



**Department
of Health**

Lead Testing in School Drinking Water

10 NYCRR Subpart 67-4

Program Updates

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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.



Key elements of Subpart 67-4 that have *not* changed

- **Sampling requirements**
- **Public Notification**
- **Recordkeeping**



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



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 meet the regulation requirements for testing (“applicable outlets”).

"Non- applicable outlets" are those outlets not used or not potentially used for drinking or cooking.

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.)

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
- **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.

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 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)



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.

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



Tying up Loose Ends

- Report lead data for the 2020-21 compliance period *if not already done*.
- Update 2020 data in HERDS to reflect current status of outlets
- Update Roles in HCS to reflect current staff assignments for reporting Lead data:
 - “School Lead in Drinking Water Reporter “ role
 - HCS Coordinator
- The new 2023-25 compliance period is here!
- HERDS reporting form for 2023-25 compliance period is now **LIVE**
 - Make sure you are reporting data for the correct compliance period (2020 vs. 2023-25)
- Future webinars and outreach activities coming soon

Questions?

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