

PETITION FOR RULE-MAKING

Rule-making Coordinator
N.C. Department of Labor
1101 Mail Service Center
Raleigh, North Carolina 27699-1101

Pursuant to N. C. Gen. Stat. §§ 150B-20 and 150B-21.1A, and 13 NCAC 01B.0101, the undersigned Petitioners, Episcopal Farmworker Ministry, North Carolina State AFL-CIO, Union of Southern Service Workers, the Hispanic Liaison of Chatham County/ El Vinculo Hispano, Western North Carolina Workers' Center, and the North Carolina State Conference of the NAACP, petition and request that the North Carolina Department of Labor (hereafter "NCDOL" or "the Department") adopt the proposed Rule attached to this petition as Exhibit A; or, in the alternative, the Department grant the Petition for Rule-making and initiate rule-making proceedings, as allowed by N. C. Gen. Stat. § 150B-20(c).

I. Petitioners

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Petitioners, NC State AFL-CIO, Episcopal Farmworker Ministry, Western North Carolina Workers' Center, Hispanic Liaison of Chatham County / El Vinculo Hispano, Union of Southern Service Workers, and the NC Conference of the NAACP, submit this Petition through their undersigned attorneys.

Petitioners are organizations in North Carolina which seek to protect and advance the rights of North Carolina's workers to a safe and healthy working environment. Since March 2020 when the COVID-19 outbreak began, they have worked to connect their members and constituents to resources, assisted them with filing NCDOL complaints, led calls for action by state and federal leaders, drafted letters to state leaders, held press conferences, and organized workers to advocate for themselves. Many of them have also had to mourn the death of workers who lost their lives to COVID-19. They are calling on NCDOL to exercise its power to engage in rulemaking in order to protect workers in our state from COVID-19 and future airborne infectious diseases.

The Episcopal Farmworker Ministry ("EFWM") seeks to minister to farmworkers through direct services, development and support of programs that work towards the empowerment of farmworkers, and by advocating for systemic change of agricultural policy at local and state levels. Their mission is to respond to the physical, emotional, and spiritual needs of migrant and seasonal farmworkers and their families. During the COVID-19 pandemic, EFWM served its community by providing food, personal protective equipment, cleaning supplies, and mental health services to agricultural workers. In addition, they have provided direct financial support to agricultural

workers impacted by COVID-19, including payments to workers who did not get paid for time they were required to quarantine, workers who lost their jobs or had their hours reduced, and payments to relatives of workers who have been hospitalized or died as a result of contracting COVID-19 at work.

Union of Southern Service Workers (USSW) believes that people who work hard for a living should make enough to support themselves, their families, and their neighborhoods and should be treated with dignity and respect. They advocate for just compensation and dignified treatment for fast-food workers and other low-wage workers. USSW has helped members file complaints with NCDOL about the lack of COVID precautions taken by fast food employers. Members have complained that when coworkers get sick, they are not informed, and their workplaces are not adequately cleaned.

The North Carolina State AFL-CIO is the largest association of unions of working people in North Carolina, representing over a hundred thousand members in the private, public, and agricultural sectors. They work together for good jobs, safe workplaces, workers' rights, consumer protections, and quality public services on behalf of ALL working people. They have helped union members and local unions navigate issues related to COVID and other workplace safety concerns.

Western North Carolina Workers' Center builds power among immigrant workers in western North Carolina, including migrant farmworkers, through education, organizing and direct action to promote worker justice. Since the onset of the COVID-19 pandemic, WNCWC has focused on workplace health and safety for the immigrant community in Western North Carolina using three strategies: building and strengthening the base of immigrant workers through the creation of innovative strategies rooted in local worker leadership circles; developing and strengthening a structured model of popular education in order to train immigrant workers around workplace health and safety; and promoting positive changes around workplace health and safety

through direct actions planned and led by immigrant worker communities.

The Hispanic Liaison of Chatham County / El Vinculo Hispano (“EVH”) is a non-profit organization serving the Hispanic communities of Chatham, Lee, Harnett, Alamance, and Randolph counties. Many of EVH’s Latinx clients work in food processing, including at the Mountaire Farms, Pilgrim’s Pride, and Tyson poultry processing plants located in Siler City and Sanford, as well as in the service and construction industries, and were deemed an “essential” labor force by state and federal government officials during the COVID-19 pandemic. Due to the working conditions in these industries, EVH’s clients are at an increased risk for contracting COVID-19 and other airborne infectious diseases. Hundreds of poultry workers and their family members in EVH’s region have been infected with COVID-19; some have died. These workers have been subjected to dangerous working conditions without adequate personal protective equipment, social distancing, COVID-19 prevention information, and leave time necessary to ensure a safe workplace.

The North Carolina Conference of the NAACP (NC-NAACP) is North Carolina’s branch of the nation’s oldest and largest civil rights organization. It is the second largest state conference of the NAACP in the United States. For over 70 years, NC-NAACP has pursued its mission to ensure the political, educational, social and economic equality of rights of all persons and to eliminate racial hatred and discrimination. The organization has followed a variety of strategies to carry out this goal, including litigation and direct advocacy on behalf of workers’ rights and economic justice.

II. Rule for Which Amendment is Requested and Text of the Proposed Rule

Petitioners request the Department adopt a new rule (attached as Exhibit A).

III. Effect of the Proposed Rule

The Proposed Rule outlines the responsibilities of employers when an airborne infectious

disease or agent 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. By planning in advance how they will take measures to protect employee health during a future pandemic, employers in North Carolina will not only keep their workforces healthy, but they will reduce business disruption, limit absenteeism and turnover, and be able to keep their businesses running smoothly. Limiting transmission of an airborne infectious disease in workplaces will have a positive impact on the public health of the community. Workers will be less likely to bring illness home from work and to the businesses and services they visit.

All employers, employees, and places of employment in North Carolina within the coverage of the Occupational Safety and Health Act of North Carolina (“OSHANC”), N.C. Gen. Stat. §95-126, *et seq.*, will be covered by the Proposed Rule.

A. Effect of the Proposed Rule on the Department

As with any new rule, the Department will face a learning curve and some costs associated with educating employees and employers about the new rule, training staff, making any necessary updates to computer or other administrative systems, and enforcing the rule. Such challenges are greatly outweighed by the positive impact of a rule that will save lives and protect the health of the workers the Department is statutorily required to protect. In addition, Department staff who conduct in-person investigations in workplaces will be better protected from becoming ill from the airborne infectious disease if there is less transmission at work.

The Department will need to train its staff on the requirements of the Proposed Rule and update its investigation procedures accordingly. The Department will have to review and potentially investigate any complaints submitted pursuant to the Proposed Rule. Coordination between the Occupational Safety and Health (“OSH”) Division and the Workplace Retaliation

Bureau could be required if employees suffer adverse employment actions related to a complaint or attempt to enforce their rights under the Proposed Rule.

The Department is required to accept reports of employee fatalities and in-patient hospitalizations under the Proposed Rule.

B. Effect of the Proposed Rule on Employers Over Whom the Department Has Jurisdiction

Employers will also benefit from the Proposed Rule. The various control measures they will implement should result in fewer employee illnesses, which means lower absenteeism and healthcare costs, and a more productive workforce. There should be higher customer satisfaction if there is less disruption to staffing and to the supply chain because fewer employees need to miss work. Employee satisfaction should also be higher when employees see their employers are taking measures to protect their health and safety. This should reduce turnover.

Employers will need to review and understand the Proposed Rule. Employers will be required to develop an exposure prevention plan and to follow it when certain conditions are met. They will need to review the plan, update it, and provide it to their employees when the criteria are met for implementing such plans. When employers are required to follow their exposure prevention plans, they may need to implement changes to the workplace, such as improved ventilation and other controls. They will need to investigate cases of airborne infectious disease in the workplace and take the required steps to remove people with the airborne infectious disease from the workplace. They will also need to provide face coverings to their employees, implement measures for physical distancing, provide hand hygiene facilities, and follow a plan for cleaning and disinfection. Employers will also need to provide training to their employees. Additionally, employers will need to maintain and make available records of illness, and to report fatalities and hospitalizations.

C. Effect of the Proposed Rule on Employees Over Whom the Department Has Jurisdiction

Employees should experience greater job satisfaction when they see their employers taking measures to protect their health and safety. Lower rates of work-related illness will have a significant positive impact on employee health. Employees will not have to take what is most often unpaid leave in order to recover from the airborne infectious disease, losing necessary income. They will be less likely to expose their family members to illness. If they do not contract the illness, they will not suffer any long-term health impacts or the discomfort and expense of short-term illness.

When the Proposed Rule is triggered, employees will need to review, understand, and follow the rule. They will be required to attend training from their employers. They will need to participate in a symptom screening process, report symptoms and positive test results, and describe close contacts. They may be required to wear a face covering and/or personal protective equipment. Employees will be subject to temporary medical removal from the workplace if they test positive.

IV. Documents Supporting the Petition

Petitioners submit a Declaration from Linsey C. Marr, Ph.D., in support of this Petition (attached as Exhibit B). The Declaration describes the vulnerability of workers in poorly ventilated workplaces to airborne infectious disease and the importance of controls, including source controls, engineering controls, and personal protective equipment, to protect workers.

V. Reasons for Adoption of the Proposed Rule

According to a recent scientific study, “the probability of a pandemic with similar impact to COVID-19 is about 2% in any year, meaning that someone born in the year 2000 would have about

a 38% chance of experiencing one by now.”¹ Another study similarly estimates “the annual probability of a pandemic on the scale of COVID-19 in any given year to be between 2.5-3.3%, which means a 47-57% chance of another global pandemic as deadly as COVID in the next 25 years.”² And, as noted by a McKinsey Report:

Both the public and private sectors have played major roles in the response to the COVID-19 crisis, but collaboration has not always been as smooth as it might have been if collaboration channels had been preestablished . . . Predefining response roles for different stakeholders at the global, national, and local levels is also an important part of active preparedness, since well-defined roles prevent delays and confusion when an outbreak occurs.³

This Proposed Rule seeks to ensure business and industry are prepared for the next pandemic, and that the lives of workers most vulnerable to infection are spared. The Proposed Rule will help mitigate the spread of any future airborne illness in the workplace that has been designated a Public Health Emergency. Specifically, the Proposed Rule requires employers to ensure proper ventilation in the workplace, provide appropriate Personal Protective Equipment to employees, allow for sufficient hand hygiene, and provide training on any relevant policies. The Proposed Rule is critical to protecting the health and lives of North Carolina’s workforce, especially those with public facing jobs.

Indeed, the current COVID-19 pandemic has made clear the relationship between the workplace and exposure to airborne illness. This is especially true of workers in front-line and

¹ Michael Penn. “Statistics Say Large Pandemics Are More Likely than We Thought.” *Duke Global Health Institute*, <https://globalhealth.duke.edu/news/statistics-say-large-pandemics-are-more-likely-we-thought>; Marani, Marco, *et al.* “Intensity and Frequency of Extreme Novel Epidemics.” *Proceedings of the National Academy of Sciences*, vol. 118, no. 35, 2021, <https://doi.org/10.1073/pnas.2105482118>.

² Smitham, Eleni, “The next Pandemic Could Come Soon and Be Deadlier.” *Center for Global Development | Ideas to Action*, <https://www.cgdev.org/blog/the-next-pandemic-could-come-soon-and-be-deadlier>.

³ Craven, Matt, *et al.* “Not the Last Pandemic: Investing Now to Reimagine Public-Health Systems.” *McKinsey & Company*, 11 Mar. 2022, <https://www.mckinsey.com/industries/public-and-social-sector/our-insights/not-the-last-pandemic-investing-now-to-reimagine-public-health-systems>.

essential jobs.^{4,5} According to an analysis of death records of working-age coronavirus victims — those between 19 and 65—blue-collar workers have disproportionately shouldered the brunt of the pandemic in North Carolina.⁶ In many of the blue-collar industries where the coronavirus toll was highest, the proportion of deaths among workers of color was even more stark.⁷ Black and Latinx workers made up 87% of people described as food production workers among those who died; 67% of food service workers; 58% of construction workers; and 44% of healthcare workers, according to the analysis of North Carolina death records.⁸

According to the Brookings Institution, almost half of all low-income workers have been considered essential workers during the pandemic.⁹ “[B]lack and Latino Americans make up a large part of the essential workforce and have been disproportionately affected by COVID-19.”¹⁰ The Center for Economic and Policy Research (“CEPR”) found that Black people, for example, make up about 12% of the U.S. workforce but represent 17% of front-line workers.¹¹ Women are likewise disproportionately represented in front-line work according to the CEPR, constituting

⁴ Nuttle, Matthew. “Essential Workers Accounted for 87% of Additional COVID-19 Deaths in California, Data Shows.” *ABC10*, 30 Apr. 2021, <https://www.abc10.com/article/news/health/coronavirus/essential-workers-covid-deaths-california-data-uc-merced/103-f0717263-7e33-497d-b1e4-b01abfc95a3f>.

⁵ Definitions of essential and frontline workers vary. The CDC defines “essential worker” as “those who conduct a range of operations and services in industries that are essential to ensure the continuity of critical functions in the United States[.]” “Interim List of Categories of Essential Workers Mapped to Standardized Industry Codes and Titles.” *Centers for Disease Control and Prevention*, U.S. Department of Health and Human Services, 29 Mar. 2021, <https://www.cdc.gov/vaccines/covid-19/categories-essential-workers.html>. Frontline workers are a subset of essential workers, whose jobs cannot be performed remotely. Goodnough, Abby, and Jan Hoffman. “The Elderly vs. Essential Workers: Who Should Get the Coronavirus Vaccine First?” *The New York Times*, 5 Dec. 2020, <https://www.nytimes.com/2020/12/05/health/covid-vaccine-first.html>; Dooling, Kathleen, et al. “The Advisory Committee on Immunization Practices’ Updated Interim Recommendation for Allocation of COVID-19 Vaccine — United States, December 2020.” *MMWR. Morbidity and Mortality Weekly Report*, vol. 69, no. 5152, 1 Jan. 2021, pp. 1657–1660., <https://doi.org/10.15585/mmwr.mm695152e2>.

⁶ Off, Gavin, et al. “Black, Latino NC Workers Had to Play ‘Russian Roulette’ during COVID. The Toll Was Steep.” *The News & Observer*, 9 June 2021.

⁷ *Id.*

⁸ *Id.*

⁹ Kinder, Molly, and Laura Stater. “Essential Workers Comprise about Half of All Workers in Low-Paid Occupations. They Deserve a \$15 Minimum Wage.” *Brookings*, The Brookings Institution, 5 Feb. 2021, <https://www.brookings.edu/blog/the-avenue/2021/02/05/essential-workers-deserve-minimum-wage-increase/>.

¹⁰ The Lancet. “The Plight of Essential Workers during the COVID-19 Pandemic.” *The Lancet*, vol. 395, no. 10237, 23 May 2020, pp. 1587–1587., [https://doi.org/10.1016/s0140-6736\(20\)31200-9](https://doi.org/10.1016/s0140-6736(20)31200-9).

¹¹ Rho, Hye Jin, et al. “A Basic Demographic Profile of Workers in Frontline Industries.” *Center for Economic and Policy Research*, 7 Apr. 2020, <https://cepr.net/a-basic-demographic-profile-of-workers-in-frontline-industries/>.

64.4% of front-line workers but only 47.4% of the national workforce.^{12,13} Worse still, recent reports reveal that essential workers, in particular, may be unable to take time off to receive life-saving health care, such as vaccinations. A 2021 Kaiser Family Foundation study reported that 54% of unvaccinated, employed Hispanic adults polled would be more likely to get a COVID-19 vaccine if their employer gave them paid leave to get and recover from the vaccine.¹⁴ The inability to receive life-saving care in North Carolina is even more pronounced than in other areas of the country, as 79% of working people in the state have no access to paid leave and 61% have no unpaid leave, should they become ill.¹⁵ Given these severe gaps in the availability of leave for sick individuals or those hoping to prevent illness, businesses are under an even greater duty to ensure employees do not become ill at work. The Proposed Rule helps accomplish these commonsense goals.

VI. Statutory Authority for the Agency to Promulgate the Rule

NCDOL has the statutory authority to enforce OSHANC. N.C. Gen. Stat. § 95-126(b)(2)(m). The North Carolina General Assembly declared in legislative findings when enacting OSHANC that “the burden of employers and employees of this State resulting from personal injuries and illnesses arising out of work situations is substantial,” and that “the prevention of these injuries and illnesses is an important objective of the government of this State.” N.C. Gen. Stat. § 95-126(b)(1). The General Assembly further declared that it was its purpose and policy through the exercise of its powers to ensure so far as possible

¹² Rho, Hye Jin, *et al.* “A Basic Demographic Profile of Workers in Frontline Industries.” *Center for Economic and Policy Research*, 7 Apr. 2020, <https://cepr.net/a-basic-demographic-profile-of-workers-in-frontline-industries/>.

¹³ It is important to note, however, that these findings depend on how “frontline” and “essential” workers are defined. Other studies have found that men are more likely to be frontline workers than women. Tomer, Adie, and Joseph W. Kane. “To Protect Frontline Workers during and after COVID-19, We Must Define Who They Are.” *Brookings*, The Brookings Institution, 10 June 2020, <https://www.brookings.edu/research/to-protect-frontline-workers-during-and-after-covid-19-we-must-define-who-they-are/>.

¹⁴ Artiga, Samantha, and Liz Hamel. “How Employer Actions Could Facilitate Equity in Covid-19 Vaccinations.” *KFF*, Kaiser Family Foundation, 17 May 2021, <https://www.kff.org/policy-watch/how-employer-actions-could-facilitate-equity-in-covid-19-vaccinations/>.

¹⁵ <https://www.nationalpartnership.org/our-work/resources/economic-justice/paid-leave/paid-leave-means-a-stronger-north-carolina.pdf>

every working man and woman in the State of North Carolina safe and healthful working conditions and to preserve our human resources: a. By encouraging employers and employees in their effort to reduce the number of occupational safety and health hazards at the place of employment ... [and] e. [b]y providing occupational health criteria which will assure insofar as practicable that no employee will suffer diminished health, functional capacity, or life expectancy as a result of his work experience.

N.C. Gen. Stat. §§ 95-126(b)(2)(a) and (e).

To further those ends, the North Carolina Commissioner of Labor (“Commissioner”) is statutorily authorized to develop occupational safety and health standards. N.C. Gen. Stat. § 95-126(c). The Commissioner also has the statutory authority “to secure the enforcement of all laws relating to the inspection of factories, mercantile establishments, mills, workshops, public eating places, and commercial institutions in the State,” N.C. Gen. Stat. § 94-4(4), and to take action in the courts to enforce such laws. N.C. Gen. Stat. § 95-13. Other than adopting the healthcare-specific emergency temporary standard for COVID-19,¹⁶ the Department has not adopted or amended health and safety standards to protect North Carolina workers from airborne infectious disease.

NCDOL also has the authority to enforce the state anti-retaliation statute, the Retaliatory Employment Discrimination Act (REDA), N.C. Gen. Stat. Section 95-240, *et seq.* REDA protections could apply if an employer were found to have unlawfully discriminated against an employee under Section 95-241.

VII. Conclusion

For the reasons outlined in this petition, Petitioners request that NCDOL adopt the Proposed Rule.

This the 14th day of December, 2022.

¹⁶ NCDOL repealed the emergency temporary standard effective March 4, 2022.

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Exhibit A

Proposed Rule

A. GENERAL PROVISIONS

1. This standard is designed to establish requirements for employers, employees, and places of employment in North Carolina to assess the risk of, prepare for, control, prevent, and mitigate the spread of an airborne infectious disease to and among employees and employers.
2. This standard is designed to supplement and clarify the rights existing under the Occupational Safety and Health Act of North Carolina (OSHANC) rules, regulations and/or standards applicable to airborne infectious disease-related hazards including, but not limited to, those dealing with personal protective equipment (“PPE”), respiratory protective equipment, face masks, and sanitation.
3. This standard shall not conflict with requirements and guidelines applicable to businesses set out in any applicable NC executive order or order of public health emergency and shall take into account all applicable federal standards to the extent practicable. Employers are encouraged to follow public health guidance from the Centers for Disease Control and Prevention (CDC) even when not required by this section.
4. This standard shall apply to:
 - i. Every employer, employee, and place of employment in North Carolina within the coverage of The Occupational Safety and Health Act of North Carolina; and
 - ii. Any 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, World Health Organization, or Centers for Disease Control as presenting a public health emergency;
 - iii. It does not apply to any seasonal or endemic infectious agent or disease, such as the seasonal flu, that has not been designated as specified in 4.ii.
5. The provisions of this section shall not be interpreted as relieving any employer from the requirements of any other state or federal guidance or requirements related to preventing the spread of an airborne infectious agent or disease to employees and third parties such as customers, contractors, and members of the public within the workplace.

B. DEFINITIONS

1. "Airborne infectious disease" shall mean any infectious viral, bacterial or fungal disease that is transmissible through the air in the form of aerosol particles or droplets and 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.
2. "Authorized employee representative" means any person designated, verbally or in writing, by an employee to serve as their authorized representative.
3. "CDC" means the Centers for Disease Control and Prevention.
4. "Employee," "employer," and "person" have the definitions used in the Occupational Safety and Health Act of North Carolina, G.S. § 95-127.
5. "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.
6. "Undue hardship" has the definition used in G.S. § 168A-3(11).

C. EXPOSURE PREVENTION PLAN

1. Each employer shall establish, implement and maintain a written exposure prevention plan which is specific to the workplace and operation(s) and is designed to eliminate or minimize employee exposure to airborne infectious agents in the event of an outbreak of an airborne infectious disease. The written elements of the Exposure Prevention Plan shall include:
 - i. System for communicating. The employer shall do all of the following in a form readily understandable by employees:
 - a. Ask employees to report to the employer, without fear of reprisal, symptoms, possible close contacts, and possible airborne infectious disease hazards at the workplace;
 - b. Describe how employees with medical or other conditions that put them at increased risk of the airborne infectious disease can request accommodations;
 - c. Provide information about access to testing for infection;

- d. In accordance with subsection C..3, communicate information about airborne infectious disease hazards and the employer's airborne infectious disease policies and procedures to employees and to other employers, persons, and entities within or in contact with the employer's workplace.
- ii. Identification and evaluation of hazards. The employer shall:
- a. Allow for employee and authorized employee representative participation in the identification and evaluation of airborne infectious disease hazards.
 - b. Develop and implement a process for screening employees for and responding to employees with symptoms. The employer may ask employees to evaluate their own symptoms before reporting to work. If the employer conducts screening indoors at the workplace, the employer shall ensure that face coverings are used during screening by both screeners and employees and, if temperatures are measured, that non-contact thermometers are used.
 - c. Develop airborne infectious disease policies and procedures to respond effectively and immediately to individuals at the workplace who are positive to prevent or reduce the risk of transmission of the airborne infectious disease in the workplace.
 - d. Conduct a workplace-specific identification of all interactions, areas, activities, processes, equipment, and materials that could potentially expose employees to airborne infectious disease hazards. Employers shall treat all persons, regardless of symptoms or negative test results, as potentially infectious.
 - 1. This shall include identification of places and times when people may congregate or come in contact with one another, regardless of whether employees are performing an assigned work task or not, for instance during meetings or trainings and including in and around entrances, bathrooms, hallways, aisles, walkways, elevators, break or eating areas, cool-down areas, and waiting areas.
 - 2. This shall include an evaluation of employees' potential workplace exposure to all persons at the workplace or who may enter the workplace, including coworkers, employees of other entities, members of the public, customers or clients, and independent contractors. Employers shall consider how employees and other persons enter, leave, and travel through the workplace, in addition to addressing stationary work.
 - e. For indoor locations, evaluate how to maximize ventilation with outdoor air; the highest level of filtration efficiency compatible with the existing ventilation system; and whether the use of portable or mounted High Efficiency Particulate Air (HEPA) filtration units, or other air cleaning systems, would reduce the risk

of airborne infectious disease transmission.

- f. Review applicable orders and guidance from the State of North Carolina and the local health department related to airborne infectious disease hazards and prevention. These orders and guidance are both information of general application and information specific to the employer's industry, location, and operations.
 - g. Evaluate existing airborne infectious disease prevention controls at the workplace and the need for different for additional controls. This includes evaluation of controls in subsections C.1.iv and D.2.
 - h. Conduct periodic inspections as needed to identify unhealthy conditions, work practices, and work procedures related to the airborne infectious disease and to ensure compliance with employers' airborne infectious disease policies and procedures.
- iii. Investigating and responding to airborne infectious disease cases in the workplace.
- a. Employers shall have an effective procedure to investigate airborne infectious disease cases in the workplace. This includes procedures for seeking information from employees regarding cases and close contacts, test results, and onset of symptoms, and identifying and recording cases.
 - b. The employer shall take the following actions when there has been an airborne infectious disease case at the place of employment:
 - 1. Determine the day and time the case was last present and, to the extent possible, the date of the positive test and/or diagnosis, and the date the case first had one or more symptoms, if any were experienced.
 - 2. Determine who may have had a close contact. This requires an evaluation of the activities of the case and all locations at the workplace which may have been visited by the case during the high-risk exposure period as defined by the CDC.
 - 3. Within one business day of the time the employer knew of an airborne infectious disease case, the employer shall give written notice, in a form and in the language(s) readily understandable by employees that people at the worksite may have been exposed to the airborne infectious disease. The notice shall be written in a way that does not reveal any personal identifying information of the case, and in the manner the employer normally uses to communicate employment-related information. Written notice may include, but is not limited to, personal service, email, or text message if it can

reasonably be anticipated to be received by the employee within one business day of sending. The notice shall include the cleaning and disinfection plan required by D.2.iv. The notice must be sent to the following:

- i. All employees who were on the premises at the same worksite as the case during the high-risk exposure period. If the employer should reasonably know that an employee has not received the notice, or has limited literacy in the language used in the notice, the employer shall provide verbal notice, as soon as practicable, in a language understandable by the employee.
- ii. Independent contractors and other employers on the premises at the same worksite as the case during the high-risk exposure period.

4. Follow the steps outlined in subsection F.2. to ensure that any employee infected with the airborne infectious disease stays out of the workplace until the return-to-work criteria in F.5. are met.

iv. Correction of hazards. Employers shall implement effective policies and/or procedures for correcting unsafe or unhealthy conditions, work practices, policies and procedures in a timely manner based on the severity of the hazard. This includes, but is not limited to, implementing controls and/or policies and procedures in response to the evaluations conducted under subsections C.1.ii. and D.1. and implementing the controls required by subsection D.2.

2. The exposure prevention plan shall be reviewed and updated whenever necessary to reflect new or modified tasks and procedures which affect occupational exposure and to reflect new or modified employee assignments.

3. Each employer shall make the exposure prevention plan available in English and/or in the language(s) identified as a primary language of employees, to all employees, and, upon request, to employee representatives, collective bargaining representatives, independent contractors, the NC Department of Labor, and the NC Department of Health and Human Services.

4. Implementation of the exposure prevention plan during an outbreak of an airborne infectious disease:

- i. When an airborne infectious agent or disease 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, each employer shall:

- a. Immediately review the worksite's exposure prevention plan and update the plan, if necessary, to ensure that it incorporates current information, guidance, and mandatory requirements issued by federal, state, or local governments related to the infectious agent of concern;
- b. Finalize and promptly activate the worksite exposure prevention plan, no later than 15 days from the date of the designation referenced in 4.i.;
- c. Provide each employee with a copy of the exposure prevention plan in English and/or in the language(s) identified as the primary language of such employees, and
 1. Post a copy of the exposure prevention plan in English and/or in the language(s) identified as a primary language of employees in a visible and prominent location at the worksite (except when the worksite is a vehicle);
 2. Ensure that a copy of the exposure prevention plan is accessible to employees during all work shifts; and
 3. Retain all versions of the exposure prevention plan implemented to comply with this section while this section remains in effect.

D. EXPOSURE CONTROLS

1. The employer shall select and obtain appropriate exposure controls based on the types and level of exposure risks employees have during all activities performed at the worksite.
2. The following controls shall be included in the exposure prevention plan adopted by an employer to be used at any worksite where occupational exposure exists:
 - i. Face Coverings:
 - a. The employer shall select and provide at no cost to employees, face coverings deemed appropriate and in accordance with guidance from NC Department of Health and Human Services or the Centers for Disease Control and Prevention, as applicable.
 - b. The employer shall require that employees wear appropriate face coverings when physical distancing cannot be maintained and in accordance with applicable guidance from the NC Department of Health and Human Services or the Centers for Disease Control and Prevention, as applicable.
 - ii. Physical Distancing:

- a. Physical distancing shall be used to keep employees at least six feet apart from other individuals or as recommended by the NC Department of Health and Human Services or the Centers for Disease Control and Prevention, as applicable during a disease outbreak, unless such physical distancing would constitute an undue hardship on the employer.

iii. Hand Hygiene Facilities:

- a. The employer shall, to the extent practicable and feasible, provide handwashing facilities with an adequate supply of tepid or warm potable water, soap, and single-use towels or air-drying machines.
- b. When provision of handwashing facilities is not practicable and feasible, the employer shall provide hand sanitizing facilities and/or supplies.
- c. The hand sanitizers provided by the employer shall be effective against the infectious agent and shall contain at least 60% alcohol or other composition determined to be appropriate by the NC Department of Health and Human Services or the Centers for Disease Control and Prevention for the disease outbreak, as applicable.

iv. Cleaning and disinfection:

- a. The employer shall determine and implement an appropriate plan for cleaning and disinfection that includes the methods of decontamination based upon the location, facility type, type of surface(s) to be cleaned, type of material present, tasks or procedures being performed in the area, and as otherwise directed by the NC Department of Health and Human Services or the Centers for Disease Control and Prevention for the disease outbreak.
- b. Surfaces known or believed to be contaminated with potentially infectious materials shall be cleaned and disinfected immediately or as soon as feasible, unless the area and surfaces can be isolated for a period of time prior to cleaning.
- c. Surfaces contaminated with dust or other loose materials shall be wiped clean prior to disinfection, and the cleaning methods used should minimize dispersal of the dust or loose materials into the air.
- d. Frequently touched surfaces, such as handrails, doorknobs, and elevator buttons, shall be disinfected throughout the workday and/or as recommended

by NC Department of Health and Human Services or the Centers for Disease Control and Prevention, as applicable.

- e. Shared tools, equipment, and workspaces shall be cleaned and disinfected prior to sharing and/or as recommended by the NC Department of Health and Human Services or the Centers for Disease Control and Prevention, as applicable.
- f. Common areas, such as bathrooms, dining areas, break rooms, locker rooms, vehicles, and sleeping quarters, shall be cleaned and disinfected at least daily or as recommended by the NC Department of Health and Human Services or the Centers for Disease Control and Prevention, as applicable.

v. Ventilation:

- a. Employers who own or control buildings or structures with an existing heating, ventilation, and air conditioning (HVAC) system(s) must ensure that:
 - 1. The HVAC system(s) is used in accordance with the HVAC manufacturer's instructions and the design specifications of the HVAC system(s);
 - 2. The amount of outside air circulated through its HVAC system(s) and the number of air changes per hour are maximized to the extent appropriate;
 - 3. All air filters are rated Minimum Efficiency Reporting Value (MERV) 13 or higher, if compatible with the HVAC system(s). If MERV-13 or higher filters are not compatible with the HVAC system(s), employers must use filters with the highest compatible filtering efficiency for the HVAC system(s);
 - 4. All air filters are maintained and replaced as necessary to ensure the proper function and performance of the HVAC system(s); and
 - 5. All intake ports that provide outside air to the HVAC system(s) are cleaned, maintained, and cleared of any debris that may affect the function and performance of the HVAC system(s).
- 6. This section does not require installation of new HVAC systems to replace or augment functioning systems.

3. Personal Protective Equipment:

- i. Employers shall evaluate the need for personal protective equipment (PPE) to prevent exposure to hazards related to the airborne infectious disease, such as gloves, goggles, and face shields, and shall provide such equipment as necessary. Upon request, employers shall provide respirators to all employees for voluntary use in compliance with OSHA's respiratory standard. PPE and respirators that are identified as necessary for the protection of the employee shall fit the employee, and be provided, used, and maintained in a sanitary and reliable condition at the expense of the employer.
 - ii. The employer shall:
 - a. Provide and require employees use the personal protective equipment and other personal protective equipment deemed necessary or recommended, as applicable, by the NC Department of Health and Human Services or the Centers for Disease Control; and
 - b. Provide appropriate training and information to each employee required to use personal protective equipment.
 - iii. Where employee-owned personal protective equipment is used at the worksite, the employer shall be responsible for ensuring that the employee-owned personal protective equipment is adequate and functioning properly.
 - iv. All personal protective equipment, including employee-owned personal protective equipment used at the worksite, shall be stored, used, and maintained in a sanitary and reliable condition in order to be used at the worksite. Equipment must be maintained and disposed of according to manufacturer specifications and shall not be reused after the time when it is supposed to be disposed of.
4. Vaccination. The employer must support vaccination against airborne infectious diseases for each employee by providing reasonable time and paid leave (e.g., paid sick leave, administrative leave) if the employer has a policy and practice of providing such leave, to each employee for vaccination and any side effects experienced following vaccination.

E. TRAINING

1. During the time a designation 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 of an airborne infectious diseases as presenting a public health emergency, employers must ensure that each employee receives training, in a language and at a literacy level the employee understands, and so that the employee comprehends at least the following:

- a. How the airborne infectious disease is transmitted (including presymptomatic and asymptomatic transmission), the importance of hand hygiene to reduce the risk of spreading infections, ways to reduce the risk of spreading the airborne infectious agent or disease through the proper covering of the nose and mouth, the signs and symptoms of the disease, risk factors for severe illness, and when to seek medical attention;
- b. Employer-specific policies and procedures on patient screening and management;
- c. Tasks and situations in the workplace that could result in infection;
- d. Workplace-specific policies and procedures to prevent the spread of the airborne infectious agent or disease that are applicable to the employee's duties (e.g., policies on Standard and Transmission-Based Precautions, physical distancing, physical barriers, ventilation, aerosol generating procedures);
- e. Employer-specific or multi-employer workplace agreements related to infection control policies and procedures, the use of common areas, and the use of shared equipment that affect employees at the worksite.
- f. Employer-specific policies and procedures for PPE worn to comply with this section, including:
 - g. When PPE is required for protection;
 - h. Limitations of PPE for protection against the airborne infectious agent or disease;
 - i. How to properly put on, wear, and take off PPE;
 - j. How to properly care for, store, clean, maintain, and dispose of PPE; and
 - k. Any modifications to donning, doffing, cleaning, storage, maintenance, and disposal procedures needed to address the airborne infectious disease when PPE is worn to address workplace hazards other than the airborne infectious disease;
- l. Workplace-specific policies and procedures for cleaning and disinfection;
- m. Employer-specific policies and procedures on health screening and medical management;
- n. Available sick leave policies, any airborne infectious disease-related benefits to which the employee may be entitled under applicable federal, state, or local laws, and other supportive policies and practices (e.g., telework, flexible hours);
- o. The identity of the safety coordinator(s) specified in the Airborne Infectious Disease Plan;

- p. The requirements of this section;
 - q. How to notify the business or operation of any symptoms of the airborne infectious disease or a suspected or confirmed diagnosis of the airborne infectious disease;
 - r. How and to whom to report unsafe working conditions related to the airborne infectious agent, as well as the protocol for responding to such reports; and
 - s. The anti-retaliation and anti-discrimination provisions of Section o of this rule; and
 - t. How the employee can obtain copies of this section and any employer specific policies and procedures developed under this section, including the employer's written Airborne Infectious Disease Plan, if required.
 - u. Employers may rely on training completed prior to the effective date of this section to the extent that it meets the relevant training requirements under this paragraph.
2. The employer must ensure that each employee receives additional training whenever:
 - a. Changes occur that affect the employee's risk of contracting the airborne infectious disease at work (e.g., new job tasks);
 - b. Policies or procedures are changed; or
 - c. There is an indication that the employee has not retained the necessary understanding or skill.
 3. The employer must ensure that the training is overseen or conducted by a person knowledgeable in the covered subject matter as it relates to the employee's job duties.
 4. The employer must ensure that the training provides an opportunity for interactive questions and answers with a person knowledgeable in the covered subject matter as it relates to the employee's job duties.

F. TEMPORARY MEDICAL REMOVAL FROM THE WORKPLACE

1. If the employer knows an employee has a confirmed positive test for or has been diagnosed by a licensed healthcare provider with, the airborne infectious disease then the employer must immediately remove that employee from the workplace and keep them removed until they meet the return-to-work criteria in section F.5. Nothing in this standard shall prohibit an employer from permitting a worker known or suspected to be infected with the airborne infectious disease from engaging in teleworking or other form

of offsite work that would not result in potentially exposing other people to the airborne infectious disease.

2. If the employer knows an employee is experiencing symptoms of the airborne infectious disease as identified by the CDC, then the employer must immediately remove that employee and either:
 - a. Keep the employee removed until they meet the return-to-work criteria in F.5 or
 - b. Keep the employee removed and provide an airborne infectious disease polymerase chain reaction (PCR) test at no cost to the employee.
 - c. If the test results are negative, the employee may return to work immediately.
 - d. If the test results are positive, the employer must comply with section G.2.
3. Any time an employee is required to be removed from the workplace for any reason under this section, the employer may require the employee to work remotely or in isolation if suitable work is available.
4. Where the employer has a policy or a practice of making such payments, employers must use sick leave in order to pay the employee their same regular pay when an employer removes an employee under section F., in accordance with state law. This subsection does not apply where the employee received disability payments, was covered by workers' compensation, or received temporary disability.
5. The determination of when an employee may return to work after an airborne infectious disease-related workplace removal must be based on and in accordance with guidance from a licensed healthcare provider or the CDC.
7. When an employee returns to work after temporary medical removal, the employer shall return the employee to his or her former job status. This requirement is not intended to expand upon or restrict any rights an employee has or would have had, absent temporary medical removal, to a specific job classification or position under the terms of a collective bargaining agreement.

G. RECORDKEEPING.

1. Small employer exclusion. Employers with 10 or fewer employees on the effective date of this section are not required to comply with section G.
2. Employers must establish and maintain a log to record each instance identified by the employer in which an employee is positive for an airborne infectious disease, regardless of whether the instance is connected to exposure to the airborne infectious agent at work.

3. The log must contain, for each instance, the employee's name, one form of contact information, occupation, location where the employee worked, the date of the employee's last day at the workplace, the date of the positive test for, or diagnosis of, the airborne infectious disease, and the date the employee first had one or more symptoms, if any were experienced.
4. The information in the log must be recorded within 24 hours of the employer learning that the employee is positive and must be maintained as though it is a confidential medical record and must not be disclosed except as required by this rule or other federal or state law.
5. The log must be maintained and preserved while this section remains in effect.
6. Availability of records. By the end of the next business day after a request, the employer must provide, for examination and copying:
 - a. The individual log entry for a particular employee to that employee and to anyone having written authorized consent of that employee.
 - b. A version of the log that removes the names of employees, contact information, and occupation, and only includes, for each employee in the log, the location where the employee worked, the last day that the employee was at the workplace before removal, the date of that employee's positive test for, or diagnosis of, the airborne infectious disease, and the date the employee first had one or more symptoms, if any were experienced, to any employees, or their authorized representatives.
8. Employers must continue to record all work-related confirmed cases of the airborne infectious disease on their OSHA Forms 300, 300A, and 301, or the equivalent forms, if required to do so under 29 CFR part 1904.

H. REPORTING FATALITIES AND HOSPITALIZATIONS TO THE OCCUPATIONAL SAFETY AND HEALTH DIVISION

1. The employer must report to OSH
 - a. Each airborne infectious disease employee fatality within 8 hours of the employer learning about the fatality.
 - b. Each airborne infectious disease employee inpatient hospitalization within 24 hours of the employer learning about the inpatient hospitalization.
 - c. When reporting airborne infectious disease fatalities and in-patient hospitalizations to OSH in accordance with this section, the employer must follow the requirements in 29 CFR § 1904.39, except for 29 CFR §§ 1904.39(a)(1) and (2) and (b)(6). 13 NCAC 07A.0301.

EXHIBIT B

Declaration of Linsey C. Marr, Ph.D.

Declaration of Linsey C. Marr, Ph.D.

I, Linsey C. Marr, under the penalty of perjury, declare as follows:

1. My name is Linsey C. Marr. I am over 18 years of age. I am providing this declaration in support of the adoption of a North Carolina OSHA standard to control the transmission of airborne infectious disease.

2. I am the Charles P. Lunsford Professor of civil and environmental engineering in the College of Engineering at Virginia Tech in Blacksburg, Virginia.

3. I have studied airborne transmission of viruses for the past 13 years, and have published more than 30 scientific papers on the topic, among more than 100 papers total on topics related to air pollution and health.

4. I testified in front of the U.S. House of Representatives Committee of Education and Labor's Subcommittee on Workforce Protections on March 11, 2021 about protection against transmission of COVID-19.

5. There is overwhelming evidence that inhalation of virus-containing aerosols is the main route of transmission for COVID-19.

6. If you spend a long time around other people indoors and do not wear a "good" mask (which I describe below), you could breathe in enough virus-containing aerosols to become sick with COVID-19. The simplest way to prevent transmission is to limit exposure to the virus. One way of accomplishing this is by avoiding crowded indoor spaces and limiting the amount of time spent indoors with those who are not part of the same household.

7. When contact with others cannot be avoided, it is critical to reduce exposure to virus in the air by ensuring good ventilation—this reduces the amount of virus in the air—and wearing high-performance masks or respirators.

8. The total amount of virus that someone breathes in depends on both the concentration of the virus in the air and the amount of time spent breathing that air. Thus, someone who spends 8-12 hours in a poorly ventilated workplace where they share the air with other people is at much greater risk for transmission than a customer who passes through the space for a short period of time.

9. Because workers may spend 8-12 hours in a poorly ventilated workplace with frequent contact with co-workers, patients, and members of the public who may be unmasked, workers require special considerations. According to the hierarchy of controls, the first priority is to control the source. Unfortunately, workers may be exposed to members of the public who are unmasked, especially in restaurants and localities where masks are not required.

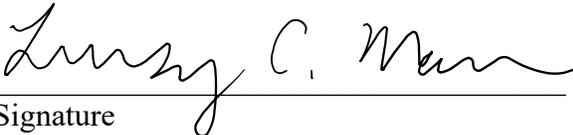
10. The next priority is to use engineering controls, such as ventilation, to reduce the amount of virus in the air. Fresh air dilutes the virus, so it cannot build up to dangerous levels. Opening windows and doors is an easy way to improve ventilation. Workplaces should ensure that HVAC systems are running with as much outdoor air, rather than recirculated air, as possible. Improved filtration also helps remove viruses from the air. Filters in HVAC systems should be upgraded if possible. Portable air filters are an alternative way to reduce virus concentrations in the air.

11. Personal protective equipment (PPE) is considered the final line of defense. Because SARS-CoV-2 is transmitted mainly by aerosols, the appropriate PPE for workers at elevated risk is a high-performance mask (e.g., filtration efficiency of at least 80% according to the new ASTM standard) or a respirator (e.g., N95, elastomeric respirator, or PAPR), depending on the level of risk.

12. Using high-performance masks and sufficient ventilation to clean the air is critical. Improved guidance is sorely needed so that people can better protect themselves against infection, especially for workers who may be exposed to elevated levels of virus in the air for long periods of time.

13. In February 2021, I co-authored with 12 other leading medical and scientific experts a letter to the Biden Administration and the Centers for Disease Control calling on the CDC and OSHA to issue recommendations and requirements that address transmission of COVID-19 by inhalation of aerosols. Specifically, we urged OSHA to issue an emergency standard on COVID-19 that requires implementation of control measures, including effective respiratory protection for all healthcare workers and other workers at high risk, including those in meatpacking, corrections, and public transit.

I, Linsey C. Marr, do declare and say under penalty of perjury under the laws of the United States of America that the statements that I have made above are true and correct to the best of my knowledge and understanding.


Signature