

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.

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.

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

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

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 ~~within 24 months after the effective date of this Rule~~ or an inspection for lead-based paint
8 or asbestos is conducted by May 1, 2024 ~~within 18 months after the effective date of this Rule~~ and the test or inspection
9 is conducted in accordance with the rules of this Section.

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

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

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

28 (d) Notwithstanding Paragraphs (a) and (b) of this Rule, if asbestos or lead-based paint is detected during a capital,
29 renovation, or repair project in a public school or licensed child care facility, the public school or licensed child care
30 facility shall be eligible to participate in the funding mechanisms established in accordance with S.L. 2021-180, s.
31 9G.8. as follows:

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

1 conducted in accordance with Rules .1003(e) and .1004(e) of this Section and with the limitation on
2 materials set out in Subparagraph (b)(3) of this Rule, except that the abatement may be limited to
3 the area in the public school or licensed child care facility where the capital, renovation, or repair
4 project is being conducted.

5 (e) Inspections and abatements described in Paragraph (d) of this Rule that are limited to the area in the public school
6 or licensed child care facility where the capital, renovation, or repair project is being conducted shall not satisfy the
7 facility-wide inspection requirements for public schools and licensed child care facilities set out in Rules .1003 and
8 .1004 of this Section.

9 (f) Notwithstanding the foregoing, to be eligible to participate in any funding mechanism under this Rule, responsible
10 individuals shall make all records regarding testing, inspection, abatement, and remediation available to the
11 Department upon request, including, but not limited to, itemized expense reports for activities funded under S.L. 2021-
12 180, s. 9G.8.

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

15
16 *History Note: Authority S.L. 2021-180, s. 9G.8;*
17 *Temporary Adoption Eff. April 29, 2022;*
18 *Eff. April 1, 2023.*
19

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.

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?

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

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

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 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?

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?

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"?

Brian Liebman
Commission Counsel

Date submitted to agency: February 24, 2023

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

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

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

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?

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 .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(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. ~~within 18 months of the effective~~
25 ~~date of this Rule.~~ Inspections for asbestos hazards shall be performed by an inspector and documented in an inspection
26 survey report in accordance with the rules of Section .0600 of this Subchapter. A management planner shall review
27 the inspection survey report to determine whether an asbestos hazard has been detected and shall document his or her
28 findings in an asbestos 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 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; ~~general.hccu@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 ~~submit~~; report the [following:] following on a form provided
5 by the 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 ~~within 18 months after the effective date of this~~
20 ~~Rule~~ in lieu of meeting the requirements in 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 ~~submit~~; 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, addresses, email addresses, phone numbers, names~~ and accreditation numbers
27 of the professionals who will conduct the ~~abatement~~ abatement; and the email address and
28 phone number of the on-site asbestos supervisor who will 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~~; abatement that contains information on the type of
33 materials to be abated, the location of the abatement, the quantity of material to be abated,
34 and the 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 ~~submit~~; 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 Section .0600 of this Subchapter, provided that building material that
- 15 was sampled during a previous inspection and reported as trace asbestos or ~~less than between 0~~
- 16 ~~percent and~~ 10 percent asbestos content shall be reinspected in accordance with the process
- 17 established in Paragraphs (b) - (f) of this Rule; ~~or~~
- 18 (2) ~~the public school or licensed child care facility produces documentation is produced~~ in accordance
- 19 with 40 C.F.R. ~~763.99(a)(7); or 763.99(a)(7).~~
- 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.*
26

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.

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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.

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

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?

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?

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..."?

Brian Liebman
Commission Counsel

Date submitted to agency: February 24, 2023

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?

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”?

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

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

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

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?

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

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 as defined
7 at 40 C.F.R. 745.83. Abatement shall not be considered complete until a final clearance inspection
8 of the public school or licensed child care facility is performed by a certified risk assessor in
9 accordance with the standards set forth at 40 C.F.R. ~~745.227, 745.85(b)~~.
- 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, ~~within 18 months of the~~
23 ~~effective date of this Rule~~. Inspections for lead-based paint hazards shall be performed by a certified risk assessor and
24 documented in an inspection report. The certified risk assessor shall determine whether a lead-based paint hazard is
25 present in the public school or licensed child care facility based on the inspection, in accordance with the rules of
26 Sections .0800 and .0900 of this Subchapter, and document the determination in the inspection report. If the certified
27 risk assessor determines that a lead-based paint hazard exists, then an occupant protection plan shall be written by a
28 certified supervisor or certified project designer in accordance with 40 C.F.R. 745.227(e)(5) and the rules of Section
29 .0800 of this Subchapter.

30 (c) If the certified risk assessor determines that a lead-based paint hazard has been detected, then the responsible
31 individual shall restrict access to the identified lead-based paint hazard until abated in accordance with 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 the rules of Sections
3 .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; ~~general.hecu@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 ~~submit; report the~~ following on a form provided
8 by the 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 ~~or occupant protection plan~~ associated with the previous inspection or the
22 signed attestation by May 1, 2024 ~~within 18 months from the effective date of this Rule~~ in lieu of
23 meeting the requirements in Subparagraph (f)(1) of this Rule.

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

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

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

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

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

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

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

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

- 6 (A) the name, address, email address, and phone number of the responsible individual;
7 (B) the name and address, including county, of the individual school and the public school unit
8 or the licensed child care facility;
9 (C) whether the facility for which the responsible individual is submitting the report is a public
10 school or a licensed child care facility;
11 (D) the date on which the abatement was completed; and
12 (E) a report of the results of the final clearance inspection.

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

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

- 20 (1) the public school or licensed child care facility has previously completed a risk assessment an
21 inspection of its buildings that meets the requirements of Sections .0800 and .0900 of this
22 Subchapter; or
23 (2) the responsible individual of a public school or licensed child care facility located in a building that
24 was built after February 28, 1978 signs a statement attesting that no lead-based paint was used in
25 the building.

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

30

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.

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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.

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?

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

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

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

1 10A NCAC 41C .1005 is adopted 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).
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. ~~within 24 months after the effective date of this~~
17 ~~Rule.~~
18 (3) The responsible individual shall collect samples and submit them for testing in accordance with
19 guidance specified by the United States Environmental Protection Agency in its publication, 3Ts
20 for Reducing Lead in Drinking Water in Schools and Child Care Facilities, which is hereby
21 incorporated by reference, including any subsequent editions or amendments, and available free of
22 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)
23 [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
24 of up to 72 hours. Samples shall be analyzed by a laboratory certified by the North Carolina State
25 Laboratory of Public Health to analyze for lead in drinking water.
26 (4) When a water sample is analyzed for lead content by a laboratory under this Rule, the laboratory
27 shall notify the Department of the test results by electronic submission in alignment with the
28 requirements of G.S. 130A-131.8.
29 (5) When a public school receives test results from a laboratory indicating that a water sample collected
30 by the responsible individual contains a lead concentration at or above the lead poisoning hazard
31 level, the responsible individual shall:
32 (A) restrict access to any water outlet(s) used for drinking or food preparation that have lead
33 concentrations at or above the lead poisoning hazard level;
34 (B) ensure that all students and staff have access to water free of cost that does not contain lead
35 concentrations at or above the lead poisoning hazard level for drinking and food
36 preparation; and

1 (C) continue to follow Parts (b)(5)(A) - (B) of this Rule until the Department determines in
2 accordance with Subparagraph (b)(10) of this Rule that the water outlet(s) are not
3 producing water lead levels at or above the lead poisoning hazard level and notifies the
4 responsible individual and the Department of Public Instruction in writing of this
5 determination.

6 (6) If a water sample collected by the responsible individual reveals a water lead level at or above the
7 lead poisoning hazard level then the requirement of Rule .1002(b)(1) of this Section shall be
8 considered met.

9 (7) Within five business days of receiving the test results of a water analysis that shows a water lead
10 level at or above the lead poisoning hazard level, the responsible individual shall provide written
11 notification of the test results to the parents or legal guardians of the children attending the public
12 school and the staff of the public school in accordance with the United States Environmental
13 Protection Agency guidance specified in Subparagraph (b)(3) of this Rule.

14 (8) Within five business days of receiving the test results of a water analysis that shows a water lead
15 level at or above the lead poisoning hazard level, the public school shall make the test results
16 available to the public, free of charge. The responsible individual may post test results to the public
17 school's website to satisfy the requirement to make the test results available to the public.

18 (9) Remediation of water outlet(s) producing water lead levels at or above the lead poisoning hazard
19 level shall ensure that water produced is below the lead poisoning hazard level and may include
20 replacement of service lines, pipes, and fixtures and the installation of filters at affected faucets.
21 Within 30 business days from the date on which remediation is conducted under this Rule, the
22 responsible individual shall submit the following information to the Program:

23 (A) the name and contact information of the responsible individual;

24 (B) the name and address, including county, of the public school;

25 (C) the steps taken to remediate the lead poisoning hazard; and

26 (D) the date on which the remediation was completed.

27 (10) Remediation shall not be considered complete until the Department conducts sampling at the water
28 outlet identified to have a water lead level at or above the lead poisoning hazard level to confirm
29 that the remediated water outlet is no longer producing water lead levels at or above the lead
30 poisoning hazard level.

31
32 *History Note: Authority S.L. 2021-180, s. 9G.8;*
33 *Temporary Adoption Eff. April 29, 2022;*
34 *Eff. April 1, 2023.*
35

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 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

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