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## SUMMARY OF PUBLIC COMMENTS AND DEPARTMENT'S RESPONSE & LIST OF CHANGES MADE TO THE FINAL RULE

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### LEAD TESTING IN SCHOOL DRINKING WATER (10-144 CMR Chapter 234)

The Department of Health and Human Services (Department) held a public hearing on January 8, 2020, to accept comments on the new proposed rule 10-144 CMR Chapter 234, Lead Testing In School Drinking Water, at the Maine CDC, 286 Water Street in Augusta, Maine. This hearing was advertised in five major newspapers, the Secretary of State's Webpage and the Maine CDC's Rule Webpage on December 18, 2019. Written comments were accepted from December 18, 2019 through January 18, 2020 (the comment deadline). Comments were received from the following people:

#### TABLE OF COMMENTERS

ID #	First Name	Last Name	Date	Representing	Format
1	David	Pelletier	12-19-2019	Deer Isle-Stonington School	Written
2	Patrick	MacRoy	01-08-2020	Environmental Health Strategy Center	Oral & Written
3	Roger	Crouse	01-08-2020	Kennebec Water District	Oral & Written
4	Carol	White	01-08-2020	Chebeague Island School/CAW LLC	Oral
5	Stephen	Meister	01-08-2020	Maine Chapter of the American Academy of Pediatrics	Written
6	Roger S.	Shaw	01-10-2020	Easton School Department	Written
7	Steve	Nolan	01-14-2020	Regional School Unit 40	Written
8	Mary-Ellen	Barret	01-17-2020	Maine School Management Association	Written
9	Phelps	Turner	01-17-2020	Conservation Law Foundation	Written
10	Bradley	Sawyer	01-17-2020	Maine Rural Water Association	Written

All oral comments are captured in written comments, listed below. The Department's response follows each comment and explains whether the suggestions (if any) were followed by the Department. If the Department made no change in response to the comment, then an explanation of the reasons why no changes were made also is provided below. The summary list of changes following these comments identify new changes resulting from either public comment or Assistant Attorney General review of the rule for form and legality.

#### GENERAL COMMENTS

- Comment:** Commenter 1 stated that it is unnecessary to test for lead annually when a system is consistently passing testing requirements on a triennial basis. The commenter added that this requirement will add an unnecessary expense and burden to school budgets and that additional testing will not change the results. The commenter would agree with annual testing if a system had an issue with lead or needed to treat for lead. Systems that do not have issues should not be required to test more frequently. The commenter added that there is no scientific basis for this requirement and that the change in legislation has nothing to do with public health but appeases public paranoia, and that this is "Do-Good, Feel-Good Legislation."

**Response:** Annual testing for lead in school drinking water is not a requirement of this rule, or of 22 MRS § 2604-B, which requires the Department to adopt this rule. Per this statute, a school cannot be required to expand or modify its activities so as to necessitate additional expenditures from local revenue. The Department will pay for all lead testing for schools required by this rule. This rule will also result in testing of taps that might otherwise not be tested through the federal Lead and Copper Rule, which is administered by the Department for public water systems. No changes were made to the rule based on this comment.

- 2. Comment:** Commenter 3 stated that P.L. 2019 Chapter 158, charged the Department with adopting rules to include, “establishing water lead levels; testing protocols, including the frequency of testing; abatement or mitigation methods; procedures for the issuance of guidance to reduce exposure to lead; and public notification procedures.” The commenter added that the new legislation limits the Department’s authority to require schools to act, if the Department funds the action, or if there are no additional expenditures from local revenue. The commenter added, that the Department must attempt to reduce the risk of lead exposure to children without additional funding. The commenter stated this rule means that other legislatively mandated work done by the Department’s Drinking Water Program will suffer. Commenter 4 added that this proposed rule could impose a “burden” upon the staff of the Maine CDC Drinking Water Program.

Commenters 3 and 10 stated that the Department regulates approximately 1,900 public water systems, and that there are 700 private and public schools in Maine, of which 200 are already regulated by the Department. The commenters added that this rule creates 500 new entities (a 25% increase) for the Department to regulate. The commenters concluded that the impact of this rule will be a significant burden on the Department’s Drinking Water Program staff who are already working near or at maximum capacity.

**Response:** No changes were made to the rule based on this comment.

- 3. Comment:** Commenter 4 stated that for the work to be done properly and for the data to be meaningful, there needs to be sufficient technical support. The commenter expressed concern about the Department’s ability to obtain reliable and accurate data which would be meaningful to the objective of the legislation. Commenter 4 added that most schools do not have a water operator; so, trying to determine which taps to sample within the school will be a challenge.

**Response:** The Department recognizes the concerns of the commenter. The Department will issue a Request for Proposals (RFP), in which labs wishing to submit proposals will be required to articulate how they will provide data management, sample analysis and sample tracking. Department staff are available to help schools identify which taps to designate for testing. No changes were made to the rule based on this comment.

- 4. Comment:** Commenter 5 stated that 120 of Maine’s 700 schools are regulated as public water systems by the Maine CDC. The commenter added that the 120 schools designated as public water systems must also comply with State and federal requirements for lead. The commenter stated that this proposed rule focuses on identifying and mitigating lead problems in all Maine schools, including the approximate 580 schools that receive their drinking water from a water utility. These 580 schools are not currently required to sample their water for lead, and this rule will help reduce lead exposure in all Maine schools.

**Response:** No changes were made to the rule based on this comment.

- 5. Comment:** Commenter 5 stated that the Maine Chapter of the American Academy of Pediatrics (AAP) is in strong support of the proposed rule to comply with 2019 P.L. Ch. 158, An Act to Strengthen Testing for Lead in School Drinking Water. The commenter added that the pediatricians of Maine thank the Maine CDC for taking a significant step in reducing lead exposure for all the children in Maine. The Commenter stated that there has been an increased understanding on the adverse effects of lead on children’s developing brains and other organs, and on understanding ways to reduce lead exposure through public health regulations and other activities. The commenter added that the average blood lead level of U.S. children aged 1 to 5 years has decreased from 16 µg/dL in the early 1970s to approximately 1 µg/dL, at present.

Commenter 5 stated that the adverse effects of lead are now known to occur at the very lowest levels of children’s exposure. The commenter added that the federal Centers for Disease Control and Prevention, the National Toxicological Program, the Environmental Protection Agency, and the American Academy of Pediatrics agree that children’s blood lead levels above 5 µg/dL can cause decreased school achievement, attention-deficit/hyperactive disorder, lower IQ scores, impaired executive functioning, and behavior problems. Each of

these groups recognize that there is no safe level of exposure. The commenter stated that once a child is exposed, there is no evidence that these adverse health effects are reversible.

Commenter 5 continued to state that children exposed to lead experience other impairments to their developing cardiovascular, immune, and endocrine systems. The commenter added that, despite progress in reducing lead exposure, the risk continues in older homes and disproportionately affects low-income and racial and ethnic minority communities. Commenter 5 stated that lead can remain in household dust, in soil that children unintentionally ingest through developmentally normal hand-to-mouth behavior, or in water that is supplied through pipes containing lead. The commenter concluded that the most critical step that we can take is to prevent lead exposure before it occurs.

**Response:** The Department thanks the commenter for his comment. No changes were made to the rule based on this comment.

6. **Comment:** Commenters 6, 7, 8 and 10 expressed concern that potential unbudgeted remediation could be excessively burdensome for schools. The commenters stated that schools already have several mandates with which they are struggling to implement, due to a lack of adequate funding. The commenters asked if there would be any funding for remediation through the Department of Education, the Department of Health and Human Services or elsewhere.

**Response:** The Department will pay for testing required by this rule. There are no mandated expenditures on the part of the school; however, if a school wishes to implement remediation measures, a possible source of funding for abatement and mitigation recommendations resulting from testing may be the School Revolving Renovation Fund administered by the State of Maine Department of Education. Lead issues in schools are given priority through this program. No changes were made to the rule based on this comment.

7. **Comment:** Commenters 8 and 10 asked if there would be any exemption from testing for brand new systems, piping less than five years old, or school buildings where it can be verified that no lead piping or fixtures were used. Commenter 10 noted that many schools contain a mixture of old and new construction and recommended that the Department construct a comprehensive list of building stock and prioritize testing for high risk schools.

**Response:** The statutory authority for this rule, 22 MRS § 2604-B, requires that all schools test for lead in water used for drinking or culinary purposes; it does not exempt any school from testing. Accordingly, this rule applies to all schools in Maine, regardless of age or type of construction. No changes were made to the rule based on this comment.

8. **Comment:** Commenter 8 suggested that the Department provide training sessions or training materials to schools to ensure that testing is done properly.

**Response:** The Department intends to utilize a contracted entity or entities to provide the necessary training. No changes were made to the rule based on this comment.

9. **Comment:** Commenter 8 asked whether the State would provide staff to assist schools on site.

**Response:** The Department will have staff available to provide technical assistance as needed, and, if necessary, to provide on-site assistance to the school. No changes were made to the rule based on this comment.

10. **Comment:** Commenter 10 stated that this rule will require a significant amount of time, due to the fact that the number of fixtures for some schools could be in the hundreds. The commenter added that with the draining requirement, the time required by a staff member or contracted entity is noteworthy. The commenter stated that, should a school seek outside help from their local water utility, a task of this size would consume a considerable amount of their time.

**Response:** It is a requirement of 22 MRS § 2604-B that schools test water used for drinking or culinary purposes. The Department will work with public water system suppliers that provide water to schools, to assist with testing. The rule does not require flushing prior to testing. The rule no longer sets a maximum limit on the amount of time water may remain motionless prior to testing, but, instead, provides a recommended maximum time limit. Please see the response to Comment #24.

11. **Comment:** Commenter 9 stated that the proposed rule fails to adequately address major childhood health risks posed by lead in school drinking water and fails to advance the State’s goal of eliminating lead poisoning in children by 2030. The commenter referenced a report from DHHS, Maine CDC, January 2019, submitted to the Maine Legislature, that stated lead poisoning is “one of the major environmental health threats for children in Maine.” The commenter also stated that the report indicated that young children exposed to lead, even at very low levels, may experience brain damage that can result in learning and behavioral problems. The commenter added that the national scientific community agrees that there is no safe level of lead in a child’s body. The commenter added that the EPA estimates that 10 to 20 % of human exposure to lead may come from drinking water. The commenter stated that it is critical that Maine CDC adopt a rule that protects children’s health, reflects the consensus that there is no safe level of lead for children, and that advances the State’s goal of eradicating childhood lead poisoning by 2030. The commenter referenced 22 MRS § 314-A of the Lead Poisoning Control Act.

**Response:** This rule meets the requirements of 22 MRS § 2604-B, by providing the funding necessary for the testing of school drinking water, requires public notification of testing results and provides recommendations for lead abatement and mitigation, based on school drinking water test results. No changes were made to the rule based on this comment.

12. **Comment:** Commenter 10 referenced EPA’s Lead and Copper Rule, stating that there is no sunset provision in this proposed rule to phase out testing requirements when a new Lead and Copper Rule is approved. The commenter asked if there is a plan to do so, or whether this rule would stand until changed by the Maine Legislature.

**Response:** There are no sunset provisions within this rule. This rule is required by 22 M.R.S. § 2604-B and is independent of the EPA Lead and Copper Rule. Pursuant to this rule, all schools are required to test drinking water samples at least once; based on the results, the Department may recommend additional sampling. Recommendations for additional testing will be made on a case-by-case basis. No changes were made to the rule based on this comment.

## SECTION 1. PURPOSE & DEFINITIONS

13. **Comment:** Commenter 3 asked if the term bubbler was needed in the definition of drinking water outlet. The definition, added Commenter 3, already contains the term “drinking water fountain.” Within the same definition, the commenter also stated that the phrase, “cafeteria faucets kettles” is confusing.

**Response:** The Department finds that the term bubbler helps the define drinking water outlet and keeps the term within this definition. However, the Department agrees with the commenter that the phrase, “cafeteria faucets kettles” is confusing and has revised this section of the rule by adding a comma, so that it states “cafeteria faucets, kettles.”

14. **Comment:** Commenters 3 and 4 asked if a different acronym could be used for the definition of MRL for Lead (Maine Response Level for lead). The Commenters stated that MRL acronym is already used by the Laboratory Accreditation Program to mean “Minimum Reporting Level” and that this use of the same acronym could lead to confusion.

**Response:** The Department agrees with the commenters and will remove the definition of MRL from the rule. The Department will add “ppb” to the list of defined terms and define it to mean “parts per billion.” Throughout the rule, the Department will replace “MRL” with “15 ppb”.

## SECTION 2. IDENTIFICATION OF SAMPLE SITES

- 15. Comment:** Commenter 3 recommended rephrasing a portion of Section 2(A), from “The Department will designate those laboratories” to “The Department will designate laboratories.”

**Response:** The Department agrees with the commenter and revised this section of the rule accordingly.

- 16. Comment:** Commenter 3 suggested that a requirement that the Department “make a list of designated laboratories available for schools” be added in Section 2(A), which would permit the Department to simply post the list on a website, rather than sending the list to each school.

**Response:** The Department intends to implement a variety of outreach methods to Maine schools, including posting on its website. The Department determined that the rule, as written, provides the Department sufficient flexibility to determine the method by which notice will be provided to schools. No changes were made to this rule based on this comment.

- 17. Comment:** Commenters 2 and 4 stated that the Department should develop a uniform naming system or naming convention for test samples. The commenters stated that a naming convention would facilitate sample management, by identifying where each sample was collected within the school. The commenters stated that this change would help schools to know which tap the sample came from and could also be used in a larger database maintained by the Drinking Water Program. The commenters stated that if a naming convention does not exist, schools could come up with inconsistent naming conventions that may make it difficult for both schools and the Drinking Water Program to track the locations over time. The commenters added that a naming convention would be useful to facilitate public presentation of the data, such as through an online portal.

**Response:** The Department will provide a recommended naming convention and intends to develop a comprehensive database to house information gathered pursuant to this rule. No changes were made to the rule based on this comment.

- 18. Comment:** Commenter 3 stated that shower heads should be included in Section 2(C)(1), in the list of examples of outlets that do not meet the definition of drinking water outlets.

**Response:** The Department agrees with the commenter and has amended the rule to include shower heads in Section 2(C)(1). The Department also added the phrase, “may include but are not limited to” prior to the list of examples in this section.

- 19. Comment:** Commenter 3 recommended rephrasing part of Section 2(C)(1), from “Examples of outlets that do not meet the definition of drinking water outlets may include mop sinks, some science lab faucets, eye wash stations, or outdoor spigots that are not used for filling water bottles for athletics” to “Examples of outlets that may not meet the definition of drinking water outlets include mop sinks, science lab faucets, eye wash stations, and outdoor sill cocks/hose bibs not used for filling water bottles for athletics.”

**Response:** The Department agrees with the commenter and updated this section of the rule. The Department’s response to Comment #18 may be referred to above.

### SECTION 3. TESTING PROTOCOLS

**20. Comment:** Commenter 10 referenced Section 3(A), which states that “the Department will provide funds to the designated laboratory for the cost of sample bottles.” Commenter 10 asked whether this section applied to the first round of testing or all of the testing until an acceptable level is identified. The commenter added that if multiple rounds of testing are required, the cost should belong to the State and not to individual municipalities. The commenter stated that the rule does not provide any financial assistance to support the schools in the testing process except for sample bottles and lab testing. The commenter added that the time spent gathering all the samples is “significant and should be accounted for.” Commenter 2 stated that Section 3(A) notes that the State will pay for sample bottles and analyses, but does not address the cost of shipping or delivering the samples to the laboratory, which may be a significant cost for a large batch of samples.

**Response:** The Department has not been provided the resources to compensate schools for the time that it may take staff to conduct the required sampling of school drinking water. Public water systems may provide assistance to those schools that are customers of the public water systems, and, if necessary, the Department will provide technical assistance to the schools with sampling. The Department will pay for the costs of initial testing and any future testing that may be recommended by the Department, based on test results. These costs include shipping and the delivering of samples to the laboratory. The Department has updated Sections 3(A) and 3(B)(9) to clarify that the department will pay the costs for shipping and delivery.

**21. Comment:** Commenter 3 recommended a grammatical update by removing the following from the beginning of Section 3(B), “Upon receipt of the sample bottles, each school” and starting that section with “Schools...”

**Response:** The Department finds the language in this section of the rule necessary to inform schools that they will receive sample bottles from the lab, prior to sampling. No changes were made to the rule based on this comment.

**22. Comment:** Commenter 3 stated that in Section 3(B), the Department should have the ability to negotiate pricing with participating labs. The commenter added that it is unclear how the Department will obtain laboratory data. The commenter recommended adding to the rule, “to receive payment from the Department, laboratories must submit sample result data to the Department in a format prescribed by the Department.”

**Response:** The Department will require that any testing laboratory contracted to conduct testing pursuant to this rule collect data and share that data with the Department. The Department will issue an RFP to obtain bids for lab services. The RFP will allow the Department to engage in discussions regarding cost for services as well as the specific services that will be provided by the lab. No changes were made to the rule based on this comment.

**23. Comment:** Commenter 2 stated that first draw 250ml samples in Section 3(B)(3) are best for assessing lead contamination from fixtures and immediately adjacent pipes. The commenter referenced studies that have shown that when multiple samples are collected in series, a great deal of variation occurs when the highest lead levels are found. The commenter stated that this is likely depending on the specific plumbing of a structure. The commenter added that in residences it is accepted that in lead service lines is a larger contributor of lead than fixtures. The commenter stated that the impacts of a lead service line would be poorly captured in a first-draw 250ml sample. The commenter recommends adding a modest number of additional samples on a per-school basis beyond the first draw to assess the potential for leaded pipes or connections “deeper” in the plumbing system. The commenter states that, if the service line material cannot be readily determined, a larger non-first-draw sample would be best to capture stagnated water from the service line.

**Response:** It is a requirement of Maine law (22 MRS § 2604-B) that schools test water used for drinking and culinary purposes. The Department will provide assistance for any additional testing requested by a school. There is nothing in this rule that would preclude a school from performing additional testing. The Department does not have the authority to require every school to conduct additional testing, based on initial results. The Department may recommend to older schools, a three-minute flush sample be taken at the location closest to their water

service line, to test for possible lead coming from a lead service line. No changes were made to this rule based on this comment.

- 24. Comment:** Commenter 2 stated that the proposed rule should be modified to ensure the identification of potential sources of lead exposure and to reflect the results of water as potentially consumed by children. The commenter stated that this rule requires the testing of water that has sat in pipes for a maximum of 18 hours, in Section 3(B)(3). The commenter stated this requirement strongly implies that schools are required to conduct pre-stagnation flushing, or the running of all the water. The commenter added that flushing causes cleaning out of the pipes and has been shown to minimize the likelihood of detecting elevated lead levels. The commenter stated that even a six-to-eight-hour stagnation period would minimize the likelihood of finding elevated lead in water levels.

The commenter stated that, for these reasons, the USEPA specifically directs public water systems not to instruct water test samplers to perform a pre-stagnation flush methods for samples collected for Lead and Copper Rule compliance. Commenter 2 stated that the USEPA is proposing to codify this requirement as part of its proposed changes to the Lead and Copper Rule. The commenter added that the methodology in this rule is not reflective of how water is consumed in schools. The commenter referred to the impact of pre-stagnation flushing on school lead testing results in New York City. The commenter stated that the city first tested its school water outlets in 2016, requiring a pre-stagnation flush and then re-sampled the schools without a pre-stagnation flush. The commenter stated that the second round without the pre-stagnation flush found nine times as many water outlets with lead levels over 15 ppb.

The commenter also referred to the EPA's recommendation to avoid two other techniques that have been demonstrated to produce lower lead in water results: the use of narrow neck collection bottles and the removal or cleaning aerators prior to sampling. The commenter stated that lead particles are more likely to be dislodged with high flow rates, and therefore samples should be collected with as high a flow rate as possible, which is facilitated by a wide neck bottle. The commenter also stated that cleaning or removing aerators before sampling may remove lead particles that may have otherwise been collected, potentially reducing the lead concentrations that would otherwise be present.

The commenter recommended that the Department approach the testing as a screening test collected under the worst-case scenario, erring on the side of risking a false positive over a false negative. The commenter stated that pre-stagnation flushing has been "widely criticized" by some experts and has been labeled as "masking" lead in the media. The commenter stated that these techniques do not offer reassurance and open the Department and schools to further questioning. The commenter urges the Department to amend the proposed rule by striking the "maximum" stagnation time, prohibiting pre-stagnation flushing, mandating the collection of samples at the highest flow rate practicable in wide-mouth containers, and prohibiting the removal or pre-sample cleaning of aerators.

**Response:** The Department's intent is not to promote flushing as part of the testing process in this rule. In response to Public Law, Chapter 158, the Department considered EPA recommendations for reducing lead in drinking water in schools. In its *3T's for Reducing Lead in Drinking Water in Schools*, the EPA recommends a stagnation period as part of the testing process. The Department has revised this section of rule to read "The Department, in accordance with the EPA's 3Ts, guidance, recommends that the water be motionless no longer than 18 hours before the collection of samples begins." In the training materials provided to all Maine schools, the Department will add specific language advising samplers not to remove the aerators from faucets prior to collecting water samples.

- 25. Comment:** Commenter 3 stated that the use of the term "normal use" in Section 3(B)(4) is "problematic", because a collector may not have enough information to determine what is normal use. The commenter recommended that the Department require the use of the cold water side of the faucet, which would be consistent with the instructions provided in Section 3(B)(3).

**Response:** The Department considers the wording in this section of the rule to be sufficiently written. The school's sampler will be in a better position to determine the normal use of a particular outlet than will the Department. No changes were made to the rule based on this comment.

- 26. Comment:** Commenter 3 stated that this proposed rule and the *Rules Relating to Drinking Water* should be consistent. The commenter stated that the *Rules Relating to Drinking Water* uses "laboratory sampling form" while in Section 3(B)(5), this proposed rule uses "chain of custody form."

**Response:** This section requires the school to complete all forms required by the laboratory. The Department has determined that chain of custody form is an acceptable term for use in this rule. The terms "laboratory sample form" and "chain of custody form" are often used interchangeably. The Department does not view the use of this form to be inconsistent, particularly given that the rule requires the completion of all forms required by the laboratory, "including" chain of custody forms. No changes were made to the rule based on this comment.

- 27. Comment:** Commenter 2 stated that the rule needs criteria for ongoing testing. Commenter 2 stated that the proposed rule only requires one round of testing (Section 3(B)(7)), unless, based on test results, the State determines that additional testing is necessary, under Section 3(B)(9). The commenter stated that the requirements for a retest needs further clarification and stated that "major changes in source water" is vague. Commenter 2 added that the rule needs to identify changes to source water chemistry, alterations to the service line or internal plumbing, that could release lead and require additional testing. The commenter stated that a routine testing program is necessary, due to the fact that little is known about the changes in lead leaching over time. The commenter stated that there is a need to capture changes to the plumbing system or source water chemistry. The commenter added that a routine testing program should be required on a rolling basis every several years.

Commenter 2 stated that the Act itself "envisions" ongoing testing, as evidenced by its requirement of annual reports to the Legislature. The commenter stated that it would be "hard to fathom" that the Legislature would want an annual reminder of the activity the Department did a single time.

**Response:** Section 3(B)(9) permits the Department to recommend additional sampling in the event of major changes in water source. The term "major changes in source water" provides the Department with the ability to recommended additional testing under any circumstance that may have negatively affected the quality of a school's water. The Department may not mandate that schools conduct ongoing testing, as 22 M.R.S. § 2604-B prohibits the Department from requiring a school to expand or modify its activities so as to necessitate additional expenditures from local revenue and requires the Department to act within existing resources. The implementation of a routine testing program would require additional resources appropriated by the Legislature. No changes were made to the rule based on this comment.

- 28. Comment:** Commenter 2 stated that the EPA's proposed federal Lead and Copper Rule amendments add new requirements for public water systems to conduct testing in schools. The commenter strongly discourages the Department from relying on the proposed amendments, stating that the proposed Lead and Copper Rule changes are only proposed and that the EPA may not follow through with the proposal. The commenter stated that the Department should not write regulations presumptively, based on proposed federal action. The commenter added that Maine should set rules and procedures for the testing that meet the highest standards. The commenter stated that there is little risk of duplication of regulation as the proposed revisions to the Lead and Copper Rule allows states to waive the school testing requirements, if the state has a separate program that is at least as stringent.

**Response:** The Department is not legally authorized to require ongoing testing for schools under this particular rule. The basis for this Lead Testing in School Drinking Water Rule was 2019 P.L. Ch. 158, as codified at 22 MRS § 2604-B. Based on the resources allocated to the Department for implementation, the rule was drafted for practicality and reasonableness. No changes were made to the rule based on this comment.



**29. Comment:** Commenter 8 stated that Section 3(B)(7) requires all schools to test at least once. Commenter 8 asked whether future testing would be required if initial test findings show no unacceptable level of lead.

**Response:** The Department refers the commenter to the Department's response to Comment #27. No changes were made to the rule based on this comment.

**30. Comment:** Commenter 3 recommended a revision to the beginning of Section 3(B)(7), by removing, "All schools" from the beginning of the section and replacing it with "Schools..."

**Response:** The Department finds that "all" should remain when describing schools, to articulate that the rule does not refer to any subset of schools. No changes were made to the rule based on this comment.

**31. Comment:** Commenters 2 and 3 stated that Section 3(B)(6) requires a school to contact the Department 60 days before sampling, if assistance is needed; however, the Department is not required to notify the school until 30 days before sampling begins, in accordance with Section 3(B)(8). The commenter noted that this wording creates a potential problem for the school. The commenter also asked for clarification about the length of the collection period.

**Response:** The collection period will be determined by the Department based on the capacity of the approved laboratory or laboratories for analyzing and processing samples. The Department will advise each school of its collection period at least thirty days in advance. The Department revised Section 3(B)(6) to clarify this process, by changing "start date" to "expiration period."

**32. Comment:** Commenter 9 recommended that this rule adopt the same requirements as those contained in NH RSA § 485:17-a(I), which requires schools and child care facilities to test once every five years, until at least three rounds are below the State standard. The commenter stated that this frequency would identify changing lead levels sampled from aging pipes in schools and in the water distribution systems that serve schools. The commenter added that Sections 3(B)(7) and 3(B)(9) should be revised to require lead testing at least once every five years.

**Response:** The Department refers the commenter to its responses to Comments #27 and #28. No changes were made to the rule based on this comment.

**33. Comment:** Commenter 3 referred to Section 3(B)(9), which states that the Department may recommend additional sampling, if the Department determines that testing of more samples would determine the source of the lead contamination. The commenter asked whether a school is required to follow the Department's recommendation and inquired about how the Department would determine that more sampling would be necessary.

**Response:** The Department will provide technical assistance and information to guide schools for future testing. Based on an analysis of an initial water sample, where the sample result was reported to be over 15 ppb, the Department would recommend that two more samples be collected and analyzed, to ensure that the initial water sample reading was correct and accurate. If mitigation is necessary, then the Department would recommend one more sample be collected and analyzed, after mitigation was completed, to ensure that mitigation was successful. No changes were made to the rule based on this comment.

**34. Comment:** Commenter 3 referred to Section 3(B)(9), which states that additional sampling could also be used to determine whether major changes in source water negatively impacted water quality. The commenter stated that under the Safe Drinking Water Act's Lead and Copper Rule, the Department already has the authority to require lead and copper sampling when there is a water source change. The commenter recommended removing this language from Section 3(B)(9) because it is duplicative.

**Response:** This particular rule is intended for all Maine schools, including those that are not public water systems serving water from their own wells. The Lead and Copper Rule that the commenter refers to only applies to public water systems. Approximately 580 schools are customers of (and receive water from) a municipality public water system. Removing this section from the rule would remove the Department's ability to recommend testing following major changes in source water to those 580 schools. This rule is intended to apply equally to all schools, regardless of whether they are regulated as public water systems. No changes were made to the rule based on this comment.

- 35. Comment:** Commenter 3 asked the Department to explain which expenses will be paid pursuant to Section 3(B)(9). The commenter asked whether the Department would pay for staff time and other expenses.

**Response:** The Department will pay for any additional testing recommended by the Department, which is explained in the Department's response to Comment #20 above. The Department updated this section of the rule to provide more clarity by removing the term "expenses" and added, "shipping and delivery charges, sample bottles and lab analyses."

- 36. Comment:** Commenter 3 recommends replacing Section 3(B)(9) with the following, "The Department may recommend additional sampling to help identify the source of lead contamination or confirm lead mitigation results. The Department will pay the cost of sample bottles and analyses for additional testing conducted as a result of its recommendation."

**Response:** The Department refers the commenter to the Department's response to Comment #35.

#### SECTION 4. WATER LEAD LEVELS

- 37. Comment:** Commenter 3 recommends removing, "parts per billion" MRL from Section 4(A) and Section 5(A), and instead use the acronym "ppb."

**Response:** The Department agrees with the commenter and removed "parts per billion MRL" from Sections 4(A) and 5(A), replacing it with "ppb".

- 38. Comment:** Commenter 9 stated that in Section 4(A), a school that reports any drinking water outlet with a first-draw lead level exceeding 15 ppb "may" refer to Section 5 to reduce lead exposure. The commenter stated the rule should be revised to state that the school "shall" refer to Section 5, to reduce lead exposure. This suggested change would require the school to engage in the abatement and mitigation actions outlined in Section 5. Commenter 9 stated that this revision would make Section 4(A) consistent with Section 5(A), which states that if a school reports lead in water above standard, then certain actions "will" occur.

**Response:** Pursuant to 22 MRS § 2604-B(4), the Department, "may not require a school to expand or modify its activities so as to necessitate additional expenditures from local revenue[.]" The Department can recommend abatement and mitigation and offer technical guidance to the school; however, the Department is unable to mandate or require a school to undertake abatement and mitigation. No changes were made to the rule based on this comment.

- 39. Comment:** Commenter 3 recommends the following revision for Section 4(B), replacing "must continue to meet the standards of this rule" with "must meet the requirements of this rule."

**Response:** The Department agrees with the commenter and replaced "must continue to meet the standards of this rule" with "must meet the requirements of this rule" in Section 4(B).

## SECTION 5. ABATEMENT AND MITIGATION

**40. Comment:** Commenter 10 referenced Section 5(A), which states that “the Department will provide outreach materials to detail possible mitigation measures.” The commenter requested that, if the Legislature approves adoption of this rule, then a group of relevant parties should be brought together to help draft these materials. The commenter added that the issue of toxins in water is very complex and any material provided to the public should be written for the intended audience.

**Response:** The Department thanks the commenter for his offer of assistance. No changes were made to the rule based on this comment.

**41. Comment:** Commenter 3 recommends adding a statement to Section 5(A)(1), to state that outreach materials are available on the Department’s website.

**Response:** The Department intends to provide outreach through a variety of methods, including the use of the Drinking Water Program’s website to post outreach materials for schools. No changes were made to the rule based on this comment.

**42. Comment:** Commenter 3 stated that deadlines should be included in Section 5(A)(2)(b), if the Department is going to recommend abatement or mitigation.

**Response:** In accordance with the Department’s response to Comment #38, the Department may not mandate abatement or mitigation; accordingly, any deadlines imposed by the Department would be unenforceable. The Department does plan to conduct outreach to schools whose water levels exceed 15 ppb, to strongly encourage abatement and mitigation and to recommend specific measures. No changes were made to the rule based on this comment.

**43. Comment:** Commenter 9 stated that Sections 5(A)(1) and (2) should have deadlines for the Maine CDC to provide guidance on mitigation, and deadlines for the schools to develop and submit lead remediation plans. The commenter added these deadlines should be no longer than 30 days. Commenter 9 referenced New Hampshire statute, NH RSA § 485:17-a(I), which requires schools and child care facilities that exceed limits for lead to implement a remediation plan as approved by the state within 30 days of notification of parents or as soon as practicable.

**Response:** Please see the Department’s response to Comment #42. New Hampshire statute imposes mandates that the statute authorizing this rule prohibits.

**44. Comment:** Commenter 8 asked for additional information regarding flushing as a recommendation for abatement and mitigation. Commenter 8 requested the parameters for flushing.

**Response:** Based on a review of the Maine schools’ test results, the Department will provide guidance to those schools exceeding 15 ppb, regarding possible abatement and mitigation options, including flushing. No changes were made to the rule based on this comment.

**45. Comment:** Commenter 3 referenced Section 5(A)(3) of the rule, when asking the following questions: Under what circumstances would the Department not recommend prohibiting the use of the drinking water outlet? Why make this a recommendation and not a requirement? How soon after the notification would the recommendation occur? Does the school have to wait for the Department to tell them or are they responding to the lab results? Could a school permanently label the faucet “Do Not Drink” as the long term solution? If so, then success would not require additional testing.

**Response:** The Department may make recommendations for abatement and mitigation and will be available to assist schools with interpreting test results. The Department does not have the authority to require any specific

abatement or mitigation measures that would require additional expenditures from local revenue. The posting of a permanent sign marked “Do Not Drink” may be a possible long term solution. The Department reviewed all provisions in response to this comment for consistency and determined that Section 5(A)(2) should be revised from “Utilizing that information, the school must develop and submit a lead remediation plan to the Department” to “Utilizing that information, the Department will recommend that the school develop and submit a lead remediation plan to the Department.”

- 46. Comment:** Commenters 2 and 9 stated that the abatement and mitigation provisions lack detail and should be strengthened. The commenters stated that there is value in providing a more detailed approach to guide school administrators. The commenters added that, in order to be protective of health, the rule must have mechanisms to ensure that “mitigation” methods are adhered to over time. The commenters referenced Section 5(A)(3), which states that the Maine CDC will “recommend that a school prohibit use of any drinking water outlet exceeding the lead concentration level of 15 ppb by physically disconnecting the outlet or by posting ‘Do Not Drink’ signs”. The commenters stated that to protect children from lead poisoning, the rule should be revised to remove the option for posting signage and should require a physical disconnection of the outlet in all cases of water lead level exceedance. The commenters expressed that the health risk is then immediately eliminated, either permanently or temporarily, until a lead remediation plan is successfully implemented. The commenters added that the rule must add mechanisms to ensure that mitigation methods are adhered to over time. The commenters stated that if the solution is to take an outlet out of service, then it must be permanently disabled. The commenters added that if mitigation involves regular flushing or a use of filters, then there must be a regular review of records by the Department, to demonstrate that flushes were conducted and filters were replaced.

**Response:** The Department refers the commenters to the Department’s response to Comment #42. No changes were made to the rule based on this comment.

- 47. Comment:** Commenter 8 asked whether, in the event that internal piping needs replacement, the Department would impose a time frame and inquired as to who would pay for the replacement.

**Response:** Pursuant to 22 MRS § 2604-B, the Department is not authorized to require a school to expand or modify its activities so as to necessitate additional expenditures from local revenue; accordingly, the Department could not require the replacement of internal piping. No changes were made to this rule based on this comment.

- 48. Comment:** Commenter 8 stated that one funding source cited in the lead testing legislation was the School Revolving Renovation Fund. The commenter stated that this fund is “woefully” underfunded and stated that if schools are adding lead mitigation methods to its operations, then it will require more resources.

**Response:** The funding of the School Revolving Renovation Fund is beyond the scope of this rulemaking. No changes were made to the rule based on this comment.

## SECTION 6. PUBLIC NOTIFICATION TO PARENTS

- 49. Comment:** Commenter 3 asked the Department how soon after it receives sample reports, would the Department provide a fillable public notice to the school. The commenter recommends that the Department place the fillable form on its website and inform the school of its availability.

**Response:** As written, the rule provides the Department with flexibility to determine the method in which it provides schools with the public notice document. The Department intends to make all information associated with this rule available in as many formats as possible, which will include the Department’s website. No changes were made to the rule based on this comment.

- 50. Comment:** Commenters 3 and 9 asked for clarification about when the 120-day window starts for a school to distribute public notification. The commenters asked whether the window started when the school receives notification of high lead results from the Department or from the lab. The commenters added that, if the 120-day

window starts upon receipt of notification from the lab, then the Department may not know that the time window has begun. The commenters recommended that the schools distribute the notification. The commenters added that the 120-day period established in Section 6(D) is too long, based on the immediate and long-lasting effects of childhood lead poisoning, and should be reduced to no more than 10 days. The commenters stated that parents should be notified about all the results of testing for lead in water, not just those that exceed the threshold.

Commenter 9 stated that Section 6(D) should be changed to “shall post” and should include a deadline for mandatory notification. The commenter added that the rule should also add a requirement that, in the event of an exceedance, either the school or the Maine CDC will notify the parents within 5 days. The commenter referenced New Hampshire law, NH RSA § 485:17-a(I), which requires that a school or child care facility at which there has been an exceedance must notify parents within 5 business days.

**Response:** The Department will require any laboratory that conducts testing pursuant to this rule to report results to the Department within seven days of analysis. The Department has determined that seven days is a reasonable amount of time for schools to provide certification that public notification was completed. The Department agrees with the commenters and changed “may” in the proposed Sections 6(B) and (C) to “must”. The Department also updated the rule in Section 6, by adding a new Section 6(C), which states, “Schools must distribute public notice within 10 days of receiving lab results.” Section 6(D) was also updated to state, “Schools must certify to the Department within seven days of distribution, that public notification to parents and staff was completed...” The rule requires a notice to be sent by the school and must include the location of all test results. In Section 6(E), the Department removed, “within 120 days of the school receiving notification of high lead results” to reduce confusion.

- 51. Comment:** Commenter 2 stated that the rule must be revised to ensure that schools promptly share all test results with stakeholders, such as parents, staff, prospective students, and the public. The commenter stated that the EPA’s recently proposed revisions to the Lead and Copper Rule require public water systems to notify its customers within 24 hours of finding an elevated lead or copper level. The commenter stated that it is “unconscionable” that a family is required to be informed of elevated results in their home within a day, but the Department allows an entire classroom or school to continue to drink water with elevated risks, without an optional notification for four months. The commenter strongly urged the Department to change the rule to require that schools disclose to stakeholders elevated results within 24 hours and to share all test results within 10 days. The commenter stated that if it is the Department’s opinion that statute does not grant sufficient authority and that schools themselves disclose the results, the rule should then require the Department to publicize the results. The commenter stated that in the event of elevated lead results, a 24-hour window be in the rule for the school to make its own announcement, and if the school has not certified it has done so, then the Department would then immediately issue a public statement. The commenter added that in the event of results of lead below the State level, the Department publish a notice within 10 days, if the school has not certified that they have shared the results with stakeholders.

**Response:** The Department refers the commenter to the Department’s response to Comment #50.

- 52. Comment:** Commenter 2 stated that the rule should require the Department to maintain an easily accessible and searchable online database of all test results, to ensure ease of access to parents, as well as researchers and members of the public. The commenter added that this requirement is especially critical, if the Department does not set a more health-protective standard, to provide the information families may use to insist on local action to increase the safety of their schools’ drinking water.

**Response:** The Department refers the commenter to the Department’s response to Comment # 17. No changes were made to the rule based on this comment.

- 53. Comment:** Commenters 2 and 9 stated that the lead concentration in water of 15 parts per billion (ppb) in Section 4(A)(1), is too high to protect children’s health. The commenters referenced the American Academy of Pediatrics recommendation that school water not exceed 1 ppb. The commenters stated that EPA estimates drinking water as

the source of about 20% of a person's lead intake. The commenters stated that the Maine CDC should not rely on the EPA's 15 ppb standard in the EPA's Lead and Copper Rule, because it is not a health-based standard, but rather an administrative tool to assess public water systems. The commenters stated that the EPA has established a maximum lead contaminant level goal of 0 ppb lead in drinking water, but has not yet made this a federal standard. Commenter 2 stated that the EPA has proposed the creation of a "trigger level" of 10 ppb adding that the EPA believes there are systematic changes that may be done at the utility level to lower lead in water levels.

Commenter 9 stated that New Hampshire and Massachusetts are considering legislation that would establish a level of 1 ppb as their state standard for lead in water. Commenter 10 added that last year, the Vermont legislature set their action level at 4 ppb. In 2017, the Illinois legislature required comprehensive school testing with "prompt" notification to parents of all levels in excess of 5 ppb. In 2018, the District of Columbia has also decided to use the level of 5 ppb for triggering action in their schools.

Commenter 10 stated that the Department will have water outlet specific data, providing it with a much more detailed set of data than has been available to public water systems. The commenter added that schools can implement changes on a tap-to-tap basis, making it feasible to take targeted and cost effective action to reduce lead exposures to a much lower level. The commenter finally stated that with a goal to reduce water concentrations of lead to the greatest extent feasible (because there is no safe level), the rule must require actions at a level substantially below the 15 ppb action level and 10 ppb trigger level. The commenters stated that the Department should use 1 ppb, in accordance with the AAP recommendation, as the trigger to explore and evaluate the feasibility of lowering lead levels from a particular tap.

**Response:** The Department has updated the rule by adding Section 5(B), which states, "Schools with drinking water outlets below 15 ppb may choose to engage in abatement and mitigation measures. The Department will provide assistance and outreach materials to schools, if requested, regardless of lead concentration results." Parents are alerted to lead concentration levels at 15ppb, and they will have access to all lab testing results. The Department chose the lead concentration in water of 15 ppb as an action level, to be consistent with the federal Lead and Copper Rule's standard for public water systems. The Department updated Section 6(A) of this rule, by removing "in the event of a drinking water report of lead above the MRL."

- 54. Comment:** Commenter 2 added that, at a minimum, the Maine CDC must ensure that all test results are made available to the public, so that parents, teachers and communities can make informed decisions and take action to reduce lead levels, even if the State fails to mandate lower lead levels.

**Response:** In accordance with 2019 P.L. Ch. 158, the Department considered EPA recommendations for reducing lead in drinking water in schools. The EPA recommends that a lead water concentration should not exceed 15 ppb. No changes were made to the rule based on this comment. All test results will be public notification. The rule is consistent with requirements made to public water systems through the federal Lead and Copper Rule administered by the Department through state law. Part of the rule's intent is to create a single requirement for schools, whether they are public water systems or served by municipalities. Section 6(B)(9) has been added to the rule and states, "The public notice must include a link to the Department's website which will post all school results."

- 55. Comment:** Commenter 8 stated that the public disclosure process is very detailed for the general public. Commenter 8 stated that her organization would be happy to participate in discussions with the Department's Drinking Water Program and the Department of Education, to develop a communication protocol that informs the public, without causing undue alarm or confusion.

**Response:** The Department is happy to work with stakeholders in the development of a public notification format that is easy to understand. No changes were made to the rule based on this comment.

## SECTION 7. RECORD KEEPING

**56. Comment:** Commenter 2 stated that Section 7 should clarify that these records must be shared with the Department. The commenter stated that the Department should receive the following from schools: the documentation created for Sections 2(B) and 2(C); copies of all laboratory results; plans created under Section 5(A)(2); ongoing documentation of compliance with mitigation efforts; and all notices under Section 6(C). The commenter stated that it is vital that the Department receive this information if the Department is going to conduct meaningful oversight and monitoring. The commenter stated this would allow the Department to perform desk audits without visiting school locations. The commenter added that having a single repository increases the ease of access to members of the public under public records law and allows the Department to have possession of the information to create an online portal.

**Response:** The Department will require any laboratory that conducts testing pursuant to this rule to report results to the Department within seven days of analysis. The Department intends to make information available and accessible on its website. Section 6(B) of the rule contains the test results that are required to be distributed to staff, parents, students and staff as part of the public notification.

### SUMMARY OF CHANGES RESULTING FROM PUBLIC COMMENTS & AAG REVIEW FOR FORM AND LEGALITY:

Items below are changes made in response to public comments.

1. Section 1(B): removed the definition of "MRL" from the rule and added a definition for "ppb" (parts per billion) 1(B)(7). Throughout the rule replaced "MRL" with "15 ppb"
2. Section 1(B)(3): in the definition of drinking water outlet, placed a comma between "cafeteria faucets" and "kettles."
3. Section 1(B)(4): in the definition of first-draw sample changed, "a maximum of 18 hours" to "a recommended maximum of no more than 18 hours."
4. Section 2(C)(1): added, "but not limited to, shower heads."
5. Section 3(B)(3): added, in accordance with the United States "Environmental Protection Agency's (EPA's) "3Ts for Reducing Lead in Drinking Water in Schools,"" and "the Department , in accordance with the 3T's guidance, recommends that the water be motionless" no longer than 18 hours.
6. Section 3(B)(6): revised this section by changing "within 60 days" to "before 60 days" and changed "start date" to "expiration period."
7. Section 3(B)(9): removed the term "expenses" and added, "sample shipping and delivery charges, sample bottles and lab analyses associated with."
8. Section 4(B): revised this section of the rule by replacing "must continue to meet the standards of this rule" to "must meet the requirements of this rule."
9. Section 5(A): replaced "the 15 parts per billion MRL" with "15 ppb."
10. Section 5(A)(2): revised this section of the rule from "Utilizing that information, the school must develop and submit a lead remediation plan to the Department" to "Utilizing that information, the Department will recommend that the school develop and submit a lead remediation plan to the Department."
11. Section 5(B): new section added that states, "Schools with drinking water outlets below 15 ppb may choose to engage in abatement and mitigation measures. The Department will provide assistance and outreach materials to schools, if requested, regardless of lead concentration results."
12. Section 6(A): removed, "in the event of a drinking water report of lead above the MRL."
13. Section 6(B): replaced "The school may distribute public notice" with "The school must distribute public notice."
14. Section 6(B)(7): replaced "may" with "can" for clarity.
15. Section 6(C): now Section 6(D), replaced "may" with "must."
16. Section 6(C): added a new Section 6(C) that states "Schools must distribute public notice if lead concentration levels are reported at or exceed 15 ppb, with 10 days of receiving lab results." Replaced the proposed Section 6(C) with an updated 6(D) that states, "Schools must certify to the Department within seven days of

distribution pursuant to Section 6(B)(1)-(8), that public notification to parents and staff was completed...”  
The proposed Section 6(D) is now Section 6(E). In Section 6(E) the Department removed, “within 120 days of the school receiving notification of high lead results” and added, “in accordance with this rule.”

Changes below were made to keep consistency with current law (statutes and other rules), address limitations in authority, and achieve clarity, based on AAG review.

17. Sections 3(A) and 3(B)(9), added “shipping and delivery charges” to clarify the costs that will be covered by the Department.
18. Section 6(B)(9): added, “the public notice must include a link to the Department’s website which will post all school results.”
19. Section 7(A) changed “may” to “must”.