

**Frequently Asked Questions (FAQs)
Regarding
Session Law 2021-180, Sec. 9G.8. and Proposed Rules 10A NCAC 41C .1001-.1007**

March 23, 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 Commission for Public Health (CPH) is proposing to adopt rules [10A NCAC 41A .1001-.1007](#) under temporary procedures to implement requirements for these programs.

1. What does the Session Law require public school units and licensed child care facilities to do?

Under the Session Law, public school units are required to test for lead levels in drinking water. To the extent feasible and practical, this testing is directed to occur following the same model as testing conducted in child care centers under [15A NCAC 18A .2816](#). The requirements that apply to testing of water in public school units have been set out in proposed rule 10A NCAC 41C .1005.

In addition, public school units and licensed child care facilities are required to conduct inspections for lead paint and asbestos hazards in their facilities. The requirements that apply to these inspections have been set out in proposed rules 10A NCAC 41C .1003 (asbestos) and 10A NCAC 41C .1004 (lead-based paint).

2. How will the testing for lead in drinking water in public school units and the inspections for lead-based paint and asbestos hazards in public school units and licensed child care facilities be funded under these programs?

At this time, we anticipate that one or more vendors will be contracted by the State to assist public school units in meeting the requirement to test water outlets for lead, including training public school units in collecting samples, providing testing supplies, and securing analysis of samples by a qualified laboratory. It is also anticipated that one or more vendors will be contracted by the State to conduct the required lead-based paint and asbestos inspections in public school units and licensed child care facilities.

We anticipate that services provided under these State contracts will be provided to public school units and licensed child care facilities free of charge under the programs.

3. Does the Session Law or proposed rules 10A NCAC 41C .1001-.1007 require public school units and licensed child care facilities to remediate or abate identified hazards?

The Session Law does not require public school units or licensed child care facilities to participate in remediation or abatement activities. However, if a hazard is identified, the public school unit or licensed child care facility is required to restrict access to the hazard until it is remediated or abated. This may include turning off the water to an impacted water faucet, closing off an impacted room, or taking other actions to protect against exposure. In accordance with licensure and sanitation requirements, licensed child care facilities are required to be free from lead poisoning hazards and other hazards that may injure children. Public school units are also required to provide safe and sanitary conditions.

4. How will the remediation of lead in drinking water in public school units and the abatement of lead-based paint and asbestos hazards in public school units and licensed child care facilities be funded under these programs?

NCDHHS, Division of Public Health in collaboration with the Department of Public Instruction and NCDHHS, Division of Child Development and Early Education are in the process of developing a budgetary policy that

will set out the process for public school units and licensed child care facilities to access funds for remediation and abatement. Public school units will be required to provide matching funds for lead-based paint and asbestos hazard abatement in the amount of one dollar (\$1.00) of local funds for every two dollars (\$2.00) of State funds. Stakeholders, including public school units, licensed child care facilities, and industry professionals, will be consulted in the development of this budgetary policy.

5. What if my school or child care facility had an asbestos or lead-based paint inspection done recently?

We are considering accepting documentation of recent inspections in satisfaction of the lead-based paint and asbestos inspection requirements. If accepted, these recent inspections will still have to meet certain criteria, such as being conducted by a properly accredited or certified professional in compliance with 10A NCAC 41C. We received several comments on this topic during the public comment period on the proposed temporary rules and are currently processing this feedback to make recommendations to the Commission for Public Health.

6. What if my school or child care facility is located in a recently constructed building?

We are considering accepting other forms of documentation that demonstrate that a recently constructed building is free from the use of lead-based paint or asbestos containing material in satisfaction of the lead-based paint and asbestos inspection requirements. An example of documentation under consideration for the asbestos inspection requirement is a signed statement from an architect, project engineer, or accredited inspector, made in accordance with 40 CFR 763.99(a)(7), that no asbestos containing material was used as building material for the school or child care facility. An example of documentation under consideration for the lead-based paint inspection requirement is an attestation from owners of buildings built after 1978 that lead-based paint was not used in the building. We received several comments on this topic during the public comment period on the proposed temporary rules and are currently processing this feedback to make recommendations to the Commission for Public Health.

7. Why is the lead-based paint inspection in the proposed rules defined as a risk assessment rather than as a surface-by-surface inspection, as it is elsewhere 10A NCAC 41C?

S.L. 2021-180, Sec. 9G.8, requires public school units and licensed child care facilities to conduct an inspection for lead-based paint, but defers to the Commission for Public Health in the implementation of that inspection. As the legislation is focused on identifying and protecting children from hazards, it was determined that aligning the required inspection with the components of a risk-assessment, rather than a surface-by-surface inspection, would best meet the goal of identifying and assessing the nature and severity of hazards. More information on risk assessments is available [here](#).

8. Why has this rulemaking effort moved so quickly?

It is the standard practice of the Environmental Health Section of the NCDHHS, Division of Public Health to engage stakeholders and solicit feedback on potential rules before commencing formal rulemaking. However, due to the short timeframe to spend appropriated funds, a decision was made to pursue adoption of this rule package under the temporary rulemaking process. Federal funding for these programs is currently required to be obligated by the end of 2024 and expended by the end of 2026. Temporary rulemaking allows for an abbreviated rulemaking timeline, enabling us to more quickly stand up and fund the first phase of these programs, involving testing and inspections. Once temporary rules are in effect, we expect to commence the permanent rulemaking process, which will provide additional opportunities for stakeholder engagement, including a 60-day public comment period and another public hearing.