

10A NCAC 41A .1001-.1007 Public Comments by Rule and DPH Response

Rule Number	Summary of Comment	Commenter	Method Received	Date Received	DPH Response
GENERAL					
General	How will funding be approved for this program? Will additional guidance on funding be forthcoming?	Becky Howell	Public Hearing	2/25/2022	Thank you for your comment. Please see the attached frequently asked questions (FAQ) document for additional information.
General	Why don't the rules include parameters that would limit inspections to buildings built before 1978?	Becky Howell	Public Hearing	2/25/2022	Thank you for your comment. Please see the attached FAQ document for additional information.
General	Will funding be available for lead-based paint inspections?	Becky Howell	Public Hearing	2/25/2022	Thank you for your comment. Please see the attached FAQ document for additional information.
General	Why are existing Health Hazards Control Unit (HHCU) processes not being used for this program?	Becky Howell	Public Hearing	2/25/2022	Thank you for your comment. The rules include numerous cross-references to existing processes and standards that are set out in North Carolina statutes in G.S. 130A and rules in 10A NCAC 41C, as well as applicable federal regulations; however, some aspects of this program are novel and not contemplated under current statutes, rules, and regulations. These rules are therefore tailored to the program established under S.L. 2021-180, s. 9G.8. to provide clarity to certified and accredited professionals as well as public schools and licensed child care facilities.
General	How will decisions about funding be made and by whom?	Becky Howell	Public Hearing	2/25/2022	Thank you for your comment. Please see the attached FAQ document for additional information.
General	What will change for schools that already have processes in place for lead paint and asbestos inspections?	Jeff Church	Public Hearing	2/25/2022	Thank you for your comment. Please see the attached FAQ document for additional information.
General	When will the rules become effective?	Russell Harrings	Public Hearing	2/25/2022	Thank you for your comment. This rulemaking effort is being pursued under temporary rulemaking procedures. Following the public comment period, the rules will be presented to the Commission for Public Health (CPH) for consideration of adoption at a special meeting on March 29, 2022. If CPH adopts the rules, then the rules will then be submitted to the Rules Review Commission (RRC) for consideration at their regular meeting in April 2022. If the rules are approved by RRC, they will become effective when the Codifier enters them into the NC Administrative Code.
General	Is there an estimated start date or proposed timeline for these regulations?	Russell Harrings	Email	3/2/2022	Thank you for your comment. Please see the above response.
General	Once records of upcoming lead or asbestos remediation projects are submitted, will the school or child care facility receive some confirmation that the project has been approved for funding or partial funding? Proposed Rule .1002 Funding indicates that the Department is not fiscally responsible once the funding has run out. How will schools/child care centers know if they can safely proceed with their projects?	Stephen McLoughlin, Becky Howell	Email	3/2/2022	Thank you for your comment. Please see the attached FAQ document for additional information.

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General	We strongly support these temporary rules and the permanent rules that will need to follow. Given the posture of the rulemaking – implementing a clear directive of the NC General Assembly – we will not reiterate the substantial scientific evidence showing that exposure to lead and asbestos can impose lifelong costs on North Carolina’s children. But we know that you appreciate this science and also the evidence that exposures are disproportionately visited on both children in lower-income households and children of color. Reducing exposures in child care centers and in public schools will not prevent all exposures – many children living in older housing stock will still be exposed to lead paint, for example – but because harms are cumulative, reducing school and center exposures will directly improve children’s health.	Grady McCallie, Veronica Oakler	Email	3/4/2022	Thank you for your comment.
General	In addition, we support and want to incorporate by reference two thoughtful recommendations made by NC Child in their comment letter of March 2. First, we hope the final rule makes clear that licensed in-home child care centers can participate in the funding mechanism established by these rules. Second, we agree that schools and child care centers should be encouraged to use the self-testing and reporting model that allows samples to be collected first thing Monday morning, when they are most likely to catch violations.	Grady McCallie, Veronica Oakler	Email	3/4/2022	Thank you for your comment. The definition of a "licensed child care facility" at G.S. 110-86(3)(b) includes family child care homes. Rule 10A NCAC 41C .1005 is written to require schools to use the same 3Ts protocol and methodology that was referenced in Rule 15A NCAC 18A .2816, which governs testing for lead hazards in water in child care centers. The 3Ts methodology allows for samples to be collected first thing on Monday mornings.
General	We hope that the Commission and NC Department of Health & Human Services (DHHS) will use this opportunity to drive lead concentrations in drinking water as low as possible. We recognize that state law establishes a ‘lead hazard level’ at 10 parts per billion (ppb) in drinking water, NCGS §130A-131.7(7)(g). The appropriation in the 2021 budget, SL 2021-180(9G.8(a)) directs DHHS to “develop a mechanism for providing funding for the testing and mitigation of lead in drinking water that meets the lead poisoning hazard levels, as set forth in GS 130A-131.7....” Thus, as is reflected in the rules you have proposed, the trigger for this funding to be available to schools and centers is that their lead levels are over 10 ppb...Nothing in the state budget provision says that the funding can only be used to lower concentrations to just below 10 ppb. We strongly encourage the Commission and DHHS – either as an explicit statement in the final rule, or as a guiding principle of DHHS’ oversight of remediation plans – to fund remediation that takes concentrations of lead from above 10 ppb to as close as possible to zero.	Grady McCallie, Veronica Oakler	Email	3/4/2022	Thank you for your comment. Our intention is to follow the science and best practices to remediate lead hazards in water to the fullest extent possible.
General	Second, we note that the federal Infrastructure Investment and Jobs Act, Public Law 117-58, §50110, authorizes some \$200 million for FY22-26 to support EPA grant programs for testing, compliance monitoring, and remediation of lead contamination in schools and child care centers. We encourage the Commission and DHHS to apply for these competitive grants, and to view this as a source of funding to help abate lead in schools and centers that test below 10 ppb in the next 18 months. To support that, we encourage the Commission and DHHS to collect and keep self-test reports from all schools and centers that have detectable concentrations of lead – above or below 10 ppb – so DHHS can articulate the need and compete effectively for this additional tranche of federal funding.	Grady McCallie, Veronica Oakler	Email	3/4/2022	Thank you for your comment. The Division of Public Health (DPH) is in the process of applying for additional grant funds made available under the Water Infrastructure Improvements for the Nation (WIIN) Act to support a second round of testing for lead in water in child care centers in accordance with 15A NCAC 18A .2816. It is our intention to apply for the FY22-26 Infrastructure Investment and Jobs Act (IIJA) funds as well as they become available. In both cases, DPH will have a record of all results for lead in water testing that is conducted in child care centers.

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General	Beyond the current rulemaking, we note that numerous private drinking water wells in North Carolina have elevated concentrations of lead. To be clear, some public schools and child care centers may number among the water sources fed by these wells, and this temporary rule will help catch and fix that. Moreover, many of the children exposed to lead in private well water at home are spending their days in child care centers and public schools, so this rule may also help reduce their cumulative exposures and blood lead levels. Yet, there likely remains a population of children with elevated blood lead levels exposed exclusively through private residential wells. This rule cannot reach them, and we would love to work with the Commission for Public Health to explore other policies and potential funding streams that could.	Grady McCallie, Veronica Oakler	Email	3/4/2022	Thank you for your comment.
General	Will an asbestos inspection be required if there is an Architect's letter for the school (AHERA October 12, 1988 exclusion rule)?	Russell Harrings	Email	3/2/2022	Thank you for your comment. Please see the attached FAQ document for additional information.
General	Will there be exemptions allowed for schools newer than a certain construction date? (i.e. October 13, 1988 for asbestos or 1979 for lead?)	Russell Harrings	Email	3/2/2022	Thank you for your comment. Please see the attached FAQ document for additional information.
General	Do the regulations require inspections in all areas of the school, or only child-occupied areas? Are mechanical, janitorial, office, and exterior areas included?	Russell Harrings	Email	3/2/2022	Thank you for your comment. The rules provide definitions of an "inspection" for asbestos and lead-based paint hazards and include cross-references to North Carolina statutes and rules and federal regulations. Inspections, as defined in the rules, must be carried out in accordance with these legal frameworks.
General	It appears that the regulations are only focused on lead hazards and not a full lead-based paint (LBP) inspection. Is it accurate that a full LBP inspection will not be required for these regulations?	Russell Harrings	Email	3/2/2022	Thank you for your comment. Please see the attached FAQ document for additional information.
General	Can the "Responsible Individual" responsibilities be delegated by a school district to their AHERA LEA Designee for all of the schools within the district?	Russell Harrings	Email	3/2/2022	Thank you for your comment. Yes, under Rule 10A NCAC 41C .1001, the responsible individual may delegate authority and responsibility to a designee.
General	Since this is coming from Biden-Harris Lead Pipe and Paint Action Plan, Executive order 13990, Where is the funding for additional employees and testing from the government?	Dale Ladd	Email	3/4/2022	Thank you for your comment. These proposed rules are not related to the Biden-Harris Lead Pipe and Paint Action Plan or Executive Order 13990. The funding for the program that the rules implement is from the American Rescue Plan Act.
General	Which rule are we to follow?? EPA 3ts rule? the 10A NCAC 41C.1005 Rule that states a one time test of all water outlets ? or the 15A NCAC 18A .2816 that states SHALL test once every 3 years ?	Dale Ladd	Email	3/4/2022	Thank you for your comment. Rule 15A NCAC 18A .2816, which is not part of this rulemaking package, applies to testing for lead hazards in water in child care centers. Rule 10A NCAC 41C .1005 applies to testing for lead hazards in water in public schools.
General	Each of these programs have been in place / enforced to varying degrees for many years. Testing, inspection and abatement-remediation have been done. Does the scale and scope of testing and inspection required by this rule consider and hold valid previous testing and plans for monitoring and surveillance? This should not be a "reset" for previous programs, efforts. *I second this comment, we have processes/procedures in place, why change?	Anthony Cox *Jeff Church	Email	3/4/2022	Thank you for your comment. Please see the attached FAQ document for additional information.
General	Is the cost of testing and abatement / remediation done for capital renewal/renovation projects prior to the effective date of the rule eligible for reimbursement? E.g., tests done a few months or same year as rule goes into effect? Only allowed for work after the rule?	Anthony Cox	Email	3/4/2022	Thank you for your comment. Inspections and abatement that are conducted as part of a capital or renovation project are subject to the same timeline requirements set forth in the rules as facility-wide inspections and abatement that is not associated with a capital or renovation project.

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General	<p><u>Sec. 9G.8</u> of S.L. 2021-180 (S105- 2021 Appropriations Act) provides \$150,000,000 in non-recurring funds for the 2021-2022 fiscal year for lead and asbestos remediation and abatement programs to benefit public school units and child care facilities. This section allocates \$32,812,500 in non- recurring funds to fund a program for the testing and remediation of lead levels in drinking water at public school units and child care facilities. It also allocates \$117,187,500 in non-recurring funds to fund a program for lead paint abatement and asbestos abatement in public school units and child care facilities.</p> <p>How do we apply for these funds?? The 2021/2022 year is running out of time.</p>	Dale Ladd	Email	3/4/2022	Thank you for your comment. Please see the attached FAQ document for additional information.
General	Where does the funds come from once the non-recurring funds run out?	Bergie Speaks	Email	3/4/2022	Thank you for your comment. At this time, funds for this program are limited to the funds appropriated under S.L. 2021-180, s. 9G.8.
General	Because lead paint was no longer allowed for use in consumer paints after 1978, are there any restrictions on the ages of building that qualify for a reimbursable risk assessment?	Stephen McLoughlin, Becky Howell	Email	3/2/2022	Thank you for your comment. Please see the attached FAQ document for additional information.
General	Would the funding support schools and child-care facilities that want to be pro-active and remove lead paint and/or asbestos that presently does not pose a health hazard?	Stephen McLoughlin, Becky Howell	Email	3/2/2022	Thank you for your comment. Lead-based paint and asbestos hazards that are identified during the course of a capital, renovation, or repair project may be eligible for funding under this program.
General	The Proposed Rules periodically suggest that involvement in this program is compulsory, and yet the Session Law limits any requirements to those “[A]s part of the program”. Clarification would be appreciated.	Stephen McLoughlin, Becky Howell	Email	3/2/2022	Thank you for your comment. Please see the attached FAQ document for additional information.
General	This program starts off with a lot of promise. The state decides to use an excess of funds (\$150 million!) to offer financial assistance to public schools (including charter schools) and child care facilities (CCFs) to clean up asbestos and lead hazards. It sounds great, right? We’ll use this money for something good - to help protect our children from asbestos and lead in paint and lead in water. But wait, there’s a catch. Public schools (including charter schools) must pay one third of the costs associated with any remediation. Privately-owned child care facilities, which could be sold at great profit immediately after extensive renovation paid for by taxpayer dollars, can have their remediations fully funded. I was recently approached to do some training for a small school district in a low-income, rural county. I gave them a proposal of \$300. They couldn’t afford \$300. How will they be able to afford one third of an asbestos or lead remediation project which could easily cost in the tens of thousands of dollars?	Lucinda Sullivan	Email	3/2/2022	Pursuant to S.L. 2021-180, Sec. 9G.8, the NC General Assembly appropriated \$150M from the federal Coronavirus State and Local Fiscal Recovery Fund to establish programs for the detection and remediation of lead and asbestos in public school units and licensed child care facilities. The program, including required inspections and the match for public school recipients of funds, is outlined in this legislation.
General	To add insult to injury, I recently learned that DPH plans to use roughly one-third of the \$150,000,00 to conduct unnecessary asbestos and lead paint inspections. This hasn’t been offered up for public comment. This hasn’t been publicized at all — so about one-third of the available funding will be used with absolutely no input from the schools or child care facilities.	Lucinda Sullivan	Email	3/2/2022	Please see the attached FAQ document for additional information regarding inspections. This rulemaking process went through a public notice and comment process in accordance with G.S. 150B-21.1.

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General	I used to work for the Health Hazards Control Unit (HHCU) as a Technical Trainer and then Consultant so I have more than a passing familiarity with the asbestos and lead paint rules. I helped write both the Asbestos Hazard Management Program Rules and the Lead Hazard Management Program Rules. Every time, we held meetings that afforded the public the opportunity to express their concerns and exchange ideas. The regulated communities (in this case schools and CCFs) were made aware of the proposed changes through various public meetings. It is very disappointing that the public was not afforded that opportunity with the development of these proposed temporary rules. It is almost more disappointing that no one has been informed of the plans to conduct mass inspections. It also seems there is a rush to get these rules approved and in place, and as we know from past experience, when all factors are not considered, there are usually more unanswered questions, poor work practices and inexperienced professionals conducting work that is below standards. (Take for example when the federal Asbestos Containing Materials in Schools Rule, commonly referred to as AHERA, was first implemented. The initial management plans were incomplete. These plans have since been reviewed and updated, but it took years of work.). The notification that I received simply stated it was addressed to "Interested Parties." Were all schools and CCFs notified of these proposed changes?	Lucinda Sullivan	Email	3/2/2022	Please see the attached FAQ document for information regarding the temporary rulemaking process. Interested parties were notified in accordance with G.S. 150B-21.1.
General	Additionally, as I understand the program, it is a voluntary funding program. The law clearly states that "As part of this program, public schools and child care facilities shall inspect . . .". There are many schools and child care facilities without asbestos or lead paint hazards, so there is no need for them to participate in this funding program, and yet, DPH insists that they must also be inspected — that it's required by the law. But the law clearly states that the inspection requirement is part of this program. If you're not involved in the program, why would you need an inspection?	Lucinda Sullivan	Email	3/2/2022	Thank you for your comment. Please see the attached FAQ document for additional information.
General	AHERA requires schools built before 1988 to have an asbestos inspection. Every 6 months, school personnel are required to check on the condition of the identified asbestos containing materials (ACMs). Every 3 years, an accredited inspector and management planner is required to again check on the condition of identified ACMs. This is called a Reinspection and special forms must be completed, signed, and sent to the NC Health Hazards Control Unit. Why waste good money conducting work that is already required to be done by state and federal regulations? It is unclear if previous inspections and reports are usable in this program, but it appears they are not.	Lucinda Sullivan	Email	3/2/2022	Thank you for your comment. Please see the attached FAQ document for additional information.
General	Schools built after 1988 are not required to have an asbestos inspection if they have an asbestos inspection exemption letter. They still must have an asbestos inspection prior to renovation or demolition in accordance with the federal NESHAP. The likelihood that a school built after 1988 has an "asbestos hazard" (to borrow your term) is extremely low. Why waste money inspecting these schools?	Lucinda Sullivan	Email	3/2/2022	Thank you for your comment. Please see the attached FAQ document for additional information.
General	Lead in excess of .06% was no longer allowed for use in consumer paints after 1978. Why would DPH conduct lead inspections on schools built after 1978?	Lucinda Sullivan	Email	3/2/2022	Thank you for your comment. Please see the attached FAQ document for additional information.
General	Lastly, what are the enforcement implications? Is there an agency that will be enforcing these rules, or following through if the inspections/assessments are not conducted properly.	Lucinda Sullivan	Email	3/4/2022	Thank you for your comment. Under S.L. 2021-180, s. 9G.8., public schools are required to test for lead in water and public schools and licensed child care facilities are required to inspect for asbestos and lead-based paint hazards. Licensed child care facilities that do not test or inspect, or that fail to abate, remediate, or restrict access to hazards that are identified during testing or an inspection, may be subject to licensure action by the Division of Child Development and Early Education.

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General	Please see the attached petition signed by 614 North Carolina residents expressing their support for the proposed temporary rules, 10A NCAC 41 .1001- .1007, requiring public schools and childcare centers to test for lead in drinking water, lead paint, and asbestos within 18 months, and to remediate unsafe exposures. Lead and asbestos exposures can cause lasting damage to growing brains and bodies, reducing children's opportunities for a healthy, joyful life, and robbing them of earning potential and diminishing their physical or mental capacities. Your proposed rule takes a crucial step forward to implement the state legislature's mandates for testing and remediation and to safeguard the youngest and most vulnerable in our state. Our children deserve the greatest protection from lead and asbestos that we can give them.	Brittany Lery / NC Conservation Network	Email	3/4/2022	Thank you for your comment.
General	We encourage the Commission and the Department of Health and Human Services to go even further. Following state law, the rule requires remediation of drinking water that shows lead concentrations of more than 10 parts per billion. The US EPA treats concentrations over 5 ppb as a threat, and scientists say in fact there is no safe level of exposure to lead for a developing child. We recognize that the Commission cannot change the trigger for remediation in state law; however, we encourage you, when lead is found above 10 ppb, to ensure it is remediated to eliminate the risk, not just lower it below 10 ppb. With state funding available, there's no reason to stop halfway. Our children deserve the greatest protection from lead and asbestos that we can give them.	Brittany Lery / NC Conservation Network	Email	3/4/2022	Thank you for your comment. Our intention is to follow the science and best practices to remediate lead hazards in water to the fullest extent possible.
General	How do schools apply for funding? What will the funding cover?	Jonathan Guetta	Email	2/25/2022	Thank you for your comment. Please see the attached FAQ document for additional information.
General	In the new rules – do the architect letters still suffice for newer facilities for asbestos?	Jonathan Guetta	Email	2/25/2022	Thank you for your comment. Please see the attached FAQ document for additional information.
General	Does this new rule overrule AHERA or do previous AHERA management plans suffice to comply with this new rule?	Jonathan Guetta	Email	2/25/2022	Thank you for your comment. These rules are written to align with existing processes and standards currently set out in North Carolina statutes and rules and applicable federal regulations, including the Asbestos Hazard Emergency Response Act (AHERA). Please see the attached FAQ document for more information about the use of previous inspections and related documentation, such as management plans, to meet the rules' inspection requirements.
General	Is there a cut off date for lead where no inspection is needed? (i.e. 1978?)	Jonathan Guetta	Email	2/25/2022	Thank you for your comment. Please see the attached FAQ document for additional information.
General	What certifications/accreditations will be required to conduct the asbestos inspections/Lead inspections/management plans/designs?	Jonathan Guetta	Email	2/25/2022	Thank you for your comment. Except as set forth in Rule 10A NCAC 41C .1006, certified and accredited professionals who perform testing, inspection, abatement, and remediation activities under this program must meet current requirements set forth in 10A NCAC 41C Sections .0600, .0800, and .0900, as applicable.

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General	When are these regulations expected to be implemented?	Jonathan Guetta	Email	2/25/2022	Thank you for your comment. This rulemaking effort is being pursued under temporary rulemaking procedures. Following the public comment period, the rules will be presented to the Commission for Public Health (CPH) for consideration of adoption at a special meeting on March 29, 2022. If CPH adopts the rules, then the rules will then be submitted to the Rules Review Commission (RRC) for consideration at their regular meeting in April 2022. If the rules are approved by RRC, they will become effective when the Codifier enters them into the NC Administrative Code.
General	Please clarify the length of time the inspections/remediation work will be funded.	Jonathan Guetta	Email	2/25/2022	Thank you for your comment. Pursuant to S.L. 2021-180, s. 9G.8., funding for this program is available until it is spent or until December 31, 2026, whichever comes first. More information about funding is available in the attached FAQ document.
General	If funds are depleted will the school systems be responsible to pay for testing and remediation activities?	Jonathan Guetta	Email	2/25/2022	Thank you for your comment. At this time, funds for this program are limited to the funds appropriated under S.L. 2021-180, s. 9G.8. Please see the attached FAQ document for additional information about funding.
MULTIPLE RULES					
.1003(f) .1004(f) .1005(b)(10)	Standardizing data collection 10A NCAC 41C .1003 [Paragraph (f)], 1004 [Paragraph (f)], and 10A NCAC 41C .1005 [Subparagraph (b)(10)]: Throughout the rules, required documents must be emailed to a specific email address. This statewide effort requires standardized submissions, document tracking, and retention. We suggest elaborating on the document submission requirements to ensure the achievement of standardized reporting. We suggest instead of listing a specific email address that the rule state: The information listed in this Paragraph shall be submitted to the Program in a format that allows for proper and efficient documentation and tracking of all efforts pursuant to this rule, which may include the use of a website, email, online survey form, or other means that allow for robustly documenting information in a standardized way:	Crystal Lee Pow Jackson / RTI	Email	3/27/2022	Thank you for your comment. As written, the rules standardize data collection by requiring submission of an enumerated set of data fields. Data will be collected for the time being via electronic mail due to limitations of existing information technology systems. Additional or alternative methods of submission and data collection may be considered during the permanent rulemaking process following anticipated updates to IT systems.
.1003(f)(1)G .1003(f)(3)E .1004(f)(1)G .1004(f)(3)E	Documentation from an accredited lab 10A NCAC 41C .1003 [Subparagraph (f)(1,G) and (f)(3,E)] and 10A NCAC 41C .1004 [Subparagraph (f)(1,G) and (f)(3,E)]. We suggest that all results submitted to the Program contain documentation of laboratory accreditation for the scope of testing. You may also consider requiring the submission of records of the laboratory's external proficiency testing performance.	Crystal Lee Pow Jackson / RTI	Email	3/28/2022	Thank you for your comment. As noted in the comment, the rules already require that testing be performed by accredited laboratories. We are currently anticipate contracting with one or more vendors. Please see the FAQ document for additional information.
.1003 .1004 .1005	Notification of parents, legal guardians, and staff 10A NCAC 41C .1003-5. Currently, there is only one requirement to notify parents, legal guardians, and staff of sampling results. This is if drinking water samples collected by the Department find lead at or above the lead poisoning hazard level. Communication early and often with communities will support community engagement and trust in the commitment to providing a safe environment for students and staff. We suggest adding a requirement that all sample results for asbestos, lead paint, and lead in drinking water must be shared with the community. This can be achieved by adding to each rule: "The responsible individual is required to notify parents, legal guardians, and staff of inspection or testing results."	Crystal Lee Pow Jackson / RTI	Email	3/25/2022	Thank you for your comment. We will consider how to best implement this during the permanent rulemaking process.

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.1002(a) .1003(b) .1004(b) .1005(b)(2)	Timeframe for implementation 10A NCAC 41C .1002 [Paragraph (a)], 1003 [Paragraph (b)], 1004 [Paragraph (b)], and 1005 [Subparagraph (b)(2)]. Throughout the proposed temporary rules there is a requirement that testing or inspection of lead and asbestos must occur within 18 months after the effective date of this Rule. From professional experience, a 24-month window is a more realistic timeframe for all facilities in the state of North Carolina to connect with a laboratory for testing, test all their drinking and cooking taps, conduct follow-up sampling, and implement risk mitigation if they meet rule requirements. You may also want to consider up to two additional 6-month extension periods at the end of the additional window if it is deemed necessary to achieve intended goals and there are sufficient remaining resources.	Crystal Lee Pow Jackson / RTI	Email	3/4/2022	Thank you for your comment. We have revised the language of Rule 10A NCAC 41C .1005 to include the longer timeframe for consideration by the Commission for Public Health, but recommend maintaining the 18 month language in Rules 41C .1003 and .1004 due to the short timeframe to obligate federal funds.
.1002(a) .1002(c) .1003(b)	Integrating previous lead in drinking water testing at child care facilities data and asbestos inspection data at public schools 10A NCAC 41C .1002 [Paragraph (a) and (c)] and 10A NCAC 41C .1002 1003 [Paragraph (b)], To maximize the efficiency and utilization of these funds, we suggest that the State consider integrating previous data collected at public schools and child care facilities relevant to this rule. This includes water testing results collected by the mechanism established for 15A NCAC 18A .2816 and previous asbestos inspection data conducted through the mechanism established by the Asbestos Containing Materials in Schools Rule (40 CFR Part 763) or the National Emission Standards for Hazardous Air Pollutants (NESHAP) regulation (40 CFR 61.145(a)). We suggest the following revisions: 10A NCAC 41C .1002 [Paragraph (a)]: Public schools and licensed child care facilities in North Carolina shall be eligible to participate in the funding mechanisms established in accordance with S.L. 2021-180, Sec. 9G.8. to fully or partially offset the cost of conducting testing for lead in water and inspection for asbestos and lead-based paint hazards, when the responsible individual provides conducts the test or inspection results for lead or asbestos within 18 months after the effective date of this Rule and in accordance with the Rules of this Section. 10A NCAC 41C .1002 [Paragraph (c)]: Notwithstanding Paragraphs (a) and (b) of this Rule, child care centers facilities conducting testing and remediation of water outlets used for drinking or food preparation in child care centers pursuant to through 15A NCAC 18A .2816 mechanisms shall be eligible to participate in the funding mechanisms established in accordance with S.L. 2021-180, Sec. 9G.8. for testing conducted in accordance with that Rule within 18 months after the effective date of this Rule and remediation conducted in accordance with that Rule 10A NCAC 41C .1005 between the effective date of this Rule and the date on which funds are no longer available in accordance with S.L. 2021-180, Sec. 9G.8.(d). 10A NCAC 41C .1003 [Paragraph (b)]: Each responsible individual shall ensure that an inspection is conducted for asbestos hazards in their facility within 18 months 24 months [see comment 1] of the effective date of this Rule. Inspections for asbestos hazards shall be performed by a North Carolina accredited inspector and documented in an inspection survey report in accordance with the Rules of Section .0600 of this Subchapter. Building materials that have been previously sampled by an accredited inspector and analyzed by a NVLAP-accredited laboratory finding greater than 50% asbestos may be assumed to be asbestos without collecting additional samples of that material. Building materials that have been previously sampled and analyzed by a NVLAP-accredited laboratory finding no asbestos or reporting "trace" or "1%" asbestos content shall be re-sampled and re-analyzed regardless of how recently the material was inspected. A North Carolina accredited management planner shall review the inspection survey report to determine whether an asbestos hazard has been detected and shall document his or her findings in an asbestos management plan in accordance with Rule 10A NCAC 41C .0604.	Crystal Lee Pow Jackson / RTI	Email	3/5/2022	Thank you for your comment. Testing for lead in water in child care centers under 15A NCAC 18A .2816 that occurred prior to the effective date of these rules will not be eligible for funding for the costs of testing; however, testing that occurs after the effective date of these rules and remediation for those child care centers that tested under 15A NCAC 18A .2816 and identified hazards may be funded under this program. Please see the attached FAQ document for more information about public schools and licensed child care facilities using documentation from previous lead-based paint and asbestos inspections to satisfy the inspection requirement and become eligible for funding for abatement.
RULE .1002					
.1002(b)(3)	Will all the costs associated with replacement materials (e.g., installation) be reimbursed if the conditions of Rule .1002(b)(3) are met?	Stephen McLoughlin, Becky Howell	Email	3/2/2022	Thank you for your comment. Public schools and licensed child care facilities may be able to receive funding to fully or partially offset the costs of replacement materials that are tied to an abatement project. Please see the attached FAQ document for additional information about funding.

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.1002(b)(3)	Rule .1002(b)(3) allows for some asbestos and lead in replacement materials. Please note that lead hazards can be created by disturbance of painted components with even trace amounts of lead. Likewise, building materials with only trace amounts of asbestos can still pose a hazard if improperly handled.	Stephen McLoughlin, Becky Howell	Email	3/2/2022	Thank you for your comment. These rules reflect current U.S. Environmental Protection Agency (EPA) and Consumer Product Safety Commission (CPSC) regulatory requirements which establish the >1% asbestos or >90 ppm standards for lead in consumer products.
.1002(d)(1)	Rule .1002(d)(1) appears to allow for reimbursement of a partial inspection, but Rule .1002(e) states that partial inspections will not meet the inspection requirements of Rules .1003 and .1004. However, there is nothing in the definition of "Inspection" adopted by Rule .1003 that requires a full inspection. Likewise, Rule .1004 has changed the definition of "Inspection" to mean "Risk Assessment".	Stephen McLoughlin, Becky Howell	Email	3/2/2022	Thank you for your comment. Rule 10A NCAC .1002(d)(1) pertains solely to inspections associated with capital, renovation, and repair projects, which do not satisfy the requirement for facility-wide inspections. Please see the attached FAQ document for additional information.
.1002(d)(1) .1002(d)(2)	Asbestos detected during a capital, renovation, or repair project 10A NCAC 41C .1002 Subparagraph d(1) and (2) The current proposed rules state that the inspection and abatement may be limited to the area in the public school or licensed child care facility where the capital, renovation, or repair project is being conducted. We suggest adding language such as "and adjacent areas that may be impacted or disturbed by the capital, renovation, or repair project activities." The intent of the National Emissions Standards for Hazardous Air Pollutants (NESHAP) is to minimize fiber release during renovation/demolition activities. Fiber release can occur when work in one area disturbs materials in another area (e.g., vibration from work in one area generates dust release from spray-applied materials in an adjacent area of the building).Not sure if we can require this because NESHAPs does not.	Crystal Lee Pow Jackson / RTI	Email	3/17/2022	Thank you for your comment. The NESHAPs require that affected areas be inspected for suspect asbestos containing building material. Since adjacent areas would fall within "affected areas," we believe that this issue is already addressed and changes to the rules are not needed at this time.
RULE .1003					
.1003(a)	Why are some of the terms that are defined in .1003(a) defined differently than elsewhere in 10A NCAC 41C?	Becky Howell	Public Hearing	2/25/2022	Thank you for your comment. The rules include numerous cross-references to existing processes and standards that are set out in North Carolina statutes in G.S. 130A and rules in 10A NCAC 41C, as well as applicable federal regulations; however, some aspects of this program are novel and not contemplated under current statutes, rules, and regulations. These rules are therefore tailored to the program established under S.L. 2021-180, s. 9G.8. to provide clarity to certified and accredited professionals as well as public schools and licensed child care facilities. Please see the attached FAQ document for additional information.
.1003(a)(1)	Final clearance inspection 10A NCAC 41C .1003 Subparagraph (a)(1). We suggest being explicit by stating a requirement for clearance testing after abatement. This can be achieved by modifying the text to state: Abatement shall not be considered complete until a final clearance inspection of the public school or licensed child care facility is performed by an air monitor and clearance air sampling in accordance with 40 C.F.R. 763.90(i).	Crystal Lee Pow Jackson / RTI	Email	3/26/2022	Thank you for your comment. The applicable part of the federal regulations, 40 C.F.R. 763.90(i), is already cited to in the rule and fully addresses clearance inspections. We therefore do not think it is necessary to add additional language to the rules at this time.
.1003(a)(5)	In the proposed language for 10A NCAC 41C.1003 (a) (5), it states that an asbestos hazard is a condition that results in exposure to a category of asbestos containing material defined at 40 CFR 763.88(b). The 40 CFR 763.88(b) regulation does not define any of these categories as a hazard. Category 7 is "any remaining friable ACBM or friable suspected ACBM", which is typically interpreted as ACBM in good condition with a low potential for damage. Is it the intention of these regulations that all ACBM with a category, even category 7, be designated as a hazard? If so, this would incapacitate many older schools with asbestos ceilings in good condition.	Russell Harrings	Email	3/2/2022	Thank you for your comment. We have amended the rule language to exclude category 7 under 40 C.F.R. 763.88(b) from the definition of an asbestos hazard.

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.1003(b)	In the proposed language for 10A NCAC 41C.1003 (b), it states that an inspection for hazards be conducted in each facility. Is it the intention that only hazards be identified and sampled or is a full lead-based paint (LBP) inspection (in accordance with HUD Guidelines) required of the entire facility, regardless of the damage or potential for damage to the ACBM?	Russell Harrings	Email	3/2/2022	Thank you for your comment. Please see the attached FAQ document for additional information about the use of risk assessments to identify lead-based paint hazards.
1003(a)(1)	Rule .1003(a)(1) "Abatement" -- The requirement to conduct a final clearance before the project is considered complete may get overlooked if it is included only in this definition. Air clearance is already required by both AHERA 40 CFR 763.90(i) (for projects greater than 3 sf/3 lf) and the AHMP Public Area Rule .0607 (for projects greater than 160 sf/260 lf/ 35 cuft). Is the intention here to require air clearance after projects of any size? Is it to ensure that clearance is conducted and that the clearance reports are included with the final submittal for reimbursement? Or both? Perhaps this would be better clarified by breaking it out and assigning it its own letter? Maybe it could be included after .1003(e)?	Stephen McLoughlin, Becky Howell	Email	3/2/2022	Thank you for your comment. All interior spaces require final air clearance to ensure regulatory standards have been met and to ensure the safety of building occupants. We do not believe further changes are needed to the rule at this time.
.1003(a)(5)	Rule .1003(a)(5) "Asbestos hazard" is partially defined as "... a condition that results in exposure to asbestos in excess of the standards . . .". The only way to determine this is through air sampling. Is that the intention? Perhaps the definition of "Regulated Asbestos Containing Material" from NESHAP (40 CFR Part 61) could be used in place of the proposed definition for "Asbestos hazard"?	Stephen McLoughlin, Becky Howell	Email	3/2/2022	Thank you for your comment. Air sampling is not the only way to determine an asbestos hazard. Having an asbestos concentration above 1% and a deteriorated condition can constitute an asbestos hazard. Facilities must consider both AHERA and NESHAP requirements to the extent that either set of federal regulations is applicable to the work being performed.
.1003(a)(6)	Rule .1003(a)(6) "Inspection" -- Thorough asbestos inspections are already required prior to renovation or demolition by NESHAP. AHERA requires sampling of only interior accessible materials (with a few exceptions). Would NESHAP be a more applicable reference? Limiting the definition of "Inspection" to "reinspection" when applied to public schools is confusing when trying to interpret the rest of the Rules. Why not use the terms independently?	Stephen McLoughlin, Becky Howell	Email	3/2/2022	Thank you for your comment. We do not think that a reference to NESHAP would be more applicable. Inspections must comply with North Carolina and federal law, which includes both NESHAP and AHERA, as applicable. "Inspection" is defined to include reinspections for the purpose of carving reinspections into the category of activity that can be funded under this program.
.1003(b)	Rule .1003(b) -- In accordance with the definition of "Inspection", public schools may conduct reinspections and meet the requirement of this Rule. Reinspections can be conducted by inspectors who, in accordance with AHERA 40 CFR 763.88(b), can assign the category of physical condition to the asbestos-containing material. Reinspections are then reviewed and signed by management planners, as required by AHERA. Is this adequate for public schools? Why require the use of a management planner to conduct asbestos inspections in child-care facilities? Why require the development of a management plan? A management plan requires the completion of detailed forms that are time-consuming to complete and difficult to interpret.	Stephen McLoughlin, Becky Howell	Email	3/2/2022	Thank you for your comment. Yes, the process described in the comment is adequate for public schools. Only a management planner can determine if hazards are present and recommend response actions. The proposed rules do not require the development of a new asbestos management plan for public schools and licensed child care facilities that already have a management plan that meets the requirements of the rules.
.1003(b)	Can previously completed inspections be used in satisfaction of the inspections requirements or will all new inspections have to be done?	Becky Howell	Public Hearing	2/25/2022	Thank you for your comment. Please see the attached FAQ document for additional information.
.1003(b)	How will past inspections fit into this program?	Scott Abel	Public Hearing	2/25/2022	Thank you for your comment. Please see the attached FAQ document for additional information.
.1003(f)	Please verify the email address provided.	Stephen McLoughlin, Becky Howell	Email	3/2/2022	Thank you for your comment. The email address was corrected to general.hhcu@dhhs.nc.gov.
.1003(f)	If an existing public school knows of an asbestos-containing material that has deteriorated over the years, would the original sampling documentation and the most recent AHERA Reinspection be adequate documentation of an "asbestos hazard", or would the school have to hire an inspector and a management planner to re-sample the material in order to procure the documentation that is needed for reimbursement submittal?	Stephen McLoughlin, Becky Howell	Email	3/2/2022	Thank you for your comment. Please see the attached FAQ document for additional information.

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Rule Number	Summary of Comment	Commenter	Method Received	Date Received	DPH Response
.1003(f)(2)	Rule .1003(f)(2) – Participating schools and child-care facilities must meet the AHMP permitting requirements, and a copy of the completed permit application would fulfill this documentation requirement. Facilities conducting small projects that are not required to be permitted by the AHMP. Rules could still be required as a condition of reimbursement to submit a courtesy notification on the same permit application.	Stephen McLoughlin, Becky Howell	Email	3/2/2022	Thank you for your question. The reporting requirements for this program, as set forth in the rules, are separate and distinct from the existing permitting process that is set forth in the asbestos hazard management program (AHMP) rules .
.1003(g)	Rule .1003(g) – This seems completely out of place in Rules defining the requirements of a voluntary financial assistance program. Is the intention really to suggest that if the requirements of this voluntary program are not met, then the child care facility will be considered in violation of the other referenced Rules, neither of which mentions asbestos?	Stephen McLoughlin, Becky Howell	Email	3/2/2022	Thank you for your comment. Under S.L. 2021-180, s. 9G.8., public schools are required to test for lead in water and public schools and licensed child care facilities are required to inspect for asbestos and lead-based paint hazards. Licensed child care facilities that do not test or inspect, or that fail to abate, remediate, or restrict access to hazards that are identified during testing or an inspection, may be subject to licensure action by the Division of Child Development and Early Education.
RULE .1004					
.1004	While the 40 CFR 745.223 definition of a lead inspection indicates that an inspection is a surface-by-surface investigation, the definition of risk assessment does not.	Stephen McLoughlin, Becky Howell	Email	3/2/2022	Thank you for your comment. Please see the attached FAQ document for additional information.
.1004(a)(1)	Rule .1004(a)(1) “Abatement” – It is unnecessarily confusing to the regulated community to change the definition of well-known words like “Abatement”. Perhaps a different word like “remediation”, the definition of which includes work ranging from interim controls to abatement [as defined in NCGS 130A-131.7(15)], could be used instead.	Stephen McLoughlin, Becky Howell	Email	3/2/2022	Thank you for your comment. The term "abatement" was used in this rule to align with the language and requirements of S.L. 2021-180, s. 9G.8.
.1004(a)(3)	Rule .1004(a)(3) “Certified Supervisor” – Typo. The word “and” should be “an”.	Stephen McLoughlin, Becky Howell	Email	3/2/2022	Thank you for your comment. We have made the suggested change.
.1004(a)(5)	In the proposed language for 10A NCAC 41C.1004 (a) (5), it states that an inspection means a risk assessment in accordance with 40 CFR 745.223. HUD has very clear definitions of an inspection and a risk assessment related to LBP. To avoid confusion, the word “inspection” throughout 10A NCAC 41C.1004 should generally be changed to “risk assessment” to avoid confusion and match the HUD definitions.	Russell Harrings	Email	3/2/2022	Thank you for your comment. The term "inspection" was used in this rule to align with the language and requirements of S.L. 2021-180, s. 9G.8. Please see the attached FAQ document for additional information.
.1004(b)	In the proposed language for 10A NCAC 41C.1004 (b), it states an inspection for lead-based paint hazards shall be performed. The proposed regulations point to G.S. 130A-131.7(6) to define a “lead-based paint hazard”, which then points to G.S. 130A-131.7(7) for sources of hazards. G.S. 130A- 131.7(7) includes “any substance that contains lead intended for use by children less than six years of age in an amount equal to or greater than 0.06 percent by weight as determined by chemical analysis. (b)” It also includes “any ceramic ware” (f). Testing that includes any substances or ceramic ware will be very destructive and costly. I propose striking those items and clarifying that hazards to be tested are limited to damaged paint, dust, soil, and drinking water listed in G.S. 130A- 131.7(7) (a), (c), (d), (e), and (g).	Russell Harrings	Email	3/2/2022	Thank you for your comment. "Lead-based paint hazard," as defined at G.S. 130A-131.7(6), only refers to "a condition that is likely to result in exposure to lead-based paint or to soil or dust that contains lead at a concentration that constitutes a lead poisoning hazard." As this definition is already limited to paint, soil, and dust, we do not think that further changes to the rule are necessary.
.1004(a)(5)	Rule .1004(a)(5) “Inspection” – Again, it is unnecessarily confusing to the regulated community to change the meaning of long-defined words like “Inspection”. Why not use the correct title of “Risk Assessment”? Please note that a risk assessment is not required to be a surface-by-surface investigation.	Stephen McLoughlin, Becky Howell	Email	3/2/2022	Thank you for your comment. The term "inspection" was used in this rule to align with the language and requirements of S.L. 2021-180, s. 9G.8. Please see the attached FAQ document for additional information.

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Rule Number	Summary of Comment	Commenter	Method Received	Date Received	DPH Response
.1004(a)(6)	Rule .1004(a)(6) "Inspection report" states that an inspection report should be prepared in accordance with Rule .0807(b). Rule .0807(b) states that a copy of the inspection report should be provided to the HHCU within 45 days. This conflicts with proposed Rule .1004(f)(1) which states that a copy of the report must be provided within 30 days. Fortunately, the requirements for inspections and risk assessments are the same in Rule .0807(b) since it is confusing as to which type of report proposed Rule .1004(a)(6) is referring.	Stephen McLoughlin, Becky Howell	Email	3/2/2022	Thank you for your comment. We agree with the comment and have revised the rule to contemplate a 45 day period.
.1004(b)	Rule .1004(b) states that if lead-based paint hazards are found, then an occupant protection plan (OPP) shall be written by either a certified supervisor or certified designer as per the EPA and NC LHMP regulations. Please note that as per LHMP Rules, an OPP for a school or child care facility must be written by a certified designer. The OPP requirement is important information that should perhaps be broken out of the larger paragraph as .1004(c) is. Will a copy of the OPP be requested?	Stephen McLoughlin, Becky Howell	Email	3/2/2022	Thank you for your comment. Under 10A NCAC 41C .0801, an OPP is required for lead abatement activities. We are not aware of a place in the lead hazard management program (LHMP) rules where the commenter indicates a certified designer is required to write the OPP for a child care facility.
.1004(f)	Rule .1004(f) – The first sentence is unclear.	Stephen McLoughlin, Becky Howell	Email	3/2/2022	Thank you for your comment. We have corrected the email address to general.hhcu@dhhs.nc.gov
.1004(f)(1)	Rule .1004(f)(1) – As mentioned above, Rule .1004(a)(6) states that inspection reports (known as "risk assessments" in all the other regulations referenced by this Rule) should be done in accordance with LHMP Rule .0807(b). LHMP Rule .0807(b) requires a copy of a risk assessment be submitted to the HHCU within 45 days. This proposed Rule .1004(f)(1) requires a copy to be submitted to the HHCU within 30 days.	Stephen McLoughlin, Becky Howell	Email	3/2/2022	Thank you for your comment. We agree with the comment and have revised the rule to contemplate a 45 day period.
.1004(f)(1)(G)	Rule .1004(f)(1)(G) – The results of any laboratory testing are requested. Should copies of the XRF readings also be submitted?	Stephen McLoughlin, Becky Howell	Email	3/2/2022	Thank you for your comment. Yes, sampling documentation should include XRF data, soil, dust and paint chip sampling.
.1004(f)(2)	Rule .1004(f)(2) – Why not take advantage of existing processes and forms and require folks to meet the LHMP permitting requirements for all projects requesting reimbursement? The existing LHMP permit form already includes the information asked for under this Rule, and submission of a permit application will be required by the LHMP Rules for many of these projects.	Stephen McLoughlin, Becky Howell	Email	3/2/2022	Thank you for your question. The reporting requirements for this program, as set forth in the rules, are separate and distinct from the existing permitting process that is set forth in the lead hazard management program (LHMP) rules.
.1004(g)	Rule .1004(g) – The first sentence is unclear. Proposed Rule .1004(b) already requires an inspection (risk assessment?) to qualify for this funding. In addition, the wording of this paragraph makes it sound like compliance with these Rules is compulsory, but it is not according to S.L. 2021-180. Sec.9G.8.	Stephen McLoughlin, Becky Howell	Email	3/2/2022	Thank you for your comment. Under S.L. 2021-180, s. 9G.8., public schools are required to test for lead in water and public schools and licensed child care facilities are required to inspect for asbestos and lead-based paint hazards. Licensed child care facilities that do not test or inspect, or that fail to abate, remediate, or restrict access to hazards that are identified during testing or an inspection, may be subject to licensure action by the Division of Child Development and Early Education.
RULE .1005					
.1005	It would seem appropriate that a school's and/or daycare's construction date (prior to 1978 for lead) would be a factor in determining the applicability of the rule and funding eligibility. Can you clarify?	C. Brett Wester	Email	2/25/2022	Thank you for your comment. Please see the attached FAQ document for additional information.
.1005	Since children aged 6 and under are more at risk for lead exposure, will the rule be limited to elementary schools, or apply to k-12?	C. Brett Wester	Email	2/25/2022	Thank you for your comment. S.L. 2021-180, s. 9G.8. establishes the program that these rules implement and addresses public schools, generally, without an age cutoff. While children under age 6 may be at greater risk for lead exposure, lead and asbestos hazards can present a risk to individuals of all ages.
.1005	Who (what entity) is the recipient for funding applications? How are funding applications made (on standard forms)?	C. Brett Wester	Email	2/25/2022	Thank you for your comment. Please see the attached FAQ document for additional information.
.1005	What is the application process, and will funding approval be granted prior to project execution?	C. Brett Wester	Email	2/25/2022	Thank you for your comment. Please see the attached FAQ document for additional information.

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.1005	What verification (if any) of expenditures, by entities complying with the rule, will be required as evidence to be eligible for funding?	C. Brett Wester	Email	2/25/2022	Thank you for your comment. Rule .1001(f) includes the following: "Notwithstanding the foregoing, to be eligible to participate in any funding mechanism under this Rule, responsible individuals shall make all records regarding testing, inspection, abatement, and remediation available to the Department upon request, including, but not limited to, itemized expense reports for activities funded under this Section." Please see the attached FAQ document for additional information about funding.
.1005	Is there currently a target effective date and notification process to regulated entities?	C. Brett Wester	Email	2/25/2022	Thank you for your comment. This rulemaking effort is being pursued under temporary rulemaking procedures. Following the public comment period, the rules will be presented to the Commission for Public Health (CPH) for consideration of adoption at a special meeting on March 29, 2022. If CPH adopts the rules, then the rules will then be submitted to the Rules Review Commission (RRC) for consideration at their regular meeting in April 2022. If the rules are approved by RRC, they will become effective when the Codifier enters them into the NC Administrative Code.
.1005	Are schools and/or daycares that already perform (or have recently performed) these assessment as part of their operations and maintenance eligible to be reimbursed, or will new assessments be required?	C. Brett Wester	Email	2/25/2022	Thank you for your comment. Please see the attached FAQ document for additional information.
.1005	Pursuant to the amendment to rule 15A NCAC 18A .2816 and G.S. 110-86(3), licensed child care homes are among the licensed child care centers eligible for lead water testing, though they are not required to test. We encourage the inclusion of licensed child care homes among the facilities eligible to participate in the funding mechanism established with S.L. 2021-180, Sec. 9G.8. to fully or partially offset the cost of conducting testing for lead in water.	Vikki Crouse	Email	3/2/2022	Thank you for your comment. We are working with our partners at NCDHHS Division of Child Development and Early Education to address testing for lead hazards in water in licensed child care homes.
.1005	We recommend that the Department encourage public schools to use the same model of self-testing being used at licensed child care facilities during the implementation of S.L. 2021-180, Sec. 9G.8. Having child care center operators collect the initial water samples themselves is likely the most cost effective and accurate means of sampling. While this methodology has been criticized for its susceptibility to dishonest sampling practices, the proposed rule amendment's reliance on self-testing follows the precedent many other environmental rules, such as the Lead and Copper Rule and the Lead Renovation, Repair, and Painting Rule. Collecting drinking water samples for lead is a straightforward task that requires only minimal training to conduct properly. Briefly, the procedure requires that the operator or trained individual simply label the sample bottle, remove the lid, place the bottle under the faucet or fountain spigot, fill the bottle to the neck with tap water, recap the lid, and mail the sample bottle to a state-certified laboratory. In an effort to increase testing accuracy, NC Child worked with RTI International to create publicly available instructional videos to guide child care operators through the process of self-testing. One of the most important stipulations in the sample collection procedure is to collect samples following a stagnation period of at least eight hours, meaning that water outlets within a facility must be inactive for at least eight hours prior to sample collection. As most child care centers are closed over the weekend, child care and public school operators should perform sample collection first thing on Monday mornings for the most accurate test results. Collecting samples Monday morning is feasible for the center or school's operator, but it would be logistically very difficult for state employees to schedule sampling on Monday mornings at the thousands of child care and public school facilities across the state. Therefore, we strongly recommend that the Department encourage the use of the same model of self-testing for lead in drinking water at public schools.	Vikki Crouse	Email	3/2/2022	Thank you for your comment. It is our intention that schools and child care facilities utilize a similar protocol and methodology (the "3Ts" methodology) as was used in Rule 15A NCAC 18A .2816, which governs testing for lead hazards in water in child care centers. This approach would allow for samples to be collected first thing Monday morning.

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.1005	NCRWA requests that the rules be amended to provide that a public water system that is a supplier of water to the public school be provided with notice of any lead poisoning hazard identified by such a school and with notice of any remediation or abatement action that has been undertaken by the school. Therefore, NCRWA requests that the proposed rules be particularly modified as follows: Amend proposed 10A NCAC 41C.1001 as follows: a. To define a "public water system" as having the same meaning as N.C.G.S. 130A- 313(10). b. To define a "school's supplier" as the public water system that supplies drinking water to the school. Amend proposed 10A NCAC 41C .1005 as follows: a.To require the school to also provide notification of the testing results required by proposed subsection (b)(l) to the school's supplier. b.To require the school to provide notice to the school's supplier when the school receives notice from the Department's testing of a lead level at or above the lead poisoning hazard level in the proposed subsection (b)(8). c. To require the school to provide notice of all actions taken to remediate the lead poisoning hazard to the school's supplier within 30 days from the date of the remediation that is required by proposed subsection (b)(10).	Jon P. Carr / NC Rural Water Association	Email	3/3/2022	Thank you for your comment. Under these rules, DPH anticipates collecting information about identified lead hazards in water and remediation activities and sharing data with the Department of Environmental Quality so that it may be shared further with public water suppliers and others.
.1005(b)(5)(B)	Access to water free of cost 10A NCAC 41C .1005 Subparagraph (b)(5, B) We suggest adding: "This can include but is not limited to taps with detectable lead below the lead poisoning hazard level or US Food and Drug Administration approved bottled water."	Crystal Lee Pow Jackson / RTI	Email	3/29/2022	Thank you for your comment. We agree with that these may be options for ways to provide safe water, but believe that this information is better addressed in policy or guidance rather than in rules, which establish minimum requirements.
.1005(b)(3)	Broken Link 10A NCAC 41C .1005 Subparagraph (b)(3). The link to the United States Environmental Protection Agency (US EPA) 3Ts document does not work. The US EPA archived the file in Fall 2021. Suggest replacing with "3Ts for Reducing Lead in Drinking Water", found at https://www.epa.gov/ground-water-and-drinking-water/3tsreducing-lead-drinking-water .	Crystal Lee Pow Jackson / RTI	Email	3/30/2022	Thank you for your comment. The web address has been updated by the EPA and we have added the corrected web address to the Rule.
.1005(b)1	Many of our schools have been tested for lead in drinking water by our municipal providers, typically one representative tap sample per school. If these schools tested negative on most recent sampling, do we still have to go back and test every outlet per paragraph (b)(1)?	Anthony Cox	Email	3/4/2022	Thank you for your comment. Yes, all outlets that provide water that is used for drinking or food preparation must be tested in accordance with the Rule.
.1005(b)(1)	.1005 LEAD POISONING HAZARDS IN DRINKING WATER: Paragraph (b)(1) states all drinking or food preparation outlets. Does this include food and consumer science classrooms? Culinary Arts CTE rooms? Teacher breakrooms or lounges? Etc....	Anthony Cox	Email	3/4/2022	Thank you for your comment. Yes, all outlets that provide water that is used for drinking or food preparation must be tested in accordance with the Rule.
.1005(b)(5)-(10)	Threshold for eligibility for drinking water mitigation funding 10A NCAC 41C .1005 Subparagraph (b)(5-10) Due to the variable nature of lead release in water and sensitivity to different sampling conditions, we suggest modifying the threshold that meets the requirements for remediation of lead in drinking water. We recommend that public schools and child care facilities should be eligible for mitigation after initial sample results are at or above the lead poisoning hazard level of 10 parts per billion. We also suggest that the Department conduct follow-up sampling after remediation (rather than a follow-up sample before remediation) to confirm that the actions to reduce or eliminate lead were effective. We suggest the following revisions (5) When a public school receives test results from an accredited laboratory certified in Method 200.8 that indicate a lead concentration at or above the lead poisoning hazard level in a water sample collected by the responsible individual. the responsible individual shall:	Crystal Lee Pow Jackson / RTI	Email	3/18/2022	Thank you for your comment. We have incorporated the suggestion that the Department conduct follow up sampling after remediation has been conducted to confirm that the water outlet no longer produces water with lead levels that present a hazard.

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Rule Number	Summary of Comment	Commenter	Method Received	Date Received	DPH Response
	<p>(A) clearly restrict access using signage and tape, shut off the water outlet valve, or physically remove any water outlet(s) used for drinking or food preparation that have lead concentrations at or above the lead poisoning hazard level; and</p> <p>(B) ensure that all students and staff have access to water free of cost that does not contain lead concentrations at or above the lead poisoning hazard level for drinking and food preparation.</p> <p>(6) When notified of a water lead level at or above the lead poisoning hazard level, the Department shall conduct sampling at the water outlet identified to have a water lead level at or above the lead poisoning hazard level within 20 business days of notification.</p> <p>(7) If an initial water sample collected by the Department reveals a water lead level at or above the lead poisoning hazard level:</p> <p>(A) the requirement of Rule .1002(b)(1) of this Section shall be considered met;</p> <p>(B) notice shall be given in accordance with Rule 15A NCAC 18A .2402(c); and</p> <p>(C) the responsible individual shall continue to follow Subparagraph (b)(5) of this Rule until the Department determines the water outlet(s) are not producing water lead levels at or above the lead poisoning hazard level and notifies the responsible individual, the local superintendent, and the Department of Public Instruction in writing of this determination.</p> <p>(8) Within five business days of receiving the test results of the Department's water analysis that shows a water lead level at or above the lead poisoning hazard level from an accredited laboratory, the responsible individual shall provide written notification of the test results to the parents or legal guardians of the children attending the public school and the staff of the public school in accordance with the United States Environmental Protection Agency guidance specified in Subparagraph (b)(3) of this Rule.</p> <p>(9) Within five business days of receiving the test results of the Department's water analysis that shows a water lead level at or above the lead poisoning hazard level, the public school shall make the test results available to the public, free of charge. The responsible individual may share an online link of the test results or post test results to the public school's website to satisfy the requirement to make the test results available to the public.</p> <p>(10) Remediation of water outlet(s) producing water lead levels at or above the lead poisoning hazard level shall ensure that water produced is below the lead poisoning hazard level and may include replacement of service lines, pipes, and fixtures and the installation of filters at affected faucets. Faucet fixture replacement, water fountain replacement, and the installation and maintenance of filters certified to remove lead are expected to be the most common actions. Within 30 business days from the date on which remediation is conducted under this Rule, the responsible individual shall submit the following information to the Program using a standardized online portal provided to use for standardized documentation:</p> <p>(A) the name and contact information of the responsible individual;</p> <p>(B) the name and address, including county, of the public school;</p> <p>(C) the steps taken to remediate the lead poisoning hazard; and</p> <p>(D) the date on which the remediation was completed.</p> <p>(11) Remediation shall not be considered complete until a final clearance test is conducted by the Department. Within 20 business days of receiving the remediation notification the Department shall conduct sampling at the water outlet remediated to confirm water outlets are no longer producing water lead levels at or above the lead poisoning hazard level.</p>				

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.1005(b)(10)	<p>Add specificity to drinking water remediation standards 10A NCAC 41C .1005 Subparagraph (b)(10) States like Michigan and Colorado have passed or are proposing lead remediation requirements in schools. These state's rules explicitly state the remediation standards based on a model bill drafted by the Natural Resources Defense Council. We suggest the North Carolina temporary rules include standards for drinking water remediation, this can be achieved with the following addition:</p> <p>(10) Remediation of water outlet(s) producing water lead levels at or above the lead poisoning hazard level shall ensure that water produced is below the lead poisoning hazard level and may include replacement of service lines, pipes, and fixtures and the installation of filters at affected faucets. The initial mitigation at taps with lead concentration results at or above the state lead poisoning hazard level is defined as the replacement of faucet fixtures and water fountains, along with the installation of filters certified to remove lead. The replacement of lead service lines and piping may be considered, as resources allow, for facilities with taps where building-wide lead levels are at or above the lead poisoning hazard level. If remediating eligible water fountains, faucets, and fixtures responsible individuals must:</p> <p>(A) Remove or replace all lead water coolers banned by the United States Environmental Protection Agency found in its publication, 3Ts for Reducing Lead in Drinking Water in Schools and Child Care Facilities – Appendix B; https://www.epa.gov/groundwater-and-drinking-water/3ts-reducing-lead-drinking-water.</p> <p>(B) Ensure replacement faucets and fixtures are certified lead-free under NSF/ANSI 372 or NSF/ANSI 61 and filters are certified to remove lead under NSF/ANSI 53 and particulates under NSF/ANSI 42.</p> <p>(C) Ensure that the number of water fountains in the facility continues to meet North Carolina Building Code Minimum Number of Fixture standards.</p> <p>(D) Any installed filters shall include a performance indication device and schools shall develop a drinking water quality management plan for maintaining and replacing filter cartridges at manufacturer-recommended intervals.</p> <p>(11) Within 30 business days from the date on which remediation is conducted under this Rule, the responsible individual shall submit the following information to the Program using a standardized online portal provided to use for standardized documentation:</p> <p>(A) the name and contact information of the responsible individual;</p> <p>(B) the name and address, including county, of the public school;</p> <p>(C) the steps taken to remediate the lead poisoning hazard; and</p> <p>(D) the date on which the remediation was completed.</p>	Crystal Lee Pow Jackson / RTI	Email	3/19/2022	Thank you for your comment. We agree that these are useful standards to use for remediation but feel that this information is better presented in guidance or policy rather than in rules.
.1005(b)	<p>Add specificity to use of drinking water funds 10A NCAC 41C .1005 Subparagraph (b). We recommend adding the following statements in the event that available funds do not match the total need for the state. Testing should be completed at public schools and licensed child care facilities that have not previously conducted testing at all drinking and cooking taps prior to providing mitigation support and funding for mitigation. Public schools or child care facilities that already conducted testing under 15A NCAC 18A.2816 or prior voluntary testing may also request to participate in re-testing and/or mitigation funds if resources allow.</p>	Crystal Lee Pow Jackson / RTI	Email	3/24/2022	Thank you for your comment. To our knowledge, few public schools would have already conducted testing of all water outlets that provide water for drinking and food preparation in accordance with this Rule. Under Rule .1002, child care centers that have already conducted testing under 15A NCAC 18A .2816 may be eligible for funding for remediation under this program.
.1005(b)(6)-(7)	<p>.1005 Paragraph (b)(6) requires the Department to conduct follow-up sampling within 20 business days of notification by school's laboratory. Paragraph (b)(7) provides no similar time constraint on the Department for notice that the re-test is positive, and again for the notification to the Superintendent that all is OK to resume using the water outlets. We are complying with (b)(5) the entire time and do not wish to be "delayed" by backlog of Department handling every school in the state!</p>	Anthony Cox	Email	3/4/2022	Thank you for your comment. We have revised the process described in Rule .1005 so that the Department is only involved in the collection of a post-remediation sample to ensure that the water outlet at issue is no longer producing water with lead at a hazardous level. This is expected to reduce the overall timeline for the processes set out in this Rule.
RULE .1006					

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.1006	<p>If this Rule was written to address concerns that there are not enough certified Risk Assessors to conduct the work that may result from this funding, please consider allowing certified Inspectors to conduct inspections (not risk assessments) instead. Schools and child care facilities will most likely be turning to the HHCU’s website for a listing of certified Risk Assessors, and they won’t have access to contact information for formerly certified individuals. It is not clear how formerly certified Risk Assessors will be notified of these opportunities. In addition, it is highly unlikely that individuals allowing their Risk Assessor certification to lapse have kept their XRFs. If the intent of this Rule is to allow the use of individuals certified by other state programs that allow lead training to be taken every three years, that is not clear.</p>	<p>Stephen McLoughlin, Becky Howell</p>	<p>Email</p>	<p>3/2/2022</p>	<p>Thank you for your comment. This rule is intended to allow risk assessors who are certified in states with which North Carolina has a reciprocity agreement and that operate on a 36-month refresher course cycle, but who otherwise meet North Carolina's requirements for certification, to work as risk assessors in North Carolina solely for the purpose of carrying out the work needed for this program. The Health Hazards Control Unit (HHCU) website listing of certified professionals is updated on a monthly basis and the notice to interested parties that was sent out on February 2, 2022 was shared with members of the industry.</p>