

**290-5-14-10 Compliance Procedures. Amended.****(1) Permits.**

(a) **Issuance.** Permits designed and approved by the Department shall be issued by the Health Authority. Such permits shall be valid until suspended or revoked.

(b) **Suspension or Revocation.** The Health Authority shall have the power and authority to suspend or revoke permits for failure to comply with the provisions of this Chapter.

1. When an application for a permit is denied or the permit previously granted is to be suspended or revoked, the applicant or holder thereof shall be afforded notice and hearing as provided in O.C.G.A. § 31-5, Article 1.

2. If an application is denied or a permit is suspended or revoked, the applicant or holder of the permit must be notified in writing, specifically stating any and all reasons why the action was taken.

3. The purpose of these procedures is to state the minimum actions to be taken to fulfill the obligation of the Health Authority in assuring compliance with the regulations when the continued operation of a restaurant presents a substantial and imminent health hazard to the public or when a food service establishment is in flagrant or continuing violation of this Chapter.

4. Suspension is effective upon service of a written notice thereof, and food service must cease immediately.

5. The notice must state the basis for the suspension and advise the permit holder of the right to a preliminary hearing on request within 72 business hours of the Health Authority.

6. If requested, the preliminary hearing will be held by an experienced supervisory level employee of the Health Authority not directly involved in the suspension.

7. The rules of evidence will not apply, but both the Health Authority and the permit holder may present witnesses, records and argument.

8. The hearing official will be authorized immediately to rescind or modify the suspension or to continue the suspension with or without conditions.

9. If the suspension is not rescinded, the permit holder will have the right on request to an evidentiary hearing. If a hearing is not requested, upon correction of all violations, owner may request an inspection to reinstate permit.

(c) **Notice of Hearing.** For the purpose of this Chapter a notice of hearing is properly served when delivered in person or by registered or certified mail.

(d) **Conditions Warranting Action.** The Health Authority may summarily suspend a permit to operate a food service establishment if it determines through inspection, or examination of employees, food, records, or other means as specified in this Chapter, that an imminent health hazard exists.

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(e) **Resumption of Operations.** If operations of a food service establishment are discontinued due to the existence of an imminent health hazard or otherwise according to law, the permit holder shall obtain approval from the Health Authority before resuming operations.

**(2) Inspections.**

(a) **Risk Categorization.** Inspections of a food service establishment shall be conducted based on risk categorization. The risk type shall be determined by the menu items served, the food preparation processes performed, and the previous food safety history in the food service establishment. Each establishment shall be grouped in one of the following categories:

1. Risk Type I. Frequency of inspection will be one time per year for establishments that do not cook any foods. This includes establishments that may reheat commercially precooked ingredients or foods such as hotdogs and sausages;

2. Risk Type II. Frequency of inspection will be two times per year for establishments that cook and/or hold and reheat foods that are prepared onsite; or

3. Risk Type III. Frequency of inspection will be three times per year for establishments that have a required and approved HACCP plan. One of these inspections will be a scheduled inspection to meet with the Certified Food Safety Manager.

**(b) Inspection Frequency.**

1. The Health Authority may conduct one or more construction / preoperational inspections to verify that the food service establishment is constructed and equipped in accordance with the approved plans and approved modifications of those plans, and is in compliance with law and this Chapter.

2. An initial inspection will be conducted in an establishment prior to the food permit being issued.

3. The first routine inspection will be conducted within sixty (60) days following the opening of the establishment.

4. After the first routine inspection, establishments maintaining an “A” food safety grade shall be inspected based on the risk categorization specified in subsection (2)(a)1.- 3. of this Rule.

5. Establishments that receive a “C” or “U” food safety grade will have at least one additional routine inspection added in a twelve month period, and may have more inspections at the discretion of the Health Authority .

6. An establishment that maintains an “A” food safety rating on three consecutive routine inspections may have the frequency of routine inspections reduced to one time per year for Risk Type II establishments and reduced to two times per year for Risk Type III establishments at the Health Authority’s discretion.

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(cont.)

7. The reduced inspection frequency may continue until the food service establishment incurs a grade of a “B”, “C” or “U”. The routine inspection frequency will then resume to the number specified for Risk Type, but may be more frequent as deemed necessary for the enforcement of this Chapter by the Health Authority.

(c) **Follow-up Inspections.** Follow-up inspections may be conducted at anytime at the discretion of the Health Authority, but must be conducted within ten days after an establishment receives a grade “U”.

(d) **Access.**

1. Representatives of the Health Authority, after proper identification, shall be permitted to enter any food service establishment or operation at any reasonable time for the purpose of making inspections and review of pertinent records to determine compliance with this Chapter. Should access be denied, an inspection warrant may be obtained as authorized in O.C.G.A. § 31-5, Article 2.

2. If a person denies access to the Health Authority, the Health Authority shall:

(i) Inform the person that:

(I) The permit holder is required to allow access to the Health Authority,

(II) Access is a condition of the acceptance and retention of a food service establishment permit to operate, and

(IV) If access is denied, an inspection warrant, issued by the appropriate authority to order access, may be obtained according to law; and

(ii) Make a final request for access.

(e) **Inspection of Mobile Food Service Units.** When inspecting a mobile food service unit in a county other than the county of origin, the Health Authority will contact the Health Authority in the county of origin to find out the violations received during the last inspection of the base of operation. These violations will be noted as violations during the inspection of each mobile unit.

(f) **Report of Inspection.**

1. The Health Authority shall document on the Department’s current approved “Food Service Establishment Inspection Report” form and “Food Service Inspection Report Addendum” form(s):

(i) Administrative information about the food service establishment's legal identity, street and mailing addresses, type of establishment and operation, inspection date, and other information which may include such information as type of water supply and sewage disposal, status of the permit, and personnel certificates that may be required;

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(cont.)

(ii) Specific factual observations of violations or other deviations from this Chapter that require correction by the permit holder including:

(I) Failure of the person in charge to demonstrate the knowledge of foodborne illness prevention, application of HACCP principles, and the requirements of this Chapter as specified under Rule .03 subsections (1)(a) – (c),

(II) Failure of food employees, conditional employees, and the person in charge to report a disease or medical condition as specified under Rule .03 subsections (4)(b) and (d),

(III) Nonconformance with Risk Factor and Public Health Intervention provisions of this Chapter,

(IV) Failure of the appropriate food employees to demonstrate their knowledge of, and ability to perform in accordance with, the procedural, monitoring, verification, and corrective action practices required by the Health Authority for a variance or HACCP Plan,

(V) Failure of the person in charge to provide records required by the Health Authority for determining conformance with a HACCP plan as specified under Rule .02 subsection (5)(d),

(VI) Nonconformance with critical limits of a HACCP plan; and

(iii) The numerical score and equivalent grade, based on debiting the appropriate points for violations and repeat violations of code provisions found or observed during the inspection.

2. Upon the completion of the inspection, the evaluating official shall have the person in charge sign the inspection report form. The person in charge's signature shall not necessarily indicate agreement with the findings noted on the inspection.

3. The Health Authority shall:

(i) Inform a person who declines to sign an acknowledgment of receipt of inspectional findings that:

(I) An acknowledgment of receipt is not an agreement with findings,

(II) Refusal to sign an acknowledgment of receipt will not affect the permit holder's obligation to correct the violations noted in the inspection report within the time frames specified, and

(III) A refusal to sign an acknowledgment of receipt is noted in the inspection report and conveyed to the Health Authority's historical record for the food service establishment; and

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(cont.)

(ii) Make a final request that the person in charge sign an acknowledgment receipt of inspectional findings.

**(g) Displaying of the Inspection Report.**

1. The most current inspection report shall be prominently displayed in public view at all times, within fifteen feet (15') of the front or primary public door and between five feet (5') and seven feet (7') from the floor and in an area where it can be read at a distance of one foot (1') away.

2. Food service establishments with drive-thru windows will post the current inspection report specified under 1 of this subsection, and also have the inspection report posted so that a minimum of the top one-third of a copy of the current inspection report is visible through each window allowing customers to easily read the score, date of inspection and establishment information.

3. At food service establishments with no primary or public door, the current inspection report shall be prominently displayed at all times where the documents can be read by the public from a distance of one (1) foot away. If requirements of this paragraph are not possible because of physical restrictions, a location will be determined as approved by the Health Authority.

4. The food service establishment inspection report addendum(s), completed by the Health Authority during an inspection, will not be required to be displayed, but will be made available by the food service establishment to the public upon request.

**(h) Violation Categories.**

1. Violations of this Chapter are categorized according to their potential for creating a health risk to the consumer. All violations shall be recorded on the current inspection report and addendum(s). Violations are divided into two categories, Risk Factors/Public Health Interventions (RF/PHI) Categories and Good Retail Practices (GRP) Categories.

2. Violation of Risk Factors/Public Health Interventions (RF/PHI) categories are prominent on the inspection report because maintaining these items in compliance is vital to preventing foodborne illness. These items are numbered 1 to 9 on the inspection report and divided into Subcategory "1" and "2" as follows:

(i) Subcategory "1" items cover provisions of the code, that when applied, would directly prevent, eliminate or reduce hazards to a safe level to protect consumer health. Because the probability of occurrence and severity of a hazard is greater when these provisions are out of compliance, the incidence and impact of foodborne illness is increased and therefore a point value is assigned for a violation of any subcategory "1" item of nine (9) points, and

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(cont.)

(ii) Subcategory “2” items cover provisions of the code, that when applied, would indirectly prevent, eliminate or reduce hazards to a safe level to protect consumer health. Because the probability of occurrence and severity of a hazard is lower than subcategory “1” when these provisions are out of compliance, the incidence and impact of foodborne illness is not as great and therefore a point value is assigned for a violation of any subcategory “2” item of four (4) points.

3. Risk Factors and Public Health Interventions (RF/PHI) Categories include:

- (i) Supervision.
- (ii) Employee health, good hygienic practices, preventing contamination by hands.
- (iii) Approved source.
- (iv) Protection from contamination.
- (v) Cooking of potentially hazardous foods, consumer advisory.
- (vi) Holding of potentially hazardous foods, datemarking of potentially hazardous foods.
- (vii) Highly susceptible populations.
- (viii) Chemicals.
- (ix) Conformance with approved procedures.

4. Good Retail Practices (GRP) categories are deemed to be operational and maintenance violations that, if not corrected, increase the potential for causing food borne illness. A violation of an item in a GRP category constitutes a one (1) to three (3) point deduction from the overall score (maximum 100 points) as delineated on the current food services establishment inspection report form.

5. Good Retail Practices Categories (GRP) include:

- (i) Safe food and water, food identification.
- (ii) Food temperature control.
- (iii) Pest and animal control.
- (iv) Prevention of food contamination.
- (v) Proper use of utensils.
- (vi) Utensils, equipment and vending.

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(cont.)

(vii) Water, plumbing and waste.

(viii) Physical facilities.

(ix) Other.

**(i) Timely Correction of Risk Factors/Public Health Intervention (RF/PHI) Categories and HACCP Plans.**

1. Except as specified in 2 of this subsection, a person in charge shall at the time of inspection correct a violation of a Risk Factors/Public Health Interventions (RF/PHI) of this Chapter and implement corrective actions for a HACCP plan provision that is not in compliance with its critical limit.

2. Considering the nature of the potential hazard involved and the complexity of the corrective action needed, the Health Authority may agree to or specify a longer time frame, not to exceed 10 calendar days after the inspection, for the permit holder to correct violations of a Risk Factors/Public Health Intervention item or HACCP plan deviations.

3. Failure to correct these violations to the satisfaction of the Health Authority may result in such emergency action as deemed necessary by the Health Authority including actions pursuant to O.C.G.A. §§ 31-5-2(b); 31-5-9(a).

**(j) Time Frame for Correction of Good Retail Practices Categories.**

1. Except as specified in 2 of this subsection, the permit holder shall correct Good Retail Practices (GRP) categories within 72 hours of the food service establishment's receipt of the inspection report or as otherwise directed by the Health Authority. Failure to make timely corrections to the satisfaction of the Health Authority of Good Retail Practices (GRP) categories may subject the food service establishment to suspension or revocation of its permit pursuant to subsection (1)(b) of this Rule.

2. The Health Authority may approve a compliance schedule that extends beyond the time limits specified under 1 of this subsection if a schedule of compliance is submitted by the permit holder and no health hazard exists or will result from allowing an extended schedule for compliance.

**(k) Verification and Documentation of Correction.**

1. After observing at the time of inspection a correction of a violation of a Risk Factor/Public Health Intervention (RF/PHI) item or deviation, the Health Authority shall enter the violation and information about the corrective action on the inspection report.

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2. As specified under subsection (2)(j)2 of this Rule, after receiving notification that the permit holder has corrected a violation of a Risk Factors/Public Health Interventions (RF/PHI) or HACCP plan deviation, or at the end of the specified period of time, the Health Authority shall verify correction of the violation, document the information on an inspection report or addendum, and enter the report in the Health Authority's records.

(l) **Grading Inspections.** Inspections will receive a letter grade based on the numerical score as follows:

1. "A". The letter grade "A" means food safety excellence and is applied to numerical score of 90 to 100.

2. "B". The letter grade "B" means satisfactory compliance and is applied to numerical score of 80 to 89.

3. "C". The letter grade "C" means marginal compliance and is applied to numerical score of 70 to 79.

4. "U". The letter grade "U" means unsatisfactory compliance and is applied to numerical score of 69 or less.

(m) **Repeat Violations.** A repeat violation means a violation of the same code provision of this Chapter under an item in a Risk Factors/Public Health Interventions (RF/PHI) or Good Retail Practices (GRP) category as documented in the previous routine inspection. A repeat violation constitutes the initial point deduction as specified in subsection (2)(h) 2 and 4 of this Rule plus an additional two (2) point deduction for one or more repeat violation(s) within a RF/PHI category and one (1) point deduction in a GRP category from the overall score (maximum 100 points). If a repeat violation of the same code provision of this Chapter occurs for three (3) consecutive routine inspections, then the points will be deducted accordingly and the food service establishment may be subject to suspension or revocation of its permit pursuant to subsection (1)(b) of this Rule.

(n) **Follow-up Inspections.**

1. A follow-up inspection means a complete inspection done as a result of a routine inspection. A follow-up inspection will be conducted when the establishment earns a "C" or "U" grade on a routine inspection. If a grade of "C" or higher is earned on the follow-up inspection, then no additional follow-up inspections will be conducted, however all RF/PHI violations must be corrected as specified under subsection 2(j)1 - 3 of this Rule.

2. The new score and equivalent grade will be posted on an inspection report during a follow-up inspection. The two previous inspection grades and scores, whether routine and / or follow-up inspections, will be posted subsequently under "Last Grade, Score and Date" and "Prior Grade, Score and Date" on the inspection report.

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(o) **Informal Follow-up Inspection.** If a follow-up inspection as specified in subsection (2)(n) of this Rule cannot be conducted by the Health Authority, then an informal follow-up may be performed to confirm correction of the violations that were cited on the routine inspection that were not corrected at the time of the inspection. On an informal follow-up inspection, an inspection report addendum(s) will be completed, documenting the violations that have been corrected. It will be noted on the addendum(s) that this was an informal follow-up inspection, and the establishment will keep the same grade that was earned on the previous routine inspection. The addendum(s) will be made available by the food service establishment to the public upon request.

(p) **Voluntary Closure.**

1. A food service establishment that is graded as a “U” and does not earn at least a grade “C” within ten days of receiving the “U” will be requested to voluntarily close until all violations are corrected and/or have enforcement action taken to suspend or revoke the food service permit according to subsection (1)(b) of this Rule.

2. A food service establishment that is graded as a “U” on two consecutive routine inspections will be asked to voluntarily close until all violations are corrected and/or have enforcement action taken to suspend or revoke the food service permit pursuant to subsection (1)(b) of this Rule.

**(3) Examination, Condemnation and Public Notice.**

(a) **Examination of Food.** Food may be examined or sampled by the Health Authority when necessary to determine freedom from adulteration or misbranding.

(b) **Condemnation of Food.**

1. The Health Authority may, upon written notice to the owner or person in charge, place a hold order on any food that the Health Authority determines or has probable cause to believe to be unwholesome or otherwise adulterated, or misbranded. Under a hold order, food shall be moved to a suitable holding area for storage until a hold order release or destruction order is issued. No food subject to a hold order shall be used, served, or removed from the establishment except as specified in 2 of this subsection. Immediate destruction shall be ordered and accomplished if there is risk to public health.

2. If the Health Authority has reasonable cause to believe that the hold order will be violated, or finds that the order is violated, the Health Authority may remove the food that is subject to the order to a place of safekeeping.

3. The hold order notice shall:

(i) State that food subject to the order may not be used, sold, moved from the food service establishment, or destroyed without a written release of the order from the Health Authority;

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(ii) State the specific reasons for placing the food under the hold order with reference to the applicable provisions of this Chapter and the hazard or adverse effect created by the observed condition;

(iii) Completely identify the food subject to the hold order by the common name, the label information, a container description, the quantity, Health Authority's tag or identification information, and location;

(iv) State that the permit holder has the right to an appeal hearing and may request a hearing within 72 business hours of the Health Authority;

(v) State that the Health Authority may order the destruction of the food if a timely request for a hearing is not received; and

(vi) Provide the name and address of the Health Authority representative to whom a request for an appeal hearing may be made.

**(4) Procedure When Infection is Suspected.**

(a) **Investigation and Control.** The Health Authority shall act when it has reasonable cause to believe that a food employee or conditional employee has possibly transmitted disease; may be infected with a disease in a communicable form that is transmissible through food; may be a carrier of infectious agents that cause a disease that is transmissible through food; or is affected with a boil, an infected wound, or acute respiratory infection, by:

1. Securing a confidential medical history of the food employee or conditional employee suspected of transmitting disease or making other investigations as deemed appropriate; and

2. Requiring appropriate medical examinations, including collection of specimens for laboratory analysis, of a suspected food employee or conditional employee.

(b) **Restriction or Exclusion of Food Employee, or Summary Suspension of Permit.** Based on the findings of an investigation related to a food employee or conditional employee who is suspected of being infected or diseased, the Health Authority may issue an order to the suspected food employee, conditional employee or permit holder instituting one or more of the following control measures:

1. Restricting the food employee or conditional employee;

2. Excluding the food employee or conditional employee; or

3. Closing the food service establishment by summarily suspending a permit to operate in accordance with law.

**290-5-14-.10 Compliance Procedures. Amended. (5) Variance.****(5) Variance.**

(a) **Modifications and Waivers.** The Department may grant a variance by modifying or waiving the requirements of this Chapter if in the opinion of the Department a health hazard or nuisance will not result from the variance. If a variance is granted, the Department shall retain the information specified under subsection 5(b) of this Rule in its records for the food service establishment.

(b) **Documentation of Proposed Variance and Justification.** Before a variance from a requirement of this Chapter is approved, the information that shall be provided by the person requesting the variance and retained in the Department's file on the food service establishment includes:

1. A statement of the proposed variance of the Chapter requirement citing relevant rule and subsection numbers;

2. An analysis of the rationale for how the potential public health hazards and nuisances addressed by the relevant rules and subsections will be alternatively addressed by the proposal; and

3. A HACCP plan if required that includes the information specified under Rule .02 subsections (5)(a) – (e) as it is relevant to the variance requested.

(c) **Conformance with Approved Procedures.** If the Department grants a variance as specified in subsection (5)(a) of this Rule, or a HACCP plan is otherwise required as specified under Rule .02 subsections (5)(a) – (e), the permit holder shall:

1. Comply with the HACCP plans and procedures that are submitted as specified under Rule .02 subsections (5)(a) – (e) and approved as a basis for the modification or waiver; and

2. Maintain and provide to the Department, upon request, records specified under Rule .02 subsections (5)(d) and (e) that demonstrate that the following are routinely employed;

(i) Procedures for monitoring the critical control points,

(ii) Monitoring of the critical control points,

(iii) Verification of the effectiveness of the operation or process, and

(iv) Necessary corrective actions if there is failure at a critical control point.

**(6) Implementation and Enforcement.** The administration and enforcement of these rules and regulations shall be as prescribed in O.C.G.A. § 31-5. Implementation of these rules and regulations shall begin nine months after the effective date.

**290-5-14-.10 Compliance Procedures. Amended. (7) Penalty.**

**(7) Penalty.** Any person who violates any provision of this Article or any rule or regulation promulgated under O.C.G.A. § 26-2, Article 13 by the Health Authority shall be guilty of a misdemeanor.

Authority O.C.G.A. Secs. 26-2-373. 31-2-4. Administrative History. Original Rule entitled "Violations" was filed and effective on July 19, 1965 as 270-5-6-14-.10. Amended: Rule repealed and a new Rule entitled "Personnel" adopted. Filed January 24, 1967; effective February 12, 1967. Amended: Rule renumbered as 290-5-14-.10. Filed June 10, 1980; effective June 30, 1980. Amended: Rule repealed and a new Rule entitled "Protective Shielding" adopted. Filed July 10, 1986; effective July 30, 1986. Amended: Rule repealed and a new Rule of the same title adopted. Filed March 5, 1996; effective March 25, 1996. Amended: Rule repealed and a new Rule entitled "Compliance Procedures" adopted. Filed Jan. 26, 2006; effective Feb. 15, 2006. Amended: Rule repealed and a new Rule of same title adopted. Filed Jan. 24, 2007; effective Feb. 13, 2007. Repealed: New Rule of same title adopted. Filed August 23, 2007; effective Sept. 12, 2007.

290-5-14-.10 Compliance Procedures. Further Amended

(1) Permits

- (a) Issuance: Permits shall be issued by the Health authority. Such permits shall be valid until suspended or revoked.
1. All fees must be paid in full before a food service establishment begins operation and a food service permit is issued. Annual permit renewal fee(s) must be received by the Clayton County Board of Health within thirty (30) days prior to the expiration of the permit. No person shall operate a Food service establishment without having paid the fees incurred.
  2. Permit holders do not have an automatic right to renewal and the Food service establishment must be in satisfactory compliance with the provisions of the rules of this Chapter for the gaining of permits.
  3. Permit holders who fail to satisfy compliance with the rules of this Chapter at the time of the renewal or fail to submit the permit renewal fees, re-inspection fees, or fines by the dates required, are subject to permit suspension and administrative closure of the Food service establishment.
  4. Notice of hearing: For the purpose of this Chapter a notice of hearing is properly served when delivered in person, or registered/certified mail.