



TITLE: Food Safety Progressive Enforcement

SUPERSEDES: N/A

Scope

This policy is in effect for Morgan County Health Department.

Purpose

To standardize the enforcement procedure and provide a mechanism for handling both recalcitrant facilities and situations that pose an immediate risk. The Ohio Revised Code Section 3717 provides uniform enforcement rules for food service and retail food establishments.

Policy

Follow-Up Inspection Requirements

Facilities can have either a “satisfactory” or “unsatisfactory” inspection. If any of the following criteria are met during an inspection, then the facility will have an “unsatisfactory” inspection and a follow-up inspection shall be conducted at the facility:

- 1) Four or more total violations.
- 2) Two or more critical violations.
- 3) No contact with a person in charge (PIC).
- 4) Walk-in cooler is holding above 45°F or a significant number of coolers are not working properly.
- 5) Evidence of roaches or rodents.
- 6) Observation of any violation that would confirm or contribute to the conditions reported in a food borne illness investigation.
- 7) Inspector discretion with supervisor/director approval.

Follow-Up Inspection Time Frames

Follow-up inspections shall be conducted at an appropriate time frame to ensure violations are quickly resolved and the public health protected. A follow-up inspection shall be conducted within 14 days of the original inspection, with the following exceptions:

- 1) The Environmental Health Specialist may extend the follow-up time frame to a maximum of 30 days provided there are no outstanding critical violations.
- 2) All violations involving rodents shall be inspected on the **next business day** from the original inspection.
- 3) All violations involving roaches (except those that require immediate closure – see “Immediate Danger & Closure”) shall have a follow-up time frame not to exceed 14 days after the original inspection.

Follow-Up Inspection Process

The following criteria must be met in order to have a “satisfactory” follow-up inspection:

- 1) For any standard inspection, all critical and at least 50% of the total number of violations shall be corrected.
- 2) For all complaints and/or foodborne illness inspections, all violations stemming from the complaint or foodborne investigation shall be corrected.
- 3) For all rodent violations, all evidence of rodents shall be cleaned up and no new evidence present.
 - a. If the facility passes the follow-up inspection for rodents, the inspector shall conduct an inspection within 90 days of the follow-up to ensure continued compliance.
- 4) For all roach violations, all live roach activity shall be eliminated and facility shall be receiving treatment no less than once every two weeks.
 - a. If roach activity has significantly decreased, the facility has addressed all maintenance and cleaning issues related to the presence of roaches, and the facility is being treated by a licensed pesticide applicator at least once every two weeks, then a 2nd follow-up (3rd round) inspection will be scheduled with the appropriate supervisor. The time frame for follow-up will be the same as stated above in “Follow-Up Inspection Time Frames”.
- 5) If a facility has an unsatisfactory inspection for several issues, then all applicable criteria need to be met in order to pass the follow-up inspection. *Example: A food facility has 7 total violations and roach activity – in order to pass the follow-up inspection, at least 50% of the total violations shall be corrected and the roach activity eliminated.*

If the facility does not have a “satisfactory” follow-up inspection, the following steps shall take place:

- 1) If a facility does have a satisfactory follow-up inspection, then a 2nd follow-up inspection will be scheduled with a supervisor. The time frame for follow-up will be the same as stated above in “Follow-Up Inspection Time Frames”.
- 2) If rodent violations are not corrected upon a follow-up inspection, the facility will not have a satisfactory follow-up inspection and the Director of Environmental Health and the Supervisor shall be contacted. If the violations are determined to indicate an active rodent infestation, the facility will be asked to voluntarily close or the Health Commissioner will close the facility for Immediate Danger (see “Immediate Danger & Closure”). The facility will be scheduled for a pre-administrative hearing upon closure. The facility will be instructed to contact the Environmental Health Specialist the next business day for a follow-up prior to re-opening the facility, if voluntarily closed.
- 3) If roach violations are not corrected or are worse upon a follow-up inspection, the facility will not have a satisfactory inspection and the appropriate supervisor shall be contacted and closure for Immediate Danger may be considered (see “Immediate Danger & Closure”).
- 4) Any unsatisfactory 2nd follow-up inspection will result in further enforcement (see “Enforcement Process” below).

Failure to Comply with the Ohio Food Code:

There are instances where a facility would have an unsatisfactory standard inspection and have a satisfactory follow-up inspection but still may be required to go through MCHD's hearing process.

Level 1 and 2 Facilities

If a facility has two consecutive unsatisfactory standard inspections, an additional standard inspection will be conducted during the current licensing year. If the facility fails this **additional** standard inspection, the facility shall attend an administrative hearing at MCHD (see "Enforcement Process" below for details). It is the requirement of the Environmental Health Specialist to track failed inspections at these facilities.

Level 3 and 4 Facilities

If a facility has three unsatisfactory standard inspections within a two-year period, the facility shall attend a n administrative hearing at MCHD (see "Enforcement Process" below for details). It is the requirement of the Environmental Health Specialist to track failed inspections at these facilities.

Immediate Danger & Closure:

During an inspection, when an Environmental Health Specialist observes a facility operating with a violation that puts the public health in immediate danger, immediate action is required. Items that may constitute an immediate danger:

- 1) Necessary utilities absent (electric, running water).
- 2) Necessary electrical equipment nonfunctional (cold storage, hot holding).
- 3) Sewage back-up in the facility.
- 4) Water main break/ boil water advisory.
- 5) Any live rodent or new rodent activity.
- 6) A large cluster or multiple clusters of live roach activity.
- 7) Damage resulting from fire/natural disaster (flood, tornado, fire, etc.).
- 8) Other observed threat or danger not listed and deemed so by the Environmental Health Specialist in conjunction with the Director or Administrator.

Upon observation of a situation that poses an immediate danger to the public health, the Environmental Health Specialist will contact the Director/Administrator to inform them of the situation. The Director/Administrator will assess the information provided and may visit the facility to observe the danger and to assist the Environmental Health Specialist. Once the danger is confirmed by administration, the license holder will be contacted and the facility will be given the option to voluntarily close. If a facility fails to voluntarily close, the Health Commissioner will be contacted for closure for immediate danger and the pre administrative hearing will be scheduled.

If a facility voluntarily closes or is closed by the Health Commissioner the appropriate legal authority of the jurisdiction, in which the facility is located, shall be contacted if the operator fails to comply with closure.

When a facility is observed to be operating with conditions that pose an immediate danger to the public health or if there is a confirmed foodborne illness outbreak, the facility will be required to attend a pre-administrative hearing (see “Enforcement Process” below). The Administrator shall be informed of the details and schedule of all pre-administrative hearings.

Enforcement Notification

Although there is currently no statute that requires the MCHD to notify the public of inspection/investigation results or enforcement activities, MCHD shall notify the public of enforcement actions by posting a sign at the facility that is in plain view of the public when deemed necessary for the protection of public health.

Embargo Process

When an Environmental Health Specialist finds foods that appear to be misbranded or adulterated or in case of baby food and infant formula to be expired, the owner or person in charge (PIC) must be notified and the product(s) must be removed from use. Meat, seafood, poultry, vegetable, fruit or other perishable foods that are unsound, or contain any filthy, decomposed, or putrid substance or that may be poisonous or deleterious to health or otherwise unsafe, shall be destroyed or rendered unsalable as human food (i.e. food dye). The Environmental Health Specialist shall first provide the PIC the option to voluntarily destroy adulterated or unsound product. If the PIC agrees to voluntarily destroy the product(s) in question, a “Voluntary Destruction Report” shall be completed and proper documentation shall be noted on a Standard Inspection Report form. If the PIC does not agree to voluntary destruction, the Director/Administrator must be contacted and the following steps to embargo followed:

- 1) Once authorized by the Director/Administrator to embargo a food item, the embargo tag(s) should be affixed to the items in question
- 2) The embargo tags warn all persons not to remove or dispose of the items, by sale or otherwise, until permission for removal or disposition has been given by MCHD or Court of Law.
- 3) The items should be tabulated or documented on a Standard Inspection Report form, then isolated in an appropriate manner (i.e. keep refrigerated items refrigerated).
- 4) The Environmental Health Specialist shall photograph each embargoed item for the Standard Inspection Report.
- 5) Embargo tags are valid for up to ten (10) days. If resolution is not resolved within 10 days, the embargo can be reissued. If embargo is reissued, the Environmental Health Specialist must complete new paperwork including a new Standard Inspection Report form.
- 6) Once the verification is determined either by MCHD or by Court of Law and a decision is made, the tag(s) will be removed by or under the direction of a MCHD director/supervisor.
- 7) If product is to be destroyed, an Environmental Health Specialist shall witness and document the destruction on a Standard Inspection Report.

Enforcement Process

When a facility fails to comply with the Ohio Uniform Food Safety Code or operates in a manner that puts the public at risk, enforcement is necessary. The administrative hearing is the first step in the enforcement process. An administrative hearing is scheduled for the following reasons:

- 1) Unsatisfactory 2nd follow-up inspection through the “Follow-Up Inspections” process as described above.
- 2) “Failure to Comply with the Ohio Food Code” process as described above.
- 3) The Environmental Health Specialist observed a facility operating with conditions that are deemed an immediate danger to public health.
- 4) Confirmed foodborne illness outbreak with consultation from the Health Commissioner and the Regional Epidemiologist.

The administrative hearing will be scheduled with the Morgan County Health Department Administrator. The Health Commissioner will be informed of the hearing details. An “Administrative Hearing Notice” will be printed, and given to the (PIC) at the time of inspection or hand delivered on the next business day. Administrative hearings will address the following items:

- 1) The conditions at the facility which initiated enforcement action.
- 2) That the facility will be placed on an increased frequency of inspections for a probationary period of 180 days.
- 3) Clear objectives for obtaining compliance. The objectives shall include, but are not limited to:
 - a. Facility shall have all violations from previous inspection corrected by the next scheduled follow-up inspection.
 - b. One PIC per shift shall be required to attend an Ohio Department of Health approved (ODH) Person in Charge or Manager Food Handler Training by the specified date.
 - c. Facility shall have less than 3 critical and 5 total violations on all inspections that are conducted within the facility for the next 180 days from this hearing.
- 4) If the facility warrants a second Administrative Hearing due to unsatisfactory inspections or immediate closure within the next three years, the facility may be immediately scheduled for a Board of Health Hearing.

Supervisors or their designees shall conduct all standard inspections of facilities under probation. If a facility fails to meet the requirements of the administrative hearing, a Board of Health hearing shall be scheduled.

Procedure If applicable

References If applicable

ADOPTED BY: Morgan County Board of Health

EFFECTIVE DATE: 03/19/20

REVIEWED DATE: 04/25/24

REVISION DATE: 04/25/24