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June 23, 2016

**POSITION STATEMENT:** Packaged Food

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

**SOURCE:** Cindy R. Callahan, REHS  
Head, Food Protection and Facilities Branch

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

This position statement replaces the 1997 Packaged Food Memo and 1992 Taco Bell Dispensing Carts correspondence.

**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).

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. 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. Food 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 wrapped sandwiches to a school cafeteria to resell.
2. Food 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.



3. Packaged food purchased from a NCDHHS permitted food establishment by another entity for resale is NCDA&CS jurisdiction once the permitted food establishment loses control of the packaged food. For example, a person<sup>1</sup> 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.
4. Commercially packaged food that is heated and/or hot held and sold at a NCDA&CS regulated establishment remains under NCDA&CS jurisdiction. To remain under NCDA&CS, the food cannot be un-packaged or customized at the non-permitted site. Example, a convenience store heats and/or hot holds commercially packaged sausage biscuits for customer service.
5. Non-permitted pushcarts that sell packaged food items purchased and/or prepared at a NCDHHS or NCDA&CS regulated establishment, remains with NCDA&CS. No permit is required. The food cannot be un-packaged or customized on the pushcart.
6. The food establishment rules allow **only** hotdogs to be prepared, handled, and served from a pushcart. A NCDHHS permit is required. Other packaged food items sold from a pushcart will be regulated by the NCDHHS. If hot dogs are not being prepared on the pushcart and only packaged food is being sold, refer to #5 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 NCDA&CS. NCDA&CS representatives may be reached at 919-733-7366.

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  
<sup>1</sup>N.C.G.S. 130A-2(7)

*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.*

Cc. Anita MacMullan, Food Administrator, NCDA&CS

