NEW YORK
STATE OF
OPPORTUNITY.

Department
of Health

Lead Testing in School Drinking Water

September 16, 2016

Background

- On September 6, 2016, Governor Cuomo signed into law a bill recently passed the New York State Legislature (A10740/S8158).

- This law requires the New York State Department of Health (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.

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Emergency regulation

- Titled: *Lead Testing in School Drinking Water*
  10 NYCRR Subpart 67-4 (Subpart 67-4)
- Effective September 6, 2016
- Estimated to be published in State Register at end of September 2016
- The regulation can be found on the Department of Health's website at: health.ny.gov/regulations/emergency/docs/2016-09-06_lead_testing_in_school_drinking_water.pdf
- Public comments can be sent to: regsqna@health.ny.gov

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Who does Subpart 67-4 apply to?

- All NYS Schools, including those classified as a Public Water Systems (PWS).

- The regulations do not apply to non-public schools.

What does the regulation require?

- **Subpart 67-4 requires:**
  - ***Monitoring*** - collect first-draw samples from all outlets,
  - **Response** - respond to "action level" exceedances, where applicable,
  - **Public Notification** - provide public notification,
  - **Reporting** - report to the Department, Local Health Department (LHD) and State Education Department (SED), and
  - **Recordkeeping** - maintain records.

Monitoring

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.

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Who can collect the sample?

- 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.
- The school is ultimately responsible for ensuring that the samples are correctly taken.

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What is first-draw sampling?

- First-Draw Sample
  - a water sample that is 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-hrs and maximum of 18-hrs before sample collection
    - This amount of time ensures that the collected samples are representative of water that typically a student or faculty member may consume
  - 250 mL sample volume must be collected for analysis

Initial sampling compliance dates

Schools must complete their initial first-draw sampling:

- By **September 30, 2016**:
  - Schools serving children in any level pre-K through grade 5
- By **October 31, 2016**:
  - Schools serving children in any level grade 6 through grade 12 (but not pre-K through 5th)
- For buildings put into service after effective date (September 6, 2016):
  - sampling must be performed prior to occupancy
- For buildings put into service between effective date and October 31, 2016:
  - sampling must be performed within 30 days

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What if the school's first-draw sampling was done prior to September 6, 2016?

- 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.

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Is sampling required for buildings that are "lead free"?

- Any school building that is built with plumbing materials that are 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.

- **October 31, 2016**: Schools must report their list of lead-free buildings on their website.

- **November 11, 2016**: Schools must report their list of lead-free building using the Department's designated statewide electronic reporting system.

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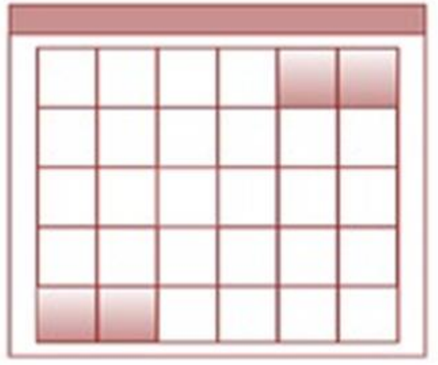
Who can analyze the samples?

- Samples must be analyzed by a laboratory that is approved to conduct lead testing in drinking water samples by the NYS Department of Health Environmental Laboratory Approval Program (ELAP)
- A listing of approved laboratories can be found at: http://www.wadsworth.org/regulatory/elap/certified-labs
  - Select the following criteria to narrow your search:
    - For lab type – select on commercial
    - For matrix – select potable water
    - For analyte – select lead, total

Continued Monitoring

- The next sampling event will occur in 2020
- Continued sampling events will occur every 5 years thereafter
- Continued monitoring can be at earlier time intervals as determined by the Department's Commissioner



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Response

What is the "action level" 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).
- 15 mcg/L is equivalent to 0.015 milligrams per liter (mg/L), or parts per million (ppm).

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If the "action level" under Subpart 67-4 is exceeded, 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

If the "action level" under Subpart 67-4 is exceeded, what does the school need to do? (Continued)

If lead the concentration at an outlet exceeds the action level, schools must:

- Report test results to the LHD As Soon As Possible (ASAP), but no more than one business day after receipt of lab report
- Notify all staff and parents/guardians of the test results, in writing:
  - ASAP, but not more than 10 business days after receipt of lab report
  - within 10 business days of effective date of the regulation or by 9/20/16, unless such written notification has already occurred, for results of tests performed prior to effective date (9/6/16)

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If an outlet tested above the "action level", can it still be used for cleaning and handwashing?

- Yes
- Signage would need to 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.

Public Notification

What are the 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.

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Reporting

What are the school's general reporting requirements?

Schools must report to the Department's statewide electronic reporting system by **November 11, 2016** the following:

- 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;

What are the school's general reporting requirements? (Continued)

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 Department;
- 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 LHD, in accordance with the regulation; and

What are the school's general reporting requirements? (Continued)

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, LHD, and SED through the Department's designated statewide electronic reporting system.

Do not submit laboratory results directly to the LHD or the Department unless otherwise directed.

Health Commerce System (HCS) Access

Where to register

1) Open your web browser and enter this web address in the address bar: https://commerce.health.state.ny.us

2) On the HCS log in page, click **All Others**

3) Click '**Register** for an account' and follow the two step process:

   a) Register for an account

   b) Enroll your account on the HCS. This step must be done with your HCS Coordinator.

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How to register

REGISTER ONLY ONCE!

1. Complete the Name, Address and Policy Statement sections, and click Continue
   - NOTE: Your name must match what is on your Photo ID

2. Create a user ID and password, click Continue

3. Answer at least six of the 27 secret questions, click Register

4. Verify your account information, and click Confirm

5. Print your Account Registration Completion information, click OK

6. Print the email confirming that your user ID was created

7. See your *HCS Coordinator with your Account Registration Completion email printout and your Photo ID

*If you do not know your HCS Coordinator, or your school needs a new HCS Director/Coordinator please call the Commerce Accounts Management Unit (CAMU) at 1-866-529-1890, option 1 (M-F 8am-4:45pm).

HERDS Access

Request Access to the HERDS application for a new user (with HCS access)

Have the individual designated to report on school lead in drinking water email their HCS Coordinator requesting to be added to the HERDS role of **School Lead in Drinking Water Reporter.**

If you do not know who your HCS Coordinator is and you have access to HCS, you can look them up following these steps:

1) Log into HCS
2) Click **My Content** and select **Look up my coordinators**
3) A list will appear with name, phone and email address

Further instructions regarding using HERDS will be provided at a later time.

Recordkeeping

What are the school's recordkeeping requirements?

- Schools must retain all records of:
  - Test results
  - Lead remediation plans
  - Determinations that a building is lead-free; and
  - Waiver requests
- Must retain records for 10-years following document creation
- Copies of documents must be provided to Department, LHD, or SED upon request

Waivers

Can a school get a waiver from initial first-draw monitoring?

Schools that want to apply for waiver for the initial sampling requirements must demonstrate that:

- The School conducted testing prior to the effective date that substantially complied with the new regulation
- Any needed remediation (including re-testing) has been performed
- The lead level in potable water in applicable buildings is currently below the action level

Can a school get a waiver from initial first-draw monitoring? (Continued)

- LHDs will review waiver applications for compliance
- If appropriate, LHD will send recommendation of approval to Department
- The Department will determine if waiver will be issued

Additional guidance on waivers is forthcoming

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Enforcement

Enforcement

- Upon reasonable notice to school, an employee of the Department or the LHD may enter any building for the purpose of determining compliance with Subpart 67-4.
- If a school does not comply with this subpart, the Department or LHD may take any action authorized by law.

Additional Information

Additional Information

- EPA's 3Ts For Reducing Lead in Drinking Water in Schools Revised Technical Guidance
- Webinar scheduled on Lead in School Drinking Water for September 23rd
- Please send any questions to your LHDs. Contact information is available at: http://health.ny.gov/environmental/water/drinking/doh_pub_contacts_map.htm.

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Questions

Thank You