

**ALABAMA STATE COMMITTEE OF PUBLIC HEALTH
BUREAU OF ENVIRONMENTAL SERVICES
ADMINISTRATIVE CODE**

**CHAPTER 420-3-22
FOOD ESTABLISHMENT SANITATION**

420-3-22-.08 Compliance And Enforcement.

(1) **Exclusions** - Sections 8-302.14, 8-401.10, and 8-401.20 of the document entitled 2013 edition of the United States Department of Health and Human Services Food Code are specifically excluded from this adoption.

(2) **Permit required** - It shall be unlawful for any person to operate a food establishment in Alabama unless such person possesses a valid permit issued by the Health Officer for the operation of such establishment. Only persons who comply with the provisions of these rules shall be entitled to receive and retain such a permit. Permits shall not be transferable with respect to person, food establishment, or location. The permit shall be kept posted by the proprietor in a conspicuous place within the food establishment, but shall remain the property of the Health Department. The permit shall be revocable for violation of these rules.

(3) **Issuance of permits**

(a) Any person desiring to operate a food establishment shall make written application for a permit on forms provided by the Health Officer. Such application shall include the name and address of each applicant, the location and type of the proposed food establishment and the signature of each applicant. The permits shall be applied for and issued on forms prescribed by the State Health Officer. Permits shall automatically expire on the date upon which state, county and municipal annual privilege licenses expire or on a date designated by the Health Officer, and shall be renewable each year upon written application from the operator within one hundred fifty days prior to date of expiration of food permits and upon compliance with the laws and rules.

(b) Prior to approval of an application for a permit, the Health Officer shall inspect the proposed food establishment or review the inspection file of the food establishment to determine compliance with the requirements of these rules.

(c) The Health Officer shall issue a permit to the applicant if his/her inspection or review reveals that the proposed food establishment complies with the requirements of these rules, including, when required, verification that the permit holder

or their designee, possess a valid certification from an accredited program, issued within the previous five years (60 months) or completion of an accredited program without certification within the previous twelve months from the date of the permit application. The permit shall be specific for the type of food establishment for which the permit is requested on the application, as Priority Category 1, Priority Category 2, Priority Category 3, or Priority Category 4.

(4) **Permit denials, suspensions, and revocations** - The Health Officer's denial, suspension and/or revocation of a permit shall be governed by the Alabama Administrative Procedure Act, §41-22-1, et seq., Code of Ala. 1975. The Department shall fulfill any request for license or permit within 28 calendar days after receiving the application or notify the applicant of the reason for failure to issue the license or permit.

(5) **Hearings** -

(a) Contested case hearings shall be provided in accordance with the Alabama Administrative Procedure Act, § 41-22-1, et seq., Code of Ala. 1975, and the State Board of Health's Contested Case Hearing Rules, Chapter 420-1-3. Informal settlement conferences may be conducted as provided in the State Board of Health's Contested Case Hearing Rules, Chapter 420-1-3.

(b) A person may appeal a civil penalty assessed pursuant to the authority of Act Number 2009-584 and 2015-156 (Catfish labeling law) by submitting a written request for a hearing to the Department of Public Health. The written request for hearing must be received by the Department within 15 days from the date the person received written notice of the imposition of the civil penalty from the Department. The written request for hearing shall be mailed to the following address: Alabama Department of Public Health, Office of General Counsel, P.O. Box 303017, Montgomery, Alabama 36130-3017. A copy of the written request for hearing shall also be furnished to the health officer of the county from which said penalty was imposed.

(6) **Suspension of permits** - Permits may be suspended temporarily by the Health Officer for failure of the permit holder to comply with the requirements of these rules.

(7) **Revocation of permits** - The Health Officer may, after providing opportunity for hearing, revoke a permit for serious or repeated violations of any of the requirements of these rules or for interference with the Health Officer in the performance of his duty or for failure to comply with the provisions of a notice of permit suspension issued under 420-3-22-.08(6).

(8) **Application after revocation** - Whenever a revocation of a permit has become final, the holder of the revoked permit may make written application for a new permit after 90 days from the date of revocation. The applicant shall demonstrate compliance with the requirements of these rules and shall specifically set forth any change in circumstances that would justify issuance of a new permit.

(9) **Inspection frequency**

(a) Food establishments shall be inspected at a minimum schedule based on their assigned Priority Category.

1. Priority Category 4 establishments shall be inspected at least four times per year,

2. Priority Category 3 establishments shall be inspected at least three times per year, when the sanitation score on the last inspection was 94 or below and at least two times per year when the sanitation score on the last inspection was 95 or above.

3. Priority Category 2 establishments shall be inspected at least two times per year, and

4. Priority Category 1 establishments shall be inspected at least one time per year.

5. Bars and lounges serving only beverages, or only beverages along with Priority Category 2 food items, shall be inspected at least annually.

6. Food establishments earning a sanitation score of less than 85 on the last inspection shall be inspected again within the next 60 days.

(b) Legal notices (ADPH-F-Insp-.17/7-82 or similar form prescribed by the State Health Officer) shall be issued when priority or priority foundation items are violated and the necessary reinspections shall be made in accordance with 420-3-22-.08(13).

(c) Additional inspections of food establishments shall be performed as often as necessary for the enforcement of these rules.

(d) The State of Alabama, Department of Public Health, shall make Food Sanitation Surveys and Program Evaluations as determined by the State Health Officer. Surveys shall be made in accordance with the provisions of these rules and the results incorporated in the annual Alabama Public Health Report. The Department shall provide education and training in food sanitation and in regulation interpretation, standardized

inspection techniques and enforcement procedures for food protection program personnel.

(10) **Access** - The Health Officer, after proper identification, shall be permitted to enter any food establishment at any reasonable time for the purpose of making inspections to determine compliance with these rules. The Health Officer shall be permitted to examine the records of the establishment to obtain information pertaining to food and supplies purchased, received or used, or to persons employed.

(11) **Report of inspections** -

(a) Whenever an inspection of a food establishment is made, the findings shall be recorded on the inspection report form prescribed by the State Health Officer. The inspection report form shall summarize the requirements of these rules and shall set forth a weighted point value for each requirement. Inspectional remarks shall be written to reference, by rule number, the rule violated and shall state the corrections to be made.

(b) The rating score of the establishment shall be the total of the weighted point values for all violations subtracted from 100, except as otherwise provided in this section. The original of the inspection report form shall be conspicuously displayed for public view within the establishment.

(c) When an initial inspection finds that a new establishment has met the requirements of these rules for obtaining a permit, the inspection results shall be reported as "Approved for permit."

(d) The score shall be promptly entered on the Food Inspection Chart or electronic file in the county health department. A copy of the inspection report shall be filed with the records of the county health department. The completed inspection report form is a public document that shall be made available for public disclosure to any person who requests it according to law.

(12) **Correction of violations**

(a) The completed inspection report form shall specify a reasonable period of time for the correction of the violations found; and correction of the violations shall be accomplished within the period specified, in accordance with the following provisions:

1. If an imminent health hazard exists, such as extended interruption of electrical or water service, complete lack of refrigeration, complete lack of hot water under pressure, sewage backup, misuse of poisonous or toxic

materials, onset of an apparent foodborne illness outbreak, gross insanitary occurrence or condition, substantial damage due to fire or flooding, or other circumstance that may endanger public health, including an inspection score of less than sixty on an inspection for enforcement purposes (not an inspection for training or survey purposes), the establishment shall immediately cease operations. Operations shall not be resumed until authorized by the Health Officer. A permit holder need not discontinue operations in an area of an establishment if, in the opinion of the Health Officer, the area is unaffected by the imminent health hazard.

2. Except as otherwise allowed in 420-3-22-.08(13)(a)3, all violations of priority and priority foundation items shall be corrected as soon as possible, but in any event, within three days for priority items and ten days for priority foundation items following the inspection.

3. Failure of the permit holder or their designee to have a valid certification from an accredited program issued within the previous five years (60 months) or completion of an accredited program without certification within the previous twelve months prior to the date of the inspection, shall be corrected within 120 days.

4. All core items shall be corrected as soon as possible, but in any event, by the time of the next routine inspection. The Health Officer may approve a compliance schedule for core items that extends beyond the time limits specified under this section if a written schedule of compliance is submitted by the permit holder and no health hazard exists or will result from allowing an extended schedule for compliance.

5. When the rating score of the establishment is less than seventy, the establishment shall initiate corrective action on all identified violations within 48 hours. One or more reinspections will be conducted at reasonable time intervals to assure correction.

6. When the rating score of the establishment is less than sixty on an inspection for enforcement purposes (not an inspection for training or survey purposes), the permit shall be immediately suspended. The permit shall remain suspended until all priority and priority foundation items are corrected, the permit holder or their designee has registered to attend an accredited program regardless of the Priority Category of the food establishment, and the rating score is eighty-five or above. Reinspections will be conducted at reasonable time intervals and in accordance with the provisions of 420-3-22-.08(4).

7. In the case of temporary food service establishments, all violations shall be corrected within 24 hours. If violations are not corrected within 24 hours, the establishment shall immediately cease food service operations until authorized to resume by the Health Officer.

8. In the case of mobile food units, all violations shall be corrected within the time limits set by this rule. Priority and priority foundation violations on the mobile food unit shall be considered failure to follow an approved plan of operations and shall be noted as such on the commissary inspection report.

9. Failure to conspicuously post for public view any document issued by the Health Officer and required by these rules to be so posted, or any document required by law to be posted and with the Health Officer as the enforcement authority, shall be corrected as soon as possible, but in any event, within ten days following the inspection.

(b) The inspection report shall state that failure to comply with any time limits for corrections may result in cessation of operations. An opportunity for hearing on the inspection findings or the time limitations or both will be provided if a written request is filed with the Health Officer within 15 days following cessation of operations. If a request for hearing is received, a hearing shall be held in accordance with 420-3-22-.08(5).

(c) Whenever a food establishment is required under the provisions of 420-3-22-.08(4) to cease operations, it shall not resume operations until it is shown on reinspection that conditions responsible for the order to cease operations no longer exist. Opportunity for reinspection shall be offered within a reasonable time.

(13) **Vending machines** - For the purpose of these rules, provisions relating to vending machines shall be enforced against the food processing establishment providing food for Except that, nothing in this placement in the vending machines. rule shall be construed to prevent the Health Officer from taking any necessary action to abate a public health problem or nuisance associated with a vending machine.

(14) **Examination and condemnation of food** -

(a) Food may be examined or sampled by the Health Officer as often as necessary for enforcement of these rules.

(b) The Health Officer may, upon written notice to the owner or person in charge, specifying with particularity the reason

therefore, place a do not sell order on any food which he believes is in violation of 420-3-22-.03 or any other section of the rules. The Health Officer shall tag, label, or otherwise identify any food subject to the do not sell order.

(c) No food subject to a do not sell order shall be used, served or moved from the establishment. The Health Officer shall permit storage of the food under conditions specified in the do not sell order unless storage is not possible without risk to the public health, in which case the food shall be destroyed in accordance with Section 22-10-3, Code of Ala. 1975.

(d) The do not sell order shall state that a request for hearing may be filed within fifteen days and that if no hearing is requested the food shall be destroyed. If a request for hearing is received, the hearing shall be held in accordance with the Rules of the Board. On the basis of evidence produced at that hearing, the do not sell order may be vacated, or the owner or person in charge of the food may be directed by written order to denature or destroy such food or to bring it into compliance with the provisions of these rules.

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