



**North Carolina Department of Health and Human Services  
Division of Public Health**

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Governor

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November 12, 2015

**POSITION STATEMENT:** Act to Allow Food Stands to Provide Tables and Chairs for Customers to use while Consuming Drinks or Food upon the Premises.

**PURSUANT TO:** Senate Bill 7 (S.L. 2015-104), N.C.G.S. 130A-248(a6)

**SOURCE:** Cindy R. Callahan, REHS  
Head, Food Protection and Facilities Branch  
Nancy Deal  
Head, Onsite Water Protection Branch

**QUESTION:** What are the requirements that must be in place for a food stand to add eight seats?  
How should a violation be assessed during an inspection if separate customer toilet rooms are not provided?

**DISCUSSION AND RATIONALE:**

Senate Bill 7 (S.L. 2015-104) amended N.C.G.S. 130-248(a6) by adding a new subsection which states, *“Notwithstanding any provision of this Part or any rules adopted pursuant to G.S. 130A-335(e), a permitted food stand may elect to provide tables and not more than eight seats for customers to use while eating or drinking on the premises. Addition of seats under this subsection shall not require further evaluation of the adequacy of the approved sanitary sewage system.”*

**RESPONSE / INTERPRETATION:**

Currently, “food stand” is defined as a food establishment that prepares or serves food and that does not provide seating facilities for customers to use while eating or drinking. The definition of food stand will be amended in the Rules Governing the Food Protection and Sanitation of Food Establishments, 15A NCAC 18A .2600.

The NC Food Code Manual Section 6-402.11 requires toilet rooms for employees. Section 5-203.12 requires toilets and urinals be provided as required by Law. The 2012 North Carolina Plumbing Code Section 403.6 states in part, “Customers, patrons and visitors shall be provided with public toilet facilities in structures and tenant spaces intended for public utilization.” The permit holder should contact the local building inspection office to ensure their food establishment complies with Plumbing Code requirements.

If a permit holder adds seats without complying with the Plumbing Code, it would be a violation of the duties of the person in charge (PIC) only if customers are allowed to enter the kitchen to access the restroom. Paragraph 2-103.11(B) of the NC Food Code Manual prohibits persons unnecessary to the food establishment operation in the food preparation, food storage, or warewashing areas. This would be marked as a violation of item #1 on the Food Establishment Inspection Report. Permit action should not be taken for this violation.

Section 5-403.11 of the NC Food Code Manual requires sewage to be disposed through an approved facility that is a public sewage treatment plant or *“an individual sewage disposal system that is sized, constructed, maintained, and operated according to Law.”* The last sentence of Section 1, S.L. 2015-104 states, “Addition of seats under this

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subsection shall not require further evaluation of the adequacy of an approved sanitary sewage system.” This applies to all sewage disposal systems approved to serve “existing” permitted food stands. “New” food establishments that include seating qualify as a restaurant and the associated sanitary sewage disposal system shall be designed in accordance with 15A NCAC 18A .1900 *et seq.*

Inspections of the sanitary sewage systems serving existing food stands shall continue as required. If compliance issues (broken risers, damaged pump, etc.) exist or arise they must be addressed.

If a permitted food stand adds tables and not more than eight seats, the permit should be amended noting the number of seats. Counties should track food establishments that add seats and report this information to the On-Site Water Protection Branch via the Monthly Activity Report.

Please contact your environmental health regional specialist if you have 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-335(e)  
15A NCAC 18A .1949

*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.*