



NC DEPARTMENT OF  
**HEALTH AND  
HUMAN SERVICES**

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Division of Public Health

December 5, 2018

**POSITION STATEMENT:** Packaged Food

**PURSUANT TO:** N.C.G.S. 130A-247 through 250; 15A NCAC 18A .2600

**SOURCE:** Shane Smith, REHS Head, Food Protection and Facilities Branch

**QUESTION/ISSUE:** Clarification of Packaged Food Jurisdiction

This position statement replaces Packaged Food, August 8, 2017.

**DISCUSSION AND RATIONALE:**

Local Health Departments have requested guidance to help achieve uniform compliance when regulating packaged food. Packaged food is regulated by the North Carolina Department of Health and Human Services (NCDHHS) and/or the North Carolina Department of Agriculture and Consumer Services (NCDA&CS).

It is important to note that NCDA&CS has two distinct food regulatory divisions.

The Food and Drug Protection Division regulates production of non-meat or poultry foods and closed faced sandwiches that contain meat or poultry. A closed faced sandwich has bread on the top and bottom of the filling. Examples of the bread portion include loaf bread, biscuit, pancake, bagel, etc.

The Meat and Poultry Inspection Division regulates businesses that slaughter animals and businesses that wholesale meat and poultry products (with one exception: they do not regulate the production of closed faced sandwiches containing meat or poultry).

The statutory authority for establishments regulated under the NCDHHS is N.C.G.S. 130A-247 through 250. N.C.G.S. 130A-247(1) states, ""Establishment" means (i) an establishment that prepares or serves drink, (ii) an establishment that prepares or serves food, (iii) an establishment that provides lodging, (iv) a bed and breakfast inn, or (v) an establishment that prepares and sells meat food products as defined in G.S. 106-549.15(14) or poultry products as defined in G.S. 106-549.51(26)". N.C.G.S. 130A-250(9), (11), and (12) exempts the food and beverage products regulated by the NCDA&CS.

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Therefore, NCDHHS regulates food establishments that prepare, handle or sell packaged and unpackaged food at retail.

**RESPONSE / INTERPRETATION:**

The following information and examples are provided to assist in determining which agency has jurisdiction as it pertains to packaged food.

1. Closed faced sandwiches prepared and packaged at a NCDHHS permitted food establishment and sold at another NCDHHS permitted establishment remains under NCDHHS jurisdiction. For example, a food establishment sells packaged turkey sandwiches to a school cafeteria to resell.
2. An NCDHHS permitted food establishment that wants to produce and prepare any other meat or poultry products and sell them to another NCDHHS permitted establishment or any other customer who plans to sell the product again, must first obtain inspections from the NCDA&CS Meat and Poultry Inspection Division. An exception to this rule is the Hotel, Restaurant and Institution (HRI) Exemption\* for NCDHHS permitted meat markets.
3. Closed faced sandwiches and any foods not containing meat or poultry prepared and packaged at a NCDHHS permitted food establishment and sold at an off-site location by the permitted food establishment will remain under NCDHHS jurisdiction. The food must remain in control of the NCDHHS permitted food establishment. The food must remain packaged at the off-site location and only handed out by food employees of the permitted food establishment. A permit is not required at the off-site location. For example, a food establishment prepares packaged sandwiches; a food employee remains with the food and serves the food at the off-site location. Temperature or time as a public health control logs can be reviewed during the routine inspection.
4. Food Service Establishments permitted by NCDHHS, may produce meat and poultry products at the primary location, package them, transport and sell them directly to the end consumer in other locations, provided the meat and poultry products remain under their control.

When such establishments are selling packaged meat and poultry products in secondary locations, products must be properly labeled per section 3-602.11 of the 2009 North Carolina Food Code. Perishable products that will be transported and stored must meet all applicable code citations.

If the secondary location is not a NCDHHS permitted establishment, vendors must be able to provide a copy of their establishment permit or other proof the products were produced in a NCDHHS permitted Food Service Establishment. At the end of the business day, any unsold products from the secondary non-permitted location, may be

returned for storage at the NCDHHS inspected establishment where they were produced if the packaged food has been maintained under proper temperature control.

If food is wholesaled to a secondary location and no longer under control of the NCDHHS permitted facility, they must first obtain inspection from the NCDA&CS Meat and Poultry Inspection Division.

5. Packaged closed faced sandwiches and other food not containing meat or poultry purchased from a NCDHHS permitted food establishment by another entity for resale is NCDA&CS Food and Drug Protection Division jurisdiction once the permitted food establishment loses control of the packaged food. For example, a person buys packaged sandwiches from a permitted food establishment and resells them at a non-permitted location. The food cannot be un-packaged or customized at the non-permitted site.
6. Commercially packaged food that is sold at a NCDA&CS Food and Drug Protection Division regulated establishment remains under NCDA&CS jurisdiction. This includes packaged food that is heated and hot held. To remain under NCDA&CS Food and Drug Protection Division, the food cannot be un-packaged or customized at the non-permitted site. For example, a convenience store heats and hot holds commercially packaged sausage biscuits for customer service.
7. Non-permitted pushcarts that sell packaged food items purchased from or prepared at a NCDHHS or NCDA&CS Food and Drug Protection Division regulated establishment, remain with NCDA&CS Food and Drug Protection Division. No permit is required. The food cannot be un-packaged or customized on the pushcart.
8. The food establishment rules allow only hotdogs to be prepared, handled, and served from a pushcart. A NCDHHS permit is required. In addition to hotdogs, other packaged food items sold from a pushcart will be regulated by NCDHHS. If hot dogs are not being prepared on the pushcart and only packaged food is being sold, refer to #8 above.

If the regulatory authority observes food regulated by NCDA&CS with temperature violations, or food that is “packaged for retail sales” in a manner that exposes food to contamination, or food not properly labeled as specified in 21 CFR 101 and 9 CFR 317, it should be reported to the appropriate NCDA&CS Division. NCDA&CS Food and Drug Protection Division representatives may be reached at 919-733-7366. NCDA&CS Meat and Poultry Inspection Division representatives may be reached at 919-707-3180.

Please contact your Environmental Health Regional Specialist if you have any questions.

REFERENCES:

Rules Governing the Food Protection and Sanitation of Food Establishments (15A NCAC 18A .2600) North Carolina Food Code Manual N.C.G.S. 130A-247 through 250

\*<http://www.ncagr.gov/MeatPoultry/documents/910InspectionRequirementsforMPBusinesses.pdf>

MPID Notice 11-7-2018 Off Site Retail Sales of Meat and Poultry Products

NOTE: Position statements are policy documents to clarify how to interpret or enforce a law or rule. They are not enforceable on their own but are intended to promote uniform interpretation and enforcement of the underlying law or rule.

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