



NC DEPARTMENT OF
**HEALTH AND
HUMAN SERVICES**

Commission for Public Health

ROY COOPER • Governor

KODY H. KINSLEY • Secretary

HELEN WOLSTENHOLME • Interim Deputy Secretary for Health

MARK T. BENTON • Assistant Secretary for Public Health

Division of Public Health

MEMORANDUM

DATE: March 1, 2022

TO: Rulemaking Interested Persons

FROM: Virginia Niehaus, Rulemaking Coordinator, Commission for Public Health and
Director of Regulatory and Legal Affairs, Division of Public Health

RE: Notification of Proposed Rule Action: 15A NCAC 18A .2901

Pursuant to G.S. 150B-21.2, this memorandum serves as the required notice to interested persons that the North Carolina Commission for Public Health (CPH) is proposing to readopt with substantive changes rule 15A NCAC 18A .2901. This rule is proposed for readoption in accordance with G.S. 150B-21.3A and, as part of that process, is being updated to clarify existing language and add new language to establish a methodology for distributing funds to local health departments impacted by certain disasters, emergencies, or events. CPH has submitted notice of its intent to readopt this rule to the NC Office of Administrative Hearings (OAH).

In accordance with G.S. 150B-21.4, a fiscal note was prepared for the proposed rule and approved by CPH. The proposed rule is expected to have an impact on state and local funds, but not expected to have a substantial economic impact. The fiscal note was initially approved by the NC Office of State Budget and Management (OSBM) on January 18, 2022 with a revised version approved on January 19, 2022.

The notice of text that was published in today's edition of the NC Register is attached to this memorandum and may be found on OAH's website at <https://www.oah.nc.gov/documents/nc-register>. The text of the proposed rule and fiscal note may be found on the CPH's website at <https://cph.publichealth.nc.gov/>.

A public hearing on this proposed rule is scheduled for Friday, April 1, 2022 at 2:00 pm. The public hearing will be held by teleconference. You may participate in the public hearing by dialing 919-715-0769. No access code is required.

CPH is accepting public comments on the proposed rule from March 1, 2022 through May 2, 2022. You may submit comments by email to cphcomment@lists.ncmail.net or by mail to Virginia Niehaus, Rulemaking Coordinator, Commission for Public Health, 1931 Mail Service Center, Raleigh, NC 27699-1931. Comments will also be accepted at the public hearing. The proposed effective date of this rule is July 1, 2022.

Should you have questions related to this memorandum, the proposed rule, or the fiscal note, please contact Shane Smith, Food Protection and Facilities Branch Head, Environmental Health Section, Division of Public Health at (919) 210-3663.

NC DEPARTMENT OF HEALTH AND HUMAN SERVICES • DIVISION OF PUBLIC HEALTH

LOCATION: 5605 Six Forks Road, Building 3, Raleigh, NC 27609
MAILING ADDRESS: 1931 Mail Service Center, Raleigh, NC 27699-1931
www.ncdhhs.gov • TEL: 919-707-5000 • FAX: 919-870-4829

AN EQUAL OPPORTUNITY / AFFIRMATIVE ACTION EMPLOYER

Attachment

cc: Dr. Ronald May, Chair, Commission for Public Health
Mr. Mark Benton, Assistant Secretary for Public Health, Division of Public Health
Mr. Larry Michael, Environmental Health Section Chief, Division of Public Health
Mr. Shane Smith, Food Protection and Facilities Branch Head, Division of Public Health
Ms. Kirsten Leloudis, Program Manager, Regulatory and Legal Affairs, Division of Public Health

TITLE 15A – DEPARTMENT OF ENVIRONMENTAL QUALITY

Notice is hereby given in accordance with G.S. 150B-21.3A(c)(2)g. that the Commission for Public Health intends to readopt with substantive changes the rule cited as 15A NCAC 18A .2901.

Link to agency website pursuant to G.S. 150B-19.1(c): <https://cph.publichealth.nc.gov/>

Proposed Effective Date: July 1, 2022

Public Hearing:

Date: April 1, 2022

Time: 2:00 p.m.

Location: This public hearing will be held by teleconference at (919) 715-0769 (no access code required).

Reason for Proposed Action: *This rule is proposed for readoption in accordance with G.S. 150B-21.3A and, as part of that process, is being updated to clarify existing language and add new language to establish a methodology for distributing funds to local health departments impacted by certain disasters, emergencies, or events.*

Comments may be submitted to: Virginia Niehaus, CPH Rulemaking Coordinator, 1931 Mail Service Center, Raleigh, NC 27699-1931; email cphcomment@lists.ncmail.net

Comment period ends: May 2, 2022

Procedure for Subjecting a Proposed Rule to Legislative Review: If an objection is not resolved prior to the adoption of the rule, a person may also submit written objections to the Rules Review Commission after the adoption of the Rule. If the Rules Review Commission receives written and signed objections after the adoption of the Rule in accordance with G.S. 150B-21.3(b2) from 10 or more persons clearly requesting review by the legislature and the Rules Review Commission approves the rule, the rule will become effective as provided in G.S. 150B-21.3(b1). The Commission will receive written objections until 5:00 p.m. on the day following the day the Commission approves the rule. The Commission will receive those objections by mail, delivery service, hand delivery, or facsimile transmission. If you have any further questions concerning the submission of objections to the Commission, please call a Commission staff attorney at 984-236-1850.

Fiscal impact. Does any rule or combination of rules in this notice create an economic impact? Check all that apply.

- State funds affected
- Local funds affected
- Substantial economic impact (\geq \$1,000,000)
- Approved by OSBM
- No fiscal note required

CHAPTER 18 - ENVIRONMENTAL HEALTH

SUBCHAPTER 18A - SANITATION

SECTION .2900 - RESTAURANT AND LODGING FEE COLLECTION AND INVENTORY PROGRAM

15A NCAC 18A .2901 DISBURSEMENT OF FUNDS

(a) For the purposes of this Rule, the following definitions shall apply:

- (1) "Department" means the North Carolina Department of Health and Human Services.
- (2) "Disaster" means when a declaration has been made by the President of the United States under 44 C.F.R. Part 206, Subpart B, which is hereby incorporated by reference, including any subsequent editions or amendments, or by the Governor of North Carolina under G.S. 166A-19.3(3).
- (3) "Emergency" means when a state of emergency declaration has been issued under G.S. 166A-19.3(19).
- (4) "Event" means a National Special Security Event designated by the President of the United States under 18 U.S.C. 3056(e)(1), which is hereby incorporated by reference, including any subsequent editions or amendments.
- (5) "Rate of compliance" means the number of inspections for food and lodging establishments conducted by the local health department during the previous state fiscal year divided by the number of inspections mandated to be conducted by the local health department per state fiscal year pursuant to G.S. 130A-249 and 10A NCAC 46 .0213, not to exceed a value of 1.

(b) Fees collected pursuant to G.S. 130A-248(d), minus state expenses budgeted for the collection and inventory program, shall be distributed to local health departments for the support of local public health programs and activities as follows:

- (1) ~~Seven~~ seven hundred and fifty dollars (\$750.00) to each county; and
- (2) the ~~remaining~~ remaining balance of funds that remain after the distribution described in Subparagraph (b)(1) of this Rule shall be distributed to each county in accordance with the following formula: formula provided in Part (b)(2)(A) of this

Rule. After the distribution of funds pursuant to Part (b)(2)(A) of this Rule, the balance of any funds that remain shall be distributed in accordance with the formula provided in Part (b)(2)(B) of this Rule to the counties that have one hundred percent compliance with the inspection requirements for food and lodging establishments as set out in G.S. 130A-249 and 10A NCAC 46 .0213 in the immediately preceding state fiscal year:

~~(a)(A)~~ [the remaining balance of funds after distribution in ~~Paragraph (1)~~ Subparagraph (b)(1) of this Rule] multiplied by (the number of facilities in the county divided by the number of facilities in the state) multiplied by ~~(the (the county's percentage rate of compliance compliance) with mandatory inspection requirements for food and lodging establishments in G.S. 130A-249 and 15A NCAC 25 .0213 for the previous fiscal year, not to exceed 100 percent)~~ equals the allocation to the county; and

~~(b)(B)~~ ~~distribution of remaining funds to counties with 100 percent compliance with mandatory inspection requirements for food and lodging establishments in G.S. 130A-249 and 15A NCAC 25 .0213 during the previous fiscal year shall be made in accordance with the following:~~ [total amount of remaining funds after distribution in ~~Paragraph Part (b)(2)(A)~~ ~~(2)(a)~~] multiplied by (the number of facilities in the county divided by the number of facilities in all counties with 100 percent compliance with mandatory inspection requirements for food and lodging establishments as set forth in G.S. 130A-249 and ~~15A10A~~ NCAC 2546 .0213 during the previous fiscal year) equals the additional allocation to the county.

(c) Notwithstanding the definition of rate of compliance in Paragraph (a) of this Rule, the total amount of funds distributed to a local health department shall be calculated in accordance with Paragraph (b) of this Rule, but using the local health department's rate of compliance from the last state fiscal year that was completed immediately prior to a disaster, emergency, or event, when:

- (1) one or more counties served by the local health department is named in a disaster or emergency declaration or in an event designation;
- (2) the local health director or the local health director's designee submits a written attestation to the State Environmental Health Director that includes the following:
 - (A) an explanation of how disruption caused by the disaster, emergency, or event is such that inspections that are required pursuant to G.S. 130A-249 and 10A NCAC 46 .0213 for food and lodging establishments cannot be carried out as planned because of the local health department's involvement in the response to the disaster, emergency, or event; and
 - (B) a statement that the loss of funds as a result of the local health department's decreased rate of compliance is expected to result in a financial hardship to the local health department's environmental health program; and
- (3) the Department determines that sufficient funds are available to make a disbursement to the local health department in accordance with this Paragraph.

(d) Attestations written pursuant to Paragraph (c) of this Rule shall be submitted to the State Environmental Health Director by mail at 5605 Six Forks Road, 1632 Mail Service Center, Raleigh, NC 27699-1632.

History Note: Authority G.S. 130A-9; 130A-248; 130A-249; Eff. May 1, 1991.