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Lead Testing in School Drinking Water

10 NYCRR Subpart 67-4

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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 (Department) 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.

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Regulation

- The Department established 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 final regulation was adopted on May 9, 2018

“Lead-Free” Buildings

Any school building, facility, addition, or wing with internal plumbing that meets the new definition of “lead-free”, as defined by Section 1417 of the Federal Safe Drinking Water Act, is exempt from sampling.

A building is 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.

Exemptions from sampling:

- Do not apply to individual outlets
- For an existing building, renovated wing (portion of a building), or an addition to a building to be exempt from sampling - all internal plumbing and service line connections must be “lead-free”

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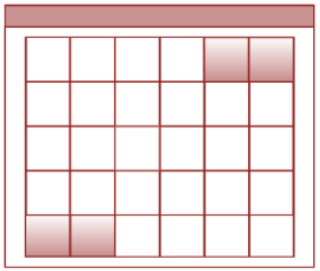
Key elements of Subpart 67-4

- Sampling
- Response
- Public Notification
- Reporting
- Recordkeeping

Sampling Schedule

- First round of testing in accordance with Subpart 67-4 was performed in 2016
- Next round to be performed in 2020 (NYC performing testing now)
- Every 5 years thereafter or at an earlier time as determined by the Commissioner of Health



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2016 Compliance Period

- Nearly 4,700 public schools and BOCES tested over 390,000 individual outlets for lead
- Through 2017, schools performed a variety of measures to address outlets containing lead over the 15 part per billion (ppb) action level.
- Between 2017 and 2018, the Department responded to and initiated over a thousand phone calls and emails to help schools with remediation, testing, and reporting of results. In 2018, the Department hosted webinars with LHD and the schools focused on remediation, reporting, and compliance.
- Since 2018, the Department worked to improve compliance through issuance of guidance, outreach through webinars, revisions to reporting tools to ease reporting for the upcoming testing and other efforts.

2016 Compliance Costs 2016-2018

- Cost of testing reimbursed through State Aid were over $15.5 M for school year 2015-2016 and over $22.7 M for school year 2016-2017, dropping to over $1.9 M for school year 2017-2018.
- Cost of remediation to State Aid were over $9.9 M for school year 2016-2017 and $15 M for school year 2017-2018.

Compliance Year 2020
Second Round of Testing

Schools must complete *initial first-draw* sampling for Compliance Year 2020 between:

- January 1, 2020 – December 31, 2020

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Sampling Locations

Outlets that should be sampled 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, including but not limited to:

- bubblers/drinking fountains
- classroom sinks
- classroom combination sinks and drinking fountains
- kitchen sinks
- kitchen kettle filler outlets
- ice machines
- bathroom sinks
- family and consumer sciences room sinks
- teachers' lounge sinks
- nurse's office sinks
- athletic field outlets and any other sink known to be or potentially used for consumption (e.g., coffeemaker or cups are nearby)

“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 remedial action plan that details on how those outlets will not be accessed and/or utilized for drinking or cooking purposes.

“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

NEW Guidance Concerning Tempered Outlets "Non-applicable outlets"

Tempered Outlets:

The Department 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 do not require sampling.

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-hours and maximum of 18-hours before sample collection
  - This timeframe represents water that would be consumed during normal operating conditions on any school day.

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Lead Action Level

The action level for lead in school drinking water is 15 micrograms per liter or parts per billion (ppb).

- Lead test results ≤ 15 ppb do *not* exceed the lead action level, and therefore do not require further testing or remediation.
- Lead test results > 15 ppb (i.e., 15.1 ppb, or greater) *exceeds* the lead action level and requires the outlet to be taken out of service and a remediation action plan be implemented.

Steps following an Action Level Exceedance

Immediate Response

- Prohibit the use of the outlet immediately (take outlet out of service or turn off) until:
  (1) A lead remedial action plan is implemented to mitigate the lead level at the outlet, and
  (2) Post-remediation test results indicate that the lead levels are at or below the action level;
- Provide building occupants with an adequate supply of water for drinking and cooking until remediation is performed;
- Report the test results to the local health department as soon as practicable, but no more than 1 business day after the school received the laboratory report;
- Notify all staff and all persons in parental relation to students of the test results, in writing, as soon as practicable but no more than 10 business days after the school received the laboratory report.

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

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 Department’s HERDS application on HCS, and
  - on the school’s website within the same reporting timeframes/requirements as specified for the initial sampling *(addressed in next section).*

Public Notification Requirements

- Within 1 business day of receipt of laboratory reports:
  - ✓ Report any and all exceedances (lead result greater than 15 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 Department's electronic reporting system, HERDS accessed through HCS. This information is posted on the Department's website for the public
- Within 6 weeks of receipt of laboratory reports:
  - ✓ Post numeric test results of all lead testing 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. 2020-2024)
- Report any lead-free buildings on the school's website

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Example of Website Posting

(One of several templates to be released in Guidance)

date last updated:

School Name: Elementary School ABC

Lab ELAP id#: 777777 **Method of analysis:** EPA Method 200.7

Lab ID#	School sample id	collection date	Sample location	Outlet description	Initial/post remediation	Lead result ug/L (ppb)	lab report receipt date	Action Taken
A-1EnvLab	001	1/15/2020	Room 104	cold water outlet	initial	6	1/29/2020	n/a
A-1EnvLab	002	1/15/2020	Gym	drinking fountain	initial	9	1/29/2020	n/a
A-1EnvLab	003	1/25/2020	Kitchen food prep sink	cold water outlet	post remediation	LT 1.0	2/10/2020	replaced

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Electronic Reporting in HCS/HERDS

- ✓ Within 10 business days of receipt of laboratory reports
  Summary data must be reported in the Department's electronic reporting system, HERDS accessed through HCS. Summary data includes:
  - General information (lead-free status, website address)
  - Sampling information
  - Lead analysis results
  - Response and remediation

- ✓ Reporting Form is new and improved for 2020

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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., NYS Department of Labor)
- Copies of documents must be provided to the Department, the NY State Education Department, or the local health department upon request

Enforcement

- Upon reasonable notice to a school, an employee of the Department or the local health department may enter any building for the purpose of determining compliance with Subpart 67-4.
- If a school does not comply with the Subpart 67-4, the Department or the local health department may take any action authorized by law.

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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

Next Steps

- Release of updated Guidance, to be posted at: https://www.health.ny.gov/environmental/water/drinking/lead/lead_testing_of_school_drinking_water.htm
- Perform lead testing between January 1 and December 31, 2020
- Enter data in HERDS within 10 days of receipt of laboratory results
- Post data on Health Data NY

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Questions?

Contact:

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