

# **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](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](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](http://health.ny.gov/environmental/water/drinking/doh_pub_contacts_map.htm).