

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, 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 Rulemaking and initiate rule-making proceedings, as allowed by N. C. Gen. Stat. § 150B-20(c).

I. Petitioners

Episcopal Farmworker Ministry
2989 East Street
Dunn, NC 28334
(919)- 805-1607

NC State AFL-CIO
P.O. Box 10805 Raleigh, NC
27605
(919) 833-6678

Western North Carolina Workers Center
200 North King St., Third Floor
Morganton, NC 28655
(828) 575-3830

The Hispanic Liaison of Chatham County/ El Vinculo Hispano
200 N. Chatham Ave.
Siler City, NC 27344
(919) 742-1448

North Carolina Conference of the NAACP
PO Box 27392

Raleigh NC 27611
(919) 682-4700

Petitioners, NC State AFL-CIO, Episcopal Farmworker Ministry, Western North Carolina Workers' Center, Hispanic Liaison of Chatham County / El Vinculo Hispano, 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 migrant farmworkers in our state.

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 has 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.

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 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 and housing operators 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.

Migrant farmworkers live and work across the state of North Carolina, and make up a significant part of our rural communities. The high risk faced by migrant farmworkers because of their living and working conditions and barriers to testing and treatment elucidate the significant risk to their health should another airborne infectious disease pandemic develop.

The Proposed Rule is designed to protect both the health of migrant farmworkers, as well as the health of all of those who come into contact with farmworkers. By limiting the transmission of a future airborne infectious disease that is designated by specific federal or state officials as

presenting a public health emergency, the rule provides a substantial benefit to many community members, including emergency workers, medical providers, school employees and students, and the farming community. Outreach workers, migrant education staff, outreach ministry participants, farmers, drivers, and others in regular contact with migrant farmworkers and other migrant housing occupants will similarly benefit from less exposure to potential infection. Migrant farmworkers and their family members who are occupants of migrant housing will be positively impacted by the rule, in that they will be less likely to be infected, become sick, and suffer long-term consequences from infection with an airborne infectious disease.

This rule shall apply to every agricultural employer, their employees, and places of agricultural employment, and to migrant housing operators in North Carolina within the jurisdiction of the Occupational Safety and Health Division (“OSH”) of the North Carolina Department of Labor.

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 overshadowed 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. The rule could also require the Department to expend resources to conduct additional pre-occupancy inspections to migrant housing sites that will be used for isolation housing. Department staff who respond to complaints related to alleged violations of the Migrant Housing or OSH Act will be better protected from becoming ill from the airborne infectious disease if there is less transmission among persons whose housing or workplaces they are inspecting.

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

Employers will benefit from the Proposed Rule. By having a plan already ready to go before a public health emergency is declared, they will avoid uncertainties and will be able to move forward quickly with necessary changes in the workplace. This is particularly important for the agricultural industry, where disruptions to the food supply could impact any public health crisis.

The various control measures employers 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 will also be higher when employees see their employers are taking measures to protect their health and safety. This should reduce turnover.

Covered employers will need to review and understand the Proposed Rule. During the time the rule is in effect, they may need to change their schedule for transporting workers or procure additional vehicles to transport them, and will need to clean and disinfect vehicles. They will need to provide hygiene supplies and face masks for vehicle and housing occupants. They may need to rearrange or expand sleeping quarters to allow for adequate space, and will need to use the ventilation measures required by the rule. Employers may need to implement changes to the bathrooms. They will have to post information and request emergency contact numbers. They will also have to ensure they have access to sufficient housing to comply with the rule, and will need to do required cleaning of the housing. Employers must coordinate with local health departments and/or the NC Department of Health and Human Services to provide medical evaluation and testing, and to report positive cases. They will also need to arrange for symptom screening and testing of new arrivals to the housing.

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 need to participate in a symptom screening process and testing upon arrival at the migrant housing, and to report symptoms and positive test results. They will be required to wear a face covering in vehicles and possibly for some time after arrival at the migrant housing. Employees who are contagious may need to move to separate housing or to a different location within the housing.

IV. Data Supporting the Petition

It is critical that employers of migrant workers and housing operators be prepared for a future airborne infectious disease pandemic. New reports of polio outbreaks in part of the United States highlight this threat. Additionally, the illness and death experienced by migrant farmworkers during the COVID-19 pandemic serves as a harbinger of what could happen if employers do not have plans in place. COVID-19 has had a devastating impact on migrant farmworkers in North Carolina. The National Center for Farmworker Health (NCFH) estimates that as of December 2021, one million agricultural workers across the country had been infected

with COVID, not including contracted and temporary labor.¹ Agricultural workers were more likely to test positive than the general population in a study examining June through November 2020 positivity rates.² Agricultural workers have high rates of underlying health conditions such as diabetes and factors like pesticide exposure that increase the possible impact of COVID-19.³ Most migrant farmworkers in North Carolina are Latinx, a group which has higher rates of COVID as well as higher mortality than many other groups.⁴ The NCFH identified difficulties maintaining social distance during field work and on transportation to and from work and overcrowded and substandard housing as risk factors for agricultural workers.⁵

In recognition of the special challenges facing migrant farmworkers in congregate living situations, North Carolina created a program to house farmworkers and others who tested positive for or were exposed to COVID and need a place to quarantine, isolate, or social distance.⁶ The state also provided funding in 2021 to H-2A employers whose employees need to quarantine.⁷

On October 8, 2020, the NC Department of Health and Human Services (NCDHHS) issued guidance for employers of agricultural workers recommending separate sleeping, bathroom, and kitchen facilities for farmworkers who are asymptomatic but exposed, symptomatic, or who have tested positive for COVID, warning that “COVID-19 can spread easily in settings where many people are in close proximity, such as the residential facilities that house migrant farmworkers.”⁸ NCDHHS also recommended testing newly arrived workers and housing them separately for 14 days, providing face coverings to all workers, not allowing farmworkers

¹ <http://www.ncfh.org/msaws-and-covid-19.html> (accessed April 13, 2022).

² *Id.*

³ *Id.*

https://www.gapconnections.com/uploads/Guidance%20for%20Migrant%20Farmworkers%20and%20their%20Employers_long%20version_10082020.pdf (accessed April 13, 2022).

⁴ <http://www.ncfh.org/msaws-and-covid-19.html> (accessed April 13, 2022).

⁵ *Id.*

⁶ <https://covid19.ncdhhs.gov/information/housing-and-sheltering/non-congregate-sheltering> (accessed April 13, 2022).

⁷ <http://www.ncagr.gov/QuarantineReimbursementProgram.htm> (accessed April 13, 2022).

⁸ https://www.gapconnections.com/uploads/Guidance%20for%20Migrant%20Farmworkers%20and%20their%20Employers_long%20version_10082020.pdf (accessed April 13, 2022).

who test positive to work, posting signs educating farmworkers about COVID in a language they understand, encouraging the reporting of symptoms, ensuring adequate ventilation in the housing, separating beds by at least 6 feet, requiring social distancing in employer-provided transportation, educating workers, and providing sanitary supplies. NCDHHS urged employers to obtain emergency contact information for workers, provide the number of the local health department and nearby clinic, and to post the address of the camp so workers can call 911 for emergency assistance.⁹ The recommendations in this guidance, however, are not enforceable.

Despite the known hazards to farmworkers concerning COVID-19, farmworkers faced barriers to testing and follow-up care once infected. Many farmworkers had to rely on their employers to provide transportation to get tested and/or get medical care for COVID-19, and outreach workers were not able to get medical providers to conduct large-scale testing in migrant labor camps.¹⁰ Some hospitals and health departments refused to test farmworkers, even when they are identified as being on the NC DHHS priority list due to their congregate living settings.¹¹ As a result, some workers had to travel to other counties in order to get tested.¹²

During the summer of 2020, there were COVID-19 outbreaks at more than 30 farms in North Carolina.¹³ Even these high numbers are likely to be an undercount. When workers were able to get tested, some hospitals and health departments were not asking patients about the type of work they do or their housing, likely leading to an undercount of infected farmworkers.¹⁴

⁹ *Id.*

¹⁰ Farmworker Advocacy Network letter to Governor Cooper and Secretary Cohen, Jun. 16, 2020, <https://ncfan.org/2020/a-letter-to-gov-cooper/>

¹¹ *Id.*

¹² *Id.*

¹³ <https://www.northcarolinahealthnews.org/2022/01/10/vaccines-become-more-accessible-to-farmworkers-but-many-still-struggle-with-internet-access/> (accessed April 13, 2022)

¹⁴ *Id.*

Compounding these issues, farmworkers were reluctant to report symptoms or get tested.¹⁵ Many workers could not afford to lose even a day’s worth of income, and they feared causing trouble for their employer and inviting retaliation if a reported infection triggers a requirement for a large portion of the labor camp to be isolated.¹⁶ Language barriers posed an additional obstacle for farmworkers in accessing treatment and testing.

These experiences of high-risk living and working conditions, underlying risk factors, high rates of infection, and barriers to testing and treatment elucidate the significant risk to farmworkers’ health should another airborne infectious disease pandemic develop.

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.”¹⁷ 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.”¹⁸ 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.¹⁹

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ 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>.

¹⁸ 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>.

¹⁹ 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>.

The COVID-19 pandemic has shown that migrant farmworkers are at high risk from airborne infectious diseases. Because they typically reside in congregate housing, migrant farmworkers often cook, eat, bathe, use the restroom, and sleep in close proximity to their co-workers. They frequently rely on group transportation in vans or school buses to and from the worksite. Farmworkers who come to North Carolina with H-2A agricultural worker visas travel thousands of miles, usually from Mexico, with dozens of their co-workers on a bus for several days.²⁰ Those traveling from overseas to North Carolina may not have access to vaccines or testing in their home countries. These unique living and working conditions make migrant farmworkers particularly vulnerable to airborne infectious diseases. It is therefore essential that NCDOL exercise its power to adopt a permanent rule to protect migrant farmworkers from a future airborne infectious disease pandemic.

VI. Statutory Authority for the Proposed Rule

NCDOL has the statutory authority to enforce the Occupational Safety and Health Act of North Carolina (“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 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

²⁰ Aaron Sánchez-Guerra, Victoria Bouloubasis, & Paola Jaramillo, *Coronavirus poses a threat to a major NC food producer: the immigrant farmworker*, The News & Observer, Apr. 8, 2020, <https://www.newsobserver.com/news/coronavirus/article241444926.html>

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 emergency temporary standard for COVID-19,²¹ the Department has not adopted or amended health and safety standards to protect North Carolina workers from airborne infectious disease.

NCDOL additionally has specific authority over migrant housing, both by virtue of its obligation to enforce federal OSHA migrant housing standards and through the authority given to NCDOL by the Migrant Housing Act of North Carolina (“MHA”). N.C. Gen. Stat. § 95-225(a) (adopting all federal standards unless otherwise provided). NCDOL’s authority with respect to migrant housing applies to housing operators and migrants rather than employers and employees. N.C. Gen. Stat. § 95-227(a)(1). The MHA was enacted “to ensure safe and healthy migrant housing conditions,” N.C. Gen. Stat. § 95-222(b), and allows the Labor Commissioner to delegate to the Director of the Agricultural Safety and Health Bureau “the powers, duties, and responsibilities” to ensure such conditions. N.C. Gen. Stat. § 95-224(b)(1). Through the MHA, North Carolina exceeds federal migrant housing standards, providing additional protection related to fire safety, food preparation, and beds, among other things. N.C. Gen. Stat. § 95-225. The Department is statutorily authorized to require housing operators to provide alternative housing

²¹ NCDOL repealed the emergency temporary standard effective March 4, 2022.

where the housing provided may “reasonably be expected to cause death or serious physical harm.” N.C. Gen. Stat. § 95-229.1. NCDOL is already statutorily authorized to investigate migrant housing and/or transportation if a complaint is filed alleging a violation of the OSH Act or the Migrant Housing Act. N.C. Gen. Stat. §§ 95-136, 95-227(a).

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

The federal Migrant and Seasonal Agricultural Worker Protection Act (AWPA), 19 U.S.C. §§ 1801, *et seq.*, and its accompanying regulations, 29 C.F.R. Part 500, set forth protections related to migrant housing and transportation. This in no way preempts North Carolina’s ability to regulate in these areas. 29 U.S.C. § 1871 (“This chapter is intended to supplement State law, and compliance with this chapter shall not excuse any person from compliance with appropriate State law and regulation”); *DeBruyn Produce Co. v. Romero*, 508 N.W.2d 150, 155 (Mich. App. 1993), appeal denied, 447 Mich. 994 (Oct. 25, 1994) (“Although the AWPA serves to regulate the relationship between migrant workers and their employers, it does not occupy the entire field of regulation so as to preempt state regulation”). The proposed rule does not impact AWPA remedies in any way, and is not preempted by the AWPA. *Adams Fruit Co., Inc. v. Barrett*, 494 U.S. 638, 649 (1990) (“AWPA pre-empts state law to the limited extent that it does not permit States to supplant, rather than to supplement, AWPA’s remedial scheme”). *See also Saucedo v. NW Mgmt. and Realty Servs., Inc.*, No. 12-CV-0478-TOR, 2013 WL 12097442, at *3 (Oct. 10, 2013) (award of statutory damages under the state Farm Labor Contractors Act not preempted by the AWPA).

VII. Conclusion

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

This the 14th day of December, 2022.

North Carolina Justice Center
224 S. Dawson Street
Raleigh, North Carolina 27601
Attorneys for all Petitioners

By: /s/ Clermont F. Ripley
Clermont Ripley
clermont@ncjustice.org
919-856-2154
Admitted to North Carolina Bar

/s/ Carol L. Brooke
Carol L. Brooke
carol@ncjustice.org
(919) 856-2144
Admitted to North Carolina Bar

Lawyers' Committee for Civil Rights Under Law
1500 K Street, N.W., Suite 900
Washington, DC 20005
Co-counsel for Hispanic Liaison and NC-NAACP

By: /s/ Kathryn J. Youker
Kathryn J. Youker
kyouker@lawyerscommittee.org
202-662-8375
Admitted to DC Bar

Southern Poverty Law Center
P.O. Box 1287
Decatur, Georgia 30030-1287
Co-counsel for Western North Carolina Workers' Center

By: /s/ Julia Solorzano
Julia Solorzano
julia.solorzano@splcenter.org
334-425-2137
Admitted to GA Bar

Exhibit A

Proposed Rule – Agricultural Employers and Migrant Housing Operators

Section 1. Purpose, Scope and Applicability

- (a) This standard is designed to establish requirements for agricultural employers and migrant housing operators, as defined in G.S. § 95-223, to assess the risk of, prepare for, control, prevent, and mitigate the spread of an airborne infectious disease to and among employees, employers, migrants, and any migrant housing occupants.
- (b) This standard is designed to supplement and enhance 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, those dealing with personal protective equipment (“PPE”), respiratory protective equipment, face coverings, and sanitation, and the North Carolina Migrant Housing Act and its implementing regulations.
- (c) 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.
- (d) This standard shall apply to:
 - A. every agricultural employer, their employees, and places of agricultural employment, and to migrant housing operators in North Carolina within the jurisdiction of North Carolina Occupational Safety and Health Division of the North Carolina Department of Labor.
 - B. Only 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, World Health Organization, or Centers for Disease Control as presenting a public health emergency;
- (e) This standard 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 (d)(B).

Section 2. Definitions

- (a) “Agricultural employer” means any person who recruits, solicits, hires, employs, furnishes, or transports any migrant.
- (b) “Agricultural employment”, “migrant”, “migrant housing”, and “operator,” all have the definitions provided in the Migrant Housing Act of North Carolina, G.S. § 95-223.
- (c) “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 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.
- (d) “Asymptomatic” means a person who does not have symptoms.
- (e) “CDC” means the Centers for Disease Control and Prevention.
- (f) “Cleaning” means the removal of dirt and impurities, including germs, from surfaces.
- (g) “Department” means the North Carolina Department of Labor.
- (h) “Disinfecting” and “disinfect” means using chemicals approved for use against the airborne infectious agent or disease, for example EPA-registered disinfectants, to kill germs on surfaces.
- (i) "Employee," “employer,” and “person” have the definitions used in the Occupational Safety and Health Act of North Carolina, G.S. § 95-127.
- (j) “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.
- (k) “Feasible” means capable of being done.
- (l) “Hand sanitizer” means alcohol-based hand sanitizer that is at least 60 percent alcohol or 70 percent isopropanol.
- (m) “NCDHHS” or “DHHS” means the North Carolina Department of Health and Human Services.

- (n) “Suspected to be infected with the airborne infectious agent or disease” means a person that has signs or symptoms of the airborne infectious disease but has not tested positive and no alternative diagnosis has been made (e.g., tested positive for influenza).
- (o) “Symptomatic” means the employee is experiencing symptoms similar to those attributed to the airborne infectious disease.

Section 3. Protections for Transportation of Migrants.

- (a) During the time a designation by the 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 agent or disease as presenting a public health emergency is in effect, all agricultural employers who provide transportation for migrants between worksites shall:
 - A. 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 ensure that migrants are positioned with one migrant per side, staggered in an alternating, diagonal arrangement.
 - B. 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 other transportation alternatives are feasible.
 - C. Clean and disinfect work vehicles daily. Agricultural employers must pay employees for the time spent cleaning and disinfecting.
 - D. Use the vehicle’s ventilation system to exchange fresh air in from outside the vehicle. Lower the vehicle’s windows when weather permits.
 - E. Ensure that migrants and drivers wear a face covering while using employer-provided transportation and provide a face covering to anyone in the vehicle who does not have one.
 - F. Provide hand sanitizer in each vehicle and ensure that all drivers and riders sanitize their hands before entering and exiting the vehicle.

Section 4. Protections in Migrant Housing.

- (a) Housing Provisions. 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 disease as presenting a public health emergency is in effect, all migrant housing operators shall:

- A. 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.
- B. 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 should 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.
- C. If they do not already exist, install partitions between each toilet and between each shower stall.
- D. Ensure regular ventilation of rooms (e.g., by opening screened windows and doors to increase the introduction of outside air, or providing a portable high-efficiency particulate air (HEPA) filter in each room that is used for sleeping).
- E. Encourage anyone who delivers food and water to migrant housing occupants to wear r masks or other protective equipment as recommended by the CDC, NCDHHS, or the local health department.

(b) Communication. All migrant housing operators shall:

- A. Request emergency contact numbers from each housing occupant.
- B. Ensure that housing occupants have access to the phone number of the local health department. Housing operators are required to report immediately to the local health officer the name and address of any individual in the camp known to have or suspected of having a communicable disease. Additionally, housing operators must ensure that the name, phone number, and email address of the person trained to administer first aid is posted prominently in a central location.
- C. Conspicuously post the housing address in a central location to ensure that employees or housing occupants will be able to call a 911 operator if needed.
- D. Conspicuously post the phone number 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.

- E. Present any communication or training on airborne infectious disease control practices in Spanish, English, and any other primary languages common in the migrant population.
- F. If available from the CDC, NCDHHS, or the local health department, place posters in the migrant housing that encourage 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:

- A. Provide hand sanitizer that is readily available in multiple locations in employer-provided migrant housing.
- B. Ensure that supplies in restrooms, portable toilets, and handwashing/sanitizing stations in the migrant housing are monitored and immediately re-stocked.
- C. Monitor and immediately restock cleaning and disinfecting supplies for each migrant housing unit.
- D. Housing operators shall ensure that the manufacturer's instructions for use of all disinfecting chemicals and products are complied with (e.g., concentration, application method, contact time, personal protective equipment, etc.).

(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, North Carolina Department of Health and Human Services, World Health Organization, or Centers for Disease Control of an airborne infectious disease as presenting a public health emergency is in effect, all migrant housing operators shall:

- A. Provide separate sleeping areas for each of the following groups, if recommended by current CDC guidance:
 - 1. residents who are considered to be contagious based on current CDC guidance; and
 - 2. residents who are not considered to be contagious based on current CDC guidance.
- B. Separate bathing, toileting and eating facilities should be provided to each group in (d)(A)(1-2) where feasible. If it is not feasible to provide separate bathing, toileting and eating facilities, the housing operators must create schedules for when each group can use those facilities, and must clean and disinfect bathing, toileting, and eating facilities daily.

- C. The separate facilities described in (d)(A) and (B) shall be provided for the period of time recommended by the CDC.
 - D. If there is no separate space available on-site to provide separate housing as specified above, the housing operator must provide alternative housing off-site.
 - E. Within 24 hours of a resident becoming symptomatic, 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(1)(2)(A), and, if testing is feasible, for all residents to be tested for the airborne infectious disease.
 - F. To the extent permitted by law, housing operators shall establish a reasonable 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:
 - 1. All occupants of the migrant housing location where the person with the positive test resides;
 - 2. The North Carolina Departments of Health and Human Services and Labor and the county Department of Health within 24 hours of the discovery of a positive case and include in the notification the industry, person's occupation, and the type of housing the person lives in.
 - G. If a migrant housing occupant is confirmed to have the airborne infectious disease, the migrant housing operator shall conduct cleaning and disinfection 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, North Carolina Department of Health and Human Services, World Health Organization, or Centers for Disease Control of an airborne infectious disease as presenting a public health emergency is in effect, all migrant housing operators shall:
- A. Provide symptom screening, and testing if feasible, for all newly arriving residents within 48 hours after arrival unless the resident has already been tested in the 72 hours before arrival;

- B. Whenever new residents arrive, housing 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 resident does not become symptomatic or until the recommended CDC quarantine period. If separate living units are not available, newly arriving residents 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;
 - C. If a newly arriving resident tests positive on a test or becomes symptomatic, the procedures outlined in Section 4(d) should be followed.
 - D. Cooperate with local health departments to provide for regular testing, if feasible, of all occupants 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 occupants 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, North Carolina Department of Health and Human Services, World Health Organization, or Centers for Disease Control 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 review these rules and any relevant DHHS guidance with the agricultural employer and/or housing operator.