

Subpart 67-4: Lead Testing in School Drinking Water “Substantial Compliance” Waivers

Background

10 NYCRR (Subpart 67-4) generally requires all school districts and boards of cooperative educational services (BOCES and, collectively, “schools”) to test all potable water outlets for lead contamination. Some schools may have performed sampling prior to September 6, 2016 that substantially, but not completely, complies with Subpart 67-4.

Consistent with statutory requirements, the Department of Health (Department) may issue waivers for schools that performed testing prior to September 6, 2016, in a manner that substantially complies with Subpart 67-4. This document provides guidance on how to apply for such a waiver.

Process

To apply for a waiver, schools should first contact their local health department (LHD) to determine whether the sampling performed fully complies with Subpart 67-4. If it does fully comply, no waiver is required. Contact information for the LHD can be found at: http://health.ny.gov/environmental/water/drinking/doh_pub_contacts_map.htm

Note that if a school sampled some, but not all, outlets in a building prior to September 6, 2016, the remaining outlets must be sampled. No waiver is required for the previously sampled outlets that were sampled in a manner that complies with Subpart 67-4. However, a waiver is required for those outlets sampled in a manner that did not fully comply with Subpart 67-4.

For each building sampled prior to September 6, 2016, where outlets were sampled in a manner that did not fully comply with Subpart 67-4, the school may apply for a waiver by submitting documentation to the LHD demonstrating that:

- (1) prior to September 6, 2016, the school conducted testing that substantially complied with the testing requirements of this Subpart;
- (2) any needed remediation, including re-testing, has been performed; and
- (3) the lead level in the potable water of the applicable building(s) is below the action level.

The LHD will review the waiver request and, if approval is recommended, provide its approval recommendation to the Department. The LHD will advise the school as to whether the waiver request was approved or denied and the next steps required.

If a waiver application is denied, the school must resample all outlets that were the subject of the waiver application.

Documentation

The LHD may request that the school submit the following documentation, as well as any other additional information to support the waiver application:

- Plumbing profile (if available)
- Sampling plan
- Sampling procedures
- Information regarding remediation
- Summary of sample results including the Environmental Laboratory Approval Program (ELAP) certified lab

Waiver Considerations

Waivers may be considered for:

- Prior to sampling, the water in the facility was motionless between 6 hours and 72 hours (rather than between 8 and 18).
- Sample volume less than 250 ml.

Waivers will not be considered for:

- Failure to sample all “outlets,” as defined in the regulation.
- Any sample size greater than 250mL.
- Lab testing not performed by an ELAP-certified testing lab.
- Any test results exceeding 15 micrograms per liter.
- Water used within the building less than 6 hours previous to sampling.

The Department will consider other circumstances on a case-by-case basis.