

REQUEST FOR TECHNICAL CHANGE

AGENCY: Commission for Public Health

RULE CITATION: 15A NCAC 18A .2816

DEADLINE FOR RECEIPT: Friday, September 6, 2019

PLEASE NOTE: *This request may extend to several pages. Please be sure you have reached the end of the document.*

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may call our office to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following technical changes be made:

In (b)(1), line 8, generally "at least" is not used in rules, as the rules set minimum standards. I take it you need to retain it here?

On line 9, and elsewhere the term is used, what is a "water outlet"? Does your regulated public know?

On line 14, Rule .2801 defines "Department" as DENR, and Rule .2834 refers to inspections by the "Department" which is DENR. The proposed language in this Rule contradicts those rules and this must be addressed.

In (b)(2), line 18, I do not understand this cross-reference. What part of that Rule includes this report?

In (b)(4), line 21, collected and tested by whom? Is this the same as the "analyzed" language on line 26? If labs are doing all of this, why not state it in the first line of this Subparagraph?

On line 25, please either replace "Notwithstanding the foregoing guidance," with "However," or at least delete "foregoing"

In (b)(5), line 30, I do not see that G.S. 130A-131.8 requires electronic submission. If you meant to state that the laboratory shall electronically submit the information required by G.S. 130A-131.8, state that instead.

In (b)(6), what is "immediately" here?

In (b)(7), line 6, was this change made in response to public comment?

In (b)(8), lines 8-9, why not replace "restrict access to water outlet(s) and provide alternate water as set out in" with "follow" so it reads "shall continue to follow Subparagraph (b)(6)"?

In (b)(9), line 13, replace "any one or more components" with "any Subparagraph"

Amanda J. Reeder
Commission Counsel

Date submitted to agency: August 22, 2019

In (b)(10), line 16, and (b)(11), line 21, what do you mean by "indicate"? Do you not mean "shows"?

In (b)(10), lines 18-19, why do you need "in accordance with the United States Environmental Protection Agency guidance specified in Subparagraph (b)(4) of this Rule."? Couldn't you just end the sentence after "center."?

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Amanda J. Reeder
Commission Counsel
Date submitted to agency: August 22, 2019

1 15A NCAC 18A .2816 is amended with changes as published in 33:23 NCR 2256–2258 as follows:

2
3 **15A NCAC 18A .2816 LEAD POISONING HAZARDS IN CHILD CARE CENTERS**

4 (a) In child care centers, areas accessible to children shall be free of identified lead poisoning hazards as defined
5 under G.S. 130A-131.7(7).

6 (b) The following actions shall be taken to ensure that drinking water in child care centers is free of identified lead
7 poisoning hazards as defined under G.S. 130A-131.7(7)(g).

8 (1) Child care operators, as defined under G.S. 110-86(7), shall test, at least once every three years, all
9 water outlets used for drinking or food preparation. Samples shall also be collected and tested within
10 30 calendar days of completion of any renovations or repairs that may impact the facility's drinking
11 water infrastructure, such as repair or replacement of all or part of drinking water service lines or
12 faucets. The operator shall provide documentation of testing results for review by the Department
13 of Health and Human Services (Department) during each unannounced routine sanitation inspection
14 under Rule .2834(b) of this Section.

15 (2) For centers that submit an application for licensure after the effective date of this Rule, initial
16 samples shall be collected by the child care operator and tested in accordance with Subparagraph
17 (b)(4) of this Rule during the license application process, in accordance with 10A NCAC 09
18 .0302(b).

19 (3) For all other centers, initial samples shall be collected by the child care operator and tested in
20 accordance with Subparagraph (b)(4) of this Rule within one year of the effective date of this Rule.

21 (4) Samples shall be collected and tested in accordance with guidance specified by the United States
22 Environmental Protection Agency in its publication, 3Ts for Reducing Lead in Drinking Water in
23 Schools and Child Care Facilities, which is incorporated by reference with subsequent changes or
24 amendments and available free of charge at [https://www.epa.gov/dwreginfo/3ts-reducing-lead-](https://www.epa.gov/dwreginfo/3ts-reducing-lead-drinking-water-schools-and-child-care-facilities)
25 [drinking-water-schools-and-child-care-facilities](https://www.epa.gov/dwreginfo/3ts-reducing-lead-drinking-water-schools-and-child-care-facilities). Notwithstanding the foregoing guidance, samples
26 may be collected with a stagnation period of up to 72 hours. Samples shall be analyzed by a
27 laboratory certified by the North Carolina State Laboratory of Public Health to analyze for lead in
28 drinking water.

29 (5) When a water sample is analyzed for lead content by a laboratory under this Rule, the laboratory
30 shall notify the Department of the test results by electronic submission in accordance with G.S.
31 130A-131.8.

32 (6) When a child care center receives test results from a laboratory indicating that a water sample
33 collected by the child care operator contains a lead concentration at or above the lead poisoning
34 hazard level defined in G.S. 130A-131.7(7)(g), the child care operator shall immediately:

35 (A) restrict access to any water outlet(s) used for drinking or food preparation that have lead
36 concentrations at or above the lead poisoning hazard level; and

(B) ensure that all children and staff have access to water free of cost that does not contain lead concentrations at or above the lead poisoning hazard level for drinking and food preparation.

(7) When notified of a water lead level at or above the lead poisoning hazard level, the Department shall conduct sampling at the water outlet identified to have a water lead level at or above the lead poisoning hazard level within ~~seven calendar~~ ten business days of notification.

(8) If a water sample collected by the Department reveals a water lead level at or above the lead poisoning hazard level, the child care operator shall continue to restrict access to water outlet(s) and provide alternate water as set out in Subparagraph (b)(6) of this Rule until the Department determines the water outlet(s) are not producing water lead levels at or above the lead poisoning hazard level and notifies the child care operator and the Division of Child Development and Early Education in writing of this determination.

(9) Failure to comply with Paragraph (a) of this Rule or any one or more components of this Paragraph, shall be deemed a violation of this Rule subject to demerits under Rule.2834(c)(20) of this Section.

(10) Within ~~three~~ five business days of receiving the test results of the Department's water analysis that indicate a water lead level at or above the lead poisoning hazard level, the child care operator shall provide written notification of the test results to the parents or legal guardians of the children attending the child care center and the staff of the child care center, in accordance with the United States Environmental Protection Agency guidance specified in Subparagraph (b)(4) of this Rule.

(11) Within five business days of receiving the test results of the Department's water analysis that indicate a water lead level at or above the lead poisoning hazard level, the child care operator shall make the test results available to the public, free of charge. The child care operator may post test results to the child care center's website to satisfy the requirement to make the test results available to the public.

*History Note: Authority G.S. 110-91; 130A-131.5; 130A-131.7(7); 130A-131.8;
Eff. July 1, 1991;
Amended Eff. October 1, 2019; January 1, 2006; February 1, 1995.*