Title 13 – Department of Labor

***Notice*** *is hereby given in accordance with G.S. 150B-21.2 that the Department of Labor intends to adopt the rules cited as 13 NCAC 16 .0701-.0704.*

**Link to agency website pursuant to G.S. 150B-19.1(c):***https://www.labor.nc.gov/rules-and-regulations*

**Proposed Effective Date:***December 1, 2024*

**Public Hearing:**

**Date:** *January 23, 2024*

**Time:** *10:00 a.m.*

**Location:** *https://call.lifesizecloud.com/20075131 or call +1 (312) 584-2401, 20075131#*

**Reason for Proposed Action:** *The North Carolina Department of Labor received a rulemaking petition. The Commissioner granted the petition. This is the publication of the Notice of Text pursuant to the petition. Placement of the attached proposed rules would be in a new section: SECTION .0700 - AIRBORNE INFECTIOUS DISEASES. The North Carolina Department of Labor also seeks to reserve an additional new section: SECTION .0600.*

**Comments may be submitted to:** *Jill F. Cramer, Rulemaking Coordinator, 1101 MSC, Raleigh, NC 27699-1101; email jill.cramer@labor.nc.gov*

**Comment period ends:***March 4, 2024*

**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 a written objection to the Rules Review Commission. 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 letters via U.S. Mail, private courier service, or hand delivery to 1711 New Hope Church Road, Raleigh, North Carolina, or via email to oah.rules@oah.nc.gov. If you have any further questions concerning the submission of objections to the Commission, please review 26 NCAC 05 .0110 or call a Commission staff attorney at 984-236-1850.

**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 (>= $1,000,000)**

**[ ]  Approved by OSBM**

**[x]  No fiscal note required**

Chapter 16 - Migrant Housing

SECTION .0700 – AIRBORNE INFECTIOUS DISEASES

13 ncac 16 .0701 SCOPE AND APPLICATION

(a) The Rules in the Section establish requirements for migrant housing operators, as defined in G.S. 95-223.

(b) The Rules establish methods for operators to assess the risk of, prepare for, control, prevent, and mitigate the spread of an airborne infectious disease among migrants, and their dependents, who are employed in agricultural employment of a seasonal or other temporary nature.

(c) The Rules shall supplement Migrant Housing Act, the Rules of this Chapter, and the Occupational Safety and Health Act of North Carolina (OSHNC) Rules, regulations, and standards applicable to airborne infectious disease-related hazards, including, but not limited to standards that address personal protective equipment (PPE), respiratory protective equipment, face coverings, sanitation.

(d) The Rules in this Section shall not conflict with requirements and guidelines applicable to businesses set out in any applicable North Carolina Executive order or order of public health emergency, and all applicable federal standards to the extent practicable.

(e) This Section shall apply to every migrant housing operator in North Carolina within the jurisdiction of Agricultural Safety and Health Bureau of the North Carolina Department of Labor, and those employees in the area of agricultural employment as defined in G.S. 95-223.

(f) This Section shall only apply to an airborne infectious agent or disease designated by the Governor of North Carolina, North Carolina General Assembly, U.S. Department of Health and Human Services, North Carolina Department of Health and Human Services ("DHHS"), World Health Organization, or Centers for Disease Control ("CDC") as presenting a public health emergency.

(g) The Rules in this Section shall not apply to any seasonal or endemic infectious bacterial, viral, or fungal disease, such as the seasonal flu, that has not been designated an airborne infectious disease pursuant to Paragraph (f) of this Rule.

History Note: Authority G.S. 95-4; 95-222; 95-224; 95-227;

Eff. December 1, 2024.

13 ncac 16 .0702 DEFINITIONS

In addition to the definitions set out in G.S. 95-223 and 13 NCAC 16 .0103, the following definitions apply to the Rules in this Section:

(1) "Agricultural employer" means any person who recruits, solicits, hires, employs, furnishes, or transports any migrant.

(2) "Airborne infectious disease" means any infectious viral, bacterial, or fungal disease that is transmissible through the air in the form of aerosol particles or droplets and is designated by the Governor of North Carolina, North Carolina General Assembly, U.S. Department of Health and Human Services, North Carolina Department of Health and Human Services, World Health Organization, or Centers for Disease Control as presenting a public health emergency.

(3) "Asymptomatic" means the condition of a person who does not have symptoms of an airborne infectious disease.

(4) "CDC" means the Centers for Disease Control and Prevention.

(5) "Cleaning" shall mean the removal of visual dirt and impurities, including germs, from surfaces.

(6) "Coronavirus" means an airborne infectious disease named SARS-CoV-2.

(7) "DHHS" means the North Carolina Department of Health and Human Services.

(8) "Disinfecting" and "disinfect" means using chemicals approved for use against an airborne infectious bacterial, viral, or fungal disease, for example EPA-registered disinfectants, to kill germs on surfaces.

(9) "Employee," "employer," and "person" are defined in the Occupational Safety and Health Act of North Carolina in G.S. 95-127 and shall apply to this Section.

(10) "Face covering" means a surgical mask, a medical procedure mask, a respirator worn voluntarily, or a tightly woven fabric or non-woven material of at least two layers. A face covering has no visible holes or openings and must cover the nose and mouth. A face covering does not include a scarf, ski mask, balaclava, bandana, turtleneck, collar, or single layer of fabric.

(11) "Feasible" means capable of being done.

(12) "Hand sanitizer" means alcohol-based hand sanitizer that is at least 60 percent alcohol or 70 percent isopropanol.

(13) "Hygiene supplies" means paper towels, toilet paper, hand soaps, and hand sanitizer.

(14) "Suspected to be infected with the airborne infectious agent or disease" means a person that has signs or physical symptoms of an airborne infectious disease but has not tested positive and no alternative diagnosis has been made, such as being positive for the influenza.

(15) "Symptomatic" means the employee is experiencing symptoms similar to those attributed to the airborne infectious disease.

History Note: Authority G.S. 95-4; 95-222; 95-224; 95-227;

Eff. December 1, 2024.

13 ncac 16 .0703 TRANSPORTATION OF MIGRANT WORKERS

During the time a designation by the Governor of North Carolina, North Carolina General Assembly, U.S. Department of Health and Human Services, DHHS, World Health Organization, or the CDC of an airborne infectious bacteria, virus, or fungal disease as presenting a public health emergency is in effect, all agricultural employers who provide transportation for migrants between worksites shall:

(1) Transport migrants in vehicles that allow persons to sit at least six feet apart or maintain partitions in between the various persons inside the vehicle. For vehicles with aisles between seats, agricultural employers must require migrants be positioned with one migrant per side, staggered in an alternating, diagonal arrangement.

(2) Prioritize transporting only migrants residing in the same migrant housing unit in the same vehicle. Migrants who do not share the same household or work crew shall be transported in the same vehicle only when no alternative transportation means are feasible.

(3) Clean and disinfect work vehicles daily. Agricultural employers must pay employees for the time spent cleaning and disinfecting.

(4) Use the vehicle's ventilation system to exchange fresh air in from outside the vehicle. Lower the vehicle's windows when the weather permits.

(5) Require that migrants and drivers wear a face covering while using employer-provided transportation. Operators shall provide a face covering to anyone in the vehicle who does not have one.

(6) Provide hand sanitizer in each vehicle and require all that drivers and riders sanitize their hands before entering and exiting the vehicle.

History Note: Authority G.S. 95-4; 95-222; 95-224; 95-227;

Eff. December 1, 2024.

13 ncac 16 .0704 protections in migrant housing

(a) During the time a designation by the Governor of North Carolina, North Carolina General Assembly, U.S. Department of Health and Human Services, DHHS, World Health Organization, or CDC of an airborne infectious disease as presenting a public health emergency is in effect, all migrant housing operators shall:

(1) Provide at least seven washable face coverings or at least one disposable face covering per day at no charge to each resident of the housing.

(2) Separate beds by at least six feet or more in all directions and arrange the beds in head to toe sleeping arrangements. Only one person shall be permitted to sleep in a bed or bunk bed. This provision does not apply to family members who live in their own family unit of the employer-provided housing.

(3) Install partitions between each toilet and between each shower stall.

(4) Provide ventilation of rooms by opening screened windows and doors to increase the introduction of outside air, or by providing a portable high-efficiency particulate air (HEPA) filter in each room used for sleeping.

(5) Require anyone who delivers food and water to migrant housing occupants to wear masks or other protective equipment as recommended by the CDC, DHHS, or the local health department.

(b) Communication. All migrant housing operators shall:

(1) Request emergency contact numbers from each housing occupant.

(2) Provide housing occupants with access to the phone number of the local health department.

(3) Report to the local health officer the name and address of any individual in the migrant housing location known to have or suspected of having a communicable disease.

(4) Post the name, phone number, and email address of the person trained to administer first aid in a prominent location to the migrant housing.

(5) Post the housing address in a central location of the migrant housing to provide all housing occupants or employees with the physical location of the house to provide the address if a call to emergency medical personnel is required to be made.

(6) Post the phone number in a central location of the migrant housing for the North Carolina Coronavirus hotline and/or any statewide hotline established by the State of North Carolina related to an airborne infectious disease and include on the posting a statement that if migrants would like to make a confidential complaint about unsafe migrant housing conditions related to an airborne infectious disease, they may call the hotline number. This posting must be in Spanish, English, and any other primary languages common in the migrant population at the housing site.

(7) Present any communication or training on airborne infectious disease control practices in Spanish, English, and any other primary languages common in the migrant workers.

(8) When available from the CDC, DHHS, or the local health department, place posters in the migrant housing related to the use of airborne infectious disease prevention methods. If available, posters must be posted in the languages common in the migrant population.

(c) Sanitation in Migrant Housing. All migrant housing operators shall:

(1) Provide hand sanitizer that is readily available in multiple locations in employer-provided migrant housing.

(2) Monitor hygiene supplies in restrooms, portable toilets, and handwashing/sanitizing stations in the migrant housing and immediately re-stock when hygiene supplies are not available.

(3) Monitor and immediately restock cleaning and disinfecting supplies for each migrant housing unit when cleaning and disinfecting supplies are depleted.

(4) Require that the manufacturer's instructions for use of all disinfecting chemicals and products are complied with to include, but not be limited to, concentration, application method, contact time, personal protective equipment required for use.

(d) Separate Facilities. During the time a designation by the Governor of North Carolina, North Carolina General Assembly, U.S. Department of Health and Human Services, DHHS, World Health Organization, or the CDC of an airborne infectious disease as presenting a public health emergency is in effect, all migrant housing operators shall:

(1) Provide separate sleeping areas for each of the following groups, if recommended by current CDC guidance:

(A) Residents who are considered to be contagious based on current CDC guidance; and

(B) Residents who are not considered to be contagious based on current CDC guidance.

(2) Provide separate bathing, toileting and eating facilities to each group in Subparagraph (d)(1) of this Rule where feasible. If it is not feasible to provide separate bathing, toileting and eating facilities, the housing operators shall implement schedules for when each group shall use those facilities. Operators shall clean and disinfect bathing, toileting, and eating facilities daily.

(3) The separate facilities described in Subparagraph (d)(1) of this Rule shall be provided for the period of time recommended by the CDC.

(4) If there is no separate space available on-site to provide separate housing, the operator must provide alternative housing off-site.

(5) Within 24 hours of a resident becoming symptomatic for being infected with an airborne infectious disease, the operator must arrange for that person to be evaluated by a medical provider through the local health department or federally qualified health center as defined in 42 U.S.C. 1396d(l)(2)(A). If testing for the airborne infectious disease is feasible, all residents shall be tested.

(6) To the extent permitted by existing healthcare laws, housing operators shall establish a system to receive reports of positive airborne infectious disease tests by housing occupants within the previous 14 days from the date of the positive test, and to receive reports by occupants of the migrant housing, and the housing operator shall notify:

(A) All occupants of the migrant housing location where the person with the positive test resides;

(B) The DHHS and the county Department of Health within 24 hours of the discovery of a positive case and include in the notification the industry, the person's occupation, and the type of housing in which the person lives.

(7) If a migrant housing occupant is confirmed to have the airborne infectious disease, the migrant housing operator shall conduct cleaning and disinfection of the living space occupied by the migrant housing occupant as directed by CDC guidelines.

(e) Screening and Testing. During the time a designation by the Governor of North Carolina, North Carolina General Assembly, U.S. Department of Health and Human Services, DHHS, World Health Organization, or CDC of an airborne infectious disease as presenting a public health emergency is in effect, all migrant housing operators shall:

(1) Provide symptom screening, and testing if feasible, for all newly arriving residents within 48 hours of their arrival unless the resident has already been tested in the 72 hours prior to arrival.

(2) Whenever new migrants arrive, house them in a separate living unit from current residents until newly arriving residents have a negative test result, or until either five days elapse, in which the newly arriving migrant does not become symptomatic or until the conclusion of the recommended CDC quarantine period. If separate housing is not available, newly arriving migrants shall be required to wear a cloth or disposable face covering at all times except when eating, drinking, sleeping, or performing personal hygiene activities or if the resident cannot medically tolerate a face covering, until the newly arriving resident receives a negative test result or until five days or the CDC recommended time period elapses in which the newly arriving resident does not become symptomatic.

(3) If a newly arriving migrant tests positive on a test for an airborne infectious disease or becomes symptomatic of that disease, the procedures outlined in Subparagraph (d)(4) of this Rule should be followed.

(4) Cooperate with local health departments to provide for regular testing, if feasible, to all migrants by coordinating with health departments and clinics to schedule planned testing events at times and locations that are convenient to the occupants, and affirmatively stating that migrant will not be retaliated against if they test positive.

(f) During the time a designation by the Governor of North Carolina, North Carolina General Assembly, U.S. Department of Health and Human Services, DHHS, World Health Organization, or CDC of an airborne infectious disease as presenting a public health emergency is in effect, during pre-occupancy inspections or when responding to a complaint, the Department shall confirm operators are in compliance with these Rules.

History Note: Authority G.S. 95-4; 95-222; 95-224; 95-227;

Eff. December 1, 2024.