



NC DEPARTMENT OF
**HEALTH AND
HUMAN SERVICES**

Commission for Public Health

ROY COOPER • Governor
MANDY COHEN, MD, MPH • Secretary
BETH LOVETTE, MPH, BSN, RN • Acting Director,
Division of Public Health

MEMORANDUM

DATE: June 3, 2019
TO: Rulemaking Interested Persons
FROM: Virginia Niehaus, Rulemaking Coordinator, Commission for Public Health
RE: Notification of Proposed Amendment of 15A NCAC 18A .2816 – Lead Poisoning Hazards in Child Care Centers

Pursuant to G.S. 150B-21.2, this memorandum serves as the required notice to interested persons that the NC Commission for Public Health (CPH) is proposing to amend 15A NCAC 18A .2816 – Lead Poisoning Hazards in Child Care Centers. The proposed rule amendment requires that child care centers periodically test for lead in water from outlets used for drinking and food preparation and mitigate if testing reveals lead concentrations above the lead hazard level. CPH has submitted notice of its intent to amend this rule to the NC Office of Administrative Hearings (OAH).

In accordance with G.S. 150B-21.4, a fiscal note was prepared for this rule amendment and approved by CPH. The amendment will have an impact on state and local funds as well as a substantial economic impact. The fiscal note was approved by the NC Office of State Budget and Management (OSBM) on May 8, 2019.

The notice of text that was published in today's edition of the NC Register is attached to this memorandum and may be found on OAH's website at <https://www.oah.nc.gov/rules-division/north-carolina-register>. A copy of the proposed rule text and fiscal note may be found on the CPH's website at <https://cph.publichealth.nc.gov/>.

A public hearing on this rule is scheduled for June 24, 2019 at 10:00 a.m. in the Cardinal Conference Room, Building 3, 5605 Six Forks Road, Raleigh, NC 27609.

CPH is accepting public comments on this rule amendment and fiscal note from June 3, 2019 – August 2, 2019. You may submit comments by email to cphcomment@lists.ncmail.net or by mail to Virginia Niehaus, Rulemaking Coordinator, Commission for Public Health, 1931 Mail Service Center, Raleigh, NC 27699-1931. Comments will also be accepted at the public hearing. The proposed effective date of this rule amendment is October 1, 2019.

Should you have questions related to this memorandum, the proposed rule, or the fiscal note, please contact Ed Norman, Division of Public Health, Environmental Health Section at (919) 707-5951.

Attachment

cc: Dr. Ronald May, Chair, NC Commission for Public Health
Beth Lovette, Acting Director, Division of Public Health
Larry Michael, Environmental Health Section Chief, Division of Public Health
Ed Norman, Environmental Program Manager, Division of Public Health

NC DEPARTMENT OF HEALTH AND HUMAN SERVICES • DIVISION OF PUBLIC HEALTH

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AN EQUAL OPPORTUNITY / AFFIRMATIVE ACTION EMPLOYER

TITLE 15A – DEPARTMENT OF ENVIRONMENTAL QUALITY

Notice is hereby given in accordance with G.S. 150B-21.2 that the Commission for Public Health intends to amend the rule cited as 15A NCAC 18A .2816.

Link to agency website pursuant to G.S. 150B-19.1(c): <https://cph.publichealth.nc.gov/>

Proposed Effective Date: *October 1, 2019*

Public Hearing:

Date: *June 24, 2019*

Time: *10:00 a.m.*

Location: *Cardinal Conference Room, located at 5605 Six Forks Road, Raleigh, NC 27609*

Reason for Proposed Action: *Child care centers serve young children who are especially vulnerable to the negative effects of lead exposure. Currently, there is no requirement for child care centers served by public water systems to investigate the presence of lead in their water at the point of use. The proposed rule amendment requires that child care centers periodically test for lead in water from outlets used for drinking and food preparation and mitigate if testing reveals lead concentrations above the lead hazard level.*

Comments may be submitted to: *Virginia Niehaus, Rulemaking Coordinator, 1931 Mail Service Center, Raleigh, NC 27699-1931; phone (919) 707-5006; email cphcomment@lists.ncmail.net*

Comment period ends: *August 2, 2019*

Procedure for Subjecting a Proposed Rule to Legislative Review: If an objection is not resolved prior to the adoption of the rule, a person may also submit written objections to the Rules Review Commission after the adoption of the Rule. If the Rules Review Commission receives written and signed objections after the adoption of the Rule in accordance with G.S. 150B-21.3(b2) from 10 or more persons clearly requesting review by the legislature and the Rules Review Commission approves the rule, the rule will become effective as provided in G.S. 150B-21.3(b1). The Commission will receive written objections until 5:00 p.m. on the day following the day the Commission approves the rule. The Commission will receive those objections by mail, delivery service, hand delivery, or facsimile transmission. If you have any further questions concerning the submission of objections to the Commission, please call a Commission staff attorney at 919-431-3000.

Fiscal impact. Does any rule or combination of rules in this notice create an economic impact? Check all that apply.

- State funds affected
- Local funds affected
- Substantial economic impact (\geq \$1,000,000)
- Approved by OSBM
- No fiscal note required

CHAPTER 18 - ENVIRONMENTAL HEALTH

SUBCHAPTER 18A - SANITATION

SECTION .2800 - SANITATION OF CHILD CARE CENTERS

15A NCAC 18A .2816 LEAD POISONING HAZARDS IN CHILD CARE CENTERS

(a) In child care centers, areas accessible to children shall be free of identified lead poisoning hazards as defined under G.S. 130A-131.7(7).

(b) The following actions shall be taken to ensure that drinking water in child care centers is free of identified lead poisoning hazards as defined under G.S. 130A-131.7(7)(g).

- (1) Child care operators, as defined under G.S. 110-86(7), shall test, at least once every three years, all water outlets used for drinking or food preparation. Samples shall also be collected and tested within 30 calendar days of completion of any renovations or repairs that may impact the facility's drinking water infrastructure, such as repair or replacement of all or part of drinking water service lines or faucets. The operator shall provide

- documentation of testing results for review by the Department of Health and Human Services (Department) during each unannounced routine sanitation inspection under Rule .2834(b) of this Section.
- (2) For centers that submit an application for licensure after the effective date of this Rule, initial samples shall be collected by the child care operator and tested in accordance with Subparagraph (b)(4) of this Rule during the license application process, in accordance with 10A NCAC 09 .0302(b).
- (3) For all other centers, initial samples shall be collected by the child care operator and tested in accordance with Subparagraph (b)(4) of this Rule within one year of the effective date of this Rule.
- (4) Samples shall be collected and tested 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 incorporated by reference with subsequent changes or amendments and available free of charge at <https://www.epa.gov/dwreginfo/3ts-reducing-lead-drinking-water-schools-and-child-care-facilities>. 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.
- (5) 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 in accordance with G.S. 130A-131.8.
- (6) When a child care center receives test results from a laboratory indicating that a water sample collected by the child care operator contains a lead concentration at or above the lead poisoning hazard level defined in G.S. 130A-131.7(7)(g), the child care operator shall immediately:
- (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; and
- (B) ensure that all children 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.
- (7) 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 seven calendar days of notification.
- (8) If a water sample collected by the Department reveals a water lead level at or above the lead poisoning hazard level, the child care operator shall continue to restrict access to water outlet(s) and provide alternate water as set out in Subparagraph (b)(6) 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 child care operator and the Division of Child Development and Early Education in writing of this determination.
- (9) Failure to comply with Paragraph (a) of this Rule or any one or more components of this Paragraph shall be deemed a violation of this Rule subject to demerits under Rule .2834(c)(20) of this Section.
- (10) Within three business days of receiving the test results of the Department's water analysis that indicate a water lead level at or above the lead poisoning hazard level, the child care operator shall provide written notification of the test results to the parents or legal guardians of the children attending the child care center and the staff of the child care center, in accordance with the United States Environmental Protection Agency guidance specified in Subparagraph (b)(4) of this Rule.
- (11) Within five business days of receiving the test results of the Department's water analysis that indicate a water lead level at or above the lead poisoning hazard level, the child care operator shall make the test results available to the public, free of charge. The child care operator may post test results to the child care center's website to satisfy the requirement to make the test results available to the public.

History Note: Authority G.S. 110-91; 130A-131.5; 130A-131.7(7); 130A-131.8; Eff. July 1, 1991; Amended Eff. January 1, 2006; February 1, 1995.