



NC DEPARTMENT OF
**HEALTH AND
HUMAN SERVICES**

ROY COOPER • Governor
MANDY COHEN, MD, MPH • Secretary
BETH LOVETTE, MPH, BSN, RN • Acting Director
Division of Public Health

POSITION STATEMENT: Implementation of 41°F Cold Holding effective January 1, 2019

PURSUANT TO: North Carolina Food Code Manual. Part 3-5

SOURCE: Shane Smith, REHS, Branch Head, Food Protection and Facilities Branch

QUESTION/ISSUE: Clarification of enforcement actions for cold holding requirements regarding 41°F or below.

DISCUSSION AND RATIONALE:

In 2012, the Commission for Public Health adopted the 2009 FDA Food Code. Because of concerns raised by industry, it was decided to phase in the 41°F cold holding requirement over a six-year period with an implementation date of January 1, 2019. Local Health Departments have requested guidance regarding the implementation of the 41°F cold holding requirement. On January 1, the requirements for cold holding will change from 45°F or below to 41°F or below, per 3-501.16(A)(2) of the NC Food Code.

With respect to embargo of food stored between 42-45°F, the North Carolina Department of Health and Human Services' (NCDHHS) authority to embargo (NCGS 130A-21) is subject to the North Carolina Department of Agriculture and Consumer Services (NCDA&CS) definition of *adulterated* in NCGS 106-129. NCDA&CS advises food stored between 42-45°F is not a sole justification to embargo.

The relative food code citations and enforcement actions are outlined below.

RESPONSE/INTERPRETATION:

Cold Holding-3-501.16(A)(2) and (B) – First inspection* (on or after January 1, 2019) for Time/Temperature Control for Safety (TCS) foods found within the 42°F-45°F temperature range, mark OUT and take zero points. Permit action should not be taken during the first inspection for this violation.

Cooling-3-501.14 – First inspection* (on or after January 1, 2019) mark OUT for TCS foods that have cooled to 42-45°F within cooling parameters and take zero points. Permit action should not be taken during the first inspection for this violation. When possible, relocate food to cold holding equipment capable of maintaining TCS food at 41°F or below and cool food the

NC DEPARTMENT OF HEALTH AND HUMAN SERVICES • DIVISION OF PUBLIC HEALTH

LOCATION: 5605 SIX FORKS RD, RALEIGH NC 27609
MAILING ADDRESS: 1632 MAIL SERVICE CENTER, RALEIGH NC 27699-1632
www.ncdhhs.gov • TEL: 919-707-5854 • FAX: 919-845-3972

AN EQUAL OPPORTUNITY / AFFIRMATIVE ACTION EMPLOYER

remaining 1-4 degrees. Use ice and/or walk-in freezers to prevent cooling violations when possible.

Date Marking-3-501.18 – First inspection* (on or after January 1, 2019) if 4-day dated food is found at 42-45°F, mark OUT with zero points. Permit action should not be taken during the first inspection for this violation. Food may be kept for the remaining time and should be served as soon as possible. Voluntary disposal should be considered for items not date marked, regardless of temperature. Without obtaining a variance, 4-day date marking will be subject to point deductions after the first inspection (*See Achieving Long-Term Compliance Section for more information*).

Time As A Public Health Control-3-501.19 – First inspection* (on or after January 1, 2019) if the starting temperature is 42-45°F, it can be kept or the food may be put on Time as a Public Health Control (TPHC) for 4 hours or 6 hours depending on holding temperature. Mark OUT with zero points during the first inspection. Permit action should not be taken during the first inspection for this violation. Without obtaining a variance, starting TPHC foods at 42°F-45°F will be subject to point deductions after the first inspection (*See Achieving Long-Term Compliance Section for more information*).

Thawing-3-501.13 – First inspection* (on or after January 1, 2019) Mark OUT for TCS foods that are 42°F-45°F at any point during the thawing process and take zero points. Permit action should not be taken during the first inspection for this violation.

Slacking-3-501.12 – First inspection* (on or after January 1, 2019) Mark OUT for foods that are slacking in refrigeration that is holding food between 42°F and 45°F and take zero points. Permit action should not be taken during the first inspection.

*The first inspection is the inspection that occurs in an establishment on or after January 1, 2019. After the first inspection, please proceed with taking point deductions as specified in 15A NCAC 18A .2661.

Please note that this position statement does not apply to food temperatures above 45°F. For temperature violations above 45°F, points should be deducted and corrective actions should be achieved according to current practice.

When food is found between 42°F and 45°F, this is considered a critical violation and must be corrected during the inspection. Corrective action includes using education, voluntary disposal, and Risk Control Plans (RCPs). Education can consist of guidance documents with explanation and staff training. The corrective action taken should be documented on the inspection report. All correction options listed here allow an Authorized Agent to mark the 'CDI' box on the inspection sheet. Follow up visits may still be performed and are encouraged to aid in compliance.

After each establishment has had at least one inspection in 2019 under the 41°F temperature requirement, points will be assessed as explained in Rule .2661(e). No permit action or embargo

authority should be used for 42-45°F cold holding violations alone. Determining the cause of the violation and educating operators about compliance with the 41°F temperature requirement-not assessing point deductions-is our priority as Environmental Health Specialists. Document cause of the violation on the inspection form and suggest corrective actions as previously outlined.

Achieving Long Term Compliance – Variances may be granted for Date Marking for 4 days at a maximum of 45°F or TPHC starting at a maximum of 45°F for 4 hours only (even if held at 70°F). Guidance based on FDA computer modeling has shown that the *Listeria monocytogenes* (LM) risk is addressed using these procedures. Templates have been developed and can be utilized to achieve long term compliance. Variances will need to be approved and supported by the Local Health Department and then by the NCDHHS Variance committee. These options allow operators to control LM and other pathogens of concern and prevent point deductions. NOTE: Even if a variance for Date Marking and TPHC is granted and operators are following them, foods found between 42°F-45°F will still lead to point deductions for Cold Holding after the first inspection in 2019. A variance to cover all aspects of cold holding will *not* be granted to allow foods to be held at 42°F-45°F because this would significantly increase the risk to the public.

REFERENCES:

- Rules Governing the Food Protection and Sanitation of Food Establishments, [15A NCAC 18A .2600](#)
- [NC 2009 Food Code](#)
- [NC General Statutes](#)
- [Emergency Action Plan for Retail Food Establishments](#)
- [FDA Risk Assessment for Listeria monocytogenes growth of Ready-to-eat foods](#)
- [Staphylococcus aureus Toxin Formation in Hydrated Batter Mixes](#)
- [Scombrototoxin \(Histamine\) Formation](#)
- [Clostridium botulinum Toxin Formation](#)

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.