

## 511-6-1 .10 Inseptions and Compliance Procedures

### **Permit Issuance:**

Permits issued to food service establishments by local Health Authorities are to be those that are designed, approved, and distributed by the Department of Public Health's Environmental Health Section. A local Health Authority wishing to include its county seal on permits must request permission from the Department of Public Health's Environmental Health Section.

### **Suspension or Revocation:**

In order for the local Health Authority to carry out its responsibility to protect the public health through compliance with the Chapter, the local Health Authority, who is charged by law to enforce the provisions of the Chapter, has the power and the authority to suspend and/or revoke food service permits that it issues to food service establishments. As a matter of due process of law, a hearing and notice must be afforded to food service permit applicants and permit holders whenever the following occurs:

- An application for a food service permit is denied; or
- A food service permit that was previously issued by the Health Authority that is to be suspended or revoked.

The food service permit applicant or permit holder must be afforded notice in writing specifically stating all reasons why the Health Authority is taking such action.

**Purpose of Power to Suspend or Revoke Food Service Permits:** The local Health Authority's suspension and/or revocation of a food service permit is the minimum action that it must take to protect the public health when continued operation of a food service establishment presents a substantial and imminent health hazard to the public; or when a food service establishment is in flagrant or continuing violation of the Chapter.

An order to suspend a food service permit may be issued by a County Board of Health based upon findings of a formal hearing. Also, an order to suspend a food service permit may occur based upon findings during a food service inspection and/or food-borne illness investigation conducted by an EHS representing a County Board of Health.

**Suspension of a Food Service Permit During a Food Service Inspection and/or as a result of a Food-borne illness Investigation.**

**Voluntary Compliance by Permit Holder:** The overall aim of the Chapter is to gain continual voluntary compliance with its Rules and Regulations on the part of the permit holder in order to protect the public. Prior to suspension of a food service permit, the local Health Authority will ask the permit holder to voluntarily close his establishment until all violations and/or imminent health hazard to the public have been corrected or abated. Prior to reopening the establishment, the permit holder must request a re-inspection by the Health Authority.

## **Restriction or Exclusion Orders issued by a local Health Authority:**

As per 511-6-1-.10(4) and based on the findings of an investigation related to a Food employee or Conditional employee who is suspected of being infected or diseased, the local Health Authority may issue an order to the suspected ill Food employee, Conditional employee or Permit holder without prior warning, notice of hearing, or a hearing if the order is issued by the local Health Authority to a Food employee or Conditional employee or Permit holder suspected of being infected or diseased, and the local Health Authority should provide in writing:

- Reasons for the Restriction or Exclusion that is ordered;
- State the evidence that the Food employee or Permit holder shall provide in order to demonstrate that the reasons for the Restriction or Exclusions are eliminated;
- State that the suspected Food employee or the Permit holder may request an appeal hearing by submitting a timely request as provided in Law; and
- Provide the name and address of the local Health Authority representative to whom a request for an appeal hearing may be made.

## **Involuntary Compliance by a Permit Holder:**

Should the permit holder not wish to comply with requirements of the Chapter when the continued operation of a food service establishment presents a substantial and imminent health hazard to the public or when a food service establishment is in flagrant or continuing violation of the Chapter, then the food service permit must be suspended through the issuance of a "NOTICE OF FOOD SERVICE PERMIT SUSPENSION" and the suspended food service permit is to be removed from the establishment. The permit holder is notified of his right to a preliminary hearing, as predetermined on the "NOTICE OF FOOD SERVICE PERMIT SUSPENSION", to show just cause as to why his food service permit should be reinstated. The notice is to replace the suspended food service permit and it is to be posted publicly at or on the establishment's entry door. The "NOTICE OF FOOD SERVICE PERMIT SUSPENSION" will remain until all violations have been corrected and/or an imminent health threat has been abated. Once the notice has been issued by the EHS, then the food service establishment must immediately cease operations and close to the public. The permit holder may resume

his food service establishment operations upon obtaining approval from the Health Authority.

## **Preliminary Hearing and Duties of Hearing Official:**

This preliminary hearing is not the same as the formal hearing that is held before the county board of health or before a representative of the county board of health, the medical director or his appointee, a hearing officer. The preliminary hearing official is someone that is an experienced managerial level employee who has not been involved with the inspection and or investigation of the food service establishment in question. The appointed hearing officer of a formal hearing must be in accordance with in O.C.G.A. § 31-5, Article I.

The function of a preliminary hearing is restricted to determine if a suspension should be reinstated, rescinded, or modified, or to continue the suspension with or without conditions. An example of a suspension modification could be to add additional time to correct an out of compliance risk factor, once the 10 days are up as provided within the Chapter as long as controls can be applied to temporarily reduce, limit and or eliminate the public health threat within a reasonable time limit, until the local Health Authority can determine the violations have been brought back into compliance with the Chapter.

The preliminary hearing official is authorized to oversee the proceedings of the preliminary hearing. If the suspension of a food service permit is not rescinded, the preliminary hearing official must afford the permit holder the right to request an evidentiary (or formal) hearing before the Board of Health or its designated representative. If the permit holder does not request a evidentiary (or formal) hearing before the Board of Health, the suspension of the food service permit will remain in effect until all violations have been corrected, as made apparent through an inspection to reinstate the permit.

## **Official Hearing or Administrative Review:**

When in the judgement of the Department or the County Board of Health, it is necessary and proper that such application for a permit be denied or that the permit previously granted be suspended or revoked, the applicant or holder thereof shall be afforded notice and hearing as provided in Article 1 of Chapter 5 Title 31. Furthermore, as per the Rules of the Georgia Department of Public Health, Chapter 511-1-4, Administrative Review Proceedings, a person or entity can seek further due process, and is entitled to seek Administrative Review if such person or entity is a party to proceeding before the Department or County Board of Health and is aggrieved by the final order or action in

that proceeding. A "Proceeding" shall include actions taken with regard to a license, permit, or certification issued by the Department or by a County Board of Health. If a person or entity elects to respond to a notice of hearing results by a County Board of Health, then the person or entity shall request to the Department for administrative review of a final action or order from a division of the Department or from a County Board of Health. A request for Administrative Review must be made in writing, addressed to the General Counsel in care of the Department, and received in the offices of the Department no later than 30 days after the date of the action or order for which review is sought. The request must include a copy of the action or order to be reviewed, and a statement of the reasons it should be overturned. If the request seeks review of an action or order of a County Board of Health, a copy of the request must be delivered to the District Health Director for that county at the same time it is sent to the Department.

## **Inspections**

### **Risk Categorization of Food Service Establishments:**

In determining the risk type of a food service establishment, the establishment's system of operation must be assessed based on the menu items served; the food preparation process performed, and the previous food safety history of the food service establishment.

In determining the risk type of a food service establishment, the risk inherent within the establishment's system of processing time/temperature control for safety (TCS) foods must be assessed by the EHS. The EHS must be concerned only with foods that are considered TCSs, as defined in Rule .01, and how they are processed. In addition, the EHS must consider how well the food safety system within the establishment is being managed by the CFSM. In this regard, inspection history is automatically addressed by the Chapter through grading and enforcement in Rule .10. However, if a risk type I establishment's processing steps are fluctuating back and forth (or yo-yo-effect) from strictly reheating commercially processed food to taking in non-ready-to-eat ingredients and cooking it in-house, the establishment would need to be assessed as a risk type II instead of risk type I. Since food menu and processing changes can occur within risk establishments, it becomes necessary to periodically reassess all food service establishment menus and processing systems.

Risk categorization of food service establishments is not the same as grouping the establishment's menu items into the three processing steps (i.e., no cook process, same day service, and complex). Categorization of food service establishments is primarily based upon whether or not the food process has a cook step and or it is done under a required HACCP plan in order to determine how many times the establishment

is to be inspected during a 12 month period. On the other hand, the menu review process groups foods according to how many times food makes a complete trip through the food danger zone which is between 41°F and 135°F. The purpose of the food item groupings into the three processing steps is to help the EHS to determine the flow of food through the establishment. By knowing the flow of food through the establishment, the EHS is able to identify the critical control points that hazards must be prevented, controlled, or eliminated to ensure food safety. In this way, the EHS can determine whether the food service establishment is applying control limits at these critical control points along the flow of food through the establishment as required by Chapter 511-6-1.

## **Risk Type I**

Risk type I establishments do not have a cooking step in the processing of food. They may reheat precooked foods that have been process and packaged in a commercially permitted processing plant. An example is an establishment that only serves precooked hotdogs and sausages. Since these food items are ready-to-eat, all that is necessary is to open the package and reheat to any temperature for immediate service or 135 F for hot holding for service. They may also be establishments serving commercially processed deli meats or salads, such as chicken salad. Risk type I establishments **would not offer** 1) any food items that would require disclosure and reminder statements for undercooked or raw TCS foods, or foods that require an approved HACCP plan. In addition, risk type I establishments are only allowed under the Chapter to reheat commercially precooked TCS foods. Once a food has been reheated and then cooled and reheated for service the next day, the food service establishment falls within risk type II characterization. Because a cooling and an additional reheating process step are added to the flow of food through the establishment, onsite food preparation is occurring within the establishment. As a result, these additional processing steps increase the potential for risk factors being out of control within the establishment, thereby raising the risk type characterization from type I to type II.

Should an establishment previously classified as being a Risk Type I establishment change its menu to include animal products, such as raw chicken, it would be reclassified as a risk type II food service establishment. This reclassification would be necessary because it has now changed its system of operation by adding a cook step in the flow of food through the establishment which increases the risk of cross-contamination, inadequate cooking, etc. In the risk type II establishments, the food comes into the establishment in the raw state with a high bacteria load, requiring cooking or an advisory to be considered ready-to-eat. Further, risk type II operations could include a hot holding and reheating processing step - all done in-house.

## **Risk Type II:**

A risk type II food service establishment would be an establishment that has a COOK PROCESSING STEP within the flow of food through the establishment but does not have a processing step that requires a HACCP plan. It may offer raw and/or undercooked TCS foods that require a disclosure and reminder statement. In addition, holding, reheating, cooling and additional reheating processing steps could be included within the flow of food through the establishment.

## **Risk Type III:**

**Characteristics:** A risk type III food service establishment more than likely will have processing steps similar to a risk type II establishment; however, the significant identifying factor between a risk type II and a risk type III establishment is that a risk type III establishment conducts food processing that is outside the critical limits given in the Chapter to control risk factors to foodborne illness. These food-processing steps can only be carried-out under a required HACCP Plan that indicates such processing steps can be safely conducted on a continual basis.

**Inspections:** Since Risk Type III establishments process food as per an approved HACCP Plan, they must be inspected a minimum of 3 times during a 12 month period. One of these inspections will be prearranged when the CFSM of the establishment is present specifically to assess compliance with the required HACCP Plan. During this HACCP Plan assessment, the EHS will review the records and food processing conducted under the HACCP Plan. In order to meet this requirement, one of the three inspections must be arranged when such food processing is to occur. Because this is an arranged inspection, it cannot be considered as a routine inspection nor as a follow-up inspection or an informal inspection. Therefore, the food service inspection report form will not be utilized and the establishment's evaluation will be focused on the compliance with the approved HACCP Plan only. At the conclusion of the the HACCP plan assessment inspection, the EHS will complete a HACCP Plan Verification Worksheet and place the completed form within the establishment inspection file folder at the local Health Department.

**Enforcement:** The EHS must assess whether or not the food service establishment complies with its approved HACCP Plan. Should the establishment be found in violation and the person in charge is not implementing corrective action for a HACCP plan provision that is not in compliance with its critical limit as stated within Rule -.10, then the following response will be initiated by the local Health Authority:

The food processing will stop until the person in charge has voluntarily taken corrective action to bring the process back into compliance with the approved HACCP Plan. This

may be accomplished through a risk control plan (RCP) with follow-up inspection (s); and

Food found to be processed in non-compliance with the approved HACCP Plan will be voluntarily disposed to waste by the person in charge or a withhold from sale order will be issued by the local Health Authority and the food will be subject to condemnation as specified within Rule -.10; or

Failure of the person in charge and or permit holder to comply with the direction and or orders issued by the local Health Authority to correct violations to its satisfaction will result in emergency action (i.e., permit suspension/revocation or injunctive procedures) as specified within Rule -.10.

**Monitoring Food Service Establishments for Change in Risk Type Categorization:** EHS must become familiar with the individual facility's menu and method of processing food. The EHS that inspects the facility will have the best opportunity to gain sufficient knowledge of their food processing system by asking the appropriate open-ended questions. Re-evaluation of food service establishment menu and processing changes is best done during food service inspections. At a minimum, food service establishment menus and processing steps should be formally examined on a yearly basis.

**Construction/Preoperational Inspections:** Construction/Preoperational inspections are to verify compliance with Health Authority approved food service plans and specifications, as well as, the requirements of the Chapter. They are not considered routine inspections, follow-up inspections, or informal follow-up inspections. They are to confirm compliance of the installation of food service equipment and physical facilities of the food service establishment with the requirements of the Chapter. They are not for the purpose of confirming compliance of the entire operation of the establishment (food handling, etc.) with the requirements of the Chapter. The Health Authority may or may not announce construction/preoperational inspections to the permit applicant.

**Initial Inspection:** The initial inspection of the food service establishment is an inspection conducted in which the food service permit is issued for the food service establishment to begin operations to serve food to the public. It is conducted after all of the food service establishment's construction and/or remodeling work have been completed and the establishment has all equipment in place and operating properly. The food service establishment generally contacts the Health Authority to alert them that they are ready for an opening inspection and a time is scheduled to conduct the inspection.

**Routine Inspection:** The first routine inspection of a food service establishment occurs after a food service permit is issued to the establishment. The local Health Authority

must conduct the first routine inspection (unannounced) within sixty (60) days from the date of issuance of a food service permit. Subsequent routine inspections will occur as a result of the first routine inspection and they will be unannounced to the food service establishment.

**Follow-Up Inspections:** Follow-up inspections are conducted by the Health Authority in response to findings during a routine inspection. The Health Authority will complete an inspection of the food service establishment which results in a new score and grade. If a food service establishment receives a grade of “C” and or “U” during a routine inspection, then the Health Authority must conduct a follow-up inspection. However, if a food service establishment receives a grade of “C” during a follow-up inspection with all Risk Factors/Public Health Interventions (RF/PHIs) corrected, as required within Rule - .10, then at the option of the Health Authority, no additional follow-up inspections will be required by the Chapter.

**Mobile Food Service Inspections (County of Origin):** The local Health Authority in which the base of operation is located is responsible for food service plan review and initial inspection of the base of operation. In addition, the county of origin will do the same for the mobile food service units, if the mobile food service units are operating in that county. They are also responsible for food service inspections of the base of operations. Further, it will be the responsibility of the county of origin to notify other local Health Authorities when the mobile food service establishment operator intends to operate mobile food service units within their jurisdictions.

**Local Health Authorities located Outside of the County of Origin:** Whenever a local Health Authority other than the county of origin conducts an inspection of a mobile food service unit operating within their jurisdiction, the local Health authority will contact the county of origin. The purpose of this contact with the county of origin is to obtain knowledge of violations that occurred at the base of operation during its last inspection. Any violations noted for the base of operation will be noted as violations during the inspection of each mobile food service unit.

**Informal Follow-Up Inspections:** If a follow-up inspection of a food service establishment cannot be conducted, then at the discretion of the Health Authority, an informal follow-up inspection may be conducted. The purpose of the informal follow-up inspection is to verify the correction of violations that were not corrected during the routine inspection. The main focus is to ensure that RF/PHIs are corrected in a timely manner.

**Standardization Exercises:** Standardization exercises conducted at food service establishments are not construction/preoperational, initial, routine, follow-up, nor informal follow-up inspections. Completed food service inspection forms and/or



documents associated with standardization exercises shall not be posted within food service establishments nor shall they be left with management of food service establishments. Since permit holders are not required by the Chapter to allow use of his food service establishment to conduct standardization exercises and because the standardization exercise is to assess the EHS's inspection proficiency and knowledge of the Chapter not for purposes of enforcement in regards to the establishment's operation, a fee for the standardization exercise is not to be assessed against the food service establishment.

## **Relationships between Routine Inspections, Follow-up Inspections, and Same Code Provisions**

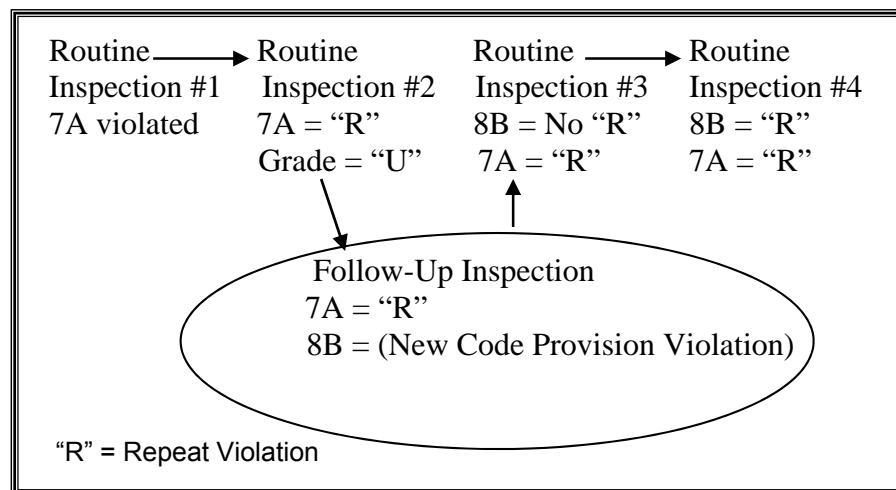
**Same Code Provision:** Code provisions are the preventive measures in the Chapter to protect consumer health by controlling hazards. They are the regulations that are found within each subsection of the Rules that make-up the Chapter. They are linked to each item under each category on the food service inspection form. They are public health interventions and good retail practices that, if applied to activities and procedures of the food employee, will prevent, eliminate, or reduce hazards to a safe level thereby helping to reduce the presence of food-borne illness. Therefore, a "same code provision" is a public health intervention or good retail practice that is noted as being marked "out" on a food service inspection form on consecutive inspections.

**Routine Inspection:** In regards to "routine inspections", the current Chapter 511-6-1 does not define a routine inspection; but instead, it describes when it first must occur. This first occurrence of a routine inspection is found within Rule -.10 subsection (2) (b) 3. which states, "The first routine inspection will be conducted within sixty (60) days following the opening of the establishment." After this first routine inspection, it is necessary to determine at what intervals the next routine inspection should occur. Subsection (2) (b) 4. through 7. gives clear instructions as to when subsequent routine inspection will be conducted after the first routine inspection. These subsequent routine inspections are scheduled based on the food service establishment's Risk Categorization as per subsection (2) (a) "Risk Categorization". Routine Inspection means, a full review and evaluation of a food establishment's operations and facilities to assess its compliance, at a planned frequency determined by the regulatory authority. This does not include re-inspections and other follow-up or special investigations. The regulatory authority in this case is the Georgia Department of Public Health and its representatives, County Boards of Health. This planned frequency of routine inspections is set within Rule -.10.

**Follow-Up Inspections:** A follow-up inspection means a complete inspection done as a result of a routine inspection. Therefore, a follow-up inspection is always resulting from findings that occurred during a “routine inspection”.

## Enforcement Action:

If a code provision of the Chapter is repeated on the next routine inspection and a follow-up inspection is required, then the violation is marked as a repeat violation during all follow-up inspections resulting from that previous routine inspection. Points for repeated violations would be marked until said repeated violations are corrected. However, should a new violation be noted during the follow-up inspection, this new code provision violation would not be marked as a repeat violation during the subsequent routine inspection. If this new code provision violation is still found to be in violation on the consecutive routine inspection, then it would be marked not only as a repeat violation; but, the associated points with a repeat violation would be taken in calculating the establishment’s overall score. In short, a repeat can only be marked as a result of it being initially observed during a routine inspection. See the following diagram for clarification of this enforcement action:



## **Voluntary Closure of a Food Service Establishment as part of Food Service Inspections:**

The Chapter is designed to encourage active managerial control of food service operations. In doing so, the CFSM or person in charge has the responsibility to do ongoing monitoring of activities of employees to ensure compliance with the requirements of the Chapter. It is through their prompt corrective action of out of control risk factors most often contributing to foodborne illness that leads to a successful food safety program within their food service establishment. It is when the management of a food service operation is not controlling risk factors and general good retail practices that leads the Health Authority to request that the establishment be voluntarily closed. Should the permit holder, CFSM or person in charge not voluntarily cease operations, the Health Authority must suspend or revoke the food service permit as stated within Rule -.10 subsection.

**Grade “U” and Not Earning Grade of “C”:** Should a food service establishment earn a grade of “U” and does not earn at least a grade “C” within ten days of earning a grade “U”, the CFSM or person in charge will be requested to voluntarily close the establishment until all violations have been corrected as per requirements of the Chapter. Failure of the food service establishment’s permit holder, CFSM, and/or person in charge to comply with a voluntary closure request from the Health Authority will require the suspension or revocation of the establishment’s food service permit, as per Rule -.10.

**Reopening a Food Service Establishment:** Once a food service establishment has been voluntarily closed, the permit holder, CFSM, and/or person in charge must request the local Health Authority to conduct a follow-up inspection to determine satisfactory compliance with the Chapter prior to reopening. Such a request for a follow-up inspection by the food service establishment will be required for both voluntary closures and suspension of permits.

## **Examination, Condemnation and Public Notice:**

**Probable Cause to Withhold From Sale:** The Health Authority may, upon written notice to the owner or person in charge, place a hold (or with hold from Sale) order on any food that the Health Authority determines or has probable cause to believe is unwholesome or otherwise adulterated; or misbranded.

**Posting of Withhold From Sale Order:** The “With Hold From Sale Order” must be attached to the food to be held. For example, cases of hamburger being held within a cooler would have a “Withhold From Sale Order” attached to the group of cases. Another example would be an entire cooler of food to be with held from sale. In this

case, a “Withhold From Sale Order” describing the food would be attached to the door of the cooler and the cooler would no longer be allowed for utilization by the food service establishment, until resolution of the withhold from sale order.