



NC DEPARTMENT OF  
**HEALTH AND  
HUMAN SERVICES**

ROY COOPER • Governor

MANDY COHEN, MD, MPH • Secretary

MARK T. BENTON • Assistant Secretary for Public Health

Division of Public Health

June 5, 2020

MEMORANDUM

FROM: Mark T. Benton *Mark T. Benton*  
Assistant Secretary for Public Health

RE: Exercise of Delegated Authority Under Executive Orders 130 and 139

As Assistant Secretary for Public Health, I have been delegated authority by the Secretary of DHHS to waive or modify certain regulations and requirements during the State of Emergency declared on March 10, 2020 due to the COVID-19 pandemic.

After careful consideration and in consultation with the Secretary of DHHS and executive leadership of the Division of Public Health, I hereby waive, modify, or take the actions permitted under Executive Orders 130 and 139 specified below. In taking such action, I have determined that they will not endanger public health and will provide necessary relief in responding to the COVID-19 pandemic.

1. Under Executive Order 130, the Secretary of DHHS is delegated the authority to:
  - a. Waive or modify, in order to provide necessary relief to restaurants continuing to provide carry-out, delivery, and drive-through services, the expiration date of transitional food establishment permits under 15A NCAC 18A .2659(b) issued from January 1, 2020 to June 30, 2020 for 180 days;
  - b. Waive or modify, in order to ensure there are sufficient analysts permitted to conduct breath alcohol tests, the expiration of analyst permits under 10A NCAC 41B .0302(a) otherwise set to expire from March 10, 2020 to June 30, 2020 for twelve (12) months;
  - c. Waive or modify enforcement of any regulations that are related to the provisions listed above; and
  - d. Reimpose any regulations related to the provisions listed above for which the Secretary has waived or modified enforcement.

Pursuant to this authority, I am waiving regulatory requirements as follows:

- The expiration date of transitional food establishment permits under 15A NCAC 18A .2659(b) issued from January 1, 2020 to June 30, 2020 for 180 days, in order to provide necessary relief to restaurants continuing to provide services; and
  - The expiration date of analyst permits under 10A NCAC 41B .0302(a) otherwise set to expire from March 10, 2020 to June 30, 2020 for twelve (12) months, in order to ensure there are sufficient analysts permitted to conduct breath alcohol tests.
2. Under Executive Order 139, the Secretary of DHHS is delegated the authority related to asbestos and lead professionals to:
    - a. Waive or modify enforcement of the expiration date of asbestos accreditations under 10A NCAC 41C .0602(e), to the extent necessary to ensure that there are sufficient accredited

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- asbestos professionals to perform asbestos management work in North Carolina. Accreditations otherwise set to expire during the State of Emergency may be extended for up to sixty (60) days following the end of the State of Emergency;
- b. Waive or modify enforcement of the expiration dates of lead abatement certifications under 10A NCAC 41C .0802(e), dust sampling technician certifications under 10A NCAC 41C .0902(c)(3)-(4), and recertification requirements under 10A NCAC 41C .0902(d), to the extent necessary to ensure that there are sufficient accredited professionals to conduct lead abatement, dust sampling, and renovation work in North Carolina. Certifications otherwise set to expire during the State of Emergency may be extended for up to sixty (60) days following the end of the State of Emergency; and
  - c. Reimpose any regulations related to the provisions listed above for which the Secretary has waived or modified enforcement.

Pursuant to this authority, I am waiving regulatory requirements as follows:

- The expiration date of asbestos accreditations under 10A NCAC 41C .0602(e) otherwise set to expire during the State of Emergency until sixty (60) days following the end of the State of Emergency, in order to ensure that there are sufficient accredited asbestos professionals to perform asbestos management work in North Carolina.
  - The expiration dates of lead abatement certifications under 10A NCAC 41C .0802(e), dust sampling technician certifications under 10A NCAC 41C .0902(c)(3)-(4), and recertification requirements under 10A NCAC 41C .0902(d) otherwise set to expire during the State of Emergency until sixty (60) days following the end of the State of Emergency, in order to ensure that there are sufficient accredited professionals to conduct lead abatement, dust sampling, and renovation work in North Carolina.
3. Under Executive Order 139, the Secretary of DHHS is delegated the authority related to local public health to:
    - a. Waive or modify enforcement of local health department mandated services requirements under 10A NCAC 46 .0200 and extend the time period for public health nurses to complete training sponsored by the North Carolina Department of Health and Human Services ("NCDHHS") under 10A NCAC 46 .0301(2)(b), upon finding that a waiver or modification of enforcement will provide necessary relief to local health departments responding to the COVID-19 pandemic and will not endanger public health. Waivers, modifications, and extensions related to this provision may remain in place for up to sixty (60) days following the end of the State of Emergency;
    - b. Waive or modify enforcement of NCGS § 130A-34.4(a) to the extent necessary to ensure that conditionally accredited local health departments continue to be eligible to receive public health funding from the Division of Public Health, upon finding that a waiver or modification of enforcement will provide necessary relief to local health departments responding to the COVID-19 pandemic and will not endanger public health. Waivers, modifications, and extensions related to this provision may remain in place for up to sixty (60) days following the end of the State of Emergency; and
    - c. Reimpose any regulations related to the provisions listed above for which the Secretary has waived or modified enforcement.

Pursuant to this authority, I am waiving the enforcement of NCGS § 130A-34.4(a) until sixty (60) days following the end of the State of Emergency to ensure that all local health departments continue to be eligible to receive public health funding from the Division of Public Health. I have found that this waiver will provide necessary relief to local health departments responding to the COVID-19 pandemic and will not endanger public health.

The Secretary previously exercised delegated authority under Executive Order 119 Subsection 1(2) on April 15, 2020 to waive certain regulatory requirements in 10A NCAC 46 .0200 and 10A NCAC 46 .0301(2)(b). The April 15 waiver remains in effect through June 30, 2020, the end of the state fiscal year.

cc: Mandy K. Cohen  
E. Benjamin Money  
Lisa Corbett  
DPH Executive Leadership Team