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POSITION STATEMENT: Shared-use Kitchen Guidance

PURSUANT TO: Session Law 2015-286, House Bill 765; N.C.G.S. 130A-248(c)

SOURCE: Cindy R. Callahan, REHS
Head, Food Protection and Facilities Branch
Shared-use Kitchen Workgroup

ISSUE: Plan Review, Permit, Inspection, and Enforcement for Shared-use Kitchens

DISCUSSION/RATIONALE:

Shared-use kitchens (the practice of more than one permitted food establishment operating within the same facility) is a growing trend in North Carolina. This practice may involve two or more food establishments permitted by the Department or food manufacturing operations regulated by the North Carolina Department of Agriculture and Consumer Services (NCDA&CS). Multiple food establishments may be issued a permit to operate within the facility in separate areas, or in the same space separated by hours of operation. The concept behind a shared-use kitchen is operators can rent space and use the kitchen by the hour or day to produce food while fulfilling regulatory compliance. Food entrepreneurs, ranging from chefs, caterers, mobile food unit proprietors, bakers, and value-added producers, can benefit from the shared-use kitchen instead of spending capital to build or lease their own facility.

Session Law 2015-286 amended N.C.G.S. 130A-248(c) to allow issuing more than one owner or lessee a permit for the same location if more than one establishment is operated in the same physical location and each establishment satisfies all the rules and requirements of the applicable subsection.

To address regulatory authority and stakeholder concerns, a committee was formed in 2015. The committee's charge was to establish guidelines that would allow shared-use kitchens to operate safely and in accordance with N.C.G.S. 130A-248(c) and the North Carolina Food Code Manual (Code).

Due to potential risks that are unique to shared-use kitchens, the ability for a permittee to maintain "active managerial control" is paramount. "Active managerial control" is defined as, "The purposeful incorporation of specific actions or procedures by industry management into the operation of their business to attain control over foodborne illness risk factors." Further, active managerial control requires a commitment by management to identify and prevent potential accidental or intentional contamination events.

RESPONSE/INTERPRETATION:

Plan review for shared-use kitchens must consider the intended use, equipment floor plan, proposed menu, number of proposed operators, and standard operating procedures (SOPs) resulting in compliance with the Code. Plan review should also include the identification of potential hazards and the control of risks. In a shared-use kitchen the physical facility, equipment, and workspace will be shared by multiple permit holders. Individual work space or individual pieces of equipment should not be required for each permit holder unless special equipment is required for a specific food process. Handwashing sinks, warewashing equipment, and food processing equipment is shared when volume and scheduled work times allow. A sample plan review application is attached.

The primary operator of the shared-use kitchen must obtain the initial permit because they own the equipment and are the management entity for the entire operation. If change of ownership occurs, a transitional permit can be issued to the new primary operator of the shared-use kitchen. Individual food establishment operators are required to apply for and obtain a food establishment permit. Transitional permits should not be issued when a permittee leaves the shared-use kitchen and a new food establishment operator applies for a permit. When a permittee leaves the shared-use kitchen a status code "G" must be assigned. This will allow a new food establishment operator to obtain a permit.

Due to individual permit holders having limited control over certain aspects of the food establishment, the primary permit holder shall be responsible for the following:

- Implementing SOPs that ensure compliance with the Code.
- Providing a certified food protection manager (CFPM) and person in charge (PIC) in accordance with Sections 2-102.12 and 2-102.20 of the Code.
- Stored food used by the individual permit holders.
- The maintenance and cleanliness of equipment and utensils.
- The maintenance and cleanliness of sewage and waste disposal, toilet facilities, garbage facilities, and physical facilities including lighting and ventilation throughout the facility.
- Activities that may lead to cross contamination of shared food contact surfaces and shared food storage spaces with physical, chemical, or biological hazards.
- Pest control.
- Any other activity that could compromise the public's health.

The permits issued should include conditions that are specific to the operation of the food establishment. If the conditions specified on the permit are not met, permit action may be taken.

The Risk Category assigned to the primary operator of the shared-use kitchen that does not prepare food is a Risk Category I, a minimum inspection frequency of once per year. However, if the primary operator prepares food, the inspection frequency would be based on the assigned Risk Category. Inspections of the food establishments operating in the shared-use kitchen are at an inspection frequency according to their assigned Risk Category.

To assist the local health department with conducting inspections, the primary operator must provide an up-to-date master schedule showing when each permit holder will be operating. Secondary schedules may be required to establish separation (by time or space) of shared equipment. For example, one six-foot prep table is provided in the kitchen and there are three permit holders that use the same table. The hours each permit holder may use the table for food preparation will need to be shown on the secondary schedule.

Enforcement activities should be as follows:

- If permitted food establishments, including mobile food units, are not operating, assign a B status; this allows the billing cycle to continue. If an inspection has not been conducted within a year of being placed in this status the permit is invalid and must be assigned a J status.
- If the primary permit is suspended or revoked, all current food establishment permits in the shared-use kitchen will be issued an Intent to Suspend and given 30 days to find a new commissary. If the operators continue to operate, all food will be considered from an unapproved source and the appropriate permit action taken.
- Permit conditions can be placed on the food establishment permits to satisfy all requirements of the Code. This includes amending existing permits if necessary.

Questions may arise and will have to be handled on a case-by-case basis. Supporting documents will be distributed by request. Please contact your Environmental Health Regional Specialist for further assistance.

REFERENCES:

N.C.G.S. 130A-248
Rules Governing the Food Protection and Sanitation of Food Establishments, 15A NCAC 18A .2600
North Carolina Food Code Manual
Chapter 46 Local Standards 10A NCAC 46 .0213 Food, Lodging/Inst Sanitation/Public Swimming Pools/Spas
2009 FDA Food Code Annexes

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.