



Needham Public Health Division

Prevent. Promote. Protect.



POLICY or PROCEDURE TITLE: **Food Code Enforcement**

Number: **HHS-PH-EH-101**

Policy Type: **Environmental Health**

Original Date: June 5, 2018

Reviewed or Revised: August 14, 2024

Effective Date: August 14, 2024

Essential Public Health Service: Essential Public Health Service: Enforce laws and regulations that protect health and ensure safety.

PURPOSE:

To ensure compliance and enforcement activities result in consistent follow-up actions for uncontrolled risk factors and timely correction of code violations.

POLICY:

The Needham Public Health Division is guided by Federal, State, and Local food codes and enforces those regulations. The Health Agents work closely with food establishments, providing consultation when food establishments struggle to achieve compliance. The Environmental Health Unit will follow a policy of progressive discipline for food establishments that have repeat violations.

PROCEDURE:

The Board of Health or its agent or designee enforces the following Food Codes:

- Federal Food Code – Applicable portions of the [2013 Food Code](#)
- State Food Code – Chapter 10 of the State Sanitary Code, [105 CMR 590.000](#)
- [Allergen Awareness Act](#), M.G.L. Ch 140, § 6B.
- [School Nutrition Bill](#), Acts of 2010, MGL Chapter 197
- [Needham Article 17](#), Board of Health Regulation to Restrict Foods Containing Trans Fat.

1. Routine inspections

The Environmental Health Agent conducts unannounced, in-person inspections of all food establishments. The frequency of those inspections is determined by the establishment's risk category. During the visit, the Health Agent identifies herself or himself by name and as an inspector with the Needham Public Health Division (NPHD). If circumstances prevent an unannounced inspection, the Health Agent may schedule an inspection. Residential kitchens are the exception and will always be scheduled in advance.

Food establishments are categorized by risk, and the risk category determines the frequency of inspections as follows:

- A. Risk Category 1: Inspected annually, with check-in calls or drop in visits at 6 months. Examples include:
- a. Most convenience store operations and residential kitchens, and some coffee shops, and small bakeries.
 - b. Establishments that serve or sell mostly pre-packaged, non- time-temperature controlled for safety foods with some pre-packaged time-temperature controlled (TCS) foods.
 - c. Establishments that heat only commercially processed and/or fully cooked TCS foods for hot holding or cold holding, with minimal handling of food and no cooling or cooking of TCS foods.
 - d. Establishments that only sell non-TCS baked goods.
 - e. Establishments that would otherwise be grouped in Category 2 but have shown through historical documentation to have achieved active managerial control of foodborne illness risk factors.
- B. Risk Category 2: Inspected every six months. Examples include:
- a. Retail food stores and quick service operations.
 - b. Preschools, elementary schools, and secondary schools.
 - c. Limited menu with most products prepared, cooked, and served immediately.
 - d. May involve hot and cold holding of TCS foods after preparation or cooking.
 - e. Complex preparation of TCS foods requiring cooking, cooling, and reheating for hot holding and is limited to only a few TCS foods.
 - f. Establishments that would otherwise be grouped in Category 3 but have shown through historical documentation to have achieved active managerial control of foodborne illness risk factors.
 - g. Newly permitted establishments that would otherwise be grouped in Category 1 until active managerial control of foodborne illness risk factors is achieved and documented.
- C. Risk Category 3: Inspected every four months. Examples include:
- a. Full-service restaurant with extensive menu and handling of raw ingredients.
 - b. Complex preparation including cooking, cooling, and reheating for hot holding involves many TCS foods.
 - c. A variety of processes require hot and cold holding of TCS food.
 - d. Establishments that would otherwise be grouped in Category 4 but have shown through historical documentation to have achieved active managerial control of foodborne illness risk factors.
 - e. Newly permitted establishments that would otherwise be grouped in Category 2 until active managerial control of foodborne illness risk factors is achieved and documented.
- D. Risk Category 4: Inspected every three months. Examples include:
- a. Hospitals, nursing homes, and other establishments that serve highly susceptible population, which conduct processing at retail.

- b. Includes establishments that conduct specialized processes that require a variance and the following of a Hazard Analysis Critical Control Point (HACCP) plan, (e.g., acidification, smoking and curing, or reduced oxygen packaging for extended shelf-life).
- c. Newly permitted establishments that would otherwise be grouped in Category 3, until active managerial control of foodborne illness risk factors is achieved and documented.

The Health Agent, using an inspection form, enters code violation information and photographs on a digital tablet. At the end of the inspection, the Health Agent meets with the person in charge (PIC), who is usually the owner or manager. The Health Agent reviews the findings with PIC and sets a date for an additional inspection if necessary. At the conclusion of the meeting, the PIC and the inspector sign an electronic copy of the inspection report, which is emailed within 12 hours of the inspection to the PIC and/or relevant other parties including but not limited to, owners and managers. To the best of the Health Agents ability, the report may be emailed immediately if requested at the time of inspection.

If food service establishments require written or spoken communication in a language other than English, the Environmental Health staff will arrange for translation of written material and will arrange for an interpreter for visits to the establishment.

2. Violations

Violations are categorized as follows:

A. Core items (non-priority):

A Core item is defined as one that relates to general sanitation, operational controls, facilities or structures, equipment design, or general maintenance. Core items are designated with a **C** on inspection reports.

B. Priority and Priority Foundation items:

Priority Foundation items are those that require the purposeful incorporation of specific actions, equipment, or procedures by industry management to attain control of risk factors that contribute to foodborne illness or injury such as personnel training, infrastructure, or necessary equipment, HACCP plans, documentation or record-keeping and labeling. Priority Foundation items are designated with a **Pf** on inspection reports.

Priority items are those that present an imminent hazard to human health. Priority items include those regarding cooking, reheating, cooling, or handwashing. Priority items are designated with a **P** on inspection reports.

If corrections can be accomplished during inspection, no re-inspection is required, although special attention will be paid to those items at the next routine inspection. If corrections cannot be accomplished during inspection, a re-inspection may be scheduled

if deemed necessary by the Health Agent. Re-inspections will generally be necessary to confirm correction of most violations noted as Priority and Priority Foundation.

C. Legal notice:

The inspection report form shall be the legal notice to the food establishment that specific actions must be taken to be in compliance or further enforcement actions will be taken.

3. Enforcement

A. First violation:

If the Health Agent determines that there is a violation of the Food Code during a routine inspection, the Health Agent will cite the violation in the inspection report. The Health Agent will return for a follow-up inspection within a timeframe specified with the PIC, management, and/or the owner. The timeframe for the follow-up re-inspection is determined by the severity of the violations. There is no fee for this follow-up reinspection and no fine will be assessed.

B. Correct on site:

Whenever possible, corrections must be made immediately, in the presence of the Health Agent. Examples might be discarding food that is deemed unsafe or adulterated, or restocking handwash stations that are missing necessary supplies. If a correction is made immediately, the violation is marked "COS" (corrected on site).

C. First re-inspection:

New violations observed during the re-inspection may be added if the Health Agent determines that they pose immediate danger to the health of the public. If the Health Agent determines during the reinspection that the situation has not improved and if the violations had not been corrected within the timeframes set, the agent will schedule a second re-inspection to continue working on improvements with the food establishment. The Health Agent considers the severity of the violations and their potential threat to the public's health in determining how to proceed.

D. Multiple re-inspection fees:

A fee of \$150.00 will be charged during each reinspection beginning with continued non-compliance at the second re-inspection and for each additional re-inspection thereafter.

F. Non-compliance after third reinspection:

If, on the third reinspection, the Health Agent sees the same violations, the food establishment owner or manager must attend an administrative hearing with the Director or Assistant Director, the Health Agent, and if possible, a member of the Board of Health. If the violation is serious and found to present an imminent threat to the public's health, the Assistant Director, or their designee, may also issue an emergency order for the food establishment to close. The food establishment must pay additional fees as noted previously. Additionally, the food establishment owner may be required to hire a certified

food safety consultant to re-train food managers and food preparation staff, and to conduct weekly unannounced audits for a period to be determined at the hearing. Reports must be shared with the Director, the Assistant Director, and the Health Agent. The food establishment owner may release the consultant only after the Health Agent determines that proper food safety protocols are practiced consistently, that progress has been documented on the consultant's audits, and that all previous violations have been corrected.

G. Continuing to operate when an Order to Close as been issued:

If a food establishment continues to operate when an emergency Order to Close (see Section 6, Compliance and enforcement orders) is in effect, the Assistant Director of Public Health, or designee, will refer the case to Town Counsel, who will then request a hearing with the Superior Court for a preliminary injunction. The Board of Health will also impose a fine for each day when the establishment operates when ordered to close.

H. Continued violations that threaten public health:

If a food establishment continues to flout regulations and does not correct problems despite coaching by the Health Agent, and despite the enforcement actions outlined above, the Board of Health may suspend or revoke the establishment's food permit with due process, either temporarily or permanently.

4. Ticketing and fines

Tickets will be issued for repeated and uncorrected priority foundation and priority violations at the second re-inspection (and for all subsequent re-inspections). For each priority foundation violation, there will be a \$50 fine, and for each priority violation there will be a \$100 fine, separate from \$150 re-inspection fees. Tickets will be noted in the inspection reports and reviewed with the PIC. In addition to a discussion with the PIC, the Health Agent will send a separate notice including a summary of the tickets issued, the sum of the fees, and the method in which the fees can be paid. Fines will be processed online and shall be paid within 21 days of the date issued. Unpaid fees will be summed and added to the annual permit renewal fee at the end of the permitted cycle. Fees are not transferable if there is a change of ownership or a change in business. See violations in the [Massachusetts Merged Food Code and 2013 FDA Food Code](#).

5. Compliance and enforcement orders

A. Order to Correct:

An *Order to Correct* may be issued for recurring priority and non-priority violations , and shall include, but is not limited to the following:

- a. Information about the food establishment and the inspection, including establishment's legal name, permit-holder's name and address, date and time, and other pertinent administrative information.

- b. The time frame for correction of the violations shall be:
 - i. Up to 72 hours for serious violations that could cause foodborne illness (priority items), however, failure to provide adequate alternatives to safely continue operation may result in temporary closure,
 - ii. Up to 10 calendar days for conditions which contribute to foodborne illness (priority foundation items),
 - iii. Up to 90 calendar days for basic sanitation and maintenance (core items).
- c. Signature of the Health Agent and person-in-charge of the food establishment at the time of the inspection, or other proof of service of the order (such as a certified mail receipt)
- d. Violations in accordance with 105 CMR 590.000, and the 2013 Food Code.
- e. Statements that
 - i. The signed order constitutes an order from the Public Health Division or Board of Health,
 - ii. Failure to comply within time limits for correction may result in suspension or revocation of the food establishment permit and cessation of operations,
 - iii. The permit holder has a right to a hearing before the Needham Board of Health if a request is submitted in writing within seven calendar days of receipt of the Order to Correct.

B. Order to Allow Inspection:

The Needham Public Health Division may order access to the food establishment premises:

- a. If admission is denied, or if there are other circumstances that justify an inspection order,
- b. To examine and sample the food,
- c. To examine the records on the premises relating to food purchased, received, or used by the food establishment.
- d. See addenda for contents of Order.

C. Criteria for Issuing Compliance and Enforcement Orders Include but are not limited to:

- a. No valid permit to operate.
- b. Violations of 105 CMR 590.000.
- c. Serious or repeated code violations beyond the timeframes for correction given by NPHD.
- d. Refusal to allow NPHD access to the food establishment for an inspection.
- e. Failure to comply with employee exclusion and restriction orders.
- f. Failure to comply with an embargo order.
- g. Failure to comply with an order as the result of a hearing.
- h. Failure to comply with a summary suspension.
- i. Other major facility issues caused by fire, flood, or another destructive event or imminent health hazard.

D. Service of Orders:

Each permit holder shall provide NPHD with their mailing address and notify NPHD within seven calendar days of any change in the mailing address. Orders, *other than orders for summary suspension*, shall be served on the applicant or permit holder or their authorized agent as follows:

- a. A copy of the order by registered or certified mail, return receipt requested.
- b. Hand delivered by a person authorized to serve civil process.
- c. If (a) and (b) above are unsuccessful, service may be made as follows:
 - i. A person authorized to serve civil process may leave a copy of the order at the permit holder's place of residence.
 - ii. If the place of residence is unknown, a copy of the order may be posted in a conspicuous place on or about the food establishment.

E. Proof of Proper Service is documented by an affidavit of the person presenting the order and the signature of the permit holder, the person-in-charge at the time of inspection, the person operating a food establishment without a permit, or an authorized agent of the food establishment.

F. Operating without a Permit or No Plan Review:

- a. Change in Ownership: Food establishment permits are not transferable and a change in ownership must be reported to NPHD at least 30 days prior to any change of name, location, or addition of new operation. If such notification does not happen before the food establishment opens under new ownership, the establishment is operating without a valid permit and will be subject to an immediate closure order. Permits may not be transferred from one person, establishment, or operation type to another.
- b. No Plan Review: Opening a food establishment without participating in the usual plan review process and permit from NPHD may subject the food establishment to an immediate closure order. Similarly, making major alterations in the kitchen or the bar without a plan review by NPHD may lead to an immediate closure. In addition to building, plumbing, and electrical work, major alterations include moving or adding equipment and fixtures that require building permits, or any other work that requires sign-off from other Town Departments.

6. Scoring

- A. Establishments will start routine inspection with a score of 100 and points will be deducted for violations based on the risk level as described in the adopted version of the Food Code.
- B. Deductions will be as follows:
 - a. Five points will be deducted for each priority violation noted.
 - b. Two points will be deducted for each priority foundation violation noted.
 - c. One point will be deducted for each core violation noted.

- d. Correcting violations onsite will not alter how points are assessed during the initial routine inspection.

The food establishment will be subject to a one-year probationary period if they receive a score of a 60 or below. During probation the risk category of the establishment will be raised one level resulting in a higher inspectional frequency.

In addition, the food establishment owner or manager must attend an administrative hearing with the Director of Health and Human Services, the Assistant Director of Public Health, the Health Agent, and, if possible, a member of the Board of Health. At this hearing, the food establishment may be ordered to hire a food safety consultant to re-train food managers and food preparation staff, and to conduct weekly unannounced audits for a period to be determined at the hearing. Reports from the food safety consultant must be shared with the Director, the Assistant Director, and the Health Agent. The food establishment owner may release the consultant only after the Health Agent determines that proper food safety protocols are practiced consistently, that progress has been documented on the consultant's audits, and that all previous violations have been corrected.

- B. If the violations are serious and found to present an imminent threat to the public's health, the Assistant Director, or designee, may issue an emergency order for the food establishment to close.

7. Board of Health hearing

A failure to correct violations, with or without a previous administrative hearing, will result in an order to appear before the Board of Health (BOH), whose members will be the hearing officers. As such, the members of the BOH will have all powers and duties as listed in the 2013 Federal Food Code and Merged State Food Code, except the issuing of subpoenas and requiring testimony under oath.

- A. A Board of Health hearing is required to be held within five business days for:
 - a. Persons excluded from work,
 - b. Permit holder whose food is subject to an embargo order; and
 - c. Permit holder whose permit is immediately suspended.*The permit holder can waive the right to a prompt hearing for exclusions, hold orders, or suspension.*
- B. A hearing for administrative remedies or other matters must be held by the BOH, when requested by the permit holder, within thirty (30) calendar days, but no earlier than seven (7) calendar days, after the service of a hearing notice .
- C. A record of the board of health hearing is required. 105 CMR 590.000 does require a transcript or tape recording of the hearing.

D. Board of Health hearing notices shall contain the following:

- a. Time, date, and place of the hearing.
- b. Purpose and reason for the hearing, including specific details of violations or allegations.
- c. Right to be represented by counsel and to present witnesses and evidence on the permit holder's behalf.
- d. The procedure for the permit holder to request a settlement offer, if the BOH will allow it.
- e. Consequences if permit holder fails to appear for the hearing. This may include conducting the hearing without the input of the permit holder.
- f. Maximum sanctions or penalties if hearing determines facts are found to be as alleged.
- g. If hearing concerns a proposed administrative remedy, a statement specifying the form and time frame for a response.
- h. Notification of the requirements of a written response.
- i. Address of the BOH.

E. Permit holder response to a hearing notice:

A response to a hearing notice shall be in writing and contain the following:

- a. An admission or denial of each allegation of fact.
- b. A statement as to whether the respondent waives the right to a hearing.
- c. A statement of defense, mitigation, or explanation concerning any allegation of fact.
- d. A statement indicating whether the presence of witnesses for NPHD are required.
- e. The name and address of the permit holder's legal counsel, if any.

F. Permit holder request for a hearing:

If the permit holder requests a hearing, that request must be received by the Director of Health and Human Services or the Board of Health within seven calendar days of receipt of the hearing notice, and the request must be in writing and include:

- a. The reason a hearing is being requested.
- b. A statement of defense, mitigation, denial, or explanation concerning each allegation of fact.
- c. A statement indicating whether the presence of witnesses for NPHD is required.
- d. The name and address of the permit holder's legal counsel, if any.

8. Open Meeting Law and Confidentiality

The Board of Health hearing complies with the Massachusetts Open Meeting Law. An executive session can be held if there will be discussion of specific employee illness or trade secrets. All those who participate in an executive session are required to maintain the confidentiality of discussions that warrant closing the hearing to the public.

9. Suspension of permit

See addenda for contents of Suspension Order

A. Emergency suspension of permit and closure:

a. A Summary Suspension of the permit may be issued without warning. It will be followed by a notice of a hearing for imminent health hazards and may be issued for any of the following reasons.

- i. Fire,
- ii. Flood,
- iii. Extended interruption of electrical or water service,
- iv. Sewage backup,
- v. Contaminated or unsafe potable water,
- vi. Pest infestations,
- vii. Misuse of poisonous or toxic material,
- viii. Onset of an apparent foodborne illness outbreak,
- ix. Gross insanitary occurrence or condition,
- x. Other circumstance that may endanger public health.

b. The permit holder is required to immediately discontinue operations and notify NPHD if an imminent health hazard exists. Depending on the hazard, an area of the food establishment unaffected by the hazard may continue in operation. If operations are discontinued, either voluntarily or by order, the permit holder must obtain the approval of NPHD prior to resuming operations.

B. Summary Suspension Orders shall be served on the permit holder or his authorized agent by:

- a. Posting the order on a public entrance to the food establishment; AND
- b. In hand service to the permit holder or by sending a copy of the order or notice by registered or certified mail, return receipt requested, to the address listed on the food establishment application.

C. A Board of Health hearing for summary suspension shall be held within three business days after receipt of a written request for a hearing.

Terms of suspension remain in effect until the reasons for the suspension no longer exist. Notice of reinstatement shall be provided to the permit holder or person-in-charge as soon as reasons for the suspension no longer exist. Re-inspection after a suspension of permit, must be conducted within two business days of the owner's request.

D. Summary Suspension with notice

A summary suspension with notice can be issued for:

- a. Failure to comply with the requirements of 105 CMR 590.000,
- b. Denial of entry to Health Agents,
- c. Providing false or misleading statements or documents to NPHD,
- d. Permit holder has been convicted of a crime relating to the operation of a food establishment,
- e. Permit holder has engaged in conduct that endangers the public health,

- f. Failure to pay any federal, state, or local taxes as required by law,
- g. Failure to comply with local regulations related to operation of the facility,
- h. Such other reasons not previously stated that pose a risk to public health and safety.

A summary suspension with notice may be the result of an administrative hearing regarding continued violations as described above.

E. Order to suspend shall be in writing and specify:

- a. Name and location of the permit holder,
- b. Specific violations for which the permit or operation is being suspended,
- c. Date suspension will become effective,
- d. Suspension shall remain in effect until cited conditions are remedied,
- e. Notice of right to a hearing if request filed within seven calendar days of the issuance of the order,
- f. Name and address of NPHD to which request should be sent,
- g. If no request for hearing is received within 10 calendar days, the suspension order will be imposed,
- h. Signature of the Assistant Director of Public Health or the Director of Health and Human Services.

10. Revocation of permit

A. Revocation of a permit with notice:

The Board of Health may issue an order to revoke a permit, or refuse to renew a permit to operate a food establishment or terminate one or more operation for:

- a. Serious or repeated violations of any of the requirements of 105 CMR 590.000
- b. Any grounds cited in 105 CMR 590.014(B) 1b-1h which in the discretion of NPHD are sufficiently serious to require revocation.

B. Order to revoke shall be in writing and shall specify:

- a. Name and location of the food establishment and the name and address of the permit holder,
- b. Specific violations for which a permit or an operation is to be suspended,
- c. Date revocation will become effective.
- d. Notice of a right to a hearing,
- e. Name and address of NPHD to which request for hearing should be sent,
- f. Statement that says, if no request for a hearing is received, NPHD will impose revocation order,
- g. Signature of the Assistant Director of Public Health or the Director of Health and Human Services.

C. The revocation effective period is one year from the date of the final order unless the Board of Health decides otherwise.

11. Public information

A. Public information:

Needham Public Health Division inspection report forms and orders are public documents, copies of which can be requested by members of the public under the Freedom of Information Act. All inspection documents shall be maintained by NPHD for five years or longer if otherwise required by law.

B. Informing the public: The most recent inspection report will be posted on the Board of Health website. This will be the front page of the routine inspection report, which contains the marked inspection checklist, number and type of violations. The name of inspector and PIC names will be redacted or removed from the posted reports. All follow-up reinspection reports will also be posted on the Board of Health website as proof of follow up.

All food establishments are required to have a conspicuously posted sign which states that the most recent food safety inspection is available upon request or via scanning a designated QR code. The QR code will direct the public to the Board of Health website where inspection reports are posted.

C. Public notification of orders to close, suspension, and revocation: If a food establishment is issued an emergency Order to Close, that notice will be posted on the front door of the establishment under a separate sign with the following printed in large black letters: *This restaurant is closed by order of the Needham Board of Health*. The emergency Order to Close will also be posted on the Town website, the Needham Public Health Division webpage, social media, and in local media.

12. Court proceedings

A. Payment of fines:

Non-payment of fines shall result in a complaint filed in court and will result in a magistrate's hearing.

B. Criminal complaints:

The Board of Health may seek to enforce the provisions of the Food Codes and its orders by instituting criminal proceedings as provided in law against the permit holder or other person who violates the provisions of the Food Code.

C. Criminal penalties:

- a. Violation of 105 CMR 590.000: Any person who violates any provision of 105 CMR 590.000 shall, upon conviction, be fined not more than \$100 for the first offense

and not more than \$500 for a subsequent offense unless a different penalty is set by statute.

- b. Failure to Comply with orders: Any person who fails to comply with any order issued pursuant to 105 CMR 590.000 shall, upon conviction, be fined not more than \$100 for the first offense and not more than \$500 for a subsequent offense.
 - i. Each day on which the permit holder fails to comply with an order shall constitute a separate offense.
 - ii. Each day on which a violation occurs is a separate violation under this section.

D. Injunctive proceeding:

The Board of Health may petition a court of appropriate jurisdiction for temporary or permanent injunction to achieve compliance with the provisions of 105 CMR 590.000 or its orders.

E. Civil proceedings:

The Board of Health may petition the Norfolk Superior Court to enforce the provisions of 105 CMR 590.000 or its administrative orders and collect a civil penalty. Each day on which a violation occurs is a separate violation under this section. Civil penalty amounts are not listed in either the Federal or State Food Codes.

13. Embargo or destruction of food

An embargo, or “hold order”, may be issued without warning or hearing.

A. An Embargo Order may be issued for foods that:

- a. Originated from an unapproved source,
- b. Are unsafe, adulterated, or not honestly presented.
- c. Are not labeled according to law (i.e., molluscan shellfish not tagged or labeled),
- d. Are not otherwise in compliance with the 105 CMR 590.000.
- e. See Addendum 1 for contents of Embargo Order.

B. Embargo tags:

Food under an embargo order must be conspicuously tagged or labeled to indicate the embargo order. The tag must include:

- a. Food is believed to be adulterated or misbranded,
- b. The food is embargoed for ten days,
- c. Cannot be removed, used, sold, or disposed of without permission of NPHD. Only NPHD may remove the embargo order and the tags or tables indicating the embargo order.

C. Examining, sampling, and testing food:

NPHD may examine, sample, and test food to determine whether they are safe food products that can be released from an embargo. (Food samples may be submitted to the Massachusetts State Public Health Laboratory or another approved laboratory for testing.) NPHD shall issue a notice of release from an embargo and shall remove tags, labels, or other identification from the food if the embargo is vacated.

D. Storage or destruction of embargoed food:

NPHD shall permit storage of food under conditions specified in the embargo order, unless storage is not possible without risk to the public health, in which case immediate destruction shall be ordered and accomplished.

E. Condemnation, disposal, or reconditioning:

If the food subject to embargo is found to be adulterated or misbranded, NPHD shall take such steps as are necessary pursuant to M.G.L. Chapter 94, Sections 146 and 189A to affect the condemnation and disposal or reconditioning (re-use) of the food.

14. Compliance and enforcement protocol review

A. Verification:

Review consistency in follow-up, re-inspections, and enforcement by having the Assistant Director of Public Health for Environmental and Community Health, another designated staff member, or a third-party consultant, review at least ten establishment inspections per year for each Health Agent. Review listed risk factor violations, the documented compliance and enforcement actions, as well as the resolution.

B. Validation:

Review violations for all facilities annually to determine if policy and procedures are working as intended to reduce risk factors. If violations have not diminished, consider appropriate changes to inspection and enforcement practices.

LEGAL AUTHORITY:

[State Sanitary Code](#)

REFERENCES:

- [2013 U.S. Food and Drug Administration Food Code](#)
- Massachusetts State Food Code – Chapter 10 of the State Sanitary Code, [105 CMR 590.000](#)
- [Massachusetts Open Meeting Law - 940 CMR 29.00](#)

ADDENDUM:

Description of Embargo Order, Order to Allow Inspection, and Summary Suspension Order

Prepared by: Tara Gurge and Lynn Schoeff

Revised: Ally Littlefield, August 2, 2021

Revised: Ally Littlefield, Tara Gurge, Ecom Lu, and Lynn Schoeff October 6, 2022

Reviewed and approved: Needham Board of Health on December 16, 2022

Revised: Tara Gurge, July 11, 2023

Revised: Sainath Palani, Tara Gurge, and Lynn Schoeff, August 12, 2024

Approved by:



8/14/24

Director of Health and Human Services

Date



8/14/24

Assistant Director of Public Health

Date

ADDENDUM

1. Embargo Order contents:

- a. Statement that food subject to the order may not be used, sold, moved from the food establishment, or destroyed without a written release of the order by the Board of Health,
- b. Reasons for placing the food under the embargo order, including adverse effects of consumption,
- c. Identify the food by common name, label information, container description, quantity, and the location,
- d. Right to an appeal by submitting a hearing request within seven days of receipt of the embargo order,
- e. Food may be destroyed if the Public Health Division does not receive a request for appeal hearing,
- f. Name and address of NPHD contacts.

2. The Order to Allow Inspection shall:

- a. Stipulate that access be allowed to the described premises, food, or records under the order's provisions,
- b. Provide a description that specifies the premises, food, or records subject to the order, and
- c. Specify areas to be accessed and activities to be performed.

3. The Summary Suspension Order shall state:

- a. The name and location of the food establishment and the name and address of the permit holder,
- b. That NPHD has determined that an imminent health hazard exists which requires the immediate suspension of the food establishment permit or the operation of one or more operations at the food establishment,
- c. The specific violation or violations that lead to the determination that an imminent health hazard exists,
- d. That all operations, or one or more operations, shall immediately cease and desist,
- e. That the emergency closure shall remain in effect until conditions cited in the order of closure are corrected and the corrections are confirmed by NPHD, through re-inspection and other means as appropriate,
- f. That a written request for hearing shall be filed with NPHD by the permit holder within seven days of receipt of the summary suspension order,
- g. That the person has the right to inspect and obtain copies of all relevant inspection reports, orders, notices, and other documentary evidence in the possession of NPHD and has the right to be represented at any hearing,
- h. The address of NPHD to which the written request for a hearing shall be sent,
- i. The signature of the Assistant Director of Public Health.

Progressive Discipline Flow Chart for Food Establishment Violations (August 2024)

