

FREQUENTLY ASKED QUESTIONS

For School Buildings and Grounds Personnel

Lead in NYS School Drinking Water

September 15, 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.

Legislation and Regulation

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.

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.

3. Are private 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.

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.

5. 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.

6. What it is a “first-draw” sample?

A “first-draw” sample is a water sample that is collected from a cold water 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).

7. 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.

8. When does the 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 #11.

9. 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.

10. 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

11. My school tested outlets prior to September 6, 2016. Are the 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 conducted prior to September 6, 2016 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.

12. Is sampling required for school buildings that are “lead-free”?

Any school building that is 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 licensed Professional Engineer or Architect certifies the building to be lead-free.

Note that schools must report a list of lead-free buildings on their website by October 31, 2016. By November 11, 2016, schools must report a list of lead-free buildings using the Department’s designated statewide electronic reporting system.

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

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

14. 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).

15. 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; and
 - (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.

16. 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.

17. 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.

18. 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, and
- 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, but by October 18, 2016.

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

Details on how to submit reports using the statewide electronic reporting system will be forthcoming. 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 be lead-free, 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.

20. What are a school's recordkeeping requirements?

The school shall retain all records of test results, lead remediation plans, determinations that a building is lead-free, and 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.

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

21. 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.

22. 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 who have 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.

23. 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 regulation are two distinct and separate regulatory programs, and schools that are also designated as a PWS must also comply with Subpart 67-4.

Additional Information

24. Where can parents or others get more information about lead?

Additional information can be found on the Department's website at: http://www.health.ny.gov/environmental/lead/child_care_providers.htm. The Department will update this website as more information becomes available.

If you have further questions, please contact your local health department. Contact information is available at: http://health.ny.gov/environmental/water/drinking/doh_pub_contacts_map.htm.



State Education Department

Department of Health

To: Superintendents of Public Schools
District Superintendents of BOCES

From: New York State Education Department
New York State Department of Health

Date: September 15, 2016

Subject: Implementation guidance for Subpart 67-4
Lead Testing in School Drinking Water

On September 6, 2016, Governor Andrew M. Cuomo signed legislation (A.10740/S.8158) requiring all school districts and boards of cooperative educational services (BOCES) in New York State to test potable water systems for lead contamination and to take responsive actions. To implement this new law, the Department of Health issued emergency regulations, titled *Lead Testing in School Drinking Water* -10 NYCRR Subpart 67-4 (Subpart 67-4), effective September 6, 2016.

Lead in children's drinking water is a serious public health issue. This memorandum outlines the requirements of Subpart 67-4 and provides guidance for implementing the regulation. For your convenience, please find attached a copy of the emergency regulations and a link to the Department of Health's website where the emergency regulations are posted: <http://health.ny.gov/regulations/emergency/>.

Subpart 67-4 applies to all New York State school districts and BOCES (collectively, "schools"), including those already classified as a public water system under 10 NYCRR Subpart 5-1. The regulations do not apply to nonpublic schools.

Pursuant to the accompanying regulations, all potable water outlets that are currently or potentially used for drinking and cooking purposes must be sampled, 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.

Schools are responsible for identifying the total number of outlets that require sampling. Samples must be first draw samples, collected in 250 ml containers, and taken from a cold water outlet where the water has been motionless in the pipes for a minimum of 8 hours but not more than 18 hours. Samples must be analyzed by a laboratory that is certified under the Department of Health's Environmental Laboratory Approval Program (ELAP). Attached, please find a Sampling Quick Reference Guide (QRG) for recommendations on sampling.

For school buildings in service as of the effective date of this regulation, by September 30, 2016, all buildings serving children in prekindergarten through grade five must have collected and submitted a sample from all potable water outlets. Any schools serving children in grades six through twelve, not including children in lower grades, must complete collection and

submit samples, from all potable water outlets, by October 31, 2016. For school buildings that are put into service after the effective date of this regulation, initial samples, from all potable water outlets, must be performed prior to occupancy, provided that if the building is put into service between the effective date of this regulation, but before October 31, 2016, the school shall have 30 days to perform first-draw sampling. Please note that these deadlines are for collection and submission only, not for receiving analysis results from an ELAP-approved laboratory. Results are subject to lab wait times, which cannot be determined by the school or the state. It may take several months to obtain results.

First-draw sampling that was conducted at buildings after January 1, 2015 in a manner consistent with these regulations will satisfy the initial sampling requirements. Additionally, schools may be eligible for a waiver for testing school buildings, if the school can demonstrate that it performed testing and remediation prior to the publication date of the regulations that substantially complies with the regulations, and that lead levels in the building's potable water are below the action level. Additional guidance on the waiver process is forthcoming.

If lead levels are detected above 15 parts per billion (ppb) at any potable water outlet, the school must discontinue use of that outlet until a lead remediation plan is implemented to mitigate the lead level, and test results indicate that the lead levels are at or below the action level. The school must ensure that building occupants have an adequate alternate supply of potable water for drinking and cooking until the remediation plan is implemented. Schools must report the exceedance to the local health department (LHD) within one business day. Test results must also be provided in writing to all staff and parents no more than 10 business days after receiving the report. For schools that performed testing prior to September 6, 2016, and that have lead levels at an outlet exceeding 15 ppb, the school must notify all staff and parents in writing of the test results by September 20, 2016.

Schools must post the results of all lead testing and any remediation plans on their website as soon as possible, but no more than six weeks after the school receives the laboratory reports. For schools that performed testing prior to September 6, 2016 that is consistent with the regulation, the school must report the results and any remediation plans on its website by October 18, 2016.

In addition, by October 31, 2016, schools must post on their website a list of all buildings that have been determined to be lead-free. More information on lead-free determinations is provided in the attached Question and Answer (Q&A) document.

By November 11, 2016, schools must report completion of all required sampling, information regarding any testing conducted prior to the effective date of the regulation, and a list of all buildings that are determined to be lead-free, to the Department of Health, LHD, and State Education Department. Schools will submit these reports through a statewide electronic reporting system, utilizing the Department of Health's Health Commerce System. Details on how to report using the statewide electronic reporting system will be forthcoming.

The school must retain all records of test results, lead remediation plans, determinations that a building is lead-free, and waiver requests, for ten years following the creation of such documentation. Copies of such documentation must be immediately provided to the Department of Health, LHD, or State Education Department, upon request.

Additional Information

A list of ELAP-approved laboratories can be found on the ELAP website at:
<http://www.wadsworth.org/labcert/elap/comm.html>.

Attached is a Question and Answer document (Q&A) regarding lead in schools and Subpart 67-4.

Additional information can be found on the Department of Health's website at:
http://www.health.ny.gov/environmental/lead/child_care_providers.htm. The Department of Health will update this website as more information becomes available.

If you have further questions, please contact your local health department. Contact information is available at:
http://health.ny.gov/environmental/water/drinking/doh_pub_contacts_map.htm.

Thank you for your continued assistance with this important work.

Attachments (3)

QUICK REFERENCE GUIDE

RECOMMENDATIONS FOR SAMPLING LEAD IN NYS SCHOOL DRINKING WATER

September 13, 2016

Purpose:

This Quick Reference Guide (QRG) outlines requirements and recommendations for developing and implementing a lead in schools sampling plan for compliance with 10 NYCRR Subpart 67-4.

Audience:

This QRG applies to all New York State public school districts and boards of cooperative educational services (collectively, "schools"), including those already classified as a public water system under 10 NYCRR Subpart 5-1. The QRG may serve as a reference for school personnel and/or consultants responsible for collecting lead in drinking water samples. The QRG may also be used as guidance by local health departments.

Identify Sampling Locations:

Before testing for and correcting lead problems, evaluate the school's plumbing and assess the factors that may contribute to lead contamination. An evaluation should identify all outlets that are used or could be potentially used for drinking and/or cooking purposes. Based on this information, the school can develop a sampling plan, including assigning unique identification numbers to each outlet to be sampled. For more information on developing a sampling plan, see EPA's publication entitled "3Ts for Reducing Lead in Drinking Water in Schools," available at https://www.epa.gov/sites/production/files/2015-09/documents/toolkit_leadschools_guide_3ts_leadschools.pdf.

Sampling:

Below is a list of recommended steps to follow after the sampling plan has been developed.

1. Select a laboratory to perform your water analysis that is certified by the New York Environmental Laboratory Approval Program (ELAP) for lead in drinking water. The list of approved laboratories is located at <http://www.wadsworth.org/regulatory/elap/certified-labs>.
2. Contact the laboratory to obtain chain of custody forms and 250 mL sample containers.
3. All samples should be collected early in the morning before any water has been used. Water must not be used for between 8 and 18 hours prior to sampling.
4. To get a sample that best represents water used for drinking, avoid collecting samples in the mornings after vacations, weekends, or holidays unless specifically directed to do so.
5. On the morning of the sampling, perform a quick walk-through of the facility to ensure no outlets were left running overnight.
6. Make sure you have clean hands and wear non-latex or nitrile gloves to reduce risk of contaminating samples.
7. Use the Chain of Custody form.
8. Use only 250 ml sample containers supplied by the ELAP-certified laboratory.
 - a. Containers should not be opened until you are ready to collect the sample.
 - b. Sampling containers that have been compromised in any way, e.g., by being touched on the threads or the interior surfaces, must not be used.
 - c. Keep food and drink away from the sampling container.
9. Make sure no water has been drawn from the outlet before you collect the sample.
10. Begin sampling at the outlet closest to the Point of Entry (where the water enters the building from the street).
11. Place the container under the outlet that is being tested and collect 250 ml of water.
 - a. If a drinking water fountain is being sampled, angle the container's mouth in a way that it will capture the entire flow of water from the bubbler.
 - b. If a faucet is being sampled, make sure you turn on the cold water tap. For motion-sensor or metered faucets, the hot water valve needs to be turned off prior to sampling.
 - c. If you are collecting a sample from a faucet, aerators and screens should not be removed before taking samples.
12. Turn on the water and fill the container at the same rate that the outlet would be used under normal use for drinking/cooking, without allowing any water to run down the drain. Close the container according to the instructions provided by the certified laboratory selected.
13. Record the time the sample was collected.
14. Label the sample container with the same information as on the Chain of Custody form.
15. Record any observations that may impact the samples' results. For example, leaking faucets or drinking water fountains, discolored water, low water pressure, etc.
16. Prepare the container for shipping according to the certified laboratory's instructions.
17. Ship containers according to the certified laboratory's instructions.
18. Samples must be delivered to the laboratory with in the timeframe provided by the laboratory.