



**Department
of Health**

Lead Testing in School Drinking Water

10 NYCRR Subpart 67-4

Program Review and Updates

2023

Bureau of Water Supply Protection
NYS Department of Health

Background

- On September 6, 2016, Governor Cuomo signed into law a bill passed by the New York State Legislature (A10740/S8158).
- The law requires the New York State Department of Health (NYS DOH) to develop regulations to require all public school districts and Boards of Cooperative Educational Services (BOCES) - collectively, “schools” - to test all potable water outlets for lead contamination, and to take action if lead levels exceed 15 micrograms per liter.



Regulatory History

- The NYS DOH established a regulation to conform with the law - introduced as an emergency regulation, effective on September 6, 2016
- Title: ***Lead Testing in School Drinking Water***
10 NYCRR Subpart 67-4 (Subpart 67-4)
- The regulation was adopted on May 9, 2018
- Public Health Law Section 1110 was amended by Governor Hochul on December 23, 2021, requiring changes to Subpart 67-4
- Revisions to the Public Health Law (PHL) Section 1110 went into effect on **December 22, 2022**





Summary of PHL Revisions

Monitoring

- Action Level lowered from 15 ppb to **5 ppb**
- Compliance monitoring will be every **3 years** (previously every 5 years)
- “**Lead-free**” **buildings no longer exempt** from testing requirements

Response

- All water provided to school staff/students in response to an outlet being taken out of service must be **free** of charge

Reporting

- Schools must now include copies of **lab reports** of the lead testing results on their websites

“Lead-Free” Buildings *No Longer Exempt*

The original legislation for 67-4 had an exemption from sampling for any school building, facility, addition, or wing with **internal plumbing** that met the new definition of “lead-free” (as defined by Section 1417 of the Federal Safe Drinking Water Act) from sampling.

A building was deemed lead-free if:

- The building was built after January 4, 2014, - OR -
- A NYS Professional Engineer or Architect certifies the building to be lead-free.

- The revisions to Public Health Law removes this exemption.
- All buildings will be required to conduct lead testing at all applicable outlets.



Changes to Key elements of Subpart 67-4

- **Action Level – now 5 ppb**
- **Sampling requirements – no change**
- **Response** - must supply water **free** of charge when appropriate
- **Public Notification – no change**
- **Reporting – must include lab reports on school website**
- **Recordkeeping – no change**



Compliance Period 2023 - 2025

Schools must complete *initial first-draw* sampling
for the 2023-2025 Compliance Period between:

January 1, 2023 – December 31, 2025



Sampling Locations



"Applicable" sampling locations requiring sampling may be located anywhere on school property including external outlets (hose bibs) if the outlet may be used for drinking or cooking (including food preparation). Samples must be collected at all outlets used or potentially used for drinking or cooking.

“Applicable” vs. “Non-applicable” outlets

Superintendents or their designees have the responsibility to identify which outlets on a school property meet the regulation requirements for sampling (“applicable outlets”).

If a Superintendent or their designee determines they have some “non-applicable” outlets, the school must develop a plan that details how those outlets will not be accessed and/or utilized for drinking or cooking purposes.

Examples "Applicable" Outlets

- bubblers/drinking fountains
- classroom sinks
- classroom combination sinks and drinking fountains
- kitchen sinks
- kitchen kettle filler outlets
- ice machines
- family and consumer sciences room sinks
- teachers' lounge sinks
- nurse's office sinks
- athletic field outlets
- Any other sink known to be or potentially used for consumption (e.g., used to make coffee in the office, etc.)

“Non-applicable outlets”

Rule of Thumb:

In general, any outlet in a room or office within a school that is not used by students (pre-kindergarten through grade 12) and does not provide water for drinking or cooking does not require sampling.

Examples of possible “Non-applicable outlets”

- **Dishwashing sinks:** If an outlet is designated for dish washing only and involves no opportunity for drinking or cooking (including food preparation), the outlet does not require sampling
- **Bus garage:** Outlets in bus garage buildings do not require sampling for lead unless the building is occupied by students (e.g., BOCES classes)
- **Point of entry:** Samples from the point of entry are not required under Subpart 67-4. Point of entry is the location where water *enters* the building from the distribution system of a public water system
- **Science/Art sinks:** Typically, classrooms in these settings prohibit eating and/or drinking. The school Superintendent has the authority to determine whether these outlets may be used for drinking or cooking and whether they require sampling

Guidance on Bathroom Sinks

Lavatory / Bathroom Sinks

Toilet rooms and bathrooms are building environments that can present unique challenges to water potability. These challenges are reflected in various code provisions that prohibit the installation of drinking facilities, drinking fountains, water coolers and water dispensers within toilet rooms and bathrooms.

NYS DOH would not object to designating these outlets nonapplicable where controls (e.g. education and signage) exist to prevent the consumption of water.

The school should include these outlets in the Remedial Action Plan with details on how their potential use will be mitigated.

Guidance for Classroom Sinks

Classroom sinks: If the outlet is used for drinking and/or cooking, it must be sampled.

However, if the school has controls in place to prevent the consumption of water, these outlets may be excluded from sampling. Superintendents, or their designees, have the responsibility to identify which outlets meet the regulation requirements for testing (“applicable outlets”). If a Superintendent or their designee determines that a school has outlets that fall outside the scope of the regulation (outlets not used or potentially used for drinking or cooking (“nonapplicable outlets”), the school must develop a Remedial Action Plan that includes details on how those outlets will not be accessed and utilized for drinking or cooking purposes.

Guidance on Tempered Outlets

“Non-applicable outlets”

Tempered outlet: an outlet that provides water with a temperature between 80 -110°F; generally, applies to bathroom fixtures in schools, gymnasiums, hotels, airports, bus and railroad stations.

The DOH and the US EPA recommend that hot or tempered water ***not*** be used for drinking or cooking as warm or hot water increase the leaching of lead into the water.

Tempered outlets are not required to be sampled. However, all tempered water outlets should be clearly posted with signs (“Do Not Drink” or equivalent), education should be provided to the students and staff to ensure awareness, and the remedial action plan should address, document, and describe continued management of the controls in place for these outlets.

“First-draw” Samples

Any sample collected for compliance under Subpart 67-4 must be a “first-draw” sample.

First-draw sample:

- A water sample collected from a cold water outlet before any water is used from that outlet
- Water must be motionless in pipes for a minimum of 8 - 18 hours before sample collection
 - This timeframe represents water that would be consumed during normal operating conditions on any school day.
- Recommended sampling times
 - While school is in session; not during or immediately after weekends, vacations or routine flushing programs;
 - following normal operation of school (e.g. Tuesday – Saturday mornings)





Lead Action Level



The action level for lead in school drinking water is **5 micrograms per liter** ($\mu\text{g}/\text{L}$) or parts per billion (ppb).

- Lead test results ≤ 5 ppb do *not* exceed the lead action level, and therefore do not require further testing or remediation until the next compliance cycle.
- Lead test results > 5 ppb (i.e., 5.1 ppb, or greater) *exceeds* the lead action level, and will require the outlet to be taken out of service and a remediation action plan to be implemented.

Guidance for outlets with test results > 5 ppb from previous compliance testing

Sampling at outlets where results from previous compliance testing (prior to December 22, 2022) have exceeded 5 ppb should be a priority.

First-draw tap testing at these outlets should be completed as soon as practicable and mitigation/remediation commenced where levels are detected above the new action level of 5 ppb.

Corrective Actions / Remediation Options

- Permanent removal of an outlet
- Outlet replacement with “lead-free” plumbing materials
- Pipe replacement with “lead-free” plumbing materials
- Remove other sources of lead (lead pipe, lead solder joints, and brass plumbing components with “lead-free” materials)
- Flushing (systematic flushing program)
- Point of Use (POU) Filters*
- Supervision
- Engineering controls
- Education
- Signage

If an outlet tested above the “action level”, can it still be used for cleaning and handwashing?

- Yes
- Signage must be placed at such outlets stating that the water should not be used for drinking (only handwashing and cleaning)
- Pictures should be used if there are small children using the water outlets, and staff should ensure the children understand what the signs mean and monitor the outlets to ensure they are not used for drinking



Corrective Actions / Remediation Options

Signage



Post-Remediation Testing

- Follow-up samples collected after an outlet has been remediated must also be “first-draw” samples. Schools may choose to perform additional sampling (i.e., 30-second flush, etc.) to determine the contribution of lead from plumbing to guide remediation decisions.
- Post-remediation tests results need to be reported:
 - In the DOH’s HERDS application on HCS
 - On the school’s website within the same reporting timeframes/ requirements as specified for the initial sampling

Public Notification Requirements

- Within 1 business day of receipt of laboratory reports:
 - ✓ Report all exceedances (lead result greater than 5 ppb) to the local health department
- Within 10 business days of receipt of laboratory reports:
 - ✓ Report all exceedances to all staff, parents, and guardians in writing.
 - ✓ Report test results (including post-remediation results) in the DOH's electronic reporting system, HERDS accessed through HCS. This information is posted on the DOH's website for the public
- Within 6 weeks of receipt of laboratory reports:
 - ✓ Post copies of **lab reports** of test results and information about remediation actions taken to address outlets where lead exceeded the action level on the school's website. This should remain posted on the school's website for the duration of the compliance period (i.e. 2023-25)



Recordkeeping Requirements

- Per Subpart 67-4, schools must retain records for **10 years** following document creation.
Note: other agencies may have additional records retention requirements (i.e., SED, NYS Department of Labor)
- Copies of documents must be provided to the DOH, the SED, or the local health department upon request



Best Management Practices to Reduce Lead in Drinking Water

- Aerator cleaning
- Routine flushing practices (after vacations and long weekends)
- Use only certified lead-free materials when performing plumbing work
- Follow the manufacturer's recommendations for water softener settings to ensure an appropriate level of hardness
- Educating staff and students of the benefits of running water at a tap briefly prior to using it for drinking or food preparation. Letting the water run for 30-60 seconds or until the water feels cold can reduce the potential levels of lead in the drinking water

Electronic Reporting in HCS/HERDS

- Within 10 business days of receipt of laboratory reports
Summary of data and sampling information must be reported in the DOH's electronic reporting system, **HERDS**, accessed through HCS. Summary data includes:
 - General information, website address
 - Number of outlets sampled, sampling information
 - Summary of Lead analysis results
 - Response and remediation status
- A new HERDS reporting form for the 2023-2025 compliance period is now live.



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General Information

1. I understand that the information I am reporting is for the lead testing in school drinking water program for the 2023-2025 compliance period. ?

2. Enter the website address where the laboratory reports are posted for the results of your school's lead testing of drinking water program. ?

Sampling Information

3. I acknowledge that all samples must be analyzed by an environmental laboratory certified by the NYS DOH's Environmental Laboratory Approval Program (ELAP) to conduct lead in drinking water analysis. ?

4. How many total outlets have been identified by the school that require sampling for lead? ?

5. How many outlets were sampled for initial first-draw compliance testing in 2023? ?

6. How many outlets were sampled for initial first-draw compliance testing in 2024? ?

7. How many outlets were sampled for initial first-draw compliance testing in 2025? ?

8. Is all sampling complete for the 2023-2025 compliance period? ?

Lead Results

9. Enter the total number of outlets with a lead result less than or equal to the action level (5 ppb): (This number should be updated throughout the compliance period to reflect the current number of outlets with a lead test result less than or equal to 5 ppb). ?

10. Enter the total number of outlets with a lead result greater than the action level (5 ppb): (This number should be updated throughout the compliance period to reflect the current number of outlets with a lead test result greater than 5 ppb). ?

11. Has your school received laboratory reports for all initial first-draw samples collected for this compliance period? ?

Response and Remediation

12. Have the outlets with lead results greater than the action level (5 ppb) been taken out of service, remediated, or are appropriate controls in place to ensure water is not used for drinking or cooking? ?

13. Identify the status of remediation. (Examples of remediation include but are not limited to: permanent removal of outlets; replacing outlets and/or plumbing; or employing other engineering controls.) ?

Attestation

By clicking the 'Save and Submit' button, I attest that all the data entered above is true and correct to the best of my knowledge, that I understand that such information shall be used for assessing regulatory compliance, and that I am authorized to submit this data on behalf of the school district or BOCES.

Tying up Loose Ends

- Report lead data for the 2020-21 compliance period *if not already done*.
- Update data in HERDS to reflect the current status
- Update Roles in HCS to reflect current staff assignments for reporting Lead data:
 - School Lead in Drinking Water Reporter role
 - HPN/HCS Coordinator
- The new 2023-25 compliance period is here!
 - Be sure to report data on School website with required timeframes
- Future webinars and outreach activities coming soon...

Questions?

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