



NC DEPARTMENT OF
**HEALTH AND
HUMAN SERVICES**

Commission for Public Health

ROY COOPER • Governor

KODY H. KINSLEY • Secretary

HELEN WOLSTENHOLME • Interim Deputy Secretary for Health

MARK T. BENTON • Assistant Secretary for Public Health

Division of Public Health

MEMORANDUM

DATE: February 2, 2022

TO: Interested Parties

FROM: Virginia Niehaus, Rulemaking Coordinator, Commission for Public Health and Director of Regulatory and Legal Affairs, Division of Public Health

RE: Notification of Proposed Temporary Rule Actions: 10A NCAC 41C .1001-.1007

G.S. § 150B-21.1 requires a rulemaking body to notify certain individuals of its intent to adopt temporary rules and the date, time, and location of the public hearing on the rules. This memorandum serves as the required notice that the Commission for Public Health (CPH) is proposing to adopt rules 10A NCAC 41C .1001-.1007 under temporary procedures.

The proposed rules are intended to implement a recent act of the General Assembly and recent change to state budgetary policy. Session Law 2021-180, Section 9G.8.(a) directs the Commission for Public Health (CPH) to adopt rules as necessary to implement requirements for the testing and remediation of lead in drinking water in public schools and the inspection for and abatement of asbestos and lead-based paint hazards in public schools and child care facilities. CPH is proposing these rules to establish these requirements.

Session Law 2021-180 occurred on November 18, 2021 with Section 9G.8.(a) made effective July 1, 2021. In accordance with G.S. 150B-21.1(a2), the Commission is providing notice that it intends to seek waiver of the 210-day requirement for temporary rulemaking, if it is determined necessary to pursue this temporary rulemaking effort.

The public hearing on these proposed temporary rules is scheduled for Friday, February 25, 2022 at 10:00 am by teleconference at (919) 715-0769. No access code is required to join the teleconference.

CPH is accepting public comments on these proposed temporary rules from February 2, 2022 - March 4, 2022. 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 temporary rules are attached to this memorandum and available at <https://cph.publichealth.nc.gov/>.

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

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AN EQUAL OPPORTUNITY / AFFIRMATIVE ACTION EMPLOYER

If you have questions related to this memorandum or the proposed rules, please contact Ed Norman, Division of Public Health, Environmental Health Section at (919) 218-6511.

Attachment

cc: Dr. Ron May, Chair, Commission for Public Health
Mr. Mark Benton, Assistant Secretary, Division of Public Health
Mr. Larry Michael, Environmental Health Section Chief, Division of Public Health
Mr. Ed Norman, Environmental Health Section, Division of Public Health
Ms. Kirsten Leloudis, Regulatory and Legal Affairs, Division of Public Health

1 10A NCAC 41C .1001 is proposed for adoption under temporary procedures as follows:
2

3 **SECTION .1000 – LEAD AND ASBESTOS INSPECTION, TESTING, ABATEMENT, AND**
4 **REMEDICATION IN NORTH CAROLINA PUBLIC SCHOOLS AND LICENSED CHILD CARE**
5 **FACILITIES**
6

7 **10A NCAC 41C .1001 DEFINITIONS**

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

9 (1) “Department” means the North Carolina Department of Health and Human Services.

10 (2) “Licensed child care facility” means a child care facility as defined at G.S. 110-86(3).

11 (3) “Public school” means a public school unit as defined at G.S. 115C-5(7a).

12 (4) “Program” means the North Carolina Department of Health and Human Services, Division of
13 Public Health, Environmental Health Section, Health Hazards Control Unit.

14 (5) “Responsible individual” means the principal of a public school or the principal’s designee or the
15 operator of a licensed child care facility or the operator’s designee, as applicable.
16

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

1 10A NCAC 41C .1002 is proposed for adoption under temporary procedures as follows:

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3 **10A NCAC 41C .1002 FUNDING**

4 (a) Public schools and licensed child care facilities in North Carolina shall be eligible to participate in the funding
5 mechanisms established in accordance with S.L. 2021-180, Sec. 9G.8. to fully or partially offset the cost of conducting
6 testing for lead in water and inspection for asbestos and lead-based paint hazards, when the responsible individual
7 conducts the test or inspection for lead or asbestos within 18 months after the effective date of this Rule and in
8 accordance with the Rules of this Section.

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

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

15 (2) the abatement or remediation, as applicable, is performed in accordance with the Rules of this
16 Section; and

17 (3) replacement materials used to abate asbestos hazards do not contain more than 1% asbestos and
18 replacement materials used to abate lead-based paint hazards do not contain lead in excess of 90
19 parts per million.

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

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

30 (1) to fully or partially offset the cost of conducting an inspection in accordance with Rules .1003(b) or
31 .1004(b) of this Section, as applicable, except that the inspection may be limited to the area in the
32 public school or licensed child care facility where the capital, renovation, or repair project is being
33 conducted; and

34 (2) to fully or partially offset the cost of conducting abatement when lead-based paint or asbestos is
35 detected that meets the requirements under the Rules of this Section for abatement and abatement is
36 conducted in accordance with Rules .1003(e) and .1004(e) of this Section and with the limitation on
37 materials set out in Subparagraph (b)(3) of this Rule, except that the abatement may be limited to

1 the area in the public school or licensed child care facility where the capital, renovation, or repair
2 project is being conducted.

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

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

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

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

1 10A NCAC 41C .1003 is proposed for adoption under temporary procedures as follows:

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3 **10A NCAC 41C .1003 ASBESTOS INSPECTIONS AND ABATEMENT IN NORTH CAROLINA PUBLIC**
4 **SCHOOLS AND LICENSED CHILD CARE FACILITIES**

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

6 (1) “Abatement” means as defined at G.S. 130A-444(4), and also includes renovation activities that
7 are carried out to repair, maintain, remove, isolate, or encapsulate asbestos containing material.

8 Abatement shall not be considered complete until a final clearance inspection of the public school
9 or licensed child care facility is performed by an air monitor in accordance with 40 C.F.R.

10 763.90(i).

11 (2) “Air monitor” means as defined at G.S. 130A-447 and 10A NCAC 41C .0601(3).

12 (3) “Asbestos” means as defined at G.S. 130A-444(2).

13 (4) “Asbestos containing material” means as defined at G.S. 130A-444(3).

14 (5) “Asbestos hazard” means a condition that results in exposure to asbestos in excess of the standards
15 set forth in 10A NCAC 41C .0607(a) or to a category of asbestos containing material defined at 40
16 C.F.R. 763.88(b).

17 (6) “Inspection” in a licensed child care facility means an examination of the facility for the presence
18 of asbestos hazards that is conducted by an inspector in accordance with the Rules of Section
19 .0600 of this Subchapter. “Inspection” in a public school means a reinspection conducted in
20 alignment with G.S. 130A-445, 10A NCAC 41C .0604, and 40 C.F.R.763.85(b).

21 (7) “Inspector” means as defined at G.S. 130A-447 and 10A NCAC 41C .0601(a)(7).

22 (8) “Management Planner” means as defined at G.S. 130A-447 and 10A NCAC 41C .0601(a)(9).

23 (b) Each responsible individual shall ensure that an inspection is conducted for asbestos hazards in their facility
24 within 18 months of the effective date of this Rule. Inspections for asbestos hazards shall be performed by an
25 inspector and documented in an inspection survey report in accordance with the Rules of Section .0600 of this
26 Subchapter. A management planner shall review the inspection survey report to determine whether an asbestos
27 hazard has been detected and shall document his or her findings in an asbestos management plan in accordance with
28 Rule 10A NCAC 41C .0604.

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

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

35 (e) Abatement shall be performed by one or more professionals who are accredited in accordance with 10A NCAC
36 41C .0602 and shall be performed in accordance with the Rules of Section .0600 of this Subchapter.

1 (f) The information listed in this Paragraph shall be submitted to the Program by email to
2 general.hccu@dhhs.nc.gov:

3 (1) Within 30 calendar days following the date on which an inspection is completed pursuant to this
4 Rule, the management planner shall submit:

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

6 (B) the name, contact information, and accreditation number of the management planner;

7 (C) the name and address, including county, of the public school or licensed child care
8 facility;

9 (D) whether the facility for which the responsible individual is submitting the information is a
10 public school or a licensed child care facility;

11 (E) whether the inspection identified the presence of an asbestos hazard;

12 (F) a description of any identified asbestos hazard; and

13 (G) the results of any laboratory testing conducted during the inspection.

14 (2) At least 10 calendar days before abatement conducted pursuant to this Rule begins, the responsible
15 individual shall submit:

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

17 (B) the name and address of the public school or licensed child care facility, as applicable;

18 (C) the names, contact information, and accreditation numbers of the professionals who will
19 conduct the abatement;

20 (D) the dates on which the abatement is scheduled to occur; and

21 (E) a description of the planned abatement.

22 (3) Within 30 calendar days following the date on which an abatement completed pursuant to this Rule,
23 the responsible individual shall submit:

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

25 (B) the name and address, including county, of the public school or licensed child care
26 facility;

27 (C) whether the facility for which the responsible individual is submitting the report is a public
28 school or a licensed child care facility;

29 (D) the date on which the abatement was completed; and

30 (E) the results of the final clearance inspection.

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

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

1 10A NCAC 41C .1004 is proposed for adoption under temporary procedures as follows:

2
3 **10A NCAC 41C .1004 LEAD-BASED PAINT INSPECTIONS AND ABATEMENT IN NORTH**
4 **CAROLINA PUBLIC SCHOOLS AND LICENSED CHILD CARE FACILITIES**

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

6 (1) “Abatement” means as defined at 40 C.F.R. 745.223, and also includes interim controls as defined
7 at 40 C.F.R. 745.83. Abatement shall not be considered complete until a final clearance inspection
8 of the public school or licensed child care facility is performed by a certified risk assessor in
9 accordance with the standards set forth at 40 C.F.R. 745.85(b).

10 (2) “Certified Project Designer” means an individual who meets the requirements for a project
11 designer as set forth in G.S. 130A-453.03 and Rule .0802. of this Subchapter.

12 (3) “Certified Supervisor” means and individual who meets the requirements for a supervisor as set
13 forth in G.S. 130A-453.03 and Rule .0802 of this Subchapter.

14 (4) “Certified Risk Assessor” means an individual who meets the requirements for a risk assessor as
15 set forth in G.S. 130A-453.03 and Rule .1006 of this Section.

16 (5) “Inspection” means a risk assessment conducted in accordance with 40 C.F.R. 745.223.

17 (6) “Inspection report” means a summary prepared in accordance with Rule .0807(b) of this
18 Subchapter.

19 (7) “Lead-based paint hazard” means as defined at G.S. 130A-131.7(6).

20 (8) “Lead poisoning hazard” means as defined at G.S. 130A-131.7(7).

21 (9) “Occupant protection plan” means as defined at Rule .0801(a)(6) of this Subchapter.

22 (b) Each responsible individual shall ensure that an inspection is conducted for lead-based paint hazards in their
23 facility within 18 months of the effective date of this Rule. Inspections for lead-based paint hazards shall be
24 performed by a certified risk assessor and documented in an inspection report. The certified risk assessor shall
25 determine whether a lead-based paint hazard is present in the public school or licensed child care facility based on
26 the inspection, in accordance with the Rules of Sections .0800 and .0900 of this Subchapter, and document the
27 determination in the inspection report. If the certified risk assessor determines that a lead-based paint hazard exists,
28 then an occupant protection plan shall be written by a certified supervisor or certified project designer in accordance
29 with 40 C.F.R. 745.227(e)(5) and the Rules of Section .0800 of this Subchapter.

30 (c) If the certified risk assessor determines that a lead-based paint hazard has been detected, then the responsible
31 individual shall restrict access to the identified lead-based paint hazard until abated in accordance with this Rule.

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

1 (e) Abatement shall be performed by one or more professionals who are certified in accordance with G.S. 130A-
2 453.03 and Rules .0802 or .0902 of this Subchapter and shall be performed in accordance with the Rules of Sections
3 .0800 and .0900 of this Subchapter, as applicable.

4 (f) The information listed in this Paragraph shall be submitted to the Program by hs.nc.gov:

5 (1) Within 30 calendar days following the date on which an inspection is completed pursuant to the
6 Rule, the certified risk assessor shall submit:

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

8 (B) the name, contact information, and certification number of the certified risk assessor;

9 (C) the name and address, including county, of the public school or licensed child care
10 facility;

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

13 (E) whether the inspection identified the presence of a lead-based paint hazard;

14 (F) a description of any identified lead-based paint hazard; and

15 (G) the results of any laboratory testing conducted during the inspection.

16 (2) At least 10 calendar days before abatement conducted pursuant to this Rule begins, the responsible
17 individual shall submit:

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

19 (B) the name and address of the public school or licensed child care facility, as applicable;

20 (C) the names, contact information, and certification numbers of the professionals who will
21 conduct the abatement;

22 (D) the dates on which the abatement is scheduled to occur; and

23 (E) a description of the planned abatement.

24 (3) Within 30 calendar days following the date on which abatement is completed pursuant to this Rule,
25 the responsible individual shall submit:

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

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

29 (C) whether the facility for which the responsible individual is submitting the report is a public
30 school or a licensed child care facility;

31 (D) the date on which the abatement was completed; and

32 (E) the results of the final clearance inspection.

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

1 hazards in accordance with this Rule shall be considered a violation of 15A NCAC 18A .2816(a), 10A NCAC 09
2 .0601(f), or 10A NCAC 09 .1707(2), as applicable.
3
4 *History Note: Authority S.L. 2021-180, Sec. 9G.8;*

1 10A NCAC 41C .1005 is proposed for adoption under temporary procedures as follows:

2
3 **10A NCAC 41C .1005 LEAD POISONING HAZARDS IN DRINKING WATER IN NORTH CAROLINA**
4 **PUBLIC SCHOOLS**

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

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

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

- 11 (1) Responsible individuals at public schools shall complete a one-time test of all water outlets used for
12 drinking or food preparation. The responsible individual shall provide documentation of testing
13 results for review by the Department during routine sanitation inspections under Rule 15A NCAC
14 18A .2402(a).
15 (2) Initial water samples shall be collected by the responsible individual and tested in accordance with
16 Subparagraph (b)(3) of this Rule within 18 months after the effective date of this Rule.
17 (3) The responsible individual shall collect samples and submit them for testing in accordance with
18 guidance specified by the United States Environmental Protection Agency in its publication, 3Ts
19 for Reducing Lead in Drinking Water in Schools and Child Care Facilities, which is hereby
20 incorporated by reference, including any subsequent editions or amendments, and available free of
21 charge at: [https://www.epa.gov/dwreginfo/3ts-reducing-lead-drinking-water-schools-and-child-](https://www.epa.gov/dwreginfo/3ts-reducing-lead-drinking-water-schools-and-child-care-facilities)
22 care-facilities. Notwithstanding the foregoing guidance, samples may be collected with a stagnation
23 period of up to 72 hours. Samples shall be analyzed by a laboratory certified by the North Carolina
24 State Laboratory of Public Health to analyze for lead in drinking water.
25 (4) When a water sample is analyzed for lead content by a laboratory under this Rule, the laboratory
26 shall notify the Department of the test results by electronic submission in alignment with the
27 requirements of G.S. 130A-131.8.
28 (5) When a public school receives test results from a laboratory indicating that a water sample collected
29 by the responsible individual contains a lead concentration at or above the lead poisoning hazard
30 level, the responsible individual shall:
31 (A) restrict access to any water outlet(s) used for drinking or food preparation that have lead
32 concentrations at or above the lead poisoning hazard level; and
33 (B) ensure that all students and staff have access to water free of cost that does not contain lead
34 concentrations at or above the lead poisoning hazard level for drinking and food
35 preparation.

- 1 (6) When notified of a water lead level at or above the lead poisoning hazard level, the Department shall
2 conduct sampling at the water outlet identified to have a water lead level at or above the lead
3 poisoning hazard level within 20 business days of notification.
- 4 (7) If a water sample collected by the Department reveals a water lead level at or above the lead
5 poisoning hazard level:
- 6 (A) the requirement of Rule .1002(b)(1) of this Section shall be considered met;
7 (B) notice shall be given in accordance with Rule 15A NCAC 18A .2402(c); and
8 (C) the responsible individual shall continue to follow Subparagraph (b)(5) of this Rule until
9 the Department determines the water outlet(s) are not producing water lead levels at or
10 above the lead poisoning hazard level and notifies the responsible individual, the local
11 superintendent, and the Department of Public Instruction in writing of this determination.
- 12 (8) Within five business days of receiving the test results of the Department's water analysis that shows
13 a water lead level at or above the lead poisoning hazard level, the responsible individual shall
14 provide written notification of the test results to the parents or legal guardians of the children
15 attending the public school and the staff of the public school in accordance with the United States
16 Environmental Protection Agency guidance specified in Subparagraph (b)(3) of this Rule.
- 17 (9) Within five business days of receiving the test results of the Department's water analysis that shows
18 a water lead level at or above the lead poisoning hazard level, the public school shall make the test
19 results available to the public, free of charge. The responsible individual may post test results to the
20 public school's website to satisfy the requirement to make the test results available to the public.
- 21 (10) Remediation of water outlet(s) producing water lead levels at or above the lead poisoning hazard
22 level shall ensure that water produced is below the lead poisoning hazard level and may include
23 replacement of service lines, pipes, and fixtures and the installation of filters at affected faucets.
24 Within 30 business days from the date on which remediation is conducted under this Rule, the
25 responsible individual shall submit the following information to the Program:
- 26 (A) the name and contact information of the responsible individual;
27 (B) the name and address, including county, of the public school;
28 (C) the steps taken to remediate the lead poisoning hazard; and
29 (D) the date on which the remediation was completed.

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

1 10A NCAC 41C .1006 is proposed for adoption under temporary procedures as follows:

2

3 **10A NCAC 41C .1006 CERTIFIED RISK ASSESSORS**

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

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

11

12 History Note: Authority S.L. 2021-180, Sec. 9G.8; G.S. 130A-453.03; G.S. 130A-453.05;

1 10A NCAC 41C .1007 is proposed for adoption under temporary procedures as follows:

2

3 **10A NCAC 41C. 1007 INCORPORATION BY REFERENCE**

4 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
5 by reference, including any subsequent amendments or editions, and available free of charge at www.ecfr.gov/.

6

7 *History Note: Authority S.L. 2021-180, Sec. 9G.8;*