

Burgos, Alexander N

Subject: FW: CPH 10A NCAC 41C Rules - March 2023 RRC

From: Niehaus, Virginia <virginia.niehaus@dhhs.nc.gov>
Sent: Tuesday, March 14, 2023 10:34 PM
To: Burgos, Alexander N <alexander.burgos@oah.nc.gov>
Subject: FW: CPH 10A NCAC 41C Rules - March 2023 RRC

Hi Alex,

Will you please include the following individuals on the WebEx Invite for the meeting:

virginia.niehaus@dhhs.nc.gov

jbarkley@ncdoj.gov

larry.michael@dhhs.nc.gov

ed.norman@dhhs.nc.gov

Thanks,
Virginia

Virginia R. Niehaus, JD, MPH

Director of Regulatory and Legal Affairs

Division of Public Health

[NC Department of Health and Human Services](#)

Pronouns: she/her/hers

Executive Assistant: [Michelle Zarate](#)

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From: Niehaus, Virginia <virginia.niehaus@dhhs.nc.gov>

Sent: Tuesday, March 14, 2023 8:34 PM

To: Liebman, Brian R <brian.liebman@oah.nc.gov>

Cc: Vail, Nathan T <Nathan.Vail@dhhs.nc.gov>; Burgos, Alexander N <alexander.burgos@oah.nc.gov>

Subject: Re: CPH 10A NCAC 41C Rules - March 2023 RRC

Hi Brian,

This is great news! I have no concerns with you sending the rules on to Dana and Alex for filing. Thanks for your help with this rule package!

Best,

Virginia

Sent from my Verizon, Samsung Galaxy smartphone
Get [Outlook for Android](#)

Burgos, Alexander N

Subject: FW: CPH 10A NCAC 41C Rules - March 2023 RRC

From: Niehaus, Virginia <virginia.niehaus@dhhs.nc.gov>

Sent: Tuesday, March 14, 2023 10:41 AM

To: Liebman, Brian R <brian.liebman@oah.nc.gov>

Cc: Vail, Nathan T <Nathan.Vail@dhhs.nc.gov>; Burgos, Alexander N <alexander.burgos@oah.nc.gov>

Subject: RE: CPH 10A NCAC 41C Rules - March 2023 RRC

Hi Brian,

Apologies – I worked remotely yesterday and again today. We have a new phone system, and I’m not sure how to check my desk phone from home (but will be figuring it out!). I hope you feel better and will keep an eye out for your feedback. If it’s helpful to discuss, the best way to reach me is on my work mobile at (919) 634-0184.

Thanks,
Virginia

Virginia R. Niehaus, JD, MPH

Director of Regulatory and Legal Affairs

Division of Public Health

[NC Department of Health and Human Services](#)

Pronouns: she/her/hers

Executive Assistant: [Michelle Zarate](#)

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Burgos, Alexander N

Subject: FW: CPH 10A NCAC 41C Rules - March 2023 RRC

From: Liebman, Brian R <brian.liebman@oah.nc.gov>
Sent: Tuesday, March 14, 2023 9:37 AM
To: Niehaus, Virginia <virginia.niehaus@dhhs.nc.gov>
Cc: Vail, Nathan T <Nathan.Vail@dhhs.nc.gov>; Burgos, Alexander N <alexander.burgos@oah.nc.gov>
Subject: Re: CPH 10A NCAC 41C Rules - March 2023 RRC

Virginia,

I left you a voicemail yesterday about this. I am just getting over a bad illness from Friday, and I'm doing my best to get to everyone's rules before the meeting. I hope to be able to get something to you today.

Brian

Brian Liebman
Counsel to the North Carolina Rules Review Commission
Office of Administrative Hearings
(984)236-1948
brian.liebman@oah.nc.gov

E-mail correspondence to and from this address may be subject to the North Carolina Public Records Law N.C.G.S. Chapter 132 and may be disclosed to third parties.

From: Niehaus, Virginia <virginia.niehaus@dhhs.nc.gov>
Sent: Tuesday, March 14, 2023 9:32:33 AM
To: Liebman, Brian R <brian.liebman@oah.nc.gov>
Cc: Vail, Nathan T <Nathan.Vail@dhhs.nc.gov>; Burgos, Alexander N <alexander.burgos@oah.nc.gov>
Subject: RE: CPH 10A NCAC 41C Rules - March 2023 RRC

Hi Brian,

I hope you are doing well. I am checking in regarding this rule set. Will you please let me know if you have any additional questions or plan to recommend approval?

Regards,
Virginia

Virginia R. Niehaus, JD, MPH
Director of Regulatory and Legal Affairs
Division of Public Health
[NC Department of Health and Human Services](#)
Pronouns: she/her/hers

Executive Assistant: [Michelle Zarate](#)

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REQUEST FOR CHANGES PURSUANT TO G.S. 150B-21.10

AGENCY: Commission for Public Health

RULE CITATION: 10A NCAC 41C .1002

DEADLINE FOR RECEIPT: Friday, March 10, 2023.

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 email the reviewing attorney to inquire concerning the staff recommendation.

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

In (a), lines 7 and 8 and (c), lines 25 and 26, you change the time frame for conducting inspections from within "24 months after the effective date of this Rule" and "18 months after the effective date of this Rule" to May 1, 2024. The effect of this post-publication change is to shorten the available time for testing from 4/1/25 (based on a 4/1/23 effective date) to 5/1/24 for water testing, and from 10/1/24 to 5/1/24 for lead paint/asbestos testing.

I believe that by shortening the time frames in the rule after publication, you've made a substantial change, in that you're creating an effect that could not have reasonably been anticipated in the published language. I would recommend replacing the original language, or, if you are committed to changing these dates, withdrawing these rules and republishing.

All non-highlighted strike-throughs and underlines in the rules originally filed with the RRC reflected changes in text between the temporary rules and the permanent rules and were published in accordance with G.S. 150B. This includes the changes in time frames mentioned here. The time frames in the temporary rules referenced a certain number of months from the effective date of the temporary rules, and these have now been replaced in the permanent rules with a particular set date. In all cases, this new date allows the same or more time for compliance than was set out in the temporary rules. The intent was to provide the public with notice of the differences between the temporary and permanent rules. In addition, all post publication-changes were highlighted in the rules originally filed with the RRC.

Accompanying the response to the request for changes, we have included revised language that removes the underlines/strike-throughs that reflect published changes between the temporary rules and permanent rules and uses only underline and strike-through to note post-publication changes. Apologies for the confusion this formatting caused.

Brian Liebman
Commission Counsel

Date submitted to agency: February 24, 2023

In (a), lines 6 and 8, please consider revising to use the active tense. As currently written, the Rule states that a school or child care facility shall be eligible for funding when a test “is conducted” by a certain date. It doesn’t specify who must do the testing.

This language is intended to coordinate with rules .1003, .1004, and .1005. Paragraph (b) of each of these three rules sets out the individual responsible for ensuring that the inspection or test is conducted and the individual who completes the inspection or test. This is a bit different for each of the rules.

In (b)(3), the changes need not be highlighted since this is an adoption.

Please see the above explanation. This has been corrected.

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

REQUEST FOR CHANGES PURSUANT TO G.S. 150B-21.10

AGENCY: Commission for Public Health

RULE CITATION: 10A NCAC 41C .1003

DEADLINE FOR RECEIPT: Friday, March 10, 2023.

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 email the reviewing attorney to inquire concerning the staff recommendation.

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

In (b), lines 24-25 and (f)(2), p.2, lines 19-20, you change the time frame for conducting inspections from within “18 months after the effective date of this Rule” to May 1, 2024. The effect of this post-publication change is to shorten the available time for testing from 10/1/24 (based on a 4/1/23 effective date) to 5/1/24.

I believe that by shortening the time frames in the rule after publication, you’ve made a substantial change, in that you’re creating an effect that could not have reasonably been anticipated in the published language. I would recommend replacing the original language, or, if you are committed to changing these dates, withdrawing these rules and republishing.

Please see the above explanation. This has been corrected.

To be clear, are the references throughout the Rule to 130A-447 meant to refer to the requirement that all persons performing “asbestos management activities” must be accredited by DHHS?

All persons performing asbestos management activities are required, pursuant to GS 130A-447, to be accredited under the Commission’s rules at 10A NCAC 41C .0600. It is the intent to cross-reference existing definitions under this framework.

Also, throughout the rule, you need not highlight your changes, as this is an adoption.

Please see the above explanation. This has been corrected.

In (a)(2), line 11, the cite to Rule .0601 should be to “.0601(a)(3)”.

Thank you. This has been corrected.

In (b), lines 25-26, I’m confused by the reference to Section .0600 of Subchapter 41C. The Rule states that “inspections shall be performed by an inspector and documented

Brian Liebman
Commission Counsel

Date submitted to agency: February 24, 2023

*in an inspection survey report in accordance with the rules of Section .0600...”
However, I don’t see any requirement for a report in Section .0600, and in fact most of
the rules in that Section deal with accreditation requirements. Can you be more specific
about which rules you’re requiring compliance with?*

*The Section .0600 rules contain cross-references to federal regulation. To simplify the
cross-reference in this rule, we have edited the language to include a direct cite to the
applicable federal regulation.*

*In (e), line 36, I have similar questions as above with respect to the reference to Section
.0600. What specific rules are you requiring compliance with?*

More specific rule cites have been added.

*In (f)(1), p.2, line 4, does the list from (A) to (G) encompass everything that would be
required for the form to be considered “complete”?*

Yes.

Same question for (f)(3), line 22, with respect to the list and the form.

Yes.

In (f)(3)(F), line 32, what kind of “information” are you requiring?

*This is intended to include details on the type of materials to be abated, the location of
the abatement, the quantity of material to be abated, and the method of abatement.*

*In (f)(4), line 36, is the “on a form provided by the Department” language omitted
intentionally?*

*Yes. There will not be a form provided for the elements to be provided in this
subparagraph.*

*In (h), p.3, line 14, I have similar questions as above with respect to the reference to
Section .0600. What specific rules are you requiring compliance with?*

*As above, we have edited the language to include a direct cite to the applicable federal
regulation.*

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

REQUEST FOR CHANGES PURSUANT TO G.S. 150B-21.10

AGENCY: Commission for Public Health

RULE CITATION: 10A NCAC 41C .1004

DEADLINE FOR RECEIPT: Friday, March 10, 2023.

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 email the reviewing attorney to inquire concerning the staff recommendation.

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

In (b), lines 22-23 and (f)(2), p.2, line 22, you change the time frames specified from within "18 months after the effective date of this Rule" to May 1, 2024. The effect of this post-publication change is to shorten the available time for compliance from 10/1/24 (based on a 4/1/23 effective date) to 5/1/24.

I believe that by shortening the time frames in the rule after publication, you've made a substantial change, in that you're creating an effect that could not have reasonably been anticipated in the published language. I would recommend replacing the original language, or, if you are committed to changing these dates, withdrawing these rules and republishing.

Also, throughout the rule, you need not highlight your changes, as this is an adoption.

Please see the above explanation. This has been corrected.

In (a)(1), line 6, "interim controls" should be in quotation marks.

We made this change.

In (b), line 26, I'm confused by the reference to Sections .0800 and .0900 of Subchapter 41C. The Rule states that a certified risk assessor shall determine whether a lead-based paint hazard is present based on the inspection, in accordance with the rules of Sections .0800 and .0900...." However, I don't see any rules governing inspections in Sections .0800 and .0900, and in fact most of the rules in those Sections deal with accreditation requirements. Can you be more specific about which rules you're requiring compliance with?

It was determined that this cross-cite is not needed.

Brian Liebman
Commission Counsel

Date submitted to agency: February 24, 2023

In (b), line 29, I have similar questions as above with respect to the reference to Section .0800. What specific rules are you requiring compliance with?

A more specific cite has been added.

In (c), line 30, I think the phrase “If the certified risk assessor determines that a lead-based paint hazard has been detected...” is redundant. Would it change the meaning to say “If the certified risk assessor detects a lead-based paint hazard...”?

We made this change.

In (e), p.2, line 3, I have similar questions as above with respect to the reference to Sections .0800 and .0900. What specific rules are you requiring compliance with?

More specific rule cites have been added.

In (f)(1), p.2, line 7, does the list from (A) to (G) encompass everything that would be required for the form to be considered “complete”?

Yes.

Same question for (f)(3), line 25, with respect to the list and the form.

Yes.

In (f)(3)(F), p.3, line 1, what kind of “information” are you requiring?

This is intended to include details on the type of materials to be abated, the location of the abatement, the quantity of material to be abated, and the method of abatement.

In (f)(4), line 5, is the “on a form provided by the Department” language omitted intentionally?

Yes. There will not be a form provided for the elements to be provided in this subparagraph.

In (h), p.3, line 21, I have similar questions as above with respect to the reference to Sections .0800 and .0900. What specific rules are you requiring compliance with?

The Section .0800 and .0900 rules contain cross-references to federal regulation. To simplify the cross-reference in this rule, we have edited the language to include a direct cite to the applicable federal regulation.

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

Brian Liebman
Commission Counsel
Date submitted to agency: February 24, 2023

REQUEST FOR CHANGES PURSUANT TO G.S. 150B-21.10

AGENCY: Commission for Public Health

RULE CITATION: 10A NCAC 41C .1005

DEADLINE FOR RECEIPT: Friday, March 10, 2023.

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 email the reviewing attorney to inquire concerning the staff recommendation.

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

In (b)(2), line 16, you change the time frame for collecting and testing samples from within "24 months after the effective date of this Rule" to May 1, 2024. The effect of this post-publication change is to shorten the available time for compliance from 4/1/25 (based on a 4/1/23 effective date) to 5/1/24.

I believe that by shortening the time frame in the rule after publication, you've made a substantial change, in that you're creating an effect that could not have reasonably been anticipated in the published language. I would recommend replacing the original language, or, if you are committed to changing these dates, withdrawing these rules and republishing.

Please see the above explanation. This has been corrected.

Also, throughout the Rule, I'm a little unclear about how you want the "responsible individuals" to collect the samples. Per the EPA guidance incorporated by reference, the sampling procedure is a two step process, with a first draw sample and then a flush sample "if the result of [the first draw sample] is high". However, the guidance also says that to save money, both draws can be taken at the same time, with the flush sample held unless the first draw comes up high. Given the options here, what are you asking your regulated public to do?

It is acceptable for the responsible individual to use either option set out in the EPA guidance to collect the samples.

In (a)(1), line 6, please omit the parentheses around "(g)" to correct the citation.

We made this change.

In (b)(4), line 27, do you mean something specific by "in alignment with" the requirements of G.S. 130A-131.8? I don't think it's necessarily objectionable, but it seems like the typical formation here would be "in compliance with the requirements of

Brian Liebman

Commission Counsel

Date submitted to agency: February 24, 2023

G.S. 130A-131.8.” Just wondering if you had something else besides strict compliance in mind.

We have revised the language to clarify.

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

Brian Liebman
Commission Counsel
Date submitted to agency: February 24, 2023

REQUEST FOR CHANGES PURSUANT TO G.S. 150B-21.10

AGENCY: Commission for Public Health

RULE CITATION: 10A NCAC 41C .1006

DEADLINE FOR RECEIPT: Friday, March 10, 2023.

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 email the reviewing attorney to inquire concerning the staff recommendation.

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

In (b), you've highlighted portions of lines 9 and 10, but there are no changes indicated. Please correct formatting here to show what's been added or deleted. Moreover, because this Rule is an adoption, no highlighting of changes is required.

Please see the above explanation. This has been corrected.

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

1 10A NCAC 41C .1001 is adopted as published in 37:11 NCR 778-783 as follows:

2
3 **SECTION .1000 – LEAD AND ASBESTOS INSPECTION, TESTING, ABATEMENT, AND**
4 **REMEDICATION IN NORTH CAROLINA PUBLIC SCHOOLS AND LICENSED CHILD CARE**
5 **FACILITIES**

6
7 **10A NCAC 41C .1001 DEFINITIONS**

8 For the purposes of this Section, the following definitions shall apply:

- 9 (1) "Department" means the North Carolina Department of Health and Human Services.
10 (2) "Licensed child care facility" means a child care facility as defined at G.S. 110-86(3).
11 (3) "Public school" means a public school unit as defined at G.S. 115C-5(7a).
12 (4) "Program" means the North Carolina Department of Health and Human Services, Division of Public
13 Health, Environmental Health Section.
14 (5) "Responsible individual" means the superintendent of a public school operated by a local school
15 administrative unit, as defined in G.S. 115C-5(6), or the superintendent's designee(s); the governing
16 body of any charter school or school operated under Article 7A or Article 9C of G.S. 115C or that
17 body's designee(s); or the operator of a licensed child care facility or the operator's designee(s), as
18 applicable.

19
20 *History Note: Authority S.L. 2021-180, s. 9G.8;*
21 *Temporary Adoption Eff. April 29, 2022;*
22 *Eff. April 1, 2023.*

1 10A NCAC 41C .1002 is adopted with changes as published in 37:11 NCR 778-783 as follows:

2
3 **10A NCAC 41C .1002 FUNDING**

4 (a) Public schools and licensed child care facilities in North Carolina shall be eligible to participate in the funding
5 mechanisms established in accordance with S.L. 2021-180, s. 9G.8. to fully or partially offset the cost of conducting
6 testing for lead in water and inspections for asbestos and lead-based paint hazards, when a test for lead in water is
7 conducted by May 1, 2024 or an inspection for lead-based paint or asbestos is conducted by May 1, 2024 and the test
8 or inspection is conducted in accordance with the rules of this Section.

9 (b) Public schools and licensed child care facilities that are eligible to participate under Paragraph (a) of this Rule
10 shall also be eligible to participate in the funding mechanisms established in accordance with S.L. 2021-180, s. 9G.8.
11 to fully or partially offset the cost of conducting remediation of lead in water and abatement of asbestos and lead-
12 based paint hazards identified under this Section when the following requirements are met:

- 13 (1) lead or asbestos is detected that meets the requirements under the rules of this Section for abatement
14 or remediation;
- 15 (2) the abatement or remediation, as applicable, is performed in accordance with the rules of this
16 Section; and
- 17 (3) replacement materials used to abate asbestos hazards do not contain more than 1 percent asbestos
18 and replacement materials used to abate lead-based paint hazards do not contain lead in excess of
19 90 parts per ~~million~~. million as confirmed by a safety data sheet, letter from the manufacturer, or
20 laboratory test results.

21 (c) Notwithstanding Paragraphs (a) and (b) of this Rule, licensed child care centers conducting testing and remediation
22 of water outlets used for drinking or food preparation pursuant to 15A NCAC 18A .2816 shall be eligible to participate
23 in the funding mechanisms established in accordance with S.L. 2021-180, s. 9G.8. for testing conducted in accordance
24 with that Rule by May 1, 2024 and remediation conducted in accordance with that Rule between May 1, 2020 and the
25 date on which funds are no longer available in accordance with S.L. 2021-180, s. 9G.8.(d).

26 (d) Notwithstanding Paragraphs (a) and (b) of this Rule, if asbestos or lead-based paint is detected during a capital,
27 renovation, or repair project in a public school or licensed child care facility, the public school or licensed child care
28 facility shall be eligible to participate in the funding mechanisms established in accordance with S.L. 2021-180, s.
29 9G.8. as follows:

- 30 (1) to fully or partially offset the cost of conducting an inspection in accordance with Rules .1003(b) or
31 .1004(b) of this Section, as applicable, except that the inspection may be limited to the area in the
32 public school or licensed child care facility where the capital, renovation, or repair project is being
33 conducted; and
- 34 (2) to fully or partially offset the cost of conducting abatement when lead-based paint or asbestos is
35 detected that meets the requirements under the Rules of this Section for abatement and abatement is
36 conducted in accordance with Rules .1003(e) and .1004(e) of this Section and with the limitation on
37 materials set out in Subparagraph (b)(3) of this Rule, except that the abatement may be limited to

1 the area in the public school or licensed child care facility where the capital, renovation, or repair
2 project is being conducted.

3 (e) Inspections and abatements described in Paragraph (d) of this Rule that are limited to the area in the public school
4 or licensed child care facility where the capital, renovation, or repair project is being conducted shall not satisfy the
5 facility-wide inspection requirements for public schools and licensed child care facilities set out in Rules .1003 and
6 .1004 of this Section.

7 (f) Notwithstanding the foregoing, to be eligible to participate in any funding mechanism under this Rule, responsible
8 individuals shall make all records regarding testing, inspection, abatement, and remediation available to the
9 Department upon request, including, but not limited to, itemized expense reports for activities funded under S.L. 2021-
10 180, s. 9G.8.

11 (g) Nothing in this Rule shall require the Department to provide funding if the Department determines there are not
12 sufficient funds available in accordance with S.L. 2021-180, s. 9G.8.(d).

13
14 *History Note: Authority S.L. 2021-180, s. 9G.8;*
15 *Temporary Adoption Eff. April 29, 2022;*
16 *Eff. April 1, 2023.*

1 10A NCAC 41C .1003 is adopted with changes as published in 37:11 NCR 778-783 as follows:

2
3 **10A NCAC 41C .1003 ASBESTOS INSPECTIONS AND ABATEMENT IN NORTH CAROLINA PUBLIC**
4 **SCHOOLS AND LICENSED CHILD CARE FACILITIES**

5 (a) For the purposes of this Rule, the following definitions shall apply:

- 6 (1) "Abatement" means as defined at G.S. 130A-444(4), and also includes renovation activities that are
7 carried out to repair, maintain, remove, isolate, enclose, replace, or encapsulate asbestos containing
8 material. Abatement shall not be considered complete until a final clearance inspection of the public
9 school or licensed child care facility is performed by an air monitor in accordance with 40 C.F.R.
10 763.90(i).
- 11 (2) "Air monitor" means as defined at G.S. 130A-447 and 10A NCAC 41C .0601(a)(3), ~~.0601(3)~~.
- 12 (3) "Asbestos" means as defined at G.S. 130A-444(2).
- 13 (4) "Asbestos containing material" means as defined at G.S. 130A-444(3).
- 14 (5) "Asbestos hazard" means a condition that results in exposure to asbestos in excess of the standards
15 set forth in 10A NCAC 41C .0607(a) or to a category of asbestos containing material defined at 40
16 C.F.R. ~~763.88(b)(1)-(6)~~, 763.88(b)(1)-(4).
- 17 (6) "Inspection" in a licensed child care facility means an examination of the facility for the presence
18 of asbestos hazards that is conducted by an inspector in accordance with the rules of Section .0600
19 of this Subchapter. "Inspection" in a public school means a reinspection conducted in alignment
20 with G.S. 130A-445, 10A NCAC 41C .0604, and 40 C.F.R.763.85(b).
- 21 (7) "Inspector" means as defined at G.S. 130A-447 and 10A NCAC 41C .0601(a)(7).
- 22 (8) "Management Planner" means as defined at G.S. 130A-447 and 10A NCAC 41C .0601(a)(9).

23 (b) Each responsible individual shall ensure that an inspection is conducted for asbestos hazards in each public school
24 or licensed child care facility for which he or she is responsible by May 1, 2024. Inspections for asbestos hazards shall
25 be performed by an inspector and documented in an inspection ~~survey~~ report in accordance with 40 C.F.R. 763,
26 Subpart E, the rules of Section .0600 of this Subchapter. A management planner shall review the inspection ~~survey~~
27 report to determine whether an asbestos hazard has been detected and shall document his or her findings in an asbestos
28 management plan in accordance with Rule 10A NCAC 41C .0604.

29 (c) If the management planner determines that an asbestos hazard has been detected, then the responsible individual
30 shall restrict access to the identified asbestos hazard until it is abated in accordance with this Rule.

31 (d) A determination by a management planner that an asbestos hazard is present in a public school or licensed child
32 care facility that is documented in an asbestos management plan in accordance with Paragraph (b) of this Rule shall
33 satisfy the requirement of Rule .1002(b)(1) or (d)(2) of this Section, as applicable, that asbestos is detected that meets
34 the requirements for abatement.

35 (e) Abatement shall be performed by one or more professionals who are accredited in accordance with 10A NCAC
36 41C .0602 and shall be performed in accordance with Rules .0605-.0607 ~~the rules of Section .0600~~ of this Subchapter.

1 (f) The information listed in this Paragraph shall be submitted to the Program by email to ARPA-
2 Reimbursement@dhhs.nc.gov:

3 (1) Within 45 calendar days following the date on which an inspection is completed pursuant to this
4 Rule, the management planner shall report the ~~following:~~ following on a form provided by the
5 Department:

6 (A) the name, address, email address, and phone number of the responsible individual;

7 (B) the name, address, email address, phone number, and accreditation number of the
8 management planner;

9 (C) the name and address, including county, of the individual school and the public school unit
10 or the licensed child care facility;

11 (D) whether the facility for which the responsible individual is submitting the information is a
12 public school or a licensed child care facility;

13 (E) whether the inspection identified the presence of an asbestos hazard;

14 (F) a description of any identified asbestos hazard; and

15 (G) the results of any laboratory testing conducted during the inspection.

16 (2) If the public school or licensed child care facility plans to use a previous inspection or documentation
17 under Paragraph (h) of this Rule, then the responsible individual shall submit a copy of the
18 inspection ~~survey~~ report, reinspection report, or management plan associated with the previous
19 inspection or the documentation by May 1, 2024 in lieu of meeting the requirements in
20 Subparagraph (f)(1) of this Rule.

21 (3) At least 10 calendar days before abatement conducted pursuant to this Rule begins, the responsible
22 individual shall report the ~~following:~~ following on a form provided by the Department:

23 (A) the name, address, email address, and phone number of the responsible individual;

24 (B) the name and address, including county, of the individual school and the public school unit
25 or the licensed child care facility, as applicable;

26 (C) the names and accreditation numbers of the professionals who will conduct the abatement
27 and the email address and phone number of the on-site asbestos supervisor who will
28 oversee the abatement;

29 (D) whether the facility for which the responsible individual is submitting the report is a public
30 school or a licensed child care facility; ~~and~~

31 (E) the dates on which the abatement is scheduled to ~~occur.~~ occur; and

32 (F) a description of the planned abatement that contains information on the type of materials
33 to be abated, the location of the abatement, the quantity of material to be abated, and the
34 method of abatement.

35 (4) Within 45 calendar days following the date on which an abatement completed pursuant to this Rule,
36 the responsible individual shall report the following:

37 (A) the name, address, email address, and phone number of the responsible individual;

- 1 (B) the name and address, including county, of the individual school and the public school unit
- 2 or the licensed child care facility;
- 3 (C) whether the facility for which the responsible individual is submitting the report is a public
- 4 school or a licensed child care facility;
- 5 (D) the date on which the abatement was completed; and
- 6 (E) a report of the results of the final clearance inspection.

7 (g) In accordance with 10A NCAC 09 .0601 and 10A NCAC 09 .1719, as applicable, licensed child care facilities
8 shall inspect for asbestos hazards in accordance with this Rule to ensure these facilities are safe and free from hazards
9 that may injure children. The failure of a responsible individual in licensed child care facility to inspect for asbestos
10 hazards or to restrict access to or abate identified asbestos hazards in accordance with this Rule shall be considered a
11 violation of 10A NCAC 09 .0601 and 10A NCAC 09 .1719, as applicable.

12 (h) The requirements of Paragraph (b) of this Rule shall be considered met if:

- 13 (1) the public school or licensed child care facility previously completed an inspection of its buildings
- 14 that meets the requirements of 40 C.F.R. 763, Subpart E, Section .0600 of this Subchapter, provided
- 15 that building material that was sampled during a previous inspection and reported as trace asbestos
- 16 or less than ~~between 0 percent and~~ 10 percent asbestos content shall be reinspected in accordance
- 17 with the process established in Paragraphs (b) - (f) of this Rule;
- 18 (2) the public school or licensed child care facility produces documentation in accordance with 40
- 19 C.F.R. 763.99(a)(7); or
- 20 (3) the licensed child care facility produces a property tax record that shows the building occupied by
- 21 the licensed child care facility was built after October 12, 1988.

22

23 *History Note: Authority S.L. 2021-180, s. 9G.8;*
24 *Temporary Adoption Eff. April 29, 2022;*
25 *Eff. April 1, 2023.*

1 10A NCAC 41C .1004 is adopted with changes as published in 37:11 NCR 778-783 as follows:

2
3 **10A NCAC 41C .1004 LEAD-BASED PAINT INSPECTIONS AND ABATEMENT IN NORTH**
4 **CAROLINA PUBLIC SCHOOLS AND LICENSED CHILD CARE FACILITIES**

5 (a) For the purposes of this Rule, the following definitions shall apply:

- 6 (1) "Abatement" means as defined at 40 C.F.R. 745.223, and also includes "interim controls" ~~interim~~
7 ~~controls~~ as defined at 40 C.F.R. 745.83. Abatement shall not be considered complete until a final
8 clearance inspection of the public school or licensed child care facility is performed by a certified
9 risk assessor in accordance with the standards set forth at 40 C.F.R. 745.227.
- 10 (2) "Certified Project Designer" means an individual who meets the requirements for a project designer
11 as set forth in G.S. 130A-453.03 and Rule .0802 of this Subchapter.
- 12 (3) "Certified Supervisor" means an individual who meets the requirements for a supervisor as set forth
13 in G.S. 130A-453.03 and Rule .0802 of this Subchapter.
- 14 (4) "Certified Risk Assessor" means an individual who meets the requirements for a risk assessor as set
15 forth in G.S. 130A-453.03 and Rule .1006 of this Section.
- 16 (5) "Inspection" means a risk assessment conducted in accordance with 40 C.F.R. 745.223.
- 17 (6) "Inspection report" means a summary prepared in accordance with Rule .0807(b) of this Subchapter.
- 18 (7) "Lead-based paint hazard" means as defined at G.S. 130A-131.7(6).
- 19 (8) "Lead poisoning hazard" means as defined at G.S. 130A-131.7(7).
- 20 (9) "Occupant protection plan" means as defined at Rule .0801(a)(6) of this Subchapter.

21 (b) Each responsible individual shall ensure that an inspection is conducted for lead-based paint hazards in each public
22 school or licensed child care facility for which he or she is responsible by May 1, 2024. Inspections for lead-based
23 paint hazards shall be performed by a certified risk assessor and documented in an inspection report. The certified risk
24 assessor shall determine whether a lead-based paint hazard is present in the public school or licensed child care facility
25 based on the inspection, ~~inspection, in accordance with the rules of Sections .0800 and .0900 of this Subchapter,~~ and
26 document the determination in the inspection report. If the certified risk assessor determines that a lead-based paint
27 hazard exists, then an occupant protection plan shall be written by a certified supervisor or certified project designer
28 in accordance with 40 C.F.R. 745.227(e)(5) and Rule .0801(a)(6) ~~the rules of Section .0800~~ of this Subchapter.

29 (c) If the certified risk assessor ~~detects~~ determines that a lead-based paint hazard, ~~hazard has been detected~~, then the
30 responsible individual shall restrict access to the identified lead-based paint hazard until abated in accordance with
31 this Rule.

32 (d) A determination by a certified risk assessor that a lead-based paint hazard is present in the public school or licensed
33 child care facility that is documented in the inspection report in accordance with Paragraph (b) of this Rule shall satisfy
34 the requirement of Rule .1002(b)(1) or (d)(2) of this Section, as applicable, that lead is detected that meets the
35 requirements for abatement.

1 (e) Abatement shall be performed by one or more professionals who are certified in accordance with G.S. 130A-
2 453.03 and Rules .0802 or .0902 of this Subchapter and shall be performed in accordance with Rules .0807-.0809 and
3 .0906 ~~the rules of Sections .0800 and .0900~~ of this Subchapter, as applicable.

4 (f) The information listed in this Paragraph shall be submitted to the Program by email to ARPA-
5 Reimbursement@dhhs.nc.gov:

6 (1) Within 45 calendar days following the date on which an inspection is completed pursuant to the
7 Rule, the certified risk assessor shall report the ~~following:~~ following on a form provided by the
8 Department:

9 (A) the name, address, email address, and phone number of the responsible individual;

10 (B) the name, address, email address, phone number, and certification number of the certified
11 risk assessor;

12 (C) the name and address, including county, of the individual school and the public school unit
13 or the licensed child care facility;

14 (D) whether the facility for which the responsible individual is submitting the report is a public
15 school or a licensed child care facility;

16 (E) whether the inspection identified the presence of a lead-based paint hazard;

17 (F) a description of any identified lead-based paint hazard; and

18 (G) the results of any laboratory testing conducted during the inspection.

19 (2) If the public school or licensed child care facility plans to use a previous inspection or a signed
20 attestation under Paragraph (h) of this Rule, then the responsible individual shall submit a copy of
21 the inspection report associated with the previous inspection or the signed attestation by May 1,
22 2024 in lieu of meeting the requirements in Subparagraph (f)(1) of this Rule.

23 (3) At least 10 calendar days before abatement conducted pursuant to this Rule begins, the responsible
24 individual shall report the ~~following:~~ following on a form provided by the Department:

25 (A) the name, address, email address, and phone number of the responsible individual;

26 (B) the name and address, including county, of the individual school and the public school unit
27 or the licensed child care facility, as applicable;

28 (C) the names and certification numbers of the professionals who will conduct the abatement
29 and the email address and phone number of the on-site lead supervisor who will oversee
30 the abatement;

31 (D) whether the facility for which the responsible individual is submitting the report is a public
32 school or a licensed child care facility; ~~and~~

33 (E) the dates on which the abatement is scheduled to ~~occur.~~ occur; and

34 (F) a description of the planned abatement that contains information on the type of materials
35 to be abated, the location of the abatement, the quantity to be abated, and the method of
36 abatement.

1 (4) Within 45 calendar days following the date on which abatement is completed pursuant to this Rule,
2 the responsible individual shall report the following:

3 (A) the name, address, email address, and phone number of the responsible individual;

4 (B) the name and address, including county, of the individual school and the public school unit
5 or the licensed child care facility;

6 (C) whether the facility for which the responsible individual is submitting the report is a public
7 school or a licensed child care facility;

8 (D) the date on which the abatement was completed; and

9 (E) a report of the results of the final clearance inspection.

10 (g) In accordance with 15A NCAC 18A .2816(a), 10A NCAC 09 .0601(f), and 10A NCAC 09 .1707(2), as applicable,
11 licensed child care facilities shall inspect for lead-based paint hazards in accordance with this Rule to ensure these
12 facilities are free from lead poisoning hazards. The failure of a responsible individual in licensed child care facility to
13 inspect for lead-based paint hazards or to restrict access to or abate identified lead-based paint hazards in accordance
14 with this Rule shall be considered a violation of 15A NCAC 18A .2816(a), 10A NCAC 09 .0601(f), or 10A NCAC
15 09 .1707(2), as applicable.

16 (h) The requirements of Paragraph (b) of this Rule shall be considered met if:

17 (1) the public school or licensed child care facility has previously completed a risk assessment ~~an~~
18 ~~inspection~~ of its buildings that meets the requirements of 40 C.F.R. 745.223; Sections .0800 and
19 ~~.0900 of this Subchapter~~; or

20 (2) the responsible individual of a public school or licensed child care facility located in a building that
21 was built after February 28, 1978 signs a statement attesting that no lead-based paint was used in
22 the building.

23
24 *History Note:* Authority S.L. 2021-180, s. 9G.8;
25 Temporary Adoption Eff. April 29, 2022;
26 Eff. April 1, 2023.

1 10A NCAC 41C .1005 is adopted with changes as published in 37:11 NCR 778-783 as follows:

2
3 **10A NCAC 41C .1005 LEAD POISONING HAZARDS IN DRINKING WATER IN NORTH CAROLINA**
4 **PUBLIC SCHOOLS**

5 (a) For the purposes of this Rule, the following definitions shall apply:

- 6 (1) "Lead poisoning hazard" means as defined at G.S. 130A-131.7(7)g. ~~130A-131.7(7)(g).~~
7 (2) "Testing" means the process described in Subparagraphs (b)(1)-(4) of this Rule.
8 (3) "Remediation" means as defined at G.S. 130A-131.7(15).

9 (b) The following actions shall be taken to ensure that drinking water in public schools are free of identified lead
10 poisoning hazards:

- 11 (1) Responsible individuals at public schools shall complete a one-time test of all water outlets used for
12 drinking or food preparation. The responsible individual shall provide documentation of testing
13 results for review by the Department during routine sanitation inspections under Rule 15A NCAC
14 18A .2402(a).
15 (2) Initial water samples shall be collected by the responsible individual and tested in accordance with
16 Subparagraph (b)(3) of this Rule by May 1, 2024.
17 (3) The responsible individual shall collect samples and submit them for testing in accordance with
18 guidance specified by the United States Environmental Protection Agency in its publication, 3Ts
19 for Reducing Lead in Drinking Water in Schools and Child Care Facilities, which is hereby
20 incorporated by reference, including any subsequent editions or amendments, and available free of
21 charge at: [https://www.epa.gov/ground-water-and-drinking-water/3ts-reducing-lead-drinking-](https://www.epa.gov/ground-water-and-drinking-water/3ts-reducing-lead-drinking-water)
22 [water.](https://www.epa.gov/ground-water-and-drinking-water/3ts-reducing-lead-drinking-water) Notwithstanding the foregoing guidance, samples may be collected with a stagnation period
23 of up to 72 hours. Samples shall be analyzed by a laboratory certified by the North Carolina State
24 Laboratory of Public Health to analyze for lead in drinking water.
25 (4) When a water sample is analyzed for lead content by a laboratory under this Rule, the laboratory
26 shall notify the Department of the test results by electronic submission of the elements set out in
27 alignment with the requirements of G.S. 130A-131.8.
28 (5) When a public school receives test results from a laboratory indicating that a water sample collected
29 by the responsible individual contains a lead concentration at or above the lead poisoning hazard
30 level, the responsible individual shall:
31 (A) restrict access to any water outlet(s) used for drinking or food preparation that have lead
32 concentrations at or above the lead poisoning hazard level;
33 (B) ensure that all students and staff have access to water free of cost that does not contain lead
34 concentrations at or above the lead poisoning hazard level for drinking and food
35 preparation; and
36 (C) continue to follow Parts (b)(5)(A) - (B) of this Rule until the Department determines in
37 accordance with Subparagraph (b)(10) of this Rule that the water outlet(s) are not

1 producing water lead levels at or above the lead poisoning hazard level and notifies the
2 responsible individual and the Department of Public Instruction in writing of this
3 determination.

- 4 (6) If a water sample collected by the responsible individual reveals a water lead level at or above the
5 lead poisoning hazard level then the requirement of Rule .1002(b)(1) of this Section shall be
6 considered met.
- 7 (7) Within five business days of receiving the test results of a water analysis that shows a water lead
8 level at or above the lead poisoning hazard level, the responsible individual shall provide written
9 notification of the test results to the parents or legal guardians of the children attending the public
10 school and the staff of the public school in accordance with the United States Environmental
11 Protection Agency guidance specified in Subparagraph (b)(3) of this Rule.
- 12 (8) Within five business days of receiving the test results of a water analysis that shows a water lead
13 level at or above the lead poisoning hazard level, the public school shall make the test results
14 available to the public, free of charge. The responsible individual may post test results to the public
15 school's website to satisfy the requirement to make the test results available to the public.
- 16 (9) Remediation of water outlet(s) producing water lead levels at or above the lead poisoning hazard
17 level shall ensure that water produced is below the lead poisoning hazard level and may include
18 replacement of service lines, pipes, and fixtures and the installation of filters at affected faucets.
19 Within 30 business days from the date on which remediation is conducted under this Rule, the
20 responsible individual shall submit the following information to the Program:
- 21 (A) the name and contact information of the responsible individual;
 - 22 (B) the name and address, including county, of the public school;
 - 23 (C) the steps taken to remediate the lead poisoning hazard; and
 - 24 (D) the date on which the remediation was completed.
- 25 (10) Remediation shall not be considered complete until the Department conducts sampling at the water
26 outlet identified to have a water lead level at or above the lead poisoning hazard level to confirm
27 that the remediated water outlet is no longer producing water lead levels at or above the lead
28 poisoning hazard level.

29
30 *History Note: Authority S.L. 2021-180, s. 9G.8;*
31 *Temporary Adoption Eff. April 29, 2022;*
32 *Eff. April 1, 2023.*
33

1 10A NCAC 41C .1006 is adopted with changes as published in 37:11 NCR 778-783 as follows:

2

3 **10A NCAC 41C .1006 CERTIFIED RISK ASSESSORS**

4 (a) For the purposes of this Section, a certified risk assessor is defined as an individual who meets the requirements
5 of Rule .0802 of this Subchapter, except that the individual shall be required to complete an accredited refresher course
6 for risk assessors every 36 months from the date of completion of initial training or last training instead of every 24
7 months as set forth in 10A NCAC 41C .0802(b).

8 (b) A certified risk assessor who is certified under Paragraph (a) of this Rule shall be considered a certified risk
9 assessor solely for the purposes of conducting inspections and determinations about the existence of lead-based paint
10 hazards in public schools and licensed child care facilities under Rule .1004 of this Section.

11

12 *History Note: G.S. 130A-453.03; 130A-453.05; S.L. 2021-180, s. 9G.8;*

13 *Temporary Adoption Eff. April 29, 2022;*

14 *Eff. April 1, 2023.*

15

1 10A NCAC 41C. 1007 is adopted as published in 37:11 NCR 778-783 as follows:

2

3 **10A NCAC 41C. 1007 INCORPORATION BY REFERENCE**

4 For the purposes of this Section, 40 C.F.R. 763, Subpart E and 40 C.F.R. 745, Subparts L and E are hereby incorporated
5 by reference, including any subsequent amendments or editions, and available free of charge at www.ecfr.gov/.

6

7 *History Note: Authority S.L. 2021-180, s. 9G.8;*
8 *Temporary Adoption Eff. April 29, 2022;*
9 *Eff. April 1, 2023.*

10

Burgos, Alexander N

Subject: FW: CPH 10A NCAC 41C Rules - March 2023 RRC
Attachments: 10A NCAC 41C .1001.docx; 10A NCAC 41C .1002.docx; 10A NCAC 41C .1003.docx; 10A NCAC 41C .1004.docx; 10A NCAC 41C .1005.docx; 10A NCAC 41C .1006.docx; 10A NCAC 41C .1007.docx; 2023.03 - 10A NCAC 41C Comm for Pub Health Rules Request for Changes-DPHResponse.docx

From: Niehaus, Virginia <virginia.niehaus@dhhs.nc.gov>
Sent: Friday, March 10, 2023 11:02 AM
To: Liebman, Brian R <brian.liebman@oah.nc.gov>
Cc: Vail, Nathan T <Nathan.Vail@dhhs.nc.gov>; Burgos, Alexander N <alexander.burgos@oah.nc.gov>
Subject: RE: CPH 10A NCAC 41C Rules - March 2023 RRC

Hi Brian,

I have attached responses to the request for technical changes and the revised rules. Please let me know if you have any further questions on these rules.

Please include the following individuals on the WebEx Invite for the meeting:

virginia.niehaus@dhhs.nc.gov

jbarkley@ncdoj.gov

larry.michael@dhhs.nc.gov

ed.norman@dhhs.nc.gov

Thanks for your assistance!

Regards,
Virginia

Virginia R. Niehaus, JD, MPH
Director of Regulatory and Legal Affairs
Division of Public Health
[NC Department of Health and Human Services](#)
Pronouns: she/her/hers

Executive Assistant: [Michelle Zarate](#)

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REQUEST FOR CHANGES PURSUANT TO G.S. 150B-21.10

AGENCY: Commission for Public Health

RULE CITATION: 10A NCAC 41C .1002

DEADLINE FOR RECEIPT: Friday, March 10, 2023.

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 email the reviewing attorney to inquire concerning the staff recommendation.

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

In (a), lines 7 and 8 and (c), lines 25 and 26, you change the time frame for conducting inspections from within "24 months after the effective date of this Rule" and "18 months after the effective date of this Rule" to May 1, 2024. The effect of this post-publication change is to shorten the available time for testing from 4/1/25 (based on a 4/1/23 effective date) to 5/1/24 for water testing, and from 10/1/24 to 5/1/24 for lead paint/asbestos testing.

I believe that by shortening the time frames in the rule after publication, you've made a substantial change, in that you're creating an effect that could not have reasonably been anticipated in the published language. I would recommend replacing the original language, or, if you are committed to changing these dates, withdrawing these rules and republishing.

All non-highlighted strike-throughs and underlines in the rules originally filed with the RRC reflected changes in text between the temporary rules and the permanent rules and were published in accordance with G.S. 150B. This includes the changes in time frames mentioned here. The time frames in the temporary rules referenced a certain number of months from the effective date of the temporary rules, and these have now been replaced in the permanent rules with a particular set date. In all cases, this new date allows the same or more time for compliance than was set out in the temporary rules. The intent was to provide the public with notice of the differences between the temporary and permanent rules. In addition, all post publication-changes were highlighted in the rules originally filed with the RRC.

Accompanying the response to the request for changes, we have included revised language that removes the underlines/strike-throughs that reflect published changes between the temporary rules and permanent rules and uses only underline and strike-through to note post-publication changes. Apologies for the confusion this formatting caused.

Brian Liebman
Commission Counsel

Date submitted to agency: February 24, 2023

In (a), lines 6 and 8, please consider revising to use the active tense. As currently written, the Rule states that a school or child care facility shall be eligible for funding when a test “is conducted” by a certain date. It doesn’t specify who must do the testing.

This language is intended to coordinate with rules .1003, .1004, and .1005. Paragraph (b) of each of these three rules sets out the individual responsible for ensuring that the inspection or test is conducted and the individual who completes the inspection or test. This is a bit different for each of the rules.

In (b)(3), the changes need not be highlighted since this is an adoption.

Please see the above explanation. This has been corrected.

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

REQUEST FOR CHANGES PURSUANT TO G.S. 150B-21.10

AGENCY: Commission for Public Health

RULE CITATION: 10A NCAC 41C .1003

DEADLINE FOR RECEIPT: Friday, March 10, 2023.

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 email the reviewing attorney to inquire concerning the staff recommendation.

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

In (b), lines 24-25 and (f)(2), p.2, lines 19-20, you change the time frame for conducting inspections from within “18 months after the effective date of this Rule” to May 1, 2024. The effect of this post-publication change is to shorten the available time for testing from 10/1/24 (based on a 4/1/23 effective date) to 5/1/24.

I believe that by shortening the time frames in the rule after publication, you’ve made a substantial change, in that you’re creating an effect that could not have reasonably been anticipated in the published language. I would recommend replacing the original language, or, if you are committed to changing these dates, withdrawing these rules and republishing.

Please see the above explanation. This has been corrected.

To be clear, are the references throughout the Rule to 130A-447 meant to refer to the requirement that all persons performing “asbestos management activities” must be accredited by DHHS?

All persons performing asbestos management activities are required, pursuant to GS 130A-447, to be accredited under the Commission’s rules at 10A NCAC 41C .0600. It is the intent to cross-reference existing definitions under this framework.

Also, throughout the rule, you need not highlight your changes, as this is an adoption.

Please see the above explanation. This has been corrected.

In (a)(2), line 11, the cite to Rule .0601 should be to “.0601(a)(3)”.

Thank you. This has been corrected.

In (b), lines 25-26, I’m confused by the reference to Section .0600 of Subchapter 41C. The Rule states that “inspections shall be performed by an inspector and documented

Brian Liebman

Commission Counsel

Date submitted to agency: February 24, 2023

*in an inspection survey report in accordance with the rules of Section .0600...”
However, I don’t see any requirement for a report in Section .0600, and in fact most of
the rules in that Section deal with accreditation requirements. Can you be more specific
about which rules you’re requiring compliance with?*

*The Section .0600 rules contain cross-references to federal regulation. To simplify the
cross-reference in this rule, we have edited the language to include a direct cite to the
applicable federal regulation.*

*In (e), line 36, I have similar questions as above with respect to the reference to Section
.0600. What specific rules are you requiring compliance with?*

More specific rule cites have been added.

*In (f)(1), p.2, line 4, does the list from (A) to (G) encompass everything that would be
required for the form to be considered “complete”?*

Yes.

Same question for (f)(3), line 22, with respect to the list and the form.

Yes.

In (f)(3)(F), line 32, what kind of “information” are you requiring?

*This is intended to include details on the type of materials to be abated, the location of
the abatement, the quantity of material to be abated, and the method of abatement.*

*In (f)(4), line 36, is the “on a form provided by the Department” language omitted
intentionally?*

*Yes. There will not be a form provided for the elements to be provided in this
subparagraph.*

*In (h), p.3, line 14, I have similar questions as above with respect to the reference to
Section .0600. What specific rules are you requiring compliance with?*

*As above, we have edited the language to include a direct cite to the applicable federal
regulation.*

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

REQUEST FOR CHANGES PURSUANT TO G.S. 150B-21.10

AGENCY: Commission for Public Health

RULE CITATION: 10A NCAC 41C .1004

DEADLINE FOR RECEIPT: Friday, March 10, 2023.

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 email the reviewing attorney to inquire concerning the staff recommendation.

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

In (b), lines 22-23 and (f)(2), p.2, line 22, you change the time frames specified from within "18 months after the effective date of this Rule" to May 1, 2024. The effect of this post-publication change is to shorten the available time for compliance from 10/1/24 (based on a 4/1/23 effective date) to 5/1/24.

I believe that by shortening the time frames in the rule after publication, you've made a substantial change, in that you're creating an effect that could not have reasonably been anticipated in the published language. I would recommend replacing the original language, or, if you are committed to changing these dates, withdrawing these rules and republishing.

Also, throughout the rule, you need not highlight your changes, as this is an adoption.

Please see the above explanation. This has been corrected.

In (a)(1), line 6, "interim controls" should be in quotation marks.

We made this change.

In (b), line 26, I'm confused by the reference to Sections .0800 and .0900 of Subchapter 41C. The Rule states that a certified risk assessor shall determine whether a lead-based paint hazard is present based on the inspection, in accordance with the rules of Sections .0800 and .0900...." However, I don't see any rules governing inspections in Sections .0800 and .0900, and in fact most of the rules in those Sections deal with accreditation requirements. Can you be more specific about which rules you're requiring compliance with?

It was determined that this cross-cite is not needed.

Brian Liebman
Commission Counsel

Date submitted to agency: February 24, 2023

In (b), line 29, I have similar questions as above with respect to the reference to Section .0800. What specific rules are you requiring compliance with?

A more specific cite has been added.

In (c), line 30, I think the phrase “If the certified risk assessor determines that a lead-based paint hazard has been detected...” is redundant. Would it change the meaning to say “If the certified risk assessor detects a lead-based paint hazard...”?

We made this change.

In (e), p.2, line 3, I have similar questions as above with respect to the reference to Sections .0800 and .0900. What specific rules are you requiring compliance with?

More specific rule cites have been added.

In (f)(1), p.2, line 7, does the list from (A) to (G) encompass everything that would be required for the form to be considered “complete”?

Yes.

Same question for (f)(3), line 25, with respect to the list and the form.

Yes.

In (f)(3)(F), p.3, line 1, what kind of “information” are you requiring?

This is intended to include details on the type of materials to be abated, the location of the abatement, the quantity of material to be abated, and the method of abatement.

In (f)(4), line 5, is the “on a form provided by the Department” language omitted intentionally?

Yes. There will not be a form provided for the elements to be provided in this subparagraph.

In (h), p.3, line 21, I have similar questions as above with respect to the reference to Sections .0800 and .0900. What specific rules are you requiring compliance with?

The Section .0800 and .0900 rules contain cross-references to federal regulation. To simplify the cross-reference in this rule, we have edited the language to include a direct cite to the applicable federal regulation.

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

Brian Liebman
Commission Counsel
Date submitted to agency: February 24, 2023

REQUEST FOR CHANGES PURSUANT TO G.S. 150B-21.10

AGENCY: Commission for Public Health

RULE CITATION: 10A NCAC 41C .1005

DEADLINE FOR RECEIPT: Friday, March 10, 2023.

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 email the reviewing attorney to inquire concerning the staff recommendation.

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

In (b)(2), line 16, you change the time frame for collecting and testing samples from within "24 months after the effective date of this Rule" to May 1, 2024. The effect of this post-publication change is to shorten the available time for compliance from 4/1/25 (based on a 4/1/23 effective date) to 5/1/24.

I believe that by shortening the time frame in the rule after publication, you've made a substantial change, in that you're creating an effect that could not have reasonably been anticipated in the published language. I would recommend replacing the original language, or, if you are committed to changing these dates, withdrawing these rules and republishing.

Please see the above explanation. This has been corrected.

Also, throughout the Rule, I'm a little unclear about how you want the "responsible individuals" to collect the samples. Per the EPA guidance incorporated by reference, the sampling procedure is a two step process, with a first draw sample and then a flush sample "if the result of [the first draw sample] is high". However, the guidance also says that to save money, both draws can be taken at the same time, with the flush sample held unless the first draw comes up high. Given the options here, what are you asking your regulated public to do?

It is acceptable for the responsible individual to use either option set out in the EPA guidance to collect the samples.

In (a)(1), line 6, please omit the parentheses around "(g)" to correct the citation.

We made this change.

In (b)(4), line 27, do you mean something specific by "in alignment with" the requirements of G.S. 130A-131.8? I don't think it's necessarily objectionable, but it seems like the typical formation here would be "in compliance with the requirements of

Brian Liebman

Commission Counsel

Date submitted to agency: February 24, 2023

G.S. 130A-131.8.” Just wondering if you had something else besides strict compliance in mind.

We have revised the language to clarify.

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

Brian Liebman
Commission Counsel
Date submitted to agency: February 24, 2023

REQUEST FOR CHANGES PURSUANT TO G.S. 150B-21.10

AGENCY: Commission for Public Health

RULE CITATION: 10A NCAC 41C .1006

DEADLINE FOR RECEIPT: Friday, March 10, 2023.

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 email the reviewing attorney to inquire concerning the staff recommendation.

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

In (b), you've highlighted portions of lines 9 and 10, but there are no changes indicated. Please correct formatting here to show what's been added or deleted. Moreover, because this Rule is an adoption, no highlighting of changes is required.

Please see the above explanation. This has been corrected.

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

1 10A NCAC 41C .1001 is adopted as published in 37:11 NCR 778-783 as follows:

2
3 **SECTION .1000 – LEAD AND ASBESTOS INSPECTION, TESTING, ABATEMENT, AND**
4 **REMEDICATION IN NORTH CAROLINA PUBLIC SCHOOLS AND LICENSED CHILD CARE**
5 **FACILITIES**

6
7 **10A NCAC 41C .1001 DEFINITIONS**

8 For the purposes of this Section, the following definitions shall apply:

- 9 (1) "Department" means the North Carolina Department of Health and Human Services.
10 (2) "Licensed child care facility" means a child care facility as defined at G.S. 110-86(3).
11 (3) "Public school" means a public school unit as defined at G.S. 115C-5(7a).
12 (4) "Program" means the North Carolina Department of Health and Human Services, Division of Public
13 Health, Environmental Health Section.
14 (5) "Responsible individual" means the superintendent of a public school operated by a local school
15 administrative unit, as defined in G.S. 115C-5(6), or the superintendent's designee(s); the governing
16 body of any charter school or school operated under Article 7A or Article 9C of G.S. 115C or that
17 body's designee(s); or the operator of a licensed child care facility or the operator's designee(s), as
18 applicable.

19
20 *History Note: Authority S.L. 2021-180, s. 9G.8;*
21 *Temporary Adoption Eff. April 29, 2022;*
22 *Eff. April 1, 2023.*

1 10A NCAC 41C .1002 is adopted with changes as published in 37:11 NCR 778-783 as follows:

2
3 **10A NCAC 41C .1002 FUNDING**

4 (a) Public schools and licensed child care facilities in North Carolina shall be eligible to participate in the funding
5 mechanisms established in accordance with S.L. 2021-180, s. 9G.8. to fully or partially offset the cost of conducting
6 testing for lead in water and inspections for asbestos and lead-based paint hazards, when a test for lead in water is
7 conducted by May 1, 2024 or an inspection for lead-based paint or asbestos is conducted by May 1, 2024 and the test
8 or inspection is conducted in accordance with the rules of this Section.

9 (b) Public schools and licensed child care facilities that are eligible to participate under Paragraph (a) of this Rule
10 shall also be eligible to participate in the funding mechanisms established in accordance with S.L. 2021-180, s. 9G.8.
11 to fully or partially offset the cost of conducting remediation of lead in water and abatement of asbestos and lead-
12 based paint hazards identified under this Section when the following requirements are met:

- 13 (1) lead or asbestos is detected that meets the requirements under the rules of this Section for abatement
14 or remediation;
- 15 (2) the abatement or remediation, as applicable, is performed in accordance with the rules of this
16 Section; and
- 17 (3) replacement materials used to abate asbestos hazards do not contain more than 1 percent asbestos
18 and replacement materials used to abate lead-based paint hazards do not contain lead in excess of
19 90 parts per ~~million~~. million as confirmed by a safety data sheet, letter from the manufacturer, or
20 laboratory test results.

21 (c) Notwithstanding Paragraphs (a) and (b) of this Rule, licensed child care centers conducting testing and remediation
22 of water outlets used for drinking or food preparation pursuant to 15A NCAC 18A .2816 shall be eligible to participate
23 in the funding mechanisms established in accordance with S.L. 2021-180, s. 9G.8. for testing conducted in accordance
24 with that Rule by May 1, 2024 and remediation conducted in accordance with that Rule between May 1, 2020 and the
25 date on which funds are no longer available in accordance with S.L. 2021-180, s. 9G.8.(d).

26 (d) Notwithstanding Paragraphs (a) and (b) of this Rule, if asbestos or lead-based paint is detected during a capital,
27 renovation, or repair project in a public school or licensed child care facility, the public school or licensed child care
28 facility shall be eligible to participate in the funding mechanisms established in accordance with S.L. 2021-180, s.
29 9G.8. as follows:

- 30 (1) to fully or partially offset the cost of conducting an inspection in accordance with Rules .1003(b) or
31 .1004(b) of this Section, as applicable, except that the inspection may be limited to the area in the
32 public school or licensed child care facility where the capital, renovation, or repair project is being
33 conducted; and
- 34 (2) to fully or partially offset the cost of conducting abatement when lead-based paint or asbestos is
35 detected that meets the requirements under the Rules of this Section for abatement and abatement is
36 conducted in accordance with Rules .1003(e) and .1004(e) of this Section and with the limitation on
37 materials set out in Subparagraph (b)(3) of this Rule, except that the abatement may be limited to

1 the area in the public school or licensed child care facility where the capital, renovation, or repair
2 project is being conducted.

3 (e) Inspections and abatements described in Paragraph (d) of this Rule that are limited to the area in the public school
4 or licensed child care facility where the capital, renovation, or repair project is being conducted shall not satisfy the
5 facility-wide inspection requirements for public schools and licensed child care facilities set out in Rules .1003 and
6 .1004 of this Section.

7 (f) Notwithstanding the foregoing, to be eligible to participate in any funding mechanism under this Rule, responsible
8 individuals shall make all records regarding testing, inspection, abatement, and remediation available to the
9 Department upon request, including, but not limited to, itemized expense reports for activities funded under S.L. 2021-
10 180, s. 9G.8.

11 (g) Nothing in this Rule shall require the Department to provide funding if the Department determines there are not
12 sufficient funds available in accordance with S.L. 2021-180, s. 9G.8.(d).

13
14 *History Note: Authority S.L. 2021-180, s. 9G.8;*
15 *Temporary Adoption Eff. April 29, 2022;*
16 *Eff. April 1, 2023.*

1 10A NCAC 41C .1003 is adopted with changes as published in 37:11 NCR 778-783 as follows:

2
3 **10A NCAC 41C .1003 ASBESTOS INSPECTIONS AND ABATEMENT IN NORTH CAROLINA PUBLIC**
4 **SCHOOLS AND LICENSED CHILD CARE FACILITIES**

5 (a) For the purposes of this Rule, the following definitions shall apply:

- 6 (1) "Abatement" means as defined at G.S. 130A-444(4), and also includes renovation activities that are
7 carried out to repair, maintain, remove, isolate, enclose, replace, or encapsulate asbestos containing
8 material. Abatement shall not be considered complete until a final clearance inspection of the public
9 school or licensed child care facility is performed by an air monitor in accordance with 40 C.F.R.
10 763.90(i).
- 11 (2) "Air monitor" means as defined at G.S. 130A-447 and 10A NCAC 41C .0601(a)(3), ~~.0601(3)~~.
- 12 (3) "Asbestos" means as defined at G.S. 130A-444(2).
- 13 (4) "Asbestos containing material" means as defined at G.S. 130A-444(3).
- 14 (5) "Asbestos hazard" means a condition that results in exposure to asbestos in excess of the standards
15 set forth in 10A NCAC 41C .0607(a) or to a category of asbestos containing material defined at 40
16 C.F.R. ~~763.88(b)(1)-(6)~~, 763.88(b)(1)-(4).
- 17 (6) "Inspection" in a licensed child care facility means an examination of the facility for the presence
18 of asbestos hazards that is conducted by an inspector in accordance with the rules of Section .0600
19 of this Subchapter. "Inspection" in a public school means a reinspection conducted in alignment
20 with G.S. 130A-445, 10A NCAC 41C .0604, and 40 C.F.R.763.85(b).
- 21 (7) "Inspector" means as defined at G.S. 130A-447 and 10A NCAC 41C .0601(a)(7).
- 22 (8) "Management Planner" means as defined at G.S. 130A-447 and 10A NCAC 41C .0601(a)(9).

23 (b) Each responsible individual shall ensure that an inspection is conducted for asbestos hazards in each public school
24 or licensed child care facility for which he or she is responsible by May 1, 2024. Inspections for asbestos hazards shall
25 be performed by an inspector and documented in an inspection ~~survey~~ report in accordance with 40 C.F.R. 763,
26 Subpart E, the rules of Section .0600 of this Subchapter. A management planner shall review the inspection ~~survey~~
27 report to determine whether an asbestos hazard has been detected and shall document his or her findings in an asbestos
28 management plan in accordance with Rule 10A NCAC 41C .0604.

29 (c) If the management planner determines that an asbestos hazard has been detected, then the responsible individual
30 shall restrict access to the identified asbestos hazard until it is abated in accordance with this Rule.

31 (d) A determination by a management planner that an asbestos hazard is present in a public school or licensed child
32 care facility that is documented in an asbestos management plan in accordance with Paragraph (b) of this Rule shall
33 satisfy the requirement of Rule .1002(b)(1) or (d)(2) of this Section, as applicable, that asbestos is detected that meets
34 the requirements for abatement.

35 (e) Abatement shall be performed by one or more professionals who are accredited in accordance with 10A NCAC
36 41C .0602 and shall be performed in accordance with Rules .0605-.0607 ~~the rules of Section .0600~~ of this Subchapter.

1 (f) The information listed in this Paragraph shall be submitted to the Program by email to ARPA-
2 Reimbursement@dhhs.nc.gov:

3 (1) Within 45 calendar days following the date on which an inspection is completed pursuant to this
4 Rule, the management planner shall report the ~~following:~~ following on a form provided by the
5 Department:

6 (A) the name, address, email address, and phone number of the responsible individual;

7 (B) the name, address, email address, phone number, and accreditation number of the
8 management planner;

9 (C) the name and address, including county, of the individual school and the public school unit
10 or the licensed child care facility;

11 (D) whether the facility for which the responsible individual is submitting the information is a
12 public school or a licensed child care facility;

13 (E) whether the inspection identified the presence of an asbestos hazard;

14 (F) a description of any identified asbestos hazard; and

15 (G) the results of any laboratory testing conducted during the inspection.

16 (2) If the public school or licensed child care facility plans to use a previous inspection or documentation
17 under Paragraph (h) of this Rule, then the responsible individual shall submit a copy of the
18 inspection ~~survey~~ report, reinspection report, or management plan associated with the previous
19 inspection or the documentation by May 1, 2024 in lieu of meeting the requirements in
20 Subparagraph (f)(1) of this Rule.

21 (3) At least 10 calendar days before abatement conducted pursuant to this Rule begins, the responsible
22 individual shall report the ~~following:~~ following on a form provided by the Department:

23 (A) the name, address, email address, and phone number of the responsible individual;

24 (B) the name and address, including county, of the individual school and the public school unit
25 or the licensed child care facility, as applicable;

26 (C) the names and accreditation numbers of the professionals who will conduct the abatement
27 and the email address and phone number of the on-site asbestos supervisor who will
28 oversee the abatement;

29 (D) whether the facility for which the responsible individual is submitting the report is a public
30 school or a licensed child care facility; ~~and~~

31 (E) the dates on which the abatement is scheduled to ~~occur.~~ occur; and

32 (F) a description of the planned abatement that contains information on the type of materials
33 to be abated, the location of the abatement, the quantity of material to be abated, and the
34 method of abatement.

35 (4) Within 45 calendar days following the date on which an abatement completed pursuant to this Rule,
36 the responsible individual shall report the following:

37 (A) the name, address, email address, and phone number of the responsible individual;

- 1 (B) the name and address, including county, of the individual school and the public school unit
- 2 or the licensed child care facility;
- 3 (C) whether the facility for which the responsible individual is submitting the report is a public
- 4 school or a licensed child care facility;
- 5 (D) the date on which the abatement was completed; and
- 6 (E) a report of the results of the final clearance inspection.

7 (g) In accordance with 10A NCAC 09 .0601 and 10A NCAC 09 .1719, as applicable, licensed child care facilities
8 shall inspect for asbestos hazards in accordance with this Rule to ensure these facilities are safe and free from hazards
9 that may injure children. The failure of a responsible individual in licensed child care facility to inspect for asbestos
10 hazards or to restrict access to or abate identified asbestos hazards in accordance with this Rule shall be considered a
11 violation of 10A NCAC 09 .0601 and 10A NCAC 09 .1719, as applicable.

12 (h) The requirements of Paragraph (b) of this Rule shall be considered met if:

- 13 (1) the public school or licensed child care facility previously completed an inspection of its buildings
- 14 that meets the requirements of 40 C.F.R. 763, Subpart E, Section .0600 of this Subchapter, provided
- 15 that building material that was sampled during a previous inspection and reported as trace asbestos
- 16 or less than ~~between 0 percent and~~ 10 percent asbestos content shall be reinspected in accordance
- 17 with the process established in Paragraphs (b) - (f) of this Rule;
- 18 (2) the public school or licensed child care facility produces documentation in accordance with 40
- 19 C.F.R. 763.99(a)(7); or
- 20 (3) the licensed child care facility produces a property tax record that shows the building occupied by
- 21 the licensed child care facility was built after October 12, 1988.

22
23 *History Note: Authority S.L. 2021-180, s. 9G.8;*
24 *Temporary Adoption Eff. April 29, 2022;*
25 *Eff. April 1, 2023.*

1 10A NCAC 41C .1004 is adopted with changes as published in 37:11 NCR 778-783 as follows:

2
3 **10A NCAC 41C .1004 LEAD-BASED PAINT INSPECTIONS AND ABATEMENT IN NORTH**
4 **CAROLINA PUBLIC SCHOOLS AND LICENSED CHILD CARE FACILITIES**

5 (a) For the purposes of this Rule, the following definitions shall apply:

- 6 (1) "Abatement" means as defined at 40 C.F.R. 745.223, and also includes "interim controls" ~~interim~~
7 ~~controls~~ as defined at 40 C.F.R. 745.83. Abatement shall not be considered complete until a final
8 clearance inspection of the public school or licensed child care facility is performed by a certified
9 risk assessor in accordance with the standards set forth at 40 C.F.R. 745.227.
- 10 (2) "Certified Project Designer" means an individual who meets the requirements for a project designer
11 as set forth in G.S. 130A-453.03 and Rule .0802 of this Subchapter.
- 12 (3) "Certified Supervisor" means an individual who meets the requirements for a supervisor as set forth
13 in G.S. 130A-453.03 and Rule .0802 of this Subchapter.
- 14 (4) "Certified Risk Assessor" means an individual who meets the requirements for a risk assessor as set
15 forth in G.S. 130A-453.03 and Rule .1006 of this Section.
- 16 (5) "Inspection" means a risk assessment conducted in accordance with 40 C.F.R. 745.223.
- 17 (6) "Inspection report" means a summary prepared in accordance with Rule .0807(b) of this Subchapter.
- 18 (7) "Lead-based paint hazard" means as defined at G.S. 130A-131.7(6).
- 19 (8) "Lead poisoning hazard" means as defined at G.S. 130A-131.7(7).
- 20 (9) "Occupant protection plan" means as defined at Rule .0801(a)(6) of this Subchapter.

21 (b) Each responsible individual shall ensure that an inspection is conducted for lead-based paint hazards in each public
22 school or licensed child care facility for which he or she is responsible by May 1, 2024. Inspections for lead-based
23 paint hazards shall be performed by a certified risk assessor and documented in an inspection report. The certified risk
24 assessor shall determine whether a lead-based paint hazard is present in the public school or licensed child care facility
25 based on the inspection, ~~inspection, in accordance with the rules of Sections .0800 and .0900 of this Subchapter,~~ and
26 document the determination in the inspection report. If the certified risk assessor determines that a lead-based paint
27 hazard exists, then an occupant protection plan shall be written by a certified supervisor or certified project designer
28 in accordance with 40 C.F.R. 745.227(e)(5) and Rule .0801(a)(6) ~~the rules of Section .0800~~ of this Subchapter.

29 (c) If the certified risk assessor ~~detects~~ determines that a lead-based paint hazard, ~~hazard has been detected~~, then the
30 responsible individual shall restrict access to the identified lead-based paint hazard until abated in accordance with
31 this Rule.

32 (d) A determination by a certified risk assessor that a lead-based paint hazard is present in the public school or licensed
33 child care facility that is documented in the inspection report in accordance with Paragraph (b) of this Rule shall satisfy
34 the requirement of Rule .1002(b)(1) or (d)(2) of this Section, as applicable, that lead is detected that meets the
35 requirements for abatement.

1 (e) Abatement shall be performed by one or more professionals who are certified in accordance with G.S. 130A-
2 453.03 and Rules .0802 or .0902 of this Subchapter and shall be performed in accordance with Rules .0807-.0809 and
3 .0906 ~~the rules of Sections .0800 and .0900~~ of this Subchapter, as applicable.

4 (f) The information listed in this Paragraph shall be submitted to the Program by email to ARPA-
5 Reimbursement@dhhs.nc.gov:

6 (1) Within 45 calendar days following the date on which an inspection is completed pursuant to the
7 Rule, the certified risk assessor shall report the ~~following:~~ following on a form provided by the
8 Department:

9 (A) the name, address, email address, and phone number of the responsible individual;

10 (B) the name, address, email address, phone number, and certification number of the certified
11 risk assessor;

12 (C) the name and address, including county, of the individual school and the public school unit
13 or the licensed child care facility;

14 (D) whether the facility for which the responsible individual is submitting the report is a public
15 school or a licensed child care facility;

16 (E) whether the inspection identified the presence of a lead-based paint hazard;

17 (F) a description of any identified lead-based paint hazard; and

18 (G) the results of any laboratory testing conducted during the inspection.

19 (2) If the public school or licensed child care facility plans to use a previous inspection or a signed
20 attestation under Paragraph (h) of this Rule, then the responsible individual shall submit a copy of
21 the inspection report associated with the previous inspection or the signed attestation by May 1,
22 2024 in lieu of meeting the requirements in Subparagraph (f)(1) of this Rule.

23 (3) At least 10 calendar days before abatement conducted pursuant to this Rule begins, the responsible
24 individual shall report the ~~following:~~ following on a form provided by the Department:

25 (A) the name, address, email address, and phone number of the responsible individual;

26 (B) the name and address, including county, of the individual school and the public school unit
27 or the licensed child care facility, as applicable;

28 (C) the names and certification numbers of the professionals who will conduct the abatement
29 and the email address and phone number of the on-site lead supervisor who will oversee
30 the abatement;

31 (D) whether the facility for which the responsible individual is submitting the report is a public
32 school or a licensed child care facility; ~~and~~

33 (E) the dates on which the abatement is scheduled to ~~occur.~~ occur; and

34 (F) a description of the planned abatement that contains information on the type of materials
35 to be abated, the location of the abatement, the quantity to be abated, and the method of
36 abatement.

1 (4) Within 45 calendar days following the date on which abatement is completed pursuant to this Rule,
2 the responsible individual shall report the following:

3 (A) the name, address, email address, and phone number of the responsible individual;

4 (B) the name and address, including county, of the individual school and the public school unit
5 or the licensed child care facility;

6 (C) whether the facility for which the responsible individual is submitting the report is a public
7 school or a licensed child care facility;

8 (D) the date on which the abatement was completed; and

9 (E) a report of the results of the final clearance inspection.

10 (g) In accordance with 15A NCAC 18A .2816(a), 10A NCAC 09 .0601(f), and 10A NCAC 09 .1707(2), as applicable,
11 licensed child care facilities shall inspect for lead-based paint hazards in accordance with this Rule to ensure these
12 facilities are free from lead poisoning hazards. The failure of a responsible individual in licensed child care facility to
13 inspect for lead-based paint hazards or to restrict access to or abate identified lead-based paint hazards in accordance
14 with this Rule shall be considered a violation of 15A NCAC 18A .2816(a), 10A NCAC 09 .0601(f), or 10A NCAC
15 09 .1707(2), as applicable.

16 (h) The requirements of Paragraph (b) of this Rule shall be considered met if:

17 (1) the public school or licensed child care facility has previously completed a risk assessment ~~an~~
18 ~~inspection~~ of its buildings that meets the requirements of 40 C.F.R. 745.223; Sections .0800 and
19 ~~.0900 of this Subchapter~~; or

20 (2) the responsible individual of a public school or licensed child care facility located in a building that
21 was built after February 28, 1978 signs a statement attesting that no lead-based paint was used in
22 the building.

23
24 *History Note: Authority S.L. 2021-180, s. 9G.8;*
25 *Temporary Adoption Eff. April 29, 2022;*
26 *Eff. April 1, 2023.*

1 10A NCAC 41C .1005 is adopted with changes as published in 37:11 NCR 778-783 as follows:

2
3 **10A NCAC 41C .1005 LEAD POISONING HAZARDS IN DRINKING WATER IN NORTH CAROLINA**
4 **PUBLIC SCHOOLS**

5 (a) For the purposes of this Rule, the following definitions shall apply:

- 6 (1) "Lead poisoning hazard" means as defined at G.S. 130A-131.7(7)g. ~~130A-131.7(7)(g).~~
7 (2) "Testing" means the process described in Subparagraphs (b)(1)-(4) of this Rule.
8 (3) "Remediation" means as defined at G.S. 130A-131.7(15).

9 (b) The following actions shall be taken to ensure that drinking water in public schools are free of identified lead
10 poisoning hazards:

- 11 (1) Responsible individuals at public schools shall complete a one-time test of all water outlets used for
12 drinking or food preparation. The responsible individual shall provide documentation of testing
13 results for review by the Department during routine sanitation inspections under Rule 15A NCAC
14 18A .2402(a).
15 (2) Initial water samples shall be collected by the responsible individual and tested in accordance with
16 Subparagraph (b)(3) of this Rule by May 1, 2024.
17 (3) The responsible individual shall collect samples and submit them for testing in accordance with
18 guidance specified by the United States Environmental Protection Agency in its publication, 3Ts
19 for Reducing Lead in Drinking Water in Schools and Child Care Facilities, which is hereby
20 incorporated by reference, including any subsequent editions or amendments, and available free of
21 charge at: [https://www.epa.gov/ground-water-and-drinking-water/3ts-reducing-lead-drinking-](https://www.epa.gov/ground-water-and-drinking-water/3ts-reducing-lead-drinking-water)
22 [water.](https://www.epa.gov/ground-water-and-drinking-water/3ts-reducing-lead-drinking-water) Notwithstanding the foregoing guidance, samples may be collected with a stagnation period
23 of up to 72 hours. Samples shall be analyzed by a laboratory certified by the North Carolina State
24 Laboratory of Public Health to analyze for lead in drinking water.
25 (4) When a water sample is analyzed for lead content by a laboratory under this Rule, the laboratory
26 shall notify the Department of the test results by electronic submission of the elements set out in
27 alignment with the requirements of G.S. 130A-131.8.
28 (5) When a public school receives test results from a laboratory indicating that a water sample collected
29 by the responsible individual contains a lead concentration at or above the lead poisoning hazard
30 level, the responsible individual shall:
31 (A) restrict access to any water outlet(s) used for drinking or food preparation that have lead
32 concentrations at or above the lead poisoning hazard level;
33 (B) ensure that all students and staff have access to water free of cost that does not contain lead
34 concentrations at or above the lead poisoning hazard level for drinking and food
35 preparation; and
36 (C) continue to follow Parts (b)(5)(A) - (B) of this Rule until the Department determines in
37 accordance with Subparagraph (b)(10) of this Rule that the water outlet(s) are not

1 producing water lead levels at or above the lead poisoning hazard level and notifies the
2 responsible individual and the Department of Public Instruction in writing of this
3 determination.

- 4 (6) If a water sample collected by the responsible individual reveals a water lead level at or above the
5 lead poisoning hazard level then the requirement of Rule .1002(b)(1) of this Section shall be
6 considered met.
- 7 (7) Within five business days of receiving the test results of a water analysis that shows a water lead
8 level at or above the lead poisoning hazard level, the responsible individual shall provide written
9 notification of the test results to the parents or legal guardians of the children attending the public
10 school and the staff of the public school in accordance with the United States Environmental
11 Protection Agency guidance specified in Subparagraph (b)(3) of this Rule.
- 12 (8) Within five business days of receiving the test results of a water analysis that shows a water lead
13 level at or above the lead poisoning hazard level, the public school shall make the test results
14 available to the public, free of charge. The responsible individual may post test results to the public
15 school's website to satisfy the requirement to make the test results available to the public.
- 16 (9) Remediation of water outlet(s) producing water lead levels at or above the lead poisoning hazard
17 level shall ensure that water produced is below the lead poisoning hazard level and may include
18 replacement of service lines, pipes, and fixtures and the installation of filters at affected faucets.
19 Within 30 business days from the date on which remediation is conducted under this Rule, the
20 responsible individual shall submit the following information to the Program:
- 21 (A) the name and contact information of the responsible individual;
 - 22 (B) the name and address, including county, of the public school;
 - 23 (C) the steps taken to remediate the lead poisoning hazard; and
 - 24 (D) the date on which the remediation was completed.
- 25 (10) Remediation shall not be considered complete until the Department conducts sampling at the water
26 outlet identified to have a water lead level at or above the lead poisoning hazard level to confirm
27 that the remediated water outlet is no longer producing water lead levels at or above the lead
28 poisoning hazard level.

29
30 *History Note: Authority S.L. 2021-180, s. 9G.8;*
31 *Temporary Adoption Eff. April 29, 2022;*
32 *Eff. April 1, 2023.*
33

1 10A NCAC 41C .1006 is adopted with changes as published in 37:11 NCR 778-783 as follows:

2

3 **10A NCAC 41C .1006 CERTIFIED RISK ASSESSORS**

4 (a) For the purposes of this Section, a certified risk assessor is defined as an individual who meets the requirements
5 of Rule .0802 of this Subchapter, except that the individual shall be required to complete an accredited refresher course
6 for risk assessors every 36 months from the date of completion of initial training or last training instead of every 24
7 months as set forth in 10A NCAC 41C .0802(b).

8 (b) A certified risk assessor who is certified under Paragraph (a) of this Rule shall be considered a certified risk
9 assessor solely for the purposes of conducting inspections and determinations about the existence of lead-based paint
10 hazards in public schools and licensed child care facilities under Rule .1004 of this Section.

11

12 *History Note: G.S. 130A-453.03; 130A-453.05; S.L. 2021-180, s. 9G.8;*

13 *Temporary Adoption Eff. April 29, 2022;*

14 *Eff. April 1, 2023.*

15

1 10A NCAC 41C. 1007 is adopted as published in 37:11 NCR 778-783 as follows:

2

3 **10A NCAC 41C. 1007 INCORPORATION BY REFERENCE**

4 For the purposes of this Section, 40 C.F.R. 763, Subpart E and 40 C.F.R. 745, Subparts L and E are hereby incorporated
5 by reference, including any subsequent amendments or editions, and available free of charge at www.ecfr.gov/.

6

7 *History Note: Authority S.L. 2021-180, s. 9G.8;*
8 *Temporary Adoption Eff. April 29, 2022;*
9 *Eff. April 1, 2023.*

10

Burgos, Alexander N

Subject: FW: CPH 10A NCAC 41C Rules - March 2023 RRC

From: Liebman, Brian R <brian.liebman@oah.nc.gov>
Sent: Friday, February 24, 2023 11:46 AM
To: Niehaus, Virginia <virginia.niehaus@dhhs.nc.gov>
Cc: Vail, Nathan T <Nathan.Vail@dhhs.nc.gov>; Burgos, Alexander N <alexander.burgos@oah.nc.gov>
Subject: RE: CPH 10A NCAC 41C Rules - March 2023 RRC

Hi Virginia,

Thanks for clarifying. I saw what was published in the Register, but I wasn't sure exactly what the agency was trying to do, or how that language had gotten there. Since the changes were published, and were not made post-publication, then there's no substantial change issue.

Have a great weekend, too!
Brian

Brian Liebman
Counsel to the North Carolina Rules Review Commission
Office of Administrative Hearings
(984)236-1948
brian.liebman@oah.nc.gov

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From: Niehaus, Virginia <virginia.niehaus@dhhs.nc.gov>
Sent: Friday, February 24, 2023 11:38 AM
To: Liebman, Brian R <brian.liebman@oah.nc.gov>
Cc: Vail, Nathan T <Nathan.Vail@dhhs.nc.gov>; Burgos, Alexander N <alexander.burgos@oah.nc.gov>
Subject: RE: CPH 10A NCAC 41C Rules - March 2023 RRC

Hi Brian,

Thank you for your feedback on these rules. We will review and respond to the request for changes by March 10.

Thank you also for briefly speaking with me about this rule package. As we discussed, all non-highlighted strike-throughs and underlines reflect changes in text between the temporary rules and the permanent rules and were published in accordance with G.S. 150B. This includes the changes in time frames that you mention in your email below. The time frames in the temporary rules referenced a certain number of months from the effective date of the temporary rules, and these have now been replaced in the permanent rules with a particular set date. In all cases, this new date allows the same or more time for compliance than was set out in the temporary rules. Our intent was to provide the public with notice of the differences between the temporary and permanent rules. In addition, all post publication-changes have been highlighted. Per our discussion, in our response to the request for changes, we will send revised language that removes the underlines/strike-throughs that reflect published changes between the temporary rules and permanent

rules and uses only underline and strike-through to note post-publication changes. I apologize for any confusion this formatting caused.

Have a nice weekend!

Regards,
Virginia

Virginia R. Niehaus, JD, MPH
Director of Regulatory and Legal Affairs
Division of Public Health
[NC Department of Health and Human Services](#)
Pronouns: she/her/hers

Executive Assistant: [Michelle Zarate](#)

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Burgos, Alexander N

From: Liebman, Brian R
Sent: Friday, February 24, 2023 10:18 AM
To: Niehaus, Virginia
Cc: Vail, Nathan T; Burgos, Alexander N
Subject: CPH 10A NCAC 41C Rules - March 2023 RRC
Attachments: 2023.03 - 10A NCAC 41C Comm for Pub Health Rules Request for Changes.docx

Hi Virginia,

I'm the attorney who reviewed the Rules submitted by CPH for the March 2023 RRC meeting. The RRC will formally review these Rules at its meeting on Thursday, March 16, 2023, at 9:00 a.m. The meeting will be a hybrid of in-person and WebEx attendance, and an invite should be sent to you as we get closer to the meeting. If there are any other representatives from your agency who will want to attend virtually, let me know prior to the meeting, and we will get invites out to them as well.

Specifically, I'd like to call to your attention that in many of the rules, I believe the post-publication changes to the specified time frames (generally changing the time to test, remediate, or otherwise comply with the Rule from within 18 to 24 months after the effective date of the rule to 5/1/24) constitute substantial changes per G.S. 150B-21.2(g). As I said in the request for changes document, I think you'll need to either revert to the original language, or withdraw and republish. Otherwise, I'd need to recommend objection. Please review, and then let me know what you'd like to do here.

Please submit the revised Rules and forms to me via email, no later than 5 p.m. on Friday, March 10, 2023.

In the meantime, please do not hesitate to reach out via email with any questions or concerns.

Thanks,

Brian

Brian Liebman
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E-mail correspondence to and from this address may be subject to the North Carolina Public Records Law N.C.G.S. Chapter 132 and may be disclosed to third parties.