classroom combination sink with drinking fountain;

(vi) A sink in a home economics classroom;

(vii) A teachers' lounge sink;

(viii) A nurse's office sink;

(ix) A sink in a special education classroom; and

(x) Any other sink known to be used for human consumption.

(c) "Drinking water outlet" does not include an outlet clearly signed as not a drinking water outlet.

(7) "Elevated level of lead" means a lead concentration in drinking water that exceeds the concentration of 20 ppb in a 250 milliliter (mL) first-draw, as recommended by the EPA in technical guidance documents for schools, including "3Ts for Reducing Lead in Drinking Water in Schools".

(8) "First-draw sample" means a 250 mL sample of tap water that has been standing in plumbing 8 to 18 hours and is collected without flushing the tap.

(9) "Flushed sample" means a 250 mL sample of tap water that has been drawn from an outlet immediately after the outlet has been run for at least 30 seconds.

(10) "Lead-free" means plumbing that meets the definition of "lead-free" as defined by Business Occupations and Provisions Article, §§12-101, 12-605.1, and 12-605.2, Annotated Code of Maryland.

(11) "MSDE" means the Maryland State Department of Education.

(12) "Nonpublic school" means an elementary or secondary school, other than a public school, offering education for prekindergarten through grade 12 wherein any child may legally fulfill compulsory school attendance requirements.

(13) "Public school" means a school, including a charter school, that is maintained at public expense for the education of the children of a community or district and constitutes a part of a system of free public education for prekindergarten through grade 12.

(14) Public Water System.

(a) "Public water system" means a water supply system that provides water for human consumption through pipes or other constructed conveyances to at least 15 service connections or regularly serves at least 25 individuals, as defined in COMAR 26.04.01.

(b) "Public water system" includes water supply sources such as ground water wells, springs, rivers, reservoirs, or lakes.

(15) "Sampling bottle" means a precleaned, high-density polyethylene, wide-mouth, single use 250 mL labeled bottle.

(16) "School" means an individual school or a school system.

(17) School Building.

(a) "School building" means any structure, facility, addition, or wing of a school that may be occupied by children or students prekindergarten through grade 12.

(b) "School building" does not include a building used solely for administrative purposes.

(18) "School day" means any day on which school is in session.

(19) "Technical guidance" means the most recent technical guidance documents issued by EPA for reducing lead in drinking water in schools, such as the "3Ts for Reducing Lead in Drinking Water in Schools" (2006) and any subsequent technical guidance documents issued by EPA for reducing lead in drinking water in schools.

.04 Applicability and Authority.

A. This chapter applies to the testing of drinking water from drinking water outlets in occupied public or nonpublic school buildings, except as noted in §B of this regulation.

B. This chapter does not apply to a public or nonpublic school if the school's water system is classified as a public water system and is already subject to testing for lead under COMAR 26.04.01.06-2.

C. Each school shall establish that it:

- (1) Has a school-specific plan for testing prior to each sampling event;
- (2) Has a plan for remedial action if an elevated level of lead is detected;
- (3) Has identified a designated responsible person who will ensure that this regulation is followed; and
- (4) Maintains records of sample dates and times, sample types, sample locations, types of outlets sampled, results of testing, waivers granted, and all actions taken.

D. The Department and MSDE employees may enter school buildings upon reasonable notice.

.05 Waivers.

A. The Department, in consultation with MSDE, may grant a waiver from the testing required under this regulation if a school submits a written request for a waiver, using a form generated by the Department, along with the required documentation that:

- (1) The following two conditions have been met:
 - (a) All drinking water outlets in the school building were tested, no more than 5 years before the effective date of this regulation, for the presence of lead in a manner that complies with this chapter, including analysis by a certified laboratory; and
 - (b) All test results are at a level of 5 ppb or lower in all drinking water outlet samples;
- (2) The following two conditions have been met:
 - (a) Students in the building do not have access to water from any drinking water outlet; and
 - (b) Bottled water is the only source of water for drinking water and food preparation in the school building; or
- (3) A school demonstrates that the school building meets the following:
 - (a) The service line and all plumbing connecting the school to the water main are lead-free;
 - (b) All interior plumbing in the school building is lead-free; and
 - (c) Certification of lead-free status shall be documented on a form developed by the Department.

B. Schools are subject to all requirements of this regulation until they receive written approval from the Department granting the waiver.

C. Substantive plumbing upgrades or renovations to the school, or changes in the corrosivity of the public water supplied to the school may invalidate a waiver.

D. The school shall notify the Department within 30 days if it no longer meets the conditions of the waiver or if the conditions in §C of this regulation are met.

E. If a school notifies the Department that it no longer meets the conditions of the waiver, it is then subject to all requirements of this regulation. The school may reapply in the future if it satisfies §A of this regulation.

.06 Testing Requirements.

A. All public and nonpublic schools that are not classified as a public water system and have not been granted a waiver shall conduct initial testing for the presence of lead in every drinking water outlet located in an occupied public or nonpublic school building. Bathroom and classroom sinks not clearly signed as not a drinking water outlet are subject to testing under this section.

B. Testing shall be prioritized as follows:

- (1) Drinking water outlets in school buildings constructed before 1988 and school buildings serving students in prekindergarten through grade 5 shall initially be tested before July 1, 2018.
- (2) Drinking water outlets in school buildings constructed in 1988 or later and serving students in grade 6 through grade 8 not

already subject to testing under this chapter shall initially be tested before July 1, 2019.

(3) Drinking water outlets in school buildings constructed in 1988 or later and serving students in grade 9 through grade 12 not already subject to testing under this chapter shall initially be tested before July 1, 2020.

C. In cases where there is overlap between or among these student age specifications testing shall be conducted by the earlier specified deadline.

D. The Department, in consultation with MSDE, may grant a deferral of initial testing from the requirements of §§A — C of this regulation, if either of the following situations apply:

- (1) A deferral, not to exceed 3 years past the date stipulated in this regulation, may be granted if:
 - (a) The school submits a written request for a deferral on a form generated by the Department;
 - (b) The request documents that all drinking water outlets in the school building have been tested for the presence of lead in a manner that complies with this chapter; and
 - (c) The request documents that analysis by a certified laboratory confirming the most recent test results indicate that elevated levels of lead were not found in water samples from any drinking water outlet; or
- (2) A deferral, not to exceed 12 months past the date stipulated in this regulation, may be granted if:
 - (a) The school submits a written request for a deferral on a form generated by the Department;
 - (b) The request documents that the school has a plan in place for testing all drinking water outlets; and
 - (c) The plan details actionable steps to be taken if an elevated level of lead in a drinking water outlet in the school building is found.

E. Testing shall be conducted during the regular school year and while school is in session. All drinking water outlets must be sampled within the same school calendar year.

F. In school buildings put into service after the effective date of this regulation, initial first-draw samples shall be performed within 1 year of the date of occupancy. Testing shall be performed during the regular school year and while school is in session.

G. Schools shall conduct lead monitoring on every drinking water outlet at a frequency of every 3 years unless the school has been granted a waiver by the Department.

H. Schools shall conduct lead monitoring within 1 year following substantive plumbing upgrades or renovations.

.07 Standard Sampling Method.

A. Schools shall collect samples in accordance with the following procedures:

- (1) Collect 250 mL first-draw samples in pre-labeled sampling bottles.
- (2) Collect samples from the cold water tap.
- (3) If the outlet has an aerator, leave the aerator in place during sampling.
- (4) If the outlet has a filter, sample without the filter.
- (5) Determine if one chiller serves more than one fountain; if it does, collect first-draw samples from each fountain.
- (6) Follow all laboratory or Department instructions for collecting, handling, and submitting water samples.
- (7) Samples must be acidified within 14 days of collection unless sample bottles are pre-acidified by the laboratory.

B. Schools shall ensure that samples have appropriate water age in the following ways:

- (1) Collect samples of water that have been sitting in pipes for at least 8 hours but not more than 18 hours.

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(2) Samples may be collected from outlets in which the water exceeds the 18 hour stagnation period if these outlets are used infrequently, and this stagnation period represents normal use patterns.

C. Schools shall ensure that samples are analyzed:

(1) By a laboratory certified by the Department for lead analysis;

(2) Within 6 months of preservation; and

(3) In accordance with EPA method 200.8, EPA method 200.9, or current method approved in 40 CFR §141.23 or COMAR 26.04.01.01-1.

D. Schools shall complete the following records for each sample collected:

(1) Record the type of sample;

(2) The building address;

(3) The location within the building;

(4) The specific tap tested;

(5) The date and time the water was last used;

(6) The date and time the sample was collected;

(7) The name and contact information of the sample collector for each sample collected, as indicated in guidance developed by the Department; and

(8) The completed chain of custody form.

.08 Response to Samples Indicating Elevated Levels of Lead.

After being notified by the laboratory of an elevated level of lead in a drinking water outlet, schools shall:

A. Within 24 hours, prevent all physical access to water from the drinking water outlet until the problem is mitigated;

B. Within 5 school days, collect a flushed sample from each outlet for which the first-draw sample result exceeded 20 ppb of lead;

C. Have the flush sample analyzed by a certified laboratory; and

D. Continuously maintain an adequate supply of drinking water to school occupants that meets the current Safe Drinking Water Act standards.

.09 Notification Requirements Following Detection of Elevated Levels of Lead.

A. The school shall provide a notice of all lead sample results with an elevated level of lead to:

(1) The parent or legal guardian of each student attending the school within 10 school days of the school's receipt of the laboratory report; and

(2) Teachers and other employees within 10 school days of the school's receipt of the laboratory report.

B. Notice shall be posted on the school website within 30 school days of the school's receipt of the laboratory results.

C. The notices shall include:

(1) The results of the lead testing and the locations of corresponding sample sites;

(2) A summary of federal and State drinking water standards relative to lead;

(3) An explanation of the health effects of lead;

(4) The sources of human exposure to lead, including drinking water;

(5) School contact information;

(6) Immediate actions taken and next steps; and

(7) The steps consumers can take to reduce exposure to lead in drinking water.

.10 Remedial Plan of Action.

A. If elevated levels of lead are found in any drinking water outlet, the school shall determine and document a remedial plan of action to permanently reduce the lead level or replace the outlet, plumbing, or service line contributing to the elevated level of lead.

B. The school shall provide its remedial plan of action to the Department and MSDE within 30 school days of receiving laboratory results of first-draw testing indicating elevated levels of lead in drinking water outlets.

C. The school shall include one or more of the following actions in its remedial plan of action:

(1) Permanently close access to the outlet or remove the outlet;

(2) Install and maintain a point of use filter at the outlet;

(3) Repair, reconfigure, or replace the outlet, plumbing, or service line contributing to the elevated level of lead;

(4) Install and maintain automatic flushing of outlets after testing confirms that the lead level in the outlet after flushing is not elevated. The automatic flushing outlets shall be installed in:

(a) Kitchen sinks;

(b) Teachers' lounge sinks;

(c) Home economics classroom sinks;

(d) Nurse's office sinks;

(e) Other sinks in the building; and

(f) Other outlets as approved by the Department;

(5) Provide bottled water;

(6) Check grounding wires and, if existing wires are grounded to water pipes, find an alternative grounding system; and

(7) Reconfigure plumbing to bypass sources of lead contamination.

D. The school may resume service at a location where an elevated level of lead was found only after:

(1) Remedial action has been taken;

(2) Follow-up first-draw lead sampling has been conducted; and

(3) The outlet no longer has an elevated level of lead.

E. The school shall report remedial measures taken to the Department and MSDE no later than 30 school days after implementation and include all actions taken and the associated dates.

F. The school shall post on the school's website remedial measures taken no later than 30 school days after implementation and include all actions taken and the associated dates.

G. The dates and results of all follow-up lead sampling shall be reported to the Department and MSDE within 10 school days of receipt of results from the laboratory.

.11 Reporting.

A. Every sample result of lead shall be reported to the Department, MSDE, and the appropriate local health department within 30 days after the samples were analyzed with the following information:

(1) The date and time the water was last used in the school building;

(2) The date and time of sample collection; and

(3) The specific tap tested;

(4) The sample collector name and contact information; and

(5) The school building address.

B. The school shall certify to the Department and MSDE and the appropriate local health department no later than 30 days after the end of the school calendar year in which the samples were collected or 30 days after the samples were analyzed, on a form generated by the Department, that all drinking water outlets in the school building were tested in accordance with this regulation, and provide the following information:

(1) The total number of samples collected;

(2) The dates the samples were collected; and

(3) The number of samples with elevated levels of lead.

C. Remedial actions taken with the corresponding dates shall be reported in accordance with this chapter.

D. Within 30 days of any notification as required in this chapter, the school shall certify to the Department and MSDE, using a form provided by the Department, that the notification has been completed.

E. The Department and MSDE shall jointly report to the Governor and Maryland General Assembly on or before December 1, 2018, and on or before December 1 each year thereafter:

- (1) The name and address of each school that has tested its drinking water for lead during the reporting period;
- (2) The name and address of each school found to have elevated levels of lead in its drinking water;
- (3) The type of outlet from which a drinking water sample with an elevated level of lead was collected and its location in the building; and
- (4) The use of each water outlet with an elevated level of lead and the levels detected.

.12 Record Keeping.

Each school shall maintain the following records for a minimum of 10 years and make them available if requested by the Department or MSDE:

- A. Sampling plan that includes the location and types of all drinking water outlets;
- B. Names and responsibilities of all individuals and/or laboratories involved in sampling and testing;
- C. Records related to sampling and testing, including date, type of sample, and results;
- D. Immediate actions taken, by whom, and dates;
- E. Remedial action plan and documented actions;
- F. Records related to lead-free plumbing;
- G. Records related to bottled water; and
- H. Waiver requests, supporting documentation, and the Department's decision regarding the waiver.

BENJAMIN H. GRUMBLES
Secretary of the Environment

**Title 28
OFFICE OF
ADMINISTRATIVE
HEARINGS**

**Subtitle 04 REVIEW OF DECISIONS
AND ACTIONS OF HEALTH
OCCUPATIONS BOARDS AND
COMMISSIONS**

28.04.01 Referrals

Authority: Health Occupations Article, §1-203(c), Annotated Code of Maryland

**Notice of Proposed Action
[18-033-P]**

The Chief Administrative Law Judge of the Office of Administrative Hearings and the Secretary of Health jointly propose to adopt new Regulations .01—.08 and Appendix A under a new chapter, COMAR 28.04.01 Referrals, under a new subtitle, Subtitle 04 Review of Decisions and Actions of Health Occupations Boards and Commissions

Statement of Purpose

The purpose of this action is to implement changes enacted during the 2017 Session of the Maryland General Assembly. Health-General Article, §1-203(c), Annotated Code of Maryland, requires the Office of Administrative Hearings (OAH) to review a decision or action of a board or commission within the Maryland Department of Health (MDH), in accordance with regulations adopted by the Secretary of Health and OAH. OAH, in conjunction with the Office of the Attorney General (OAG), must establish a process for such review. The purpose of this review is to provide supervision for these boards and commissions in order to (1) prevent unreasonable anticompetitive actions by the unit and (2) determine whether the decisions and actions of the unit further a clearly articulated State policy to displace competition in the regulated market.

Comparison to Federal Standards

There is no corresponding federal standard to this proposed action.

Estimate of Economic Impact

I. Summary of Economic Impact. The regulations implementing the legislation requirements can generally be handled with existing budgeted resources. To the extent the bill results in additional OAH review costs for health occupations boards, general and/or special fund expenditures increase by an indeterminate amount.

Most health occupations board decisions do not impact market competition but relate to disciplinary actions and standards of care; therefore, MDH does not anticipate that a high volume of board decisions and actions will be subject to review. Each board or commission within MDH is responsible for the costs associated with OAH review. With the exception of the State Board of Nursing Home Administrators and the State Board for Certification of Residential Child Care Program Professionals, all health occupations boards are special funded.

II. Types of Economic Impact.

	Revenue (R+/R-)	Expenditure (E+/E-)	Magnitude
A. On issuing agency:	(E+)		Minimal
B. On other State agencies:	(E+)		Minimal
C. On local governments:	NONE		

	Benefit (+)	Cost (-)	Magnitude
D. On regulated industries or trade groups:	NONE		
E. On other industries or trade groups:	NONE		
F. Direct and indirect effects on public:	NONE		

III. Assumptions. (Identified by Impact Letter and Number from Section II.)

- A. OAH will assign administrative law judges to conduct the review of the referrals.
- B. Independent boards and commissions will be responsible for paying the OAH for reviews performed on behalf of that board or commission.

Economic Impact on Small Businesses

The proposed action has minimal or no economic impact on small businesses.

