



Foodborne Illness Prevention Program Enforcement Procedures

Enforcement actions may be initiated against food service operators when priority item (P) and priority foundation item (Pf) violations are found during inspection of the facility, or for non-compliance with other statutory or rule provisions. These actions may progress from simply assuring that a Priority and Priority foundation hazard has been corrected, to closure or suspension of a food service license. The following procedures address the enforcement process as outlined in ORS 624 and OAR 333-157.

While much of the enforcement process is clearly defined in the statute and rules, there are some areas that are subject to local circumstances and priorities and cannot be resolved in this document.

Resolution of Priority and Priority Foundation Violations

Priority and Priority foundation violations are violations that present a potential or imminent danger to the public if left uncorrected. There are differing methods of correction of Priority and Priority foundation violations, depending upon the severity of the violations. Please refer to the attached 'P and Pf Violation Resolution Process' flowchart. It summarizes the resolution process for all Priority and Priority foundation violations.

- **Imminent Priority Violations (Violations creating an imminent danger to public health¹)** include spoiled, contaminated and temperature abused food. They also include food handlers that have been diagnosed or suspected of having a communicable foodborne illness. Imminent priority violations must be corrected immediately or have an alternative procedure implemented before the inspector leaves the establishment.

¹ OAR 333-150-0000, Section 1-201.10(B)

- **Potential Priority and Priority Foundation Violations (Violations creating a potential danger to public health²)** are all other Priority and Priority foundation violations. Potential Priority and Priority foundation violations must have an approved alternative procedure in place before the inspector leaves the establishment. For violations that an alternative procedure has not been approved, the inspector shall set a time frame for correction not to exceed 14 days.

There is another category of Priority and Priority foundation violations that are considered to be “**Violations creating a significantly increased risk for foodborne illness**” (SIR).³ This category includes both potential and imminent Priority and Priority foundation violations. Specifically; potentially hazardous foods at improper temps, cross contamination of raw and ready-to-eat foods, poor personal hygiene and handwashing are all SIRs. If these Priority and Priority foundation violations are found on consecutive semi-annual inspections a recheck inspection is required, regardless of whether the violation was corrected at the time of the second semi-annual inspection or not.

If a Priority and Priority foundation violation has not been corrected within the designated time limit, the restaurant can be closed. Typically, local health departments will not close a facility based upon uncorrected Priority and Priority foundation violations if an operator is making an effort to correct the problem.

Failure to Comply⁴

A restaurant that scores less than 70 on a semi-annual inspection has failed to achieve the minimum acceptable sanitation score. The restaurant must be posted with a ‘Failed to Comply with the Acceptable Sanitation Standards’ notice and be reinspected within 30 days. While the inspector has 30 days to reinspect to determine the compliance status of the facility, Priority and Priority foundation violations must still be resolved within 14 days or the designated time limit. The ‘Failed to Comply’ notice must be posted at the customary entrance to the establishment.

² OAR 333-150, Section 1-201.10(B)

³ OAR 333-150, Section 1-201.10(B)

⁴ OAR 333-157-0020(3)

Increased Inspection Schedule

Facilities that Fail to Comply on two consecutive, semi-annual inspections are subject to quarterly inspections. These quarterly inspections are treated as semi-annual inspections, so while repeat violations cannot be doubled during the 30-day complete inspection, they can be doubled on consecutive quarterly inspections.

Closure⁵

A restaurant can be closed for four reasons: 1) an uncorrected priority violation exists that presents an imminent hazard to the public; 2) a complete inspection score below 70 after a Fail To Comply; 3) failure to implement alternative procedures as required; and 4) failure to correct Priority and Priority foundation violations within the designated time limit.

The reason for closure must clearly be indicated on the inspection report, and a Closure Order issued to the operator. The inspector must post a notice of closure at the customary entrance to the establishment.

An operator can appeal a closure order and request a formal hearing, or can meet informally with the environmental health supervisor. Formal hearings must be held in accordance with ORS Chapter 183.

The reopening procedure depends upon the original reason that the facility was closed:

- **Closure due to uncorrected Priority and Priority foundation violations, an imminent health hazard, or failure to implement alternative procedures.** The facility may reopen after 24 hours if the Priority and Priority foundation violations that resulted in closure have been corrected. To reopen within 24 hours, the operator must correct the Priority and Priority foundation violations that resulted in closure and agree to a voluntary meeting with the environmental health supervisor.

⁵ OAR 333-150-000, Chapter 1-201.10(B), 333-157-0020, 333-157-0030

- **Closure due to consecutive inspections with a score of less than 70.** To reopen after 24 hours, the operator must submit a plan of correction that will achieve a minimum sanitation score of 80 by the next semi-annual inspection and receive an inspection score on a recheck inspection of 70 or more. The facility may reopen within 24 hours if the operator also agrees to a voluntary meeting with the environmental health supervisor.

In all cases of summary closure, the operator of the facility must attend an approved food manager training course, such as ServSafe.

Civil Penalties⁶

The process for Civil Penalties is explained in detail in ORS 183. Local health departments must have a provision for assessing civil penalties as part of their general county ordinance or specific food program ordinance.

Civil penalties can be levied against a food service operator for two specific violations of ORS 624. These are:

- Operation of a restaurant without a current license.
- Operating a restaurant that has been closed due to failure to correct imminent priority violations.

For licensing violations, many counties are able to avoid civil penalties by using large brightly colored signs (DHS 34-51) stating that the facility is not licensed on the front door of the facility. However, if you need to levy civil penalties, the process is outlined below.

The process to levy civil penalties should first involve a written warning stating that further violation of the statute will result in a civil penalty being assessed. This should be followed by a Notice of Intent either to: deny, revoke or suspend license or to levy civil penalties.

If a hearing is requested, an administrative hearing will be held in accordance with ORS 183. An alternative dispute resolution method, such as mediation or arbitration can take place instead of a contested case hearing.

⁶ OAR 333-157-0045

If the local health department's action is rejected, then no action is taken against the licensed facility. If the local health department's action is supported, then an order is issued. The requirements for the content of this order are outlined in ORS 183.

If a hearing is not requested, then an order is issued. If there is no appeal to the order then the agency action is final.

If the agency order is appealed, then it is referred to an appeals court for evaluation.

Each of these procedures is outlined in detail in ORS 183. Keep in mind that every county has a different level of support for levying civil penalties. We recommend staying in close contact with your county council for the preferred methods of resolution dispute in your county.