

Cold Hold Enforcement 2019



What are we doing with all the CH Questions?

- All Regionals are tracking questions coming from the counties.
- Then they are sent to the group for input.
- Field Supervisor and Branch Head approve answers
- This presentation contains most of the CH questions we have collected since 1/1/2019.
- This presentation, like all regional presentations, will be shared with the counties.

Questions and Answers: Types of Facilities

LFSE-Limited Lodging - Do they have to have 41°F?

Yes. All types of food establishments are subject to the 41°F cold hold change.

Do new establishment like Restaurants , MFUs, and food stands need to have 41°F prior to permitting?

Yes

Q&A: Date marking concerns

According to 3-501.19, date marking is only for RTE TCS foods. Considering that, what is the corrective action for raw meats, poultry, fish held at 42°F - 45°F?

Unless these items meet the definition of an adulterated product (discoloration, swelling of packaging, foul smell, etc.), the product would be allowed to be used even with a cold hold violation. CDI would be education and possibly a RCP if a behavior is the root of the problem.

Q&A: Date marking Concerns

If an operator receives a variance for 4-day date marking, should points be assessed for cold holding after the first inspection?

Yes. Cold holding is still a violation. Additionally, points may be deducted for a cold holding violation between 42°F-45°F after the first inspection in 2019. If food is above 45°F, points may be deducted immediately.

Q&A: Date marking Concerns

Does this 4-day date marking variance apply only to RTE/TCS foods or to ALL potentially hazardous foods?

Only foods that are RTE/TCS foods can get a variance. Foods that are exempt from date marking, like raw meat, would not be covered under the variance and these items should be marked out as a cold hold violation.

When to use Date Marking Variance Solution

During a routine restaurant inspection, the REHS observes several Cold Holding violations in the walk in cooler. The REHS decides to complete a Cold Hold Checklist evaluation of the establishment and discovers that the restaurant was consistently opening the walk in cooler during peak times. The constant introduction of warm air into the walk in cooler was causing temperatures up to 45°F.

As a corrective action, the restaurant decided to purchase a new upright reach in cooler to hold RTE/TCS foods that are used more frequently during the day. The additional equipment would prevent the constant opening of the walk in cooler and allow RTE/TCS foods to stay at 41°F or below. The walk in cooler works well, but is not designed to be opened as much as a reach in cooler.

This solution worked very well for the walk in cooler, but did not work well in the reach in unit. This upright reach-in is used to store items such as deli salads, deli meats, and salad ingredients. All RTE/TCS foods, in this unit, read between 42°F - 45°F with a 4-day date marking system.

What additional questions would you ask?

Additional Questions:

1. Are these products stored in this unit at all times?
2. Where are these products cooled?
3. Is there a reason why this unit may not be working and is there a better location for the storage of this food?

What are the next steps?

Step One:

- Education – The PIC should be aware of the concerns of labeling and proper cold hold temperatures of food. Discuss pathogens of concern and remedies.

Step Two:

- Cold Hold Checklist evaluation – Determine the root cause of the issue.
 - Is it equipment issues?
 - Is it behavioral?
 - Does this solve one issue (WIC) but cause other issues?

You complete an evaluation and determine that it is not behavioral as the PIC has good AMC.

You determine after further review that the unit is not working at its optimum, but is still maintaining foods at 45°F or below.

The PIC states that all he could afford was a reach-in from an auction house and he was guaranteed good equipment and does not understand why it isn't working.

The PIC states he cannot afford another reach-in at this time and requests any other solutions that can allow him to be safe and in compliance.

What is the next step?

Step 3 should be:

- A. Shut him down he didn't try hard enough
- B. Issue an ITS and give the PIC time to get a new piece of equipment
- C. Provide the PIC with TPHC options even if he would like to keep a 3-4 day supply in the refrigerator
- D. Provide the PIC with a date marking variance application

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- If you said D, it is the best option. The PIC is working to gain compliance and has fulfilled your request as outlined in the Cold Hold Checklist evaluation.
- The PIC has indicated good AMC and the REHS is confident that the PIC will achieve compliance.
- The RTE/TCS foods in the reach in unit can be controlled through the use of 4-day date marking.
- The PIC understands that until the unit is repaired and 41°F is achieved they will be OUT of compliance with Cold Holding with a potential point deduction, but will not lose points for Date Marking.

Q&A: TPHC Concerns

Regarding TPHC starting at 45°F, this seems difficult to enforce. For example, we enter an establishment and TPHC foods are at 55°F. How will we know what temperature they started out at? I would assume we need to verify which cooler the food is being initially taken from, and by our own observations, determine the start temperature?

Using TPHC for foods starting at 42°F - 45°F (based on refrigeration temperatures) would require a variance. The food establishment would be allowed to hold the product up to 4 hours, not to exceed 70°F. In order to know if a variance is needed, the REHS should discuss where the food is being stored and check/understand the holding temperatures of that food. This scenario would require the product to be monitored to ensure the warmest portion of the food does not exceed 70°F. If the establishment does not have a variance and the product is being removed from a temperature between 42°F - 45°F, it would be a violation of 3-501.19. Procedures would be required and start time and temp should be part of those procedures.

Q&A: TPHC Concerns

If the operator gets a variance for TPHC starting at 45°F, we should take points for cold holding after the first inspection?

Yes. Cold holding is still a violation. Points may be deducted for cold holding violations between 42°F-45°F after the first inspection in 2019. If food is above 45°F, points may be deducted immediately.

Q&A: TPHC Concerns

3-501.19 (A)(1) states that TPHC procedures must be “prepared in advance.” Is the state endorsing “emergency TPHC” for the purpose of this position statement and as an overall risk factor control? An emergency should be something out of the ordinary, not a prep unit that’s maintained 44 degrees for 6 years.

Using TPHC as a corrective action for improper cold holding should be directly associated with the amount of AMC in the facility (monitoring of product, knowledge of time/temp of the product, etc.). If there is solid evidence of knowledge about the product, TPHC could be a corrective action. If there is a consistent issue with a piece of equipment not appropriately holding food at 41°F or below, a TPHC variance may be granted.

Q&A: TPHC Concerns

The Cold Holding PS implies that foods can be held up to six hours using TPHC. My understanding is that 6 hours is allowed only when foods start at 41°F. Is this correct?

Yes. If the food starts between 42°F - 45°F, TPHC is only allowed through an approved variance for up to 4 hrs at a temperature not to exceed 70°F. TPHC on PS states 4 or 6 hrs depending on holding temperature, but Achieving Long Term Compliance states for 4 hrs only.

Q&A: TPHC Concerns

Are pre-existing TPHC approvals going to be re-written and if corporate SOPs state that they are supposed to start at 41°F but they don't, will those approvals be suspended? And local pre-approved TPHCs need to be re-visited right?

Yes, establishments with pre-existing TPHC will have to rewrite/edit existing plans to be compliant. The State will not oversee this process.

Is it true that tomatoes can start TPHC at 42°F-45°F without a variance?

Yes, tomatoes can start at any temperature for TPHC. Room temperature is typical.

When to use TPHC?

For facilities such as a sub shop that constantly takes food in and out of the refrigerator for slicing, is this food in a cooling process, storage or prep? During peak periods of service these deli meats have been consistently above 41°F and sometimes 45°F, but are being rapidly sliced and consumed.

TPHC is the best option for this scenario. Advise the operator to cut the chubs in half (or smaller portions) to prevent waste.

Q&A: Permitting Concerns

What about Transitional permits?

Yes they shall meet 41°F. No current transitional permits at this time would have a variance to renew with new ownership. It is imperative to complete the CH evaluation form and start with RCP first.

It is imperative to determine the underlying cold holding concern by using a Cold Hold Checklist with the establishment prior to making any decisions. A RCP may assist in correcting those concerns and should be used prior to a variance request

Can a transitional go ahead and apply for a variance if they already have knowledge that a CH unit is not 41 °F or below?

County must complete the cold hold evaluation form first, determine that a RCP will not work in this situation and then they may support the variance.

In this situation a variance *may* be supported.

Q&A: Permitting Concerns

How do we handle facilities wishing to obtain a transitional permit with equipment that will not hold at 41°F? According to code, it may require replacement of equipment.

When the code was written this was the line of thinking. After the results of CH studies, we found most were not holding due to human error. If the equipment has been evaluated using the CH assessment and determines that replacement is the best option, then that is the way the EHS should proceed.

Q&A: Permitting Concerns

If during the second inspection cold holding violations still exists due to equipment, should we be issuing a notice of intent to suspend permit along with taking points?

Points are not to be assessed for cold holding related violations for the first inspection only. After that points are assessed. I would strongly recommend using the Cold Hold Checklist and work with the operator to come up with a solution, example-RCP or a variance.

For facilities wishing to obtain a new permit are they extended the same grace period of 1 inspection not at 41°F?

No, it's at the discretion of the EHS for points taken.

Q&A: Permitting Concerns

Is there transitional permitting guidance for a place requesting a “T” permit that has a documented history of 42° - 45°F refrigeration”?

The condition of cold holding equipment replacement on a transitional permit would be contingent on the circumstances when the REHS goes to issue the permit.

If the equipment is:

- operating sufficiently (holding food at 41°F or below) at the time of the visit, it is hard to justify having a condition on the transitional for cold holding equipment.
- Holding food 42° - 45°F during the transitional permit visit, the equipment could be listed as a condition (repair or replacement) if there is clear evidence that the temperature problem is not behavioral-based.

NOTE: Previous use of the cold hold evaluation form and risk control plans (RCPs) would provide evidence to determine if it is behavioral or equipment-related.

Q&A: Miscellaneous

For facilities inspected in January with temperature violations exceeding 45°F and half credit deduction, do they get a free zero point deduction if they are between 42°F and 45°F?

This should be at the discretion of the county. The state will support the county as long as there is solid documentation and all establishments are given the same consideration.

Q&A: Miscellaneous

For facilities that receive a grade less than an A and request a reinspection, if they were marked zero points for being between 42°F and 45°F on both cold holding and cooling (observed during inspection) would they then be subject to half credit deduction on the re-inspection because that is the 2nd inspection? This would be particularly interesting for Cat. 2s because they can go almost 12 months in between inspections.

During the reinspection points would be assessed.

Q&A: Miscellaneous

Situation: Inspector finds chili in walk in cooler at 45°F prepared and cooled from night before. Every other food in walk-in is below 41°F. This seems like an obvious cooling violation. Is this just a cooling violation failing to get to 41°F within the 6 hours? What would be the corrective action, product disposal? It has been suggested that since the product has exceeded the 6 hours it is now storage and a cold hold violation...should both violations be marked cold holding and cooling?

It is a cooling violation (#18) and a cooling method violation (#31). Since the cooler is holding at 41°F it is not cold holding. Encourage disposal.

Why can't we have a blanket variance for all cold holding equipment for 45 degrees?

- A Variance has to control the risk
- Date marking variance controls Listeria
- TPHC Variance controls bacteria growth
- A variance for CH at 45 degrees does not control the risk of bacteria that grow in cold temps.
- A study showing that cold holding at 45 is just as safe as 41 degrees?

What Tools are in your Toolbox?

- Cold Holding Material
- Cold Hold Assessment Form- Updated!
- Written Documentation on the inspection form
- Risk Control Plans
- Variance option
- Permit action

Cold Holding In The News:

Read more on Cold hold: Despite years of notice, 40 percent of SENC restaurants violated stricter refrigeration rule at <http://www.wect.com/2019/02/25/cold-hold-despite-years-notice-senc-restaurants-violated-stricter-refrigeration-rule/>

Overview of the New Article:

- Across WECT's five-county viewing area, 262 out of 662 food establishments had cold hold violations
- Specific to food establishments in New Hanover, Brunswick, Pender, Columbus, and Bladen Counties
- WECT's analysis focused specifically on compliance for proper cold holding temperature. "A cold hold violation during an inspection does not necessarily mean an establishment's food is unsafe to eat"
- An operator was quoted "One of the biggest challenges in this town is there are a lot of hot kitchens, so ambient temperature has a big thing to do with your units working properly"

Keep in Mind the Media is paying close attention!

- There have been several investigations by the media in the state checking on how counties are evaluating and writing up inspections forms.
- A few counties were found to have no CH violations at all.
- No documentation of temperatures on the inspection form
- Some inspection forms documented “lower than 45 degrees” and not noted as a violation.
- Please contact your Regional if you have any concerns about how your county is working through the cold hold enforcement.
- WE ARE HERE TO HELP!

What if a county disagrees?

Please let your regional know if you do not agree with the answer you receive.

Provide your regional with your reason(s). All questions/concerns will be taken back to the group and potentially to the AG's office for further clarification.

Please be patient since this is an unprecedented rule change.