

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

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

10A NCAC 41C .1001 DEFINITIONS

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

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

*History Note: Authority S.L. 2021-180, s. 9G.8;
Temporary Adoption Eff. April 29, 2022;
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10A NCAC 41C .1002 FUNDING

(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, s. 9G.8. to fully or partially offset the cost of conducting testing for lead in water and inspections for asbestos and lead-based paint hazards, when a test for lead in water is conducted by May 1, 2024 or an inspection for lead-based paint or asbestos is conducted by May 1, 2024 and the test or inspection is conducted in accordance with the rules of this Section.

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

- (1) lead or asbestos is detected that meets the requirements under the rules of this Section for abatement or remediation;

- (2) the abatement or remediation, as applicable, is performed in accordance with the rules of this Section; and
- (3) replacement materials used to abate asbestos hazards do not contain more than 1 percent asbestos and replacement materials used to abate lead-based paint hazards do not contain lead in excess of 90 parts per million as confirmed by a safety data sheet, letter from the manufacturer, or laboratory test results.

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

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

- (1) to fully or partially offset the cost of conducting an inspection in accordance with Rules .1003(b) or .1004(b) of this Section, as applicable, except that the inspection 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; and
- (2) to fully or partially offset the cost of conducting abatement when lead-based paint or asbestos is detected that meets the requirements under the Rules of this Section for abatement and abatement is conducted in accordance with Rules .1003(e) and .1004(e) of this Section and with the limitation on materials set out in Subparagraph (b)(3) of this Rule, except that the 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.

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

(f) 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 S.L. 2021-180, s. 9G.8.

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

History Note: Authority S.L. 2021-180, s. 9G.8;

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

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

- (1) "Abatement" means as defined at G.S. 130A-444(4), and also includes renovation activities that are carried out to repair, maintain, remove, isolate, enclose, replace, or encapsulate asbestos containing material. 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 in accordance with 40 C.F.R. 763.90(i).
- (2) "Air monitor" means as defined at G.S. 130A-447 and 10A NCAC 41C .0601(a)(3).
- (3) "Asbestos" means as defined at G.S. 130A-444(2).
- (4) "Asbestos containing material" means as defined at G.S. 130A-444(3).
- (5) "Asbestos hazard" means a condition that results in exposure to asbestos in excess of the standards set forth in 10A NCAC 41C .0607(a) or to a category of asbestos containing material defined at 40 C.F.R. 763.88(b)(1)-(4).
- (6) "Inspection" in a licensed child care facility means an examination of the facility for the presence of asbestos hazards that is conducted by an inspector in accordance with the rules of Section .0600 of this Subchapter. "Inspection" in a public school means a reinspection conducted in alignment with G.S. 130A-445, 10A NCAC 41C .0604, and 40 C.F.R.763.85(b).
- (7) "Inspector" means as defined at G.S. 130A-447 and 10A NCAC 41C .0601(a)(7).
- (8) "Management Planner" means as defined at G.S. 130A-447 and 10A NCAC 41C .0601(a)(9).

(b) Each responsible individual shall ensure that an inspection is conducted for asbestos hazards in each public school or licensed child care facility for which he or she is responsible by May 1, 2024. Inspections for asbestos hazards shall be performed by an inspector and documented in an inspection report in accordance with 40 C.F.R. 763, Subpart E. A management planner shall review the inspection 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.

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

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

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

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

- (1) Within 45 calendar days following the date on which an inspection is completed pursuant to this Rule, the management planner shall report the following on a form provided by the Department:
 - (A) the name, address, email address, and phone number of the responsible individual;
 - (B) the name, address, email address, phone number, and accreditation number of the management planner;
 - (C) the name and address, including county, of the individual school and the public school unit or the licensed child care facility;
 - (D) whether the facility for which the responsible individual is submitting the information is a public school or a licensed child care facility;
 - (E) whether the inspection identified the presence of an asbestos hazard;
 - (F) a description of any identified asbestos hazard; and
 - (G) the results of any laboratory testing conducted during the inspection.
- (2) If the public school or licensed child care facility plans to use a previous inspection or documentation under Paragraph (h) of this Rule, then the responsible individual shall submit a copy of the inspection report, reinspection report, or management plan associated with the previous inspection or the documentation by May 1, 2024 in lieu of meeting the requirements in Subparagraph (f)(1) of this Rule.
- (3) At least 10 calendar days before abatement conducted pursuant to this Rule begins, the responsible individual shall report the following on a form provided by the Department:
 - (A) the name, address, email address, and phone number of the responsible individual;
 - (B) the name and address, including county, of the individual school and the public school unit or the licensed child care facility, as applicable;
 - (C) the names and accreditation numbers of the professionals who will conduct the abatement and the email address and phone number of the on-site asbestos supervisor who will oversee the abatement;
 - (D) whether the facility for which the responsible individual is submitting the report is a public school or a licensed child care facility;
 - (E) the dates on which the abatement is scheduled to occur; and
 - (F) a description of the planned abatement that contains information on the type of materials to be abated, the location of the abatement, the quantity of material to be abated, and the method of abatement.
- (4) Within 45 calendar days following the date on which an abatement completed pursuant to this Rule, the responsible individual shall report the following:

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

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

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

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

*History Note: Authority S.L. 2021-180, s. 9G.8;
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10A NCAC 41C .1004 LEAD-BASED PAINT INSPECTIONS AND ABATEMENT IN NORTH CAROLINA PUBLIC SCHOOLS AND LICENSED CHILD CARE FACILITIES

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

- (1) "Abatement" means as defined at 40 C.F.R. 745.223, and also includes "interim controls" as defined at 40 C.F.R. 745.83. Abatement shall not be considered complete until a final clearance inspection of the public school or licensed child care facility is performed by a certified risk assessor in accordance with the standards set forth at 40 C.F.R. 745.227.

- (2) "Certified Project Designer" means an individual who meets the requirements for a project designer as set forth in G.S. 130A-453.03 and Rule .0802 of this Subchapter.
- (3) "Certified Supervisor" means an individual who meets the requirements for a supervisor as set forth in G.S. 130A-453.03 and Rule .0802 of this Subchapter.
- (4) "Certified Risk Assessor" means an individual who meets the requirements for a risk assessor as set forth in G.S. 130A-453.03 and Rule .1006 of this Section.
- (5) "Inspection" means a risk assessment conducted in accordance with 40 C.F.R. 745.223.
- (6) "Inspection report" means a summary prepared in accordance with Rule .0807(b) of this Subchapter.
- (7) "Lead-based paint hazard" means as defined at G.S. 130A-131.7(6).
- (8) "Lead poisoning hazard" means as defined at G.S. 130A-131.7(7).
- (9) "Occupant protection plan" means as defined at Rule .0801(a)(6) of this Subchapter.

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

(c) If the certified risk assessor detects a lead-based paint hazard, then the responsible individual shall restrict access to the identified lead-based paint hazard until abated in accordance with this Rule.

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

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

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

- (1) Within 45 calendar days following the date on which an inspection is completed pursuant to the Rule, the certified risk assessor shall report the following on a form provided by the Department:
 - (A) the name, address, email address, and phone number of the responsible individual;
 - (B) the name, address, email address, phone number, and certification number of the certified risk assessor;
 - (C) the name and address, including county, of the individual school and the public school unit or the licensed child care facility;

- (D) whether the facility for which the responsible individual is submitting the report is a public school or a licensed child care facility;
 - (E) whether the inspection identified the presence of a lead-based paint hazard;
 - (F) a description of any identified lead-based paint hazard; and
 - (G) the results of any laboratory testing conducted during the inspection.
- (2) If the public school or licensed child care facility plans to use a previous inspection or a signed attestation under Paragraph (h) of this Rule, then the responsible individual shall submit a copy of the inspection report associated with the previous inspection or the signed attestation by May 1, 2024 in lieu of meeting the requirements in Subparagraph (f)(1) of this Rule.
- (3) At least 10 calendar days before abatement conducted pursuant to this Rule begins, the responsible individual shall report the following on a form provided by the Department:
- (A) the name, address, email address, and phone number of the responsible individual;
 - (B) the name and address, including county, of the individual school and the public school unit or the licensed child care facility, as applicable;
 - (C) the names and certification numbers of the professionals who will conduct the abatement and the email address and phone number of the on-site lead supervisor who will oversee the abatement;
 - (D) whether the facility for which the responsible individual is submitting the report is a public school or a licensed child care facility;
 - (E) the dates on which the abatement is scheduled to occur; and
 - (F) a description of the planned abatement that contains information on the type of materials to be abated, the location of the abatement, the quantity to be abated, and the method of abatement.
- (4) Within 45 calendar days following the date on which abatement is completed pursuant to this Rule, the responsible individual shall report the following:
- (A) the name, address, email address, and phone number of the responsible individual;
 - (B) the name and address, including county, of the individual school and the public school unit or the licensed child care facility;
 - (C) whether the facility for which the responsible individual is submitting the report is a public school or a licensed child care facility;
 - (D) the date on which the abatement was completed; and
 - (E) a report of the results of the final clearance inspection.

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

with this Rule shall be considered a violation of 15A NCAC 18A .2816(a), 10A NCAC 09 .0601(f), or 10A NCAC 09 .1707(2), as applicable.

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

- (1) the public school or licensed child care facility has previously completed a risk assessment of its buildings that meets the requirements of 40 C.F.R. 745.223; or
- (2) the responsible individual of a public school or licensed child care facility located in a building that was built after February 28, 1978 signs a statement attesting that no lead-based paint was used in the building.

History Note: Authority S.L. 2021-180, s. 9G.8;
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10A NCAC 41C .1005 LEAD POISONING HAZARDS IN DRINKING WATER IN NORTH CAROLINA PUBLIC SCHOOLS

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

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

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

- (1) Responsible individuals at public schools shall complete a one-time test of all water outlets used for drinking or food preparation. The responsible individual shall provide documentation of testing results for review by the Department during routine sanitation inspections under Rule 15A NCAC 18A .2402(a).
- (2) Initial water samples shall be collected by the responsible individual and tested in accordance with Subparagraph (b)(3) of this Rule by May 1, 2024.
- (3) The responsible individual shall collect samples and submit them for testing in accordance with guidance specified by the United States Environmental Protection Agency in its publication, 3Ts for Reducing Lead in Drinking Water in Schools and Child Care Facilities, which is hereby incorporated by reference, including any subsequent editions or amendments, and available free of charge at: <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 of up to 72 hours. Samples shall be analyzed by a laboratory certified by the North Carolina State Laboratory of Public Health to analyze for lead in drinking water.

- (4) When a water sample is analyzed for lead content by a laboratory under this Rule, the laboratory shall notify the Department of the test results by electronic submission of the elements set out in G.S. 130A-131.8.
- (5) When a public school receives test results from a laboratory indicating that a water sample collected by the responsible individual contains a lead concentration at or above the lead poisoning hazard level, the responsible individual shall:
 - (A) restrict access to any water outlet(s) used for drinking or food preparation that have lead concentrations at or above the lead poisoning hazard level;
 - (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; and
 - (C) continue to follow Parts (b)(5)(A) - (B) of this Rule until the Department determines in accordance with Subparagraph (b)(10) of this Rule that the water outlet(s) are not producing water lead levels at or above the lead poisoning hazard level and notifies the responsible individual and the Department of Public Instruction in writing of this determination.
- (6) If a water sample collected by the responsible individual reveals a water lead level at or above the lead poisoning hazard level then the requirement of Rule .1002(b)(1) of this Section shall be considered met.
- (7) Within five business days of receiving the test results of a water analysis that shows a water lead level at or above the lead poisoning hazard level, 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.
- (8) Within five business days of receiving the test results of a 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 post test results to the public school's website to satisfy the requirement to make the test results available to the public.
- (9) 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. 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:
 - (A) the name and contact information of the responsible individual;
 - (B) the name and address, including county, of the public school;
 - (C) the steps taken to remediate the lead poisoning hazard; and
 - (D) the date on which the remediation was completed.

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

History Note: Authority S.L. 2021-180, s. 9G.8;
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10A NCAC 41C .1006 CERTIFIED RISK ASSESSORS

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

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

History Note: G.S. 130A-453.03; 130A-453.05; S.L. 2021-180, s. 9G.8;
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10A NCAC 41C. 1007 INCORPORATION BY REFERENCE

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

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