

Enforcement Guidelines

Enforcement

Enforcement is the last step of a process to bring an establishment into compliance. In the vast majority of instances, voluntary compliance can be achieved by education and working with the facility management. Decisions to proceed to enforcement activities should always be based on mitigating public health threats and not just achieving compliance with a code. Before enforcement activities can begin, there must be a clear well documented trail of routine and reinspections that demonstrates a need for enforcement.

Work Order Guidelines

Work orders are our initial step in the enforcement process. The purpose of the work order is to concisely communicate to the owner/manager of the food establishment the actions we will take if specifically outlined violations are not corrected in a stated time frame. The decision to close an establishment if corrections are not forthcoming is made before a work order is issued. Work orders should not be used as a threat or issued lightly. All possible alternative avenues for compliance must have been exhausted before a work order is issued.

Work orders for Retail Food Establishments shall:

- List all violations of critical items noted during the inspection;
- List all violations of non-critical items noted during the inspection;
- List the appropriate code reference number for each violation;
- Clearly state the “correct-by-date” for each violation; and
- Include a statement, such as “Failure to comply with the conditions of this work order will result in the requesting of a closing order or may result in you, as the owner of this facility, being immediately served with an order to close until such time as the conditions of this work order have been met”.

Work orders for Food Processors shall:

- List all violations of critical items noted during the inspection;
- List all violations of non-critical items noted during the inspection;
- List the appropriate statute number;
- List the standards for compliance;
- Clearly state the “correct-by-date” for each violation; and
- Include a statement, such as “Failure to comply with the conditions of this work order will result in the requesting of a closing order or may result in you, as the owner of this facility, being immediately served with an order to close until such time as the conditions of this work order have been met”.

Conducting Follow Up to Work Order

The severity of the violations noted on the work order will determine the timeframe for establishing the correct-by-date. The date written on the work order must be the date in which the LPHA and Regional EPHS will return to the establishment to conduct another inspection to assure that the owner/operator has made the necessary corrections.

- For violation(s) to a critical item that can lead directly to an immediate food borne illness the owner/operator shall be allowed a maximum of 72 hours to make the necessary corrections. The correct-by-date may be as short as 24 hours depending upon the situation.
- For violation(s) to a critical item that will not lead directly to an immediate food borne illness the owner/operator shall be allowed a maximum of 15 days to make the necessary corrections.
- For repeat violations to a non-critical item the owner/operator shall be allowed a maximum of 90 days to make the necessary corrections.

These dates are normally set with the agreement of the owner/manager. Therefore, barring unusual extenuating circumstances, extensions will not be granted to an owner/operator who has failed to correct the violations to any critical or non-critical item within the allotted timeframe.

Compliance with a Work Order

The LPHA and Regional EPHS shall deem an owner/operator in compliance with a work order if the violations to all critical items have been corrected and the violations to repeat non-critical items are in substantial compliance. An additional inspection, conducted by the LPHA, shall be completed within 120 days to assure continued compliance.

Closing Order Authority

Section 196.240, RSMo states, "It shall be the duty of the director of the department of health and senior services, and he is hereby authorized and empowered, to close any market place, grocery store, general store, bakery, confectionery, butcher shop, slaughterhouse, dining car, refrigerator car, cold storage plant or warehouse, hotel dining room or kitchen, cafe, restaurant, lunch counter, drug store, or any other place, or places, where articles or commodities intended for human food, or for human consumption as medicine, are manufactured, sold, stored or prepared for sale, or wherever food and drink is served, where such places shall, in the judgment of said director, constitute a menace to the public health, by reason of dirt, filth, or other unsanitary cause".

Section 196.245, RSMo states, "Any order issued by the director of the department of health and senior services for the closing of any place or places mentioned in section 196.240, shall specify the cause or causes for which such order was issued, and the time during which same shall be in effect. The director shall revoke such order before the time

specified therein for its expiration; provided, that the cause for which such order was issued is removed, and if the director is satisfied that such place or places may be reopened without endangering the public health”.

Prior to issuance of a closing order under DHSS authority, one or more of the following conditions must be present:

- A person operating a food establishment or an employee of a food establishment allows violations of a critical item to remain uncorrected beyond the correct-by-date established by the LPHA and Regional EPHS.
- A person operating a food establishment or an employee of a food establishment allows an imminent health hazard to exist within the establishment and refuses to close voluntarily until the imminent health hazard is abated. *An imminent health hazard is any condition which presents an immediate, significant, threat or danger to health when there is sufficient evidence to show that a product, practice, or circumstance requires immediate correction based on the number of potential injuries and the nature, severity, and duration of the anticipated injury. Examples include, but are not limited to, sewage backing up into a food establishment or lack of running water.*
- A person operating a food establishment or an employee of a food establishment fails to comply with the inspecting authority’s order concerning an employee suspected of having a disease transmissible through handling food.
- A person operating a food establishment or an employee of a food establishment has not eliminated the cause of the food borne illness outbreak from the establishment.
- A person operating a food establishment or an employee of a food establishment fails to detain food placed under embargo.
- A person operating a food establishment or an employee of a food establishment allows numerous repeat violations of non-critical items to remain uncorrected beyond the correct-by-date established by the LPHA and Regional EPHS. *Closure in these situations will be evaluated on a case-by-case basis.*

Closing Order Guidelines

Before serving a work order, evidence must show the chronology and summary of events; that one or more of the above-mentioned condition(s) exist (this may be accomplished by presenting copies of inspection reports, photographs, etc.); that each violation observed during an initial and/or follow-up inspection was written clearly and concisely on an E6.37 Food Establishment Inspection Report; the correct-by-dates were written clearly and presented to the owner/operator on an E6.37 Food Establishment Inspection Report. The specifics of the case have been discussed with the food program coordinator and the BERL Bureau Chief and they have approved the work order. The work order is served to the owner/operator which notifies them that failure to correct the violations listed in the work order will lead to a closing order. After a work order is served, and just prior to the reinspection to determine if a closing order will be served, the BERL Bureau Chief will prepare and fax a closing order to the regional EPHS V. The regional EPHS V will

contact the state representative and state senator for the appropriate area notifying them of the possible closure of an establishment, they will then confirm this contact with the program coordinator and Bureau Chief. The LPHA will want to notify the county administrator and possibly county commissioners, members of the board of health or other county officials.

Upon reinspection, if the items presenting a menace to public health have not been corrected the closing order will be served. If so, the establishment is to close immediately, patrons who have placed orders or who have already eating may finish but no new customers will be seated or served. The owner/operator should be notified in writing on the closing order to notify the LPHA when the items presenting a menace to the public health have been corrected. The LPHA should verify that the establishment remains closed until an approval to open has been issued.

When the LPHA is notified by the owner/operator that the necessary corrections have been made, either the LPHA or the LPHA and the regional V will immediately conduct a reinspection to verify the corrections have been made and the health hazards have been abated. If so, notice will be sent to BERL and the Bureau Chief will sign and fax authorization to reopen. The regional EPHS V will notify the program coordinator, state representative and state senator that the establishment has made corrections and reopened. The LPHA will conduct a routine inspection within 60 days to assure continued compliance; additional accelerated inspections may be warranted.