

**Massachusetts
Public Health Inspector Training
(MA PHIT)
Food Certificate Program
Day 3, Session 4
Enforcement and Corrective Actions**

Overview

- Identify and initiate effective corrective actions (short & long term) that can be used in conjunction with routine inspections to eliminate or significantly reduce hazards
- Ensure due process
- Facilitate the development of a “risk control plan”



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Paired Activity

Share examples of enforcement activities you have undertaken when violations are:

1. Critical
2. Repeated from previous inspections

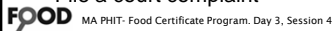


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Types of Corrective Action Progressive Enforcement



- Issue Inspection Report/Order to Correct
- Conduct a reinspection (can be scheduled)
- Consider an Order for Correction letter if violations remain
- Immediate and onsite actions
 - *Dispose or embargo contaminated food*
 - *Restrict or exclude food employees*
 - *Suspend summarily*
- Suspend or revoke (permit or operations) with notice
- Hold Hearings
- File a court complaint



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Complete Inspection Report

590.013 E




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Issue Order for Correction

590.013 E
Inspection Report Form or Letter—must include:

- Administrative Information
- Factual observations of violations including citation of provision violated
- Statements
 1. "Order to Correct"
 2. "Suspension or Revocation"
 3. "Right to a Hearing"



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Reinspection

• **From Page 1: DATE OF RE-INSPECTION:**

- **Set a date and time or timeframe** (appointments may be appropriate unless there's something you want to spot check such as glove use or hair restraints)
- Review timeframes for correction
 - Red items (risk factors): immediate
 - Blue items (critical): immediate to within 10 days
 - Blue items (non-critical): immediate to within 90 days

Immediate and Onsite

Voluntary Disposal is preferable; be sure to document (separate form is useful)

http://www.deh.ent.state.nc.us/ehs/images/food/ProductDispositionForm_10302006-1.pdf

PRODUCT DISPOSITION FORM

1. Establishment Information
 Establishment Name: _____ Address: _____
 Responsible Person: _____ Date: _____
 Title: _____ Facility Type (if any): _____

2. Description of Product(s)
 Type of Product(s): _____ Quantity: _____ Status: Fresh Frozen Canned Other
 (Check appropriate box) Yes No Not Applicable

3. Description of Product(s) Condition Requiring Action
 Product(s) was/were responsible for (e.g., "Adulterated" / "Misbranded" as noted by the following conditions):

4. Disposition of Product(s) (check box by action taken)
 VOLUNTARY DISPOSAL - I/we hereby agree to dispose of the product(s) specified in Section 2 of this form, in accordance with the applicable regulation.
 EMBARGO - I/we hereby agree to the specific conditions noted in Section 2 of this form.
 RECALL - I/we hereby agree to the specific conditions noted in Section 2 of this form.
 OTHER - I/we hereby agree to the specific conditions noted in Section 2 of this form.
 (Check appropriate box) Yes No Not Applicable

Signature of Responsible Person: _____ Title: _____ Date: _____
 (Optional) Signature of: _____ Title: _____ Date: _____

EMBARGO NOTICE - This notice is required for the form specifically described in Section 2 of this form. It shall be posted in a conspicuous place on the premises of the establishment for 30 days. The notice shall be in the form of a sign or placard and shall contain the following information: (1) Name of the establishment; (2) Name of the responsible person; (3) Description of the product(s) involved; (4) Reason for the embargo; (5) Date of the embargo; (6) Name of the enforcing authority; (7) Name of the responsible person; (8) Name of the enforcing authority; (9) Name of the responsible person; (10) Name of the enforcing authority. It shall be unlawful for any person to remove or tamper with the embargo notice posted on the premises.

Signature (Type/Name): _____ Title: _____ Date: _____
 Signature of Officer: _____ Title: _____ Date: _____

Immediate and Onsite

590.016: Examination and Embargo of Food

- Write Embargo Notice (include reason—such as misbranding or adulteration)
 - Tag Embargoed Food Items
 - Oversee Storage or Destruction
 - Condemn, Dispose, Recondition or Release
- Additional MGL CH 94, s189A requirements**



Immediate and Onsite

590.017—Prevention of Foodborne Disease Transmission—Employee Exclusions and Restrictions

- MDPH Requirements (see Guideline)
- Can obtain information
- Can restrict or exclude certain employees
- Can close the establishment
- Immediately notify MDPH!




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Immediate and Onsite

590.014

- Imminent Health Hazard
- Order for Suspension without Hearing (Summary Suspension)
- Entire permit or an operation(s)
- In writing and posted (different service requirements)
- Effective immediately
- Right to a hearing in 3 days



Discuss voluntary closure & refusal to close

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Suspension with Notice

105 CMR 590.014 (B)

No imminent health hazard but could be:

- Failure to comply with 590
- Denial of entry
- False or misleading statements or documents
- Guilty of crime related to food establishment
- Engaged in conduct that endangers public health
- Failure to pay taxes or comply with local regulations
- Other significant risk to public health or safety

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Suspension with Notice, *cont.*

Be sure the Notice:

- Is in writing
- Provides Rights to a Hearing
- Is properly served (differs from summary suspension)



Revocation with Notice or Refusal to Renew a Permit

105 CMR 590.014 (C)

- Serious or repeated violations of 590
- Any grounds cited under Suspension with Notice which are sufficiently serious to require revocation
- Notice requirements similar to Suspension with Notice
- Hearing necessary only if requested

Hearings

105 CMR 590.015

- Provide notice that Hearings can be requested
- Request must be in writing and received within 10 days of receipt of notice/order
- Hearing must be held within 10 days (3 days summary suspension)
- Hearing notice must be in writing
- BOH can also schedule Hearings with proper notice (postponements possible)

Hearings, *cont.*

At the Hearing:

- Provide an opportunity for petitioner to be heard and to show why order should be withdrawn or modified
- Oral testimony must be recorded verbatim (tape recorder)
- BOH makes a final decision



Hearings, *cont.*

After the Hearing:

- Inform petitioner in writing—this is Public Record
- If Order is sustained or modified, note timeframe (per original order or per modification)
- Aggrieved can seek relief in court



Court

- Criminal or Civil Complaints
- Should be a last resort

- Power to suspend or revoke is usually enough to gain compliance

Paired Activity

Describe other enforcement activities in your community.

- What works?
- What are you thinking about trying?

Other Enforcement Options

1. Require additional training
2. Use Risk Control Plans as an alternative
3. Charge fees or fines (reinspection fees, elevated annual permit fees, Tickets)
4. Publicize inspection results

1. Additional Training

- Authority?
- Who gets trained?
- When can you require this?
- How do you know what the risk factors and food code interventions are?
- Name top 5 of both



2. Risk Control Plan

- Authority?
- What is it?
- When is it used?
- Who develops it?
- What is in it?

Annex 5 - Sample Risk Control Plan			
Risk Control Plan for Turkey Vegetable Soup			
Establishment Name: ABC Establishment		Type of Facility: Full Service	
Physical Address: 123 AM Street		Person in Charge: John Doe	
City: Any City	State: Any State	Zip: 00000	County: Any County
Inspection Time In: 9:00 a.m.	Inspection Time Out: 12:30 p.m.	Date: July 12, 2001	Inspector's Name: Jane Doe
Agency: Your jurisdiction			
Observation: Temperature of turkey vegetable soup in walk-in cooler was 65° F after cooling in the walk-in all night (12 hours).			
Violation: Food Code Section 3-201.14 – Soup not cooled from 140° F - 41° F in 6 hours or less.			
Risk Factor To Be Controlled: Improper Holding Temperatures (Cooking)			
How the Risk Factor Will Be Controlled: Cool from 140 to 41°F within 6 hours provided the food is covered top. Fall to 10° F in 2 hours.			
What Monitoring, Corrective Actions, and Record Keeping are required:			



3. Charge Fees or Fines

- Reinspection fees
- Elevated annual permit fees
- Tickets



4. Publicize Inspection Results





Summary

- Actions & Due Process
 - Read/review the violated code sections
 - Produce legible reports
 - Conduct reinspections, as necessary
 - Include essential elements for Orders and other actions (embargo, exclusion, disposal, suspension, revocation)
 - Assure proper service
 - Provide right to a hearing and follow required hearing processes
 - Retain records—5 years per 590.013(H)
http://www.sec.state.ma.us/arc/arcpdf/MA_Municipal_Records_Retention_Manual.pdf

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QUESTIONS?

Key points from days 1 through 3:

- Quality of Inspection =
Preparation + Thorough Inspection + Good Documentation
- Take good notes; photos and videos may be necessary
- Inspection flow will vary by establishment, size, complexity as well as your experience/trust with the operator.
- Remember to use your time efficiently
- Ask questions but verify that what they say they do they actually do!
- Think about progressive enforcement; voluntary is generally preferred
- It takes time and practice to be a good inspector

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