

FREQUENTLY ASKED QUESTIONS For School Buildings and Grounds Personnel Lead in NYS School Drinking Water November 1, 2016

Background

The “on-again, off-again” nature of water use at most schools can raise lead levels in school drinking water. Water that remains in pipes overnight, over a weekend, or over vacation periods stays in contact with lead pipes or lead solder and could contain higher levels of lead. It is important to identify and address elevated levels of lead in drinking water in schools as part of reducing a child’s overall exposure to lead in the environment.

General Information

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1. What is the new lead testing in school drinking water legislation?

The New York State Legislature recently passed a bill (A10740/S8158) which requires the Department to develop regulations to require all school districts and boards of cooperative educational services (BOCES)—collectively, “schools”—to test all potable water outlets for lead contamination, and to take responsive actions. Governor Cuomo signed the proposed legislation, and the DOH adopted emergency regulations, titled *Lead Testing in School Drinking Water* -10 NYCRR Subpart 67-4 (Subpart 67-4), on September 6, 2016. The legislation includes all buildings owned or leased by a school.

2. Where can I find the regulations?

The regulation can be found at: http://health.ny.gov/regulations/emergency/docs/2016-09-06_lead_testing_in_school_drinking_water.pdf.

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3. Are private, charter, or Indian nation schools required to conduct lead testing under this regulation?

No. Only NYS schools districts and boards of cooperative educational services (BOCES) are required to test for lead under this regulation. Note: The regulation includes all buildings owned or leased by a school.

Monitoring

4. Where must samples be collected?

Samples must be collected at all outlets within the school. An outlet is a potable water fixture currently or potentially used for drinking or cooking purposes, including but not limited to bubblers, drinking fountains and faucets. Faucets may be located anywhere on school property where drinking water is currently or potentially obtained, including but not limited to the athletic field.

NEW

5. What are the acceptable types of laboratory containers for collecting samples?

The required sample volume for analysis of lead in school drinking water is 250 milliliters (mL). DOH recommends wide mouth 250 ml containers. New York State Environmental Laboratory Approval Program (ELAP) certified laboratories have been notified of the 250 mL container requirement and should supply the correct sampling containers. Note: Nitric acid is added to lead sample bottles by the lab as a sample preservative. As a safety precaution, due to the potential for accidental contact with the nitric acid which could burn skin and clothing, schools may request their contract lab send out bottles without the nitric acid preservative. The lab will add the nitric acid upon receipt of the samples in the laboratory. Schools will need to discuss this option with their lab in advance of the bottles being shipped.

NEW

6. Are samples collected prior to September 6, 2016, using 1-liter bottles, acceptable under Subpart 67-4?

No. Samples collected using 1-liter sample bottles will not be accepted.

NEW

7. Does a school need to sample outlets that are not used (or potentially used) for drinking or cooking purposes?

If the school has evaluated and determined that an outlet is not currently or potentially used for cooking or drinking purposes, then sampling is not required under Subpart 67-4.

NEW

8. Should aerators be removed before collecting samples?

Aerators should be left in place.

NEW

9. Is a point of entry sample a requirement in Subpart 67-4?

No, point of entry samples are not required under Subpart 67-4.

NEW

10. What is the proper sampling protocol for collecting samples from ice machines? Which bottles should be used?

Refer to the USEPA 3T's sample collection procedures, exhibit 4.7, initial screening sample 1E. https://www.epa.gov/sites/production/files/2015-09/documents/toolkit_leadschools_guide_3ts_leadschools.pdf

The required sampling container size is a 250 ml bottle. Wide mouth bottles are recommended.

NEW

11. Should a foot lever operated multi-outlet gang sink in a school bathroom be sampled? Is one sample from one outlet representative of all outlets on the gang sink?

All fixtures that are currently or potentially used for cooking or drinking should be sampled. Representative sampling or composite sampling are not allowed. Note: The school is responsible for determining if an outlet is currently or potentially used for cooking or drinking.

NEW

12. What is the protocol for collecting samples from fixtures that are tempered?

All outlets that are currently or potentially used for cooking or drinking purposes should be evaluated/sampled pursuant to a normal operating conditions scenario. Please refer to The Department's Recommended Sampling Instructions for Lead Testing in School Drinking Water. http://www.health.ny.gov/environmental/water/drinking/lead/docs/sampling_instructions_10_04_16.pdf

NEW

13. The Department recently updated its guidance regarding tempered outlets to reflect the outlet being monitored under normal operations, and stated that hot water feeds should not be turned off. What should a school do if they have already collected a sample from a tempered fixture with the hot water feed turned off?

The Department does not recommend turning off hot water feeds. The school is not required to resample unless directed by the Department or local health department. All future monitoring must follow the most current sampling protocols.

NEW

14. Should drinking fountains with bottle fills be sampled from both the fill and from the fountain portion? If so does it matter which is collected first?

Both fixtures should be sampled if they are used or have the potential to be used for drinking or cooking purposes. The Department recommends sampling the outlet that is most frequently used first.

15. Who can collect the samples?

Any individual who is familiar with the regulation's "first-draw" sampling protocol may collect samples. This includes but is not limited to a school staff member, a laboratory representative, or a consultant. The individual collecting the sample must be able to maintain quality assurance and control over the sampling, and must ensure the chain of custody of the water samples is maintained. However, the school is ultimately responsible for ensuring that the samples are correctly taken.

16. What is a "first-draw" sample?

A "first-draw" sample is a water sample that is collected from an outlet before any water is used from that outlet. The water shall be motionless in the pipes for a minimum of 8 hours, but not more than 18 hours, before sample collection. The required sample volume for analysis of lead in school drinking water sample is 250 milliliters (mL).

17. What does the "water must be motionless" mean?

The water in the school facility must remain motionless in the plumbing for a minimum of 8 hours but no more than 18 hours. During this time period, no water can be used in the facility. This includes non-drinking water outlets, janitorial sinks, toilets, outside hoses and irrigation systems (unless the irrigation system is served by its own service line). This amount of time was established to ensure that the collected samples are representative of water that typically a student or faculty member may consume. Sampling should be conducted to reflect normal school operating conditions.

NEW

18. Can sample collection be done in stages (i.e. on different days)?

Yes. Samples can be collected in stages as long as sampling is conducted in compliance with Subpart 67-4 and within the compliance dates.

NEW

19. Is pre-stagnation flushing allowed prior to sampling?

The Department does not recommend pre-stagnation flushing prior to sampling unless they are directed to do so by the State or Local Health Department

20. When does a school need to complete initial first-draw sampling?

By September 30, 2016, for any school serving children in any of the levels prekindergarten through grade five.

By October 31, 2016, for any school serving children in any of the levels grades six through twelve that are not also serving students in any of the levels prekindergarten through grade five.

Prior to occupancy for buildings put into service after September 6, 2016.

If your school performed sampling prior to September 6, 2016, please refer to FAQ #51.

NEW

21. My school sampled outlets before September 6, 2016, in accordance with United States Environmental Protection Agency's (USEPA) 3Ts program, but did not include outlets that were considered as not water consumptive, such as bathroom sinks.

All outlets used or potentially used for drinking or cooking purposes must be sampled as outlined in Subpart 67-4. Therefore, any samples that were omitted but required to be tested under Subpart 67-4 must be sampled.

For samples taken before September 6, 2016, the school should consult with their local health department to determine if the sampling conducted was in full or substantial compliance with Subpart 67-4. If the sampling was conducted in full compliance with the regulation, only the omitted outlets are required to be sampled. If some outlets were sampled in substantial compliance with the regulation, the school may apply for a waiver for those outlets, but must sample the omitted outlets.

22. Does Subpart 67-4 require schools to test for any other substances?

No. Only testing for lead is required of schools under this regulation.

23. After initial monitoring is complete, will there be periodic monitoring?

Yes. Schools must collect first-draw samples again in 2020, or at an earlier time as determined by the State Commissioner of Health. Sampling will be required at least every five years thereafter.

Laboratory Analysis

24. Who can analyze the samples?

All drinking water samples must be analyzed by an environmental laboratory certified by the Department's Environmental Laboratory Approval Program (ELAP) to conduct lead in drinking water analysis.

25. Where can we find a list of New York certified laboratories?

A listing of approved laboratories can be found at:

<http://www.wadsworth.org/regulatory/elap/certified-labs>

Once you click the above link, click on the following drop down boxes to narrow your search:

For lab type – select on commercial

For matrix – select potable water

For analyte – select lead, total

NEW

26. Is there a process for sample invalidation, if a school believes the test result is erroneous?

There is no process for sample invalidation. All lead results regardless of circumstances must be reported on the HERDS application on the Health Commerce System (HCS). The HCS link is: <https://commerce.health.state.ny.us>. A complete explanation of the circumstance should accompany the reporting of the initial and repeat sampling demonstrating the reduction in lead concentration at the outlet.

"Lead-free" plumbing in School Buildings

REVISED

27. Is sampling required for school buildings that are "lead-free"?

Any school building with internal plumbing that meets the new definition of "lead-free," as defined by 1417 of the Federal Safe Drinking Water Act, is exempt from sampling. A building can be deemed lead-free if: (1) it was built after January 4, 2014; or (2) a New York State Professional Engineer or Architect certifies the building to be lead-free.

Note that schools must report their list of lead-free buildings on the schools website by October 31, 2016.

By November 11, 2016, schools must report a list of lead-free building using the Department's designated statewide electronic reporting system (SERS).

NEW

28. Significant renovations were made within our schools. During the renovations most of the fountains and faucets were replaced. If the school can demonstrate that these outlets are "lead free" according to the federal regulations is the school exempt from testing those outlets?

Subpart 67-4.2 (b) exempts buildings with plumbing materials that are lead free as defined in section 1417 of the Federal Safe Drinking Water Act. To qualify for an exemption, all outlets must be lead-free. Exemptions cannot be granted for individual outlets.

Response

NEW

29. What is the "action level" for lead in school drinking water under Subpart 67-4?

The action level for lead in school drinking water is 15 micrograms per liter (mcg/L) or parts per billion (ppb). That is also equivalent to 0.015 milligrams per liter (mg/L) or parts per million (ppm). For the purposes of interpreting analytical laboratory results relative to what constitutes a lead action level exceedance under the Lead Testing in School Drinking Water regulation, the following guidance is provided:

- Lead results reported by the laboratory that are to be equal to, or less than, 15 micrograms per liter (≤ 15) does not constitute a lead action level exceedance, and therefore does not require further testing or remediation.
- Lead results reported by the laboratory that are greater than 15 micrograms per liter (i.e. 15.1 micrograms per liter, or greater) exceeds the lead action level and therefore requires the outlet to be taken out of service and a remediation plan to be implemented.

30. If the lead concentration of water at an outlet exceeds the action level under Subpart 67-4, what does the school need to do?

If the lead concentration of water at an outlet exceeds the action level, the school must:

- prohibit use of the outlet (take out of service or turn off) until:
 - (1) A lead remediation plan is implemented to mitigate the lead level of such outlet;
 - (2) Test results indicate that the lead levels are at or below the action level;
- provide building occupants with an adequate supply of potable 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; and
- 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; and, for results of tests performed prior to the effective date of this Subpart, within 10 business days of this regulation's effective date, unless such written notification has already occurred.

NEW

31. What is the required follow up testing protocol for samples above the action level? First-draw or flush-draw?

Initial and follow-up samples collected after an outlet has been remediated must be a first-draw sample, as required by Subpart 67-4 for compliance purposes. Additional sampling (i.e. 30-second flush, etc.) may be conducted to determine the plumbing contribution to lead in drinking water test result.

***NEW* 32. Does the entire building need to be re-sampled for post-remediation testing, or only those outlets that exceeded the action level?**

Only those outlets that exceed the action level need to be resampled following remediation. In accordance with Subpart 67-4, if the lead concentration of water at an individual outlet exceeds the action level, the school must prohibit use of the outlet (take out of service or turn off) until:

- (1) A lead remediation plan is implemented to mitigate the lead level of such outlet; and

(2) Test results indicate that the lead levels are at or below the action level.

33. If an outlet has tested above the action level, can the water still be used for cleaning and handwashing?

Yes. The water can be used for handwashing and cleaning. Lead is not absorbed through the skin. Signage should be placed at non-drinking water outlets stating that 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 they understand what the signs mean and monitor to ensure that they don't drink the water. Example signage can be found on the department's website at:

http://www.health.ny.gov/environmental/water/drinking/lead/lead_testing_of_school_drinking_water.htm

NEW

34. Can posting signs be used as a permanent measure for outlets that exceed an action level, rather than taking the outlet out of service?

Signage used at outlets are considered to be a temporary measure and cannot be used as a permanent measure.

NEW

35. Can an outlet be removed from service permanently if determined unnecessary?

Yes. The school is still required to meet SED's requirements for access to potable water. To ensure an outlet is permanently taken out of service the department recommends removing the fixture and/or capping the supply lines before the fixture

NEW

36. Will the Department be providing sample signage for schools to post, e.g., indicating that an outlet is not for drinking use, or is for hand washing only?

Example signage is posted on the Department website at:

http://www.health.ny.gov/environmental/water/drinking/lead/lead_testing_of_school_drinking_water.htm

NEW

37. Is the school required to post signage on non-potable water outlets?

There is no requirement to post signage on non-potable outlets in Subpart 67-4. However, if the school deems that an outlet is non-potable it may be prudent to label those outlets as non-potable.

Public Notification to School Community

38. What are a school's public notification requirements?

Schools must list on their website:

- Any lead-free buildings by October 31, 2016.
- The results of all lead testing performed and lead remediation plans implemented as soon as practicable, but no more than 6 weeks after the school received the laboratory reports
- For schools that received lead testing results and implemented lead remediation plans in a manner consistent with the regulation, prior to September 6, 2016, the school shall

make available such information on the school's website, as soon as practicable, or before October 18, 2016.

NEW

39. What level of detail is required when posting lab results on the school's website?

Schools are encouraged to publish as much detail as possible but at a minimum, should include the sampling location (i.e. building, room, outlet, etc.) and the lead result(s). Public notification guidance can be found in the USEPA 3Ts under section III, "Telling" at: https://www.epa.gov/sites/production/files/2015-09/documents/toolkit_leadschools_guide_3ts_leadschools.pdf

NEW

40. If a district tests an outlet that was not defined within the regulation as requiring testing and the results are above the action level, is there still a required reporting process for this outlet?

Although the posting of information regarding outlets not defined in Subpart 67-4 is not required, schools are encouraged to provide as much information as possible regarding lead testing in their schools on their website.

NEW

41. Will the Department be providing any suggested or required language to be included with the public notification for a lead action level exceedance?

Language for public notification as well as an example that schools can use is available in subsection 6.7 of the USEPA 3T's Guidance document. See: https://www.epa.gov/sites/production/files/2015-09/documents/toolkit_leadschools_guide_3ts_leadschools.pdf
Additional resources will be posted on the Department's website when available.

NEW

42. Subpart 67-4 requires schools to notify staff and persons in parental relation to students, in writing, when an outlet exceeds the action level, no more than 10 days after the school receives the lab report. Does posting a notice on the school website or through social media count as written notification?

No. Posting on the school website or through social media does not count as written notification. Physical written notification must be distributed to all staff and persons in parental relation to the child, not just those that the school believes were exposed to a particular outlet.

NEW

43. How long do schools need to post testing results on their websites?

Schools should maintain the most recent lead testing results on their website.

Reporting Requirements to: the Department, Local Health Departments and the State Education Department

44. What are a school's general reporting requirements?

Schools must report using DOH's statewide electronic reporting system:

- As soon as practicable, but no later than November 11, 2016:
 - completion of all required first-draw sampling;

- a list of all buildings that are determined to have lead-free plumbing, as defined in section 1417 of the Federal Safe Drinking Water Act.
- for any outlets that were tested prior to September 6, 2016, and for which the school wishes to assert that such testing was in substantial compliance with Subpart 67-4, an attestation that:
 - the school conducted testing that substantially complied with the testing requirements, consistent with guidance issued by the DOH;
 - any needed remediation, including re-testing, has been performed;
 - the lead level in the potable water of the applicable building(s) is currently below the action level; and
 - the school has submitted a waiver request to the local health department, in accordance with the regulation; and
- As soon as practicable, but no more than 10 business days after the school received the laboratory reports, the school shall report data relating to test results to the Department, local health department, and State Education Department, through the Department's designated statewide electronic reporting system.

NEW

45. How does a school report their data in the Statewide Electronic Reporting System (SERS)?

Please view the Department and SED webinar/presentation on HERDS at:
http://www.health.ny.gov/environmental/water/drinking/lead/lead_testing_of_school_drinking_water.htm.

For more information on obtaining access to Health Commerce System (HCS) log-in, call 1-866-529-1890 or contact your local school HCS coordinator.

NEW

46. For HERDS data base related questions:

Questions regarding access to HCS log-in – Direct the caller to CAMU at 1-866-529-1890 or their local school HCS coordinator.

If CAMU or the school's HCS coordinator could not provide the needed assistance – please submit questions to lead.in.school.drinking.water@health.ny.gov

If it is a survey related question that cannot be answered by the Q&A, contact your local health department – https://www.health.ny.gov/prevention/prevention_agenda/contact_list.htm

47. What are a school's recordkeeping requirements?

The school shall retain all records of test results, lead remediation plans, determinations that a building's plumbing is lead-free, and any waiver requests for ten years following the creation of such documentation. Copies of such documentation shall be immediately provided to the Department, local health department, or State Education Department upon request.

Waivers

NEW

48. What are the criteria the local and State Health Departments will use to issue a waiver for "substantial" compliance?

Waivers may be considered for:

- Prior to sampling, the water in the facility was motionless between 6 hours and 72 hours (rather than between 8 and 18).
- Sample volume less than 250 ml.

Waivers will not be considered for:

- Failure to sample all "outlets," as defined in the regulation.
- Any sample size greater than 250mL.
- Lab testing was not performed by an ELAP-certified testing lab.
- Any test results exceeding 15 micrograms per liter.
- Water had been used within the building less than 6 hours prior to sampling.

The Department will consider other circumstances on a case-by-case basis.

NEW

49. Are waivers available for testing performed after September 6, 2016?

No. Waivers are not available for samples collected after September 6, 2016.

50. What is the process for applying for a waiver? Is there a standard format that schools should be using?

To apply for a waiver, schools should first contact their local health department (LHD) to determine whether the sampling performed fully complies with Subpart 67-4. If it does fully comply, no waiver is required. Contact information for the LHD can be found at: http://health.ny.gov/environmental/water/drinking/doh_pub_contacts_map.htm

If a waiver is needed, the LHD will review the waiver request and, if approval is recommended, provide a recommendation to the Department. The LHD will advise the school as to whether the waiver request was approved or denied and the next steps required.

See the policy/procedure for applying for a waiver at:

http://www.health.ny.gov/environmental/water/drinking/lead/docs/waiver_protocols_9-27-16.pdf

51. My school tested outlets prior to September 6, 2016. Are those results acceptable?

First-draw sampling conducted consistent with the requirements in Subpart 67-4 that occurred after January 1, 2015 will satisfy the initial first-draw sampling requirement.

If the sampling was conducted prior to September 6, 2016 and was not consistent with Subpart 67-4, but was in substantial compliance with the regulation, the school can apply for a waiver from the testing requirements in Subpart 67-4. More information about the waiver process will be forthcoming.

NEW

52. Are waivers granted for individual outlets?

No. Waivers will be granted for specific buildings. Waivers will not be granted for individual outlets, or for an entire district.

Lead in Schools and Lead and Copper Rule (LCR) for Public Water Systems (PWS)

53. What is the lead action level under the LCR for PWSs?

Under the federal LCR, the EPA also established an action level 15 mcg/L (micrograms per liter), which may also be expressed as 15 parts per billion (ppb), for lead in drinking water for public water supplies. The EPA's action level for the LCR, which is the same as DOH's action level under Subpart 67-4, serves as an indicator of the effectiveness of corrosion control treatment throughout the drinking water distribution system.

54. If my school has its own PWS and performs monitoring as part of the LCR, does the school need to do additional monitoring under Subpart 67-4?

Yes. Schools with their own PWS are required to comply with the requirements of the LCR as well as with Subpart 67-4, Lead Testing in School Drinking Water regulations.

55. If a school has its own PWS and took responsive actions after an exceedance of the action level under the LCR, is it still obligated to comply with Subpart 67-4?

Yes. The LCR and the NYS Lead in School Drinking Water regulations are two distinct and separate regulatory programs. Schools that are also designated as a PWS must also comply with Subpart 67-4.

NEW

56. Our school is a PWS and conducts Lead testing under the LCR. Should the school report LCR testing results when it submits reports to the Department Statewide Electronic Reporting System pursuant to Subpart 67-4?

No. The LCR is a separate program, and LCR results should be reported in the usual manner.

Remediation

NEW

57. Where can I find guidance on remediation strategies?

Information on remediation strategies can be found in the USEPA 3T's Guidance document, https://www.epa.gov/sites/production/files/2015-09/documents/toolkit_leadschools_guide_3ts_leadschools.pdf

Note: The school is responsible for obtaining professional services to achieve remediation.

NEW

58. Schools have been informed by plumbing manufacturers that new outlets, even those that comply with the 2014 lead free fixture regulations, require flushing before use. Does the Department recommend flushing new outlets prior to use?

All remediated taps will require flushing prior to being placed back into service and only retesting will confirm the effectiveness of the flushing program. Since the actual installation event of replacement outlets can introduce lead particulates into the drinking water, as well as the fact that even new outlets meeting the new "lead-free" content requirements may still contain some lead, we recommend a period of flushing simulating normal use patterns prior to re-sampling. It is difficult to recommend a generic flushing regimen and time period for post-remediation retesting for every school building and every scenario. How much flushing is required to achieve lead concentrations to be at or below the action level will need to be evaluated on a case by case basis due to various factors, including varying water chemistries and materials used in various

outlets. Please follow manufacturer/industry recommendations or consult with a professional (i.e. plumber, engineer, etc.). Flushing and re-testing may need to be repeated multiple times before the results meet the action level requirements. Re-testing should follow the Departments sampling protocol, including the 8 - 18 hour stagnation period prior to first-draw sampling.

NEW

59. Our plumbing outlet supplier told us that outdoor hose bibs are exempt from the 2014 lead free fixture regulation: Safe Drinking Water Act 1417 (a) (4). If these outlets are sampled and the results are above the action level and a lead free replacement does not exist, what does the Department recommend to rectify this issue?

If a lead free replacement fixture that meets the 2014 Safe Drinking Water Act 1417 (a) (4) definition of lead free is not available, the outlet should be secured (only opened with a special tool or key) and marked with signage as "non-potable."

Additional Information

60. Where can more information about lead be found?

More information about lead can be found on the Department's website at:
https://www.health.ny.gov/environmental/lead/education_materials/index.htm

Additional information regarding the "Lead in School Drinking Water Program" can be found on the Department's website at:

http://www.health.ny.gov/environmental/water/drinking/lead/lead_testing_of_school_drinking_water.htm The Department will update this website as more information becomes available.

If you have any additional questions, please contact your local health department. Contact information is available at:

http://health.ny.gov/environmental/water/drinking/doh_pub_contacts_map.htm