

COMMONWEALTH OF PENNSYLVANIA



Bureau of Food Safety and Laboratory Services

DEPARTMENT OF AGRICULTURE

2301 N. Cameron Street • Room 201
Harrisburg, Pennsylvania 17110-9408
Tel: 717-787-4315

Date: _____

NOTICE OF TEMPORARY EMERGENCY SUSPENSION OF RETAIL FOOD FACILITY LICENSE FOR VIOLATION OF STATUTORY PUBLIC HEALTH REQUIREMENTS

1. This is a notice immediately *suspending* the retail food facility license issued by the Pennsylvania Department of Agriculture to the retail food facility identified below.
2. The Subject Retail Food Facility (“RFF”) is identified as follows:
 - a. Name of RFF: _____
 - b. Address of RFF: _____
 - c. Owner of RFF: _____
 - d. RFF License Number: _____
3. This notice is an emergency order and a proposed adjudication of the Pennsylvania Department of Agriculture (“PDA”). It is directed to you in your capacity as the owner, operator or person-in-charge of the Subject RFF.
4. The Subject RFF is licensed by PDA under authority of the Retail Food Facility Safety Act (3 Pa.C.S. §§ 5701 – 5714) and its attendant regulations (at 7 Pa. Code Chapter 46). PDA has general authority and responsibility to enforce the Retail Food Facility Safety Act.
5. The Retail Food Facility Safety Act authorizes PDA to suspend or revoke the license of a PDA-licensed RFF that is in violation of any “act relating to public health and being applicable to retail food facilities.” (See: 3 Pa.C.S. § 5703(i)(2)(i)).

6. By *Notice of Violation* dated _____, 2020, the Pennsylvania Department of Health (“DOH”) provided the Subject RFF notice that current Orders issued by DOH prohibit retail food facilities from offering dine-in services unless the retail food facility is located in an area that has progressed to the “green” phase with respect to COVID-19, and that the Subject RFF was in violation of those Orders by offering dine-in services to patrons. A true and correct copy of that *Notice of Violation* is attached as Attachment “A” and incorporated into this document. DOH confirmed the following with respect to the Orders at issue:

The authority to issue and enforce orders to protect the public health is granted to the Secretary of Health under the law, specifically, section 5 of the Disease Prevention and Control Law, sections 2102 and 2106 of the Administrative Code of 1929, and the Department’s regulations, which can be found at 28 Pa. Code §§ 27.60-27.68 (relating to disease controls and measures). Particularly, the Secretary has the authority to take any disease control measure appropriate to protect the public from the spread of infectious disease. *See* 35 P.S. § 521.5, 71 P.S. §§ 532(a). and 1402(a); 28 Pa. Code § 27.60.

To be clear, the Orders referenced above *relate to public health and are applicable to retail food facilities* which authorizes the Pennsylvania Department of Agriculture (PDA) to immediately suspend your license for failure to comply with the emergency requirements described above.

(Italics added).

7. The statutory authority cited by DOH in its *Notice of Violation* relates to public health and is applicable to retail food facilities, including the Subject RFF, and the Subject RFF is in violation of those public-health related statutes and thereby jeopardizing public health.
8. By continuing to allow dine-in service of food and/or beverages, the Subject RFF is in violation of the Orders referenced in the attached *Notice of Violation* issued by DOH. DOH confirms, and PDA agrees, that the statutes under which the Orders are issued relate to public health and are applicable to retail food facilities. The circumstances of this violation authorize PDA to suspend or revoke the Retail Food Facility License of the Subject RFF, pursuant to the Retail Food Facility Safety Act.
9. **For the reasons presented above, PDA immediately *suspends* the Retail Food Facility License of the Subject RFF. The Subject RFF shall immediately cease operations as a retail food facility.**

10. This RFF license suspension is issued as an emergency measure to safeguard public health.
 11. This suspension is *temporary*, but shall remain in effect until both of the following occur:
 - a. The Subject RFF comes into compliance with the referenced DOH Orders and ceases all dine-in service of food and/or beverages.
 - b. PDA inspects the RFF to see that dine-in service of food and beverages has ceased, at which point it shall terminate the suspension and the Subject RFF may resume lawful operations.
 12. In addition to any other lawful penalty or sanction, a retail food facility that continues to operate after its license is suspended is subject to civil penalties of up to \$10,000-per-violation. See 3 Pa.C.S. § 5714(a)(2).
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Notice and Opportunity for a Hearing.

You are hereby notified that you have the right to request an administrative hearing with respect to the adjudication set forth above. At an administrative hearing, you would be entitled to present evidence and testimony, cross-examine witnesses, and have legal representation at your own expense. An administrative hearing officer would preside at the hearing, and would transmit the hearing record, together with a recommended adjudication, to the Secretary of Agriculture. The Secretary would then issue the final adjudication of PDA in this matter.

The suspension of the Retail Food Facility License described above will remain in effect during any appeal, unless you separately apply for and obtain a *supersedeas* from PDA.

If you wish to contest the proposed adjudication, you must deliver written notice of this to the address immediately above no later than 15 days after your receipt of this proposed adjudication. A written appeal notice must clearly set forth the basis of your appeal, and should clearly identify the relevant issues or objections to be resolved. If you deny or challenge any averment in the adjudication, the appeal notice should identify that averment by number and describe the general basis for denial. The scope of any subsequent administrative hearings or proceedings would be limited to those issues and objections set forth in the written appeal notice. At an administrative hearing, PDA would not be limited to the averments set forth in this adjudication in terms of the evidence or testimony it might present to meet its burden of proof.

If you have any questions regarding the Retail Food Facility License Suspension described above, you are encouraged to contact your attorney at once.

Respectfully,

A handwritten signature in black ink, appearing to read "Jeffrey Warner", with a long horizontal flourish extending to the right.

Jeffrey Warner, Director
Bureau of Food Safety and Laboratory Services

Attachment “A”

**Notice of Violation
Issued by the
Pennsylvania Department of Health**