



TITLE: Food Safety Progressive Enforcement

SUPERSEDES: N/A

Scope

This policy is in effect for the Morgan County Health Department.

Purpose

To standardize the enforcement procedure and provide a mechanism for handling uncooperative 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 (unless corrected during inspection).
- 2) Two or more critical violations (unless corrected during inspection).
- 3) No contact with a person in charge (PIC).
- 4) If the walk-in cooler is above 45 °F or multiple coolers need repairing.
- 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 appropriately to ensure violations are quickly resolved and public health is 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 rodent violations 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 to have a “satisfactory” follow-up inspection:

- 1) For any standard inspection, all critical and at least 50% of the violations shall be corrected.
- 2) For all complaints and 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 will be 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 the facility shall receive 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 in “Follow-Up Inspection Time Frames.”
- 5) If a facility has an unsatisfactory inspection for several issues, all applicable criteria must be met to pass the follow-up inspection. *Example: A food facility has seven total violations and roach activity – to pass the follow-up inspection, at least 50% of the 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 has an unsatisfactory follow-up inspection, a 2nd follow-up inspection will be scheduled with a supervisor. The time frame for follow-up will be the same as stated 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 indicate an active rodent infestation, the facility will be asked to close voluntarily, 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. If voluntarily closed, the facility will be instructed to contact the Environmental Health Specialist the next business day for a follow-up before re-opening the facility.
- 3) If roach violations are not corrected or are worse upon a follow-up inspection, the facility will not have a satisfactory inspection. 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).

Enforcement Process:

Due to an unsatisfactory 2nd follow-up, a stricter enforcement process will take place. This ensures the establishment does not endanger public health and complies with the Ohio Revised Code Section 3717. The environmental health specialist performing the 2nd follow-up inspection will determine which stricter enforcement process will occur. Stricter enforcement may include:

- 1) Increase training with staff (PIC training).
- 2) Increase the frequency of inspections.
- 3) Immediate mandate of logs (temperature logs, date logs, etc.)

Stricter enforcement will remain in place as long as the environmental health specialists and Director/Administrator deem it necessary.

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). The Environmental Health Specialist is required to track failed inspections at these facilities.

Level 3 and 4 Facilities

If a facility has three unsatisfactory standard inspections within one year, the facility shall attend an administrative hearing at MCHD (see "Enforcement Process" below for details). The Environmental Health Specialist is required 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 is nonfunctional (cold storage, hot holding).
- 3) Sewage backup 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 from fire/natural disaster (flood, tornado, fire, etc.).
- 8) Other observed threats or dangers not listed and deemed so by the Environmental Health Specialist in conjunction with the Director/Administrator.
- 9) Negligence of duty present or unable to demonstrate food safety knowledge.

Upon observation of a situation that poses an immediate danger to public health, the Environmental Health Specialist will contact the Director/Administrator to inform them of the problem. 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 administration confirms the threat, the license holder will be contacted, and the facility will be allowed to close voluntarily. If a facility fails to close voluntarily, 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 operating with conditions that pose an immediate danger to 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 Director/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 inform 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 the 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. The Environmental Health Specialist shall first allow the PIC to destroy adulterated or unsound products voluntarily. If the PIC agrees to destroy the product(s) in question voluntarily, 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 must be 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 the Court of Law.
- 3) The items should be tabulated or documented on a Standard Inspection Report form, then isolated appropriately (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 the resolution is not resolved within 10 days, the embargo can be reissued. If the embargo is reissued, the Environmental Health Specialist must complete new paperwork, including a new Standard Inspection Report form.
- 6) Once the verification is determined by MCHD or the Court of Law and a decision is made, the tag(s) will be removed by or under the direction of an MCHD director/supervisor.
- 7) If the product is to be destroyed, an Environmental Health Specialist shall witness and document the destruction on a Standard Inspection Report.

Cease Use Procedure

If an item, ingredient, or process is identified as unsafe or non-compliant with health and safety standards, the following procedure must be followed:

1. **Immediate Action:** Cease use of the affected item, ingredient, or equipment.
2. **Notification:** Inform all relevant staff and management of the issue.
3. **Isolation:** Isolate the unsafe item or equipment to prevent accidental use.
4. **Investigation:** Determine the root cause of the problem and document the issue.
5. **Corrective Action:** Implement corrective measures, such as repairing equipment or discarding contaminated food.
6. **Re-assessment:** Ensure the issue is resolved before resuming use or operations.
7. **Monitoring:** Continuously monitor to ensure the issue does not recur.

The cease-use procedure will be lifted once the underlying issue, such as contamination or equipment malfunction, has been identified and resolved. Corrective actions must be implemented, such as repairing equipment, disposing of unsafe food, or retraining staff, followed by verification to ensure that the affected item, ingredient, or process meets safety standards. Once the environmental health specialists approve the corrective measures and confirm safety through inspection or testing, with continuous monitoring to prevent a recurrence, the cease-use order will be lifted, and normal operations can resume.

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 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 Director/Administrator. The Health Commissioner will be informed of the hearing details. An

“Administrative Hearing Notice” will be printed and hand-delivered to the (PIC) on the next business day. Administrative hearings will address the following items:

- 1) The conditions at the facility that initiated enforcement action.
- 2) The facility will be placed on an increased frequency of inspections for a probation 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 inspections 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. The facility shall have less than three critical and five total violations on all inspections conducted within the facility within 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 two 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: 03/19/2020

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