Lead Testing in School Drinking Water
2020 Compliance Requirements

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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 deciliter.

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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

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Who Must Comply with Subpart 67-4?

- All NYS public school districts
  - Including those schools who are classified as a public water system (PWS)
- BOCES
- All buildings owned or leased by a public school

The regulation *does not apply* to:

- private, charter, or Indian Nation schools
- daycare facilities

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“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

- Monitoring
- Response
- Public Notification
- Reporting
- Recordkeeping

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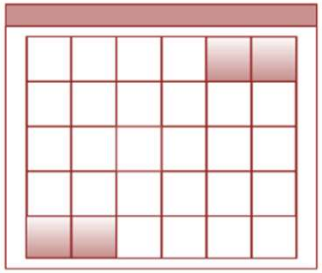
Monitoring

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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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
- 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 that they have outlets that fall outside of the scope of the regulation (outlets not used or potentially used for drinking or cooking), the school must have a remedial action plan that includes details on how those outlets will not be accessed and/or utilized for drinking or cooking purposes (“non-applicable outlets”).

Other Examples of "Applicable outlets"

- **Food washing sinks:** Food washing faucets must be sampled as they are used for cooking (including food preparation) and potentially for drinking
- **Ice machines:** The ice made in an ice machine should be sampled for lead
- **Combination bottle fill station and drinking fountain:** A sample should be collected from both outlets. The Department recommends sampling the outlet that is most frequently used first
- **Hand washing outlets:** In general, all hand washing outlets in a bathroom should be sampled as bathroom outlets may be used to obtain water for drinking and/or food preparation. The Department recognizes that there are many different types of outlets in the bathroom that present challenges for sampling. Guidance has been developed to assist with sampling the various outlets. *This Guidance is coming soon.*
- **Foot level operated multi-outlet gang sink:** In general, samples should be collected from each outlet of a gang sink, however, if the gang sink design does not allow sample collection from each outlet, the schools should contact the local health department or the Department to discuss.
- **Traditional outlet with hot and cold water handle:** Samples must be collected from each outlet but only the cold water should be turned on for sampling

“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.

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Sample Collector Qualifications

- Any individual who is familiar with the regulation and a “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.
- The school Superintendent or designee is ultimately responsible for ensuring that the samples are collected in accordance with Subpart 67-4.

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“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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Sampling Collection Guidance

- **Pre-stagnation flushing:** The Department does not allow for pre-stagnation flushing prior to sampling unless a school is directed to do so by the Department or local health department
- **Aerators**: Aerators should not be removed prior to sampling
- Required **sample volume** = 250 milliliters (mL)
  - Department recommends using wide mouth 250 mL plastic containers
  - Ensure laboratory is aware of sample volume
  - Note: This sample volume differs from the 1 liter requirement under the Lead and Copper Rule (LCR)

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Environmental Laboratory Qualifications

- Samples must be analyzed by a laboratory that is approved to perform lead testing of drinking water samples by the Department's Environmental Laboratory Approval Program (ELAP)
- A listing of approved laboratories can be found at: http://www.wadsworth.org/regulatory/elap/certified-labs

To find a laboratory, select the following criteria to narrow your search:

- For lab type: select "commercial"
- For matrix: select "potable water"
- For analyte: select "lead, total"

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Interpreting Results

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.

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Can Sample Results be Invalidated?

All lead test results *regardless of circumstances* must be reported on the school's website and to the Department, the NY State Education Department, and the local health department using the Department's HERDS application on the Health Commerce System (HCS). *(Additional reporting requirements are covered in next section)*

If a sample result is suspected to be erroneous, a complete explanation of the circumstance should be retained with other related records in the central repository at the school. In such cases, schools should retest the specific outlet(s) to determine the level of lead in water.

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Response and Corrective Actions

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.

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

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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

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Corrective Actions / Remediation Options

- Signage

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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.
- Only those outlets that exceed the action level need to be resampled (following remediation).
- All remediated outlets will likely require flushing prior to being placed back into service.
- 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).*

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Public Notification

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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Public Notification Requirements (continued)

- 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)

Required per Section 67-4.5(b)(1) "The school shall make available, on the school's website, the results of all lead testing performed and lead remediation plans implemented pursuant to this Subpart, as soon as practicable, but no more than 6 weeks after the school received the laboratory reports."

- The Department has created a template to assist schools with reporting the pertinent result information on their website.

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Example of Website Posting

(Template 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

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

Do not submit laboratory reports directly to the Department or local health department unless otherwise directed.

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New and *Improved* HERDS Reporting Format for 2020

- One form for each building (no longer 3 forms!)
- Simplified format

Note: The 2020 reporting form will not be accessible until January 1st 2020.

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HCS/HERDS Access - for School Lead in Drinking Water Reporters

1. Have an HCS Account
    1. To register:
        1. Internet search engine: ‘NYS HCS’ and click the link
        2. Click **Create an HCS Account**
        3. Follow the prompts to create an account
        4. Print the confirmation email and bring to your HCS Coordinator who must finalize your account
        5. Sign into HCS to verify access
2. Be assigned the **School Lead in Drinking Water Reporter role** by an HCS Coordinator for **each building** they are to report under

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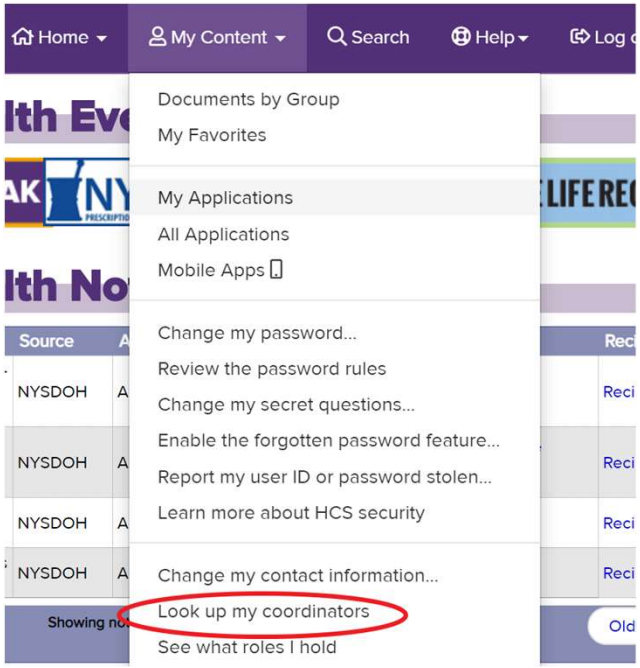
How to look up your HCS Coordinator



If you have an HCS Account:

- Sign into HCS
- Click 'My Content'
- Click 'Look up My Coordinators'
  - You'll see each HCS Coordinator's name, phone, and email in a table. Any of those individuals can assist you.

If you do **not** have an HCS Account:

- Ask a colleague with HCS access
  - they can sign into HCS and follow the steps above
- Call Commerce Accounts Management Unit ((CAMU) 1-866-529-1890 option 1)
- Call your LHD, or
- Email the Department for a list of your school's HCS Coordinators.

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New and *Improved* HERDS Reporting Format for 2020

Live Demo

Recordkeeping

Recordkeeping Requirements

- Schools must retain all records of:
  - Test results
  - Remedial action plans
  - Determinations that a building is lead-free; and
  - Waiver requests (only applicable to compliance year 2016)
- 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
- Department recommends that all records be kept in a centrally located and accessible repository for each school building

Claims and Reimbursement

NY State Education Department Reimbursement

- For testing costs only, pursuant to Education Law 3602 (6-h.), claims may be submitted for State Aid using Form FB Schedule W (similar to 2016). These claims may be submitted for expenditures in the 2019-20 school year and every year thereafter.
- No remediation costs may be claimed for building aid on Form FB Schedule W.
- Remediation costs may be eligible for building aid reimbursement. The scope would need to qualify as approved capital construction and claimed as such pursuant to Education Law 3602(6.).
- *Claims for the Lead Testing in School Drinking Water program are not reimbursed as part of the Building Condition Survey.*

(Information provided by NYS Education Department)

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Enforcement

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

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
- Temperature control
- 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

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

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Questions?

Contact us:

Email:lead.in.school.drinking.water@health.ny.gov

Phone: 518-402-7650

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