



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

MEMORANDUM

June 9, 2020

TO: Local Health Directors and Registered Environmental Health Specialists

FROM: Larry D. Michael, REHS, MPH
State Environmental Health Director

SUBJECT: Executive Order No. 130, Section 4(A)(1) – Guidance for Environmental Health Specialists on Transitional Food Establishment Permits

Governor Roy Cooper issued Executive Order No. 130 to provide additional relief in meeting the state's health and human services needs during the COVID-19 pandemic. This Executive Order delegates to the Secretary of the Department of Health and Human Services the authority to waive the enforcement of certain regulatory and legal constraints. This includes authority in Section 4(A)(1) of the Executive Order to waive or modify the expiration date of transitional food establishment permits.

This memo addresses Section 4(A)(1) of the Executive Order and serves as guidance for environmental health specialists and local health departments on this Section. It is not intended to address the Executive Order in its entirety. Executive Order No. 130 may be accessed at the following link: <https://files.nc.gov/governor/documents/files/EO130-Meeting-North-Carolinas-Health-and-Human-Services-Needs.pdf>

As specified in the attached June 3, 2020, memorandum, Secretary Mandy Cohen delegated the authority granted to her under Executive Order 130, Section 4 to Mark Benton, Assistant Secretary for Public Health. Assistant Secretary Benton exercised this authority in the attached June 5, 2020, memorandum to waive 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 practice, this means that transitional food establishment permits issued during this timeframe may be effective for up to 360 days--180 days under the rule and an additional 180 days under the Executive Order. This waiver is intended to provide relief to food establishments continuing to provide services during the COVID-19 pandemic.

Transitional permit expiration dates should be adjusted for any permits that have already been issued since January 1, 2020, and food establishments should be notified of the extension of the expiration date. For permits to be issued from now through June 30, 2020, the environmental health specialist should assign an expiration date of 360 days and notify the permit holder of the extended transitional period. Status codes will remain the same for transitional permits.

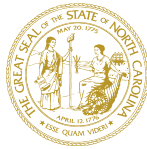
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Permits will be issued “T” status and remain in “U” status for up to 360 days after inspections begin. When all transitional permit non-compliant items have been completed, the permit (non-transitional) may be issued at any point during the transitional period with a “K” status.

For questions or additional information, please contact Veronica Bryant, Emergency Response and Outbreak Coordinator, at veronica.bryant@dhhs.nc.gov or by phone at 919-218-6943, or you may contact me at larry.michael@dhhs.nc.gov or 919-707-5855.



STATE OF NORTH CAROLINA
DEPARTMENT OF HEALTH AND HUMAN SERVICES

ROY COOPER
GOVERNOR

MANDY COHEN, MD, MPH
SECRETARY

June 3, 2020

MEMORANDUM

FROM: Mandy K. Cohen, MD, MPH
Secretary

A handwritten signature in blue ink that reads "Mandy K. Cohen".

RE: DELEGATION OF AUTHORITY

As Secretary of the North Carolina Department of Health and Human Services ("DHHS") I have been delegated authority by the Governor to waive or modify certain regulations and requirements during the State of Emergency declared on March 10, 2020 due to the COVID-19 pandemic.

Executive Orders 130 and 139 provide specific delegations of authority to me as Secretary that pertain to multiple Divisions within DHHS. After careful consideration and based on the expertise of leadership, I hereby delegate to Assistant Secretary Mark Benton the authority to perform the actions outlined below. Assistant Secretary Benton will consult with executive leadership of the Division of Public Health to implement these waivers and will document such waivers so that any waivers of regulations can be reported to the Office of the Governor and the Codifier of Rules.

Division of Public Health

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.
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 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.
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.
4. Waivers or modifications previously issued under Executive Order No. 119, Subsection 1(2) shall continue in effect for the time period listed in those previously issued waivers, including the waiver I issued on April 15, 2020.



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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