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**Appropriations Reporting Requirement  
Local Health Department Conformance  
With Food Service Sanitation Regulatory  
Program Minimum Program Requirements  
March 1998 Through September 2001**

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**Michigan Department of Agriculture  
Food and Dairy Division  
November 2001**

## TABLE OF CONTENTS

I.	Introduction	1
	Purpose	1
	Scope and Organization of this Report	1
II.	Food Service Sanitation Program Background	2
	Program Background	2
	The State and Local Partnership	2
	Evaluations of Local Health Departments	2
	Michigan Local Public Health Accreditation Program	3
	Corrective Plans of Action	3
III.	Overall Results of the Evaluations	5
IV.	Discussion of the results of the evaluations	10
	Generally	10
	Inspections	13
	Plan Review	14
	Knowledgeable Staff	17
	Licensing	17
	Follow-Up & Enforcement	18
	Foodborne Illness Investigation	18
	Management	19
V.	Conclusions	20
	Appendix -Food Service Sanitation Regulatory Minimum Program Requirements	22

**Appropriations Reporting Requirement**  
**Local Health Department Conformance With Food**  
**Service Sanitation Regulatory Program Minimum**  
**Program Requirements**

March 1998 Through September 2001

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**I. INTRODUCTION**

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**PURPOSE**

In accordance with Public Act 53 of 2001, the Michigan Department of Agriculture (MDA) is directed to report on local health department conformance with minimum program requirements. Section 401(1) of Public Act 53 of 2001 states:

The department shall monitor restaurant inspection and licensing functions carried out by local health departments to ensure uniform application and enforcement of minimum program requirements. On or before April 1, 2002, the department shall report to the senate and house appropriations subcommittees on agriculture, the senate and house fiscal agencies, and the state budget director on local health department conformance with minimum program requirements.

This report complies with the above requirement.

**SCOPE AND ORGANIZATION OF THIS REPORT**

The body of this report contains the results of the MDA evaluation of local health department food service sanitation programs. Information on the evaluation process is presented in Section II. The results of evaluations are contained in Sections III and IV.

- **Section II** provides an overview of the state and local Food Service Sanitation Program, the MDA evaluation of local health department's food safety programs, the role of the Michigan Local Public Health Accreditation Program, and corrective actions for deficiency.
- **Section III** summarizes the overall results of the evaluations.
- **Section IV** explains the basis for the evaluation results, and discusses the impacts of the findings on the food safety program.
- **Section V** offers conclusions.

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## **II. FOOD SERVICE SANITATION PROGRAM BACKGROUND**

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### **PROGRAM BACKGROUND**

The Food Service Sanitation Program's main goal is to eliminate the risk of foodborne illness from food served at licensed food service establishments. Program standards come from two basic principles: (1) reduce the occurrence of the identified risk factors that are known to cause foodborne illness and other factors that may contribute to foodborne illness; and (2) establish a food service sanitation program framework which controls risk factors. A secondary goal of the program is to satisfy reasonable customer expectations of food service establishment's sanitation.

The elements of this program include plan review, licenses and permits, inspections, provisions of education and consultative services to the industry, complaint investigation, enforcement action, and investigation of reported cases of foodborne illness.

### **THE STATE AND LOCAL PARTNERSHIP**

The regulatory program to prevent foodborne illness from food service establishments is a cooperative state and local government effort. The 45 local health departments (LHDs) regulate more than 47,000 food service establishments with approximately 400 managers and inspectors. The Michigan Department of Agriculture (MDA) provides oversight, guidance, and support to local health departments to carry out this program.

MDA monitors and evaluates the uniformity of restaurant inspection and licensing through:

- Evaluation of local health department conformance with the minimum program requirements; and
- Participation in the Michigan Local Public Health Accreditation Program.

### **EVALUATIONS OF LOCAL HEALTH DEPARTMENTS**

Periodic reviews of local health department food service sanitation programs are conducted by MDA to ensure that each local program is fulfilling its responsibility. A review consists of an evaluation of the administrative aspects of the program and field visits to a random sampling of food service establishments to assess the program's performance in its jurisdiction. These periodic evaluations are mandated by the Food Law of 2000, Public Act No. 92 of 2000 (and previously required by the Public Health Code, Public Act No. 368 of 1978).

The evaluation standards applied to a local health department are called the minimum program requirements (MPRs) and “indicators.” Each MPR is directly derived from a requirement in statute or regulation. The “indicators” specify in more detail what MDA looks for as an indicator of compliance with an applicable MPR. All indicators are derived from requirements in statute. Most indicators (32 of 43) are directly from the Food Law of 2000 (FL2000). The remaining indicators (11) either are implied by the law, or they advise local health departments prospectively of components essential for a program to meet a requirement of the law.

## **MICHIGAN LOCAL PUBLIC HEALTH ACCREDITATION PROGRAM**

In the early 1990s, a broad consensus emerged that Michigan required a formal mechanism for evaluating the capacity and performance of local health departments for core capacity and services. A Michigan Department of Public Health (now Department of Community Health) committee deliberated on this issue, and recommended a single, streamlined accreditation process be developed and implemented as a means to monitor and evaluate local health departments.

In 1996, the Michigan Association for Local Public Health (MALPH) with administrative support from the Michigan Public Health Institute (MPHI), convened an Accreditation Steering Committee comprised of representatives from local health, state agencies, and other public health professionals. The steering committee created the Michigan Local Public Health Accreditation Program (Accreditation). The pilot self-assessment tool was released in 1997, and pilot site reviews were completed in 1998.

In January 1999, the Michigan Local Public Health Accreditation Program officially began the accreditation process for Michigan’s local health departments. Accreditation operates on a three-year cycle, thus, the first Accreditation review of all 45 local health departments was completed in August 2001.

MDA supports the mission of the accreditation program, providing evaluations of food service sanitation programs. More information on the Accreditation Program can be found at the web site: <http://www.accreditation.localhealth.net/>.

## **CORRECTIVE PLANS OF ACTION**

When it is consistent with the public protection responsibilities of the MDA, and depending on the nature of the violation, it is MDA’s practice to afford local health departments an opportunity to voluntarily take appropriate and prompt corrective action of unmet minimum program requirements prior to the initiation of administrative action. When an evaluation reveals that a local health department does not meet one of the minimum program requirements, the local health department is requested to submit a corrective plan of action. MDA re-evaluates all unmet indicators for compliance after the local health department has had the opportunity to implement their corrective plan of action for at least three months. The follow-up evaluation determines both that the action plan has been implemented, and that it is effective.

## LOCAL HEALTH DEPARTMENT CONFORMANCE WITH MINIMUM PROGRAM REQUIREMENTS

When a corrective plan of action is necessary, the local health department generally will follow the timelines of the Michigan Local Public Health Accreditation Program. However, if public health may be endangered by a delay in correction, MDA will request that a local health department expedite their corrective plans independent of Accreditation Program. While being provided the opportunity to develop a corrective plan of action, the local health department may be designated “provisionally accredited” by the Accreditation Commission.

When a local health department fails to avail itself of an opportunity to voluntarily take appropriate corrective action of unmet minimum program requirements, or if the corrective actions fail to correct the deficiencies, the local health department will face the loss of accredited status. The Accreditation Program provides a mechanism for evaluation and accreditation, and its role in obtaining corrective action ends when the Accreditation Commission designates a local health department as “Not Accredited.” At this point, the deficiencies must be addressed by the state agencies charged with oversight of the local public health programs.

A broad and flexible range of administrative actions is available to effectively address the type of deficiencies encountered in minimum program requirements. The steps listed below sketch the possible actions, and assume exhaustion of cooperative efforts to obtain correction.

- (a) Compliance meeting with MDA to discuss the deficiencies (may include representatives from the Department of Environmental Quality and Department of Community Health).
- (b) Meeting with the County Board of Health or County Commissioners.
- (c) Recommendation of “not accredited” status to the Michigan Local Public Health Accreditation Program.
- (d) Reduction in part, or the entire local health department’s Local Public Health Operations (LPHO) funding from the state.
- (e) Revision of the contract between the state and the local health department as a condition for receiving LPHO funding.
- (f) Issuance of an Administrative Order pursuant to § 2497 of the Public Health Code.
- (g) Application to Circuit Court for an injunction to compel compliance with the requirements pursuant to § 5111 of the Food Law of 2000.
- (h) Application to Circuit Court for enforcement of Administrative Order.
- (i) Suspension or revocation of the local health department’s delegated responsibility and authority for the food service sanitation regulatory program.

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### III. OVERALL RESULTS OF THE EVALUATIONS

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#### Introduction and Background

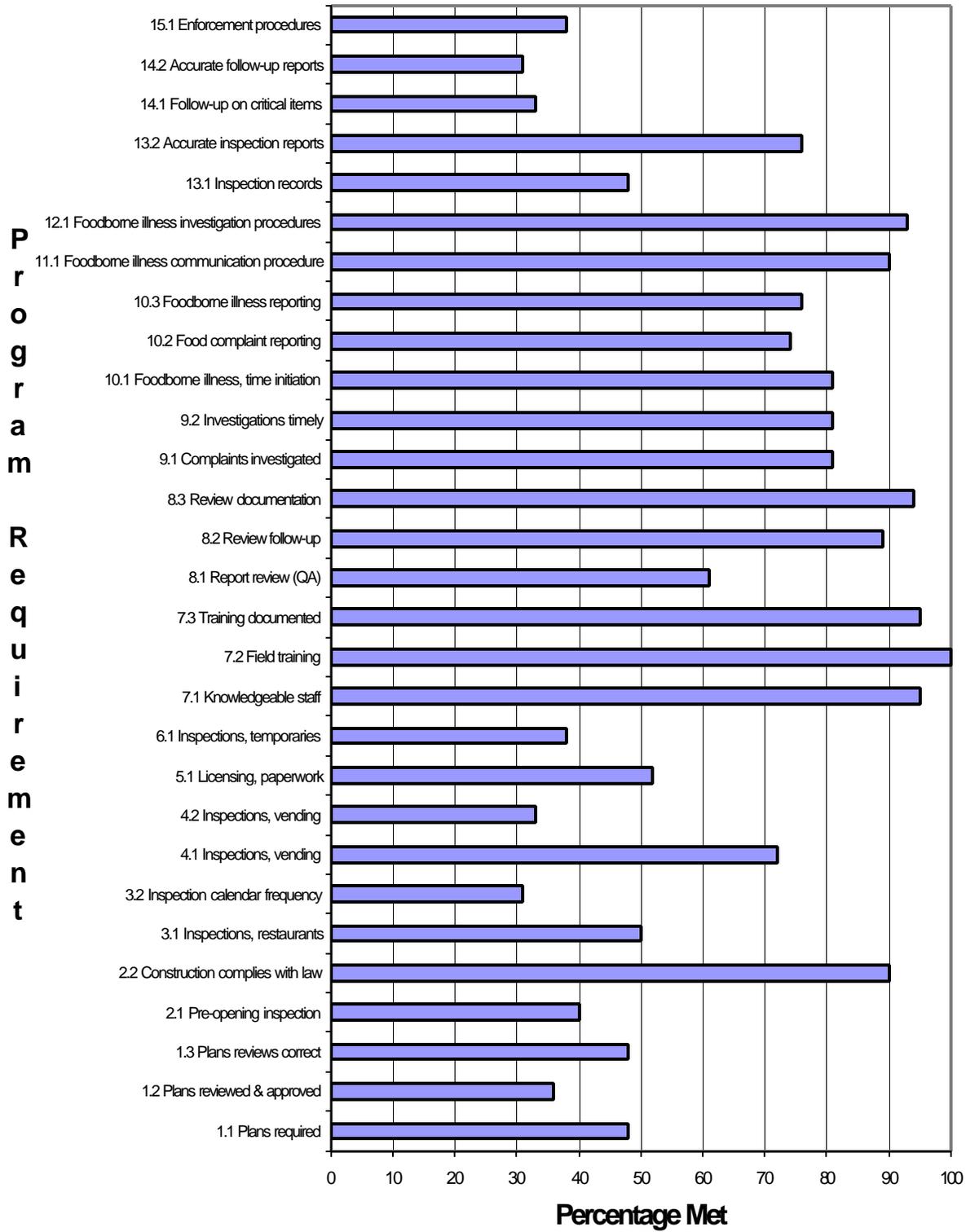
The graph and charts that follow relate to the overall compliance with the program requirements observed during the local health department evaluations. The information in this section can be read by itself, but it is important to remember that the data provides only a snapshot of the week in time when the on-site review was conducted.

Conclusions might be drawn from the initial evaluation findings – particularly as it relates to local health departments generally – however, far more important from an individual department standpoint is the status after deficiencies are brought to the department’s attention. All “Not Met” requirements are expected to be fully met. Local health departments may, and often did, initiate corrective actions immediately.

While Accreditation status is not determined by MDA (but by the Accreditation Commission), Accreditation status is provided in the charts to offer insight into how a local health department may meet Not Met requirements and achieve fully accredited status. For example, of the first ten health departments reviewed, eight received “Not Met’s” on review; seven of these eight implemented corrections and now meet all of the minimum program requirements, and have received “accredited with commendation” status.

The “status” column in the charts provides the local health department’s Accreditation status on the date of this report. Accreditation status is based upon all programs considered essential for local public health operations, which include food service sanitation, communicable disease control, hearing, immunization, on-site sewage, sexually transmitted disease, and vision.

### Summary of Met Minimum Program Requirements



LOCAL HEALTH DEPARTMENT CONFORMANCE WITH MINIMUM PROGRAM REQUIREMENTS

Table A: Summary of Food Service Sanitation Program Evaluations- FY 1999 MPRs

LOCAL HEALTH DEPARTMENT	Week of MDA Review	Minimum Program Requirement Indicators			Important Factors <sup>1</sup> (Not Required)		Status <sup>2</sup>
		Met <sup>3</sup>	Not Met <sup>4</sup>	N/A	Met	N/A	
Kalamazoo	03/98	(pilot)					Accredited with Commendation
Branch-Hillsdale-St. Joseph	03/98	(pilot)					Accredited with Commendation
Marquette	05/98	(pilot)					Accredited with Commendation
Lapeer	07/12/99	17	6	5	0	4	Accredited with Commendation
Delta-Menominee	07/26/99	17	6	5	1	3	Accredited with Commendation
Chippewa	08/09/99	13	10	5	0	4	Not Accredited
Ottawa	08/23/99	18	5	5	0	4	Accredited with Commendation
Muskegon	09/13/99	17	6	5	1	3	Accredited with Commendation
Tuscola	09/27/99	23	0	5	0	4	Accredited with Commendation

<sup>1</sup> "Important factors" are considered important, but are *not* required. A local health department that meets more than half of the important factors (in addition to meeting all requirements) receives accreditation with commendation.

<sup>2</sup> Status is the Accreditation status on the date of this report. Accreditation status is based upon all programs considered essential for local public health operations, which include food service sanitation, communicable disease control, hearing, immunization, on-site sewage, sexually transmitted disease, and vision. All Not Met indicators are expected to be fully met. When indicators are met in all programs, the local health department is eligible to receive "Accredited" status.

<sup>3</sup> The quantity listed is the number met during the on-site evaluation. All requirements are met prior to receiving Accredited status.

<sup>4</sup> When a MPR indicator is found unmet, the local health department must submit a corrective plan of action to the Michigan Local Public Health Accreditation Program within three to seven months after evaluation. MDA reevaluates all unmet indicators for compliance after a local health department has had the opportunity to implement their corrective plan of action for at least three months.

LOCAL HEALTH DEPARTMENT CONFORMANCE WITH MINIMUM PROGRAM REQUIREMENTS

Table B: Summary of Food Service Sanitation Program Evaluations- FY 2000 MPRs

LOCAL HEALTH DEPARTMENT	Week of MDA Review	Minimum Program Requirement Indicators			Important Factors (Not Required)		Status
		Met	Not Met	N/A	Met	N/A	
Grand Traverse	10/11/99	25	2	1	1	3	Accredited with Commendation
Huron	11/01/99	20	7	1	0	4	Not Accredited
Van Buren/ Cass	11/22/99	18	9	1	0	4	Accredited with Commendation
Sanilac	12/06/99	23	4	1	1	3	Accredited with Commendation
District Health Department #4	02/07/00	10	17	1	1	3	Provisional
St. Clair	02/28/00	25	2	1	1	3	Accredited with Commendation
Bay	03/13/00	14	13	1	0	4	Provisional
Mid-Michigan	03/27/00	12	15	1	1	3	Provisional
City of Detroit	04/10/00	13	14	1	1	3	Accredited with Commendation
District Health Department #2	04/24/00	23	4	1	1	3	Accredited with Commendation
Barry-Eaton	05/08/00	20	7	1	1	3	Provisional
Northwest	05/22/00	21	6	1	1	3	Provisional
Luce-Mackinac-Alger-Schoolcraft	06/05/00	6	21	1	1	3	Provisional
Shiawassee	06/19/00	17	10	1	1	3	Provisional
District Health Department #10	07/10/00	9	18	1	1	3	Provisional
Washtenaw	07/24/00	22	5	1	1	3	Accredited with Commendation
Western UP	08/07/00	17	10	1	1	3	Provisional
Kent	08/21/00	24	3	1	1	3	Provisional
Berrien	09/11/00	14	13	1	1	3	Provisional
Benzie/ Leelanau	09/25/00	21	6	1	1	3	Provisional

LOCAL HEALTH DEPARTMENT CONFORMANCE WITH MINIMUM PROGRAM REQUIREMENTS

Table C: Summary of Food Service Sanitation Program Evaluations- FY 2001 MPRs

LOCAL HEALTH DEPARTMENT	Week of MDA Review	Minimum Program Requirement Indicators			Important Factors (Not Required)		Status
		Met	Not Met	N/A	Met	N/A	
Dickinson-Iron	10/09/00	14	14	2	2	2	Provisional
Jackson	10/23/00	15	13	2	2	2	Provisional
Allegan	11/06/00	15	13	2	2	2	Provisional
Saginaw	11/27/00	21	7	2	3	1	Provisional
Genesee	12/11/00	20	8	2	4	0	Provisional
Ingham	02/26/01	26	2	2	3	1	Provisional
Calhoun	03/12/01	17	11	2	2	2	Provisional
Central Michigan	03/26/01	19	9	2	3	1	Provisional
Macomb	04/16/01	29	0	1	3	1	Provisional
Lenawee	05/07/01	29	0	1	2	2	Provisional
Ionia	05/21/01	3	25	2	2	2	Reviewed
Livingston	06/04/01	15	14	1	3	1	Provisional
Midland	06/18/01	13	16	1	3	1	Provisional
Monroe	07/09/01	15	14	1	2	2	Provisional
Oakland	07/23/01	15	14	1	3	1	Reviewed <sup>5</sup>
Wayne	08/06/01	20	9	1	3	1	Reviewed

<sup>5</sup> The status of local health departments reviewed in July and August 2001 will be scheduled for a vote at the December 2001 Accreditation Commission meeting.

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## IV. DISCUSSION OF THE RESULTS OF THE EVALUATIONS

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### GENERALLY

The Michigan Department of Agriculture is responsible for setting standards for the safe preparation and sale of foods, and advising local governments on food safety standards for restaurants, mobile and temporary food establishments, and other food service establishments. In this role, the department works diligently to provide guidance and assistance that will enhance the food safety regulatory programs of local jurisdictions. The following discussion is intended to focus and enhance this effort.

#### Areas of success

Local food service regulatory programs were generally successful in the following areas:

- Training of regulatory staff.
- Sound written procedures in place for foodborne illness investigation.
- Initiating investigation of food complaints in a timely manner.
- New construction in compliance with the law.

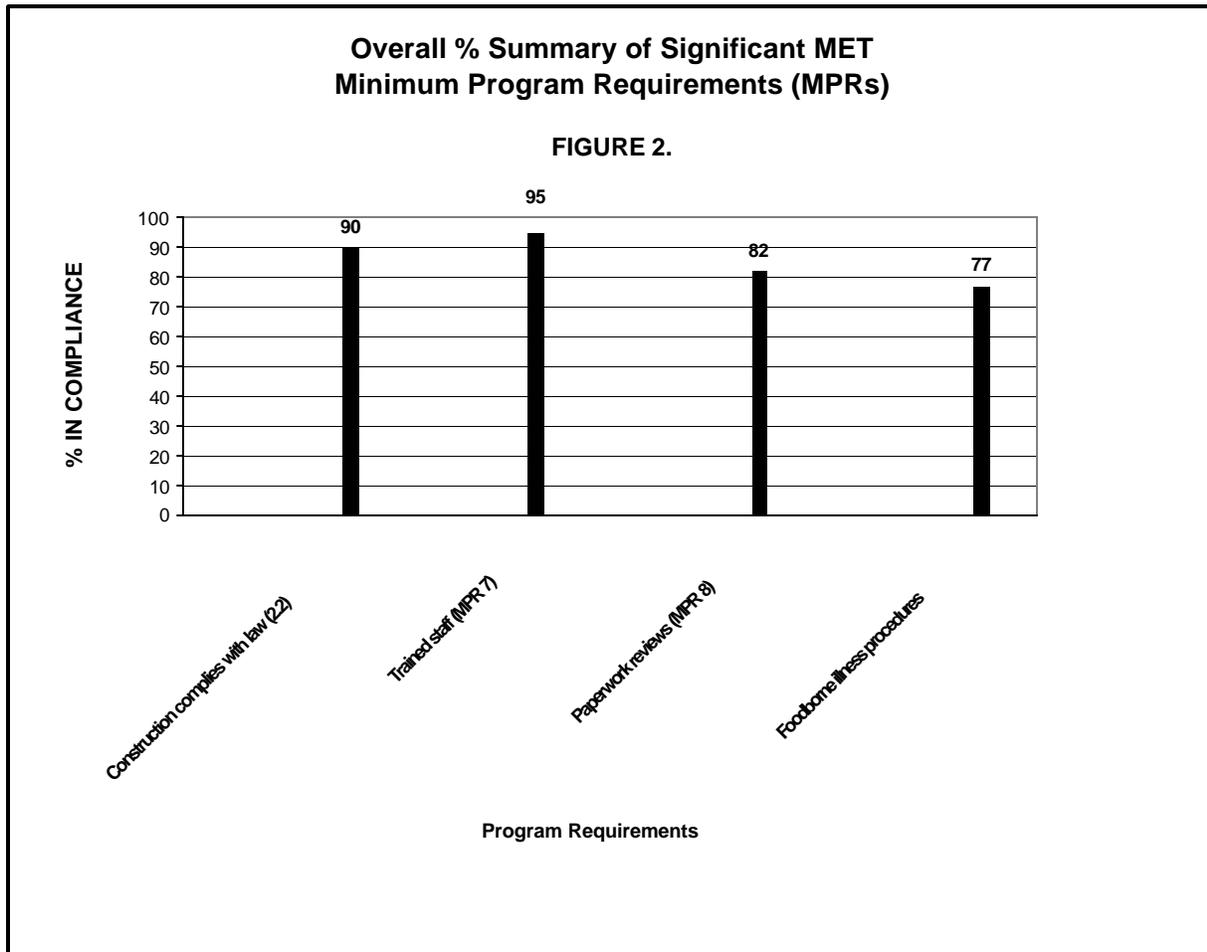
It also bears noting that four local health departments met one hundred percent of all requirements upon initial accreditation evaluation. This is rare in the new accreditation program, and it is a credit to the exceptional diligence of those programs.

#### Cause for optimism

Analysis of the overall result of the evaluations must be made in light of the fact that Local Public Health Accreditation was brought about, in large measure, through leadership, vision, and courage of local public health leaders. Local public health leadership was instrumental in bringing forth the Accreditation Program, and also responded to the challenge of building up local programs to meet minimum requirements. For example, eight of the first 10 local health departments did not meet all requirements upon initial review, but seven of those eight have put corrections in place to achieve one hundred percent compliance.

It bears emphasizing that this report is necessarily based in large part upon the results of initial reviews. Many of the requirements noted Not Met have already been corrected. The result has been both quantitative and qualitative improvements in local public health capacity and performance.

Finally, in all discussion of deficiencies, it must be remembered that – no matter the level of overall performance – in every individual requirement category, some health department excelled in that category. Some programs are role models, not just in the state, but for the whole nation.



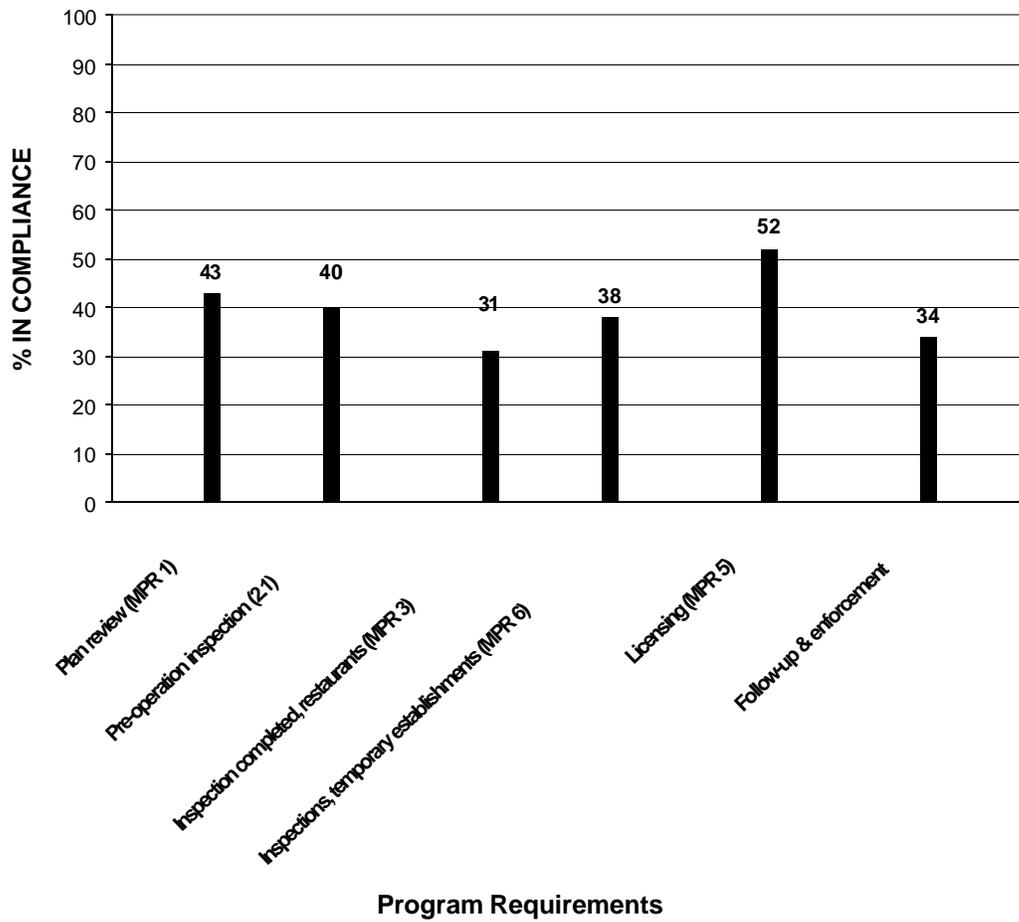
Areas for focus on improvement

If the food service regulatory program is to be fairly and uniformly implemented – and ensure that foods served are safe and wholesome – we must establish effective management control over the individual program requirements. Our regulatory community must remain focused in their efforts to improve the requirements with the most significant “Not Met” observation rate, particularly:

- Completion of inspections,
- Plan review, and
- Follow-up and enforcement of critical food safety items.

**Overall % Summary of Significant NOT MET  
Minimum Program Requirements (MPRs)**

**FIGURE 3.**



## **INSPECTIONS**

### Background

Inspections by local health departments comprise the body of the food-service regulatory program. A local health department is required to conduct both routine inspections and follow-up inspections of restaurants, vending machines, mobile food units, and temporary food service establishments. Generally, this entails two routine inspections per year on a six-month frequency, and – if one or more uncontrolled critical violations are noted – a follow-up inspection conducted within 30 days. Temporary food service facilities are inspected when the applicant applies for a license and prior to serving any foods at the opening of the scheduled event.

The inspection process evaluates a food service establishment's compliance with the applicable food law and ensures that food provided to consumers is safe and does not become a vehicle in a disease outbreak or in the transmission of communicable disease. The inspection responsibility includes ensuring that consumer expectations are met, and that food is unadulterated, prepared in a clean environment, and honestly presented. Accordingly, inspections are the key to the food safety regulatory program.

The inspections provide a system of prevention and overlapping safeguards designed to minimize foodborne illness, ensure food employee health, safe food, non-toxic and cleanable equipment, and acceptable levels of sanitation at food service establishments. The inspection addresses controls for risk factors identified by the U.S. Centers for Disease Control and Prevention as contributors to foodborne outbreaks that have been investigated and confirmed. Those factors include unsafe sources, inadequate cooking, improper holding, and poor personal hygiene.

### Findings

Upon initial review, fifty percent (50%) of local health departments were not conducting the required quantity of inspections for permanent food service establishments, sixty-nine percent (69%) were not conducting these inspections at the required calendar frequency, and sixty-two percent (62%) were not conducting the required inspections for temporary food service establishments.

Among those local health departments not meeting this requirement, the type and degree of non-compliance varied considerably. Not uncommonly, those programs not meeting the inspection requirement missed more than one half of the required food service establishment inspections. In many, the difficulty was not simply the total quantity, but the length of time between inspections, some inspections being more than two years apart (when a six-month frequency is required).

## Discussion

Fulfilling the fundamental requirement to complete the inspections is perhaps the most significant challenge facing the food service sanitation program. While it is encouraging that the requirement is clear and objective – and thus amenable to straightforward corrective measures – curing a deficiency in resources (in either basic capacity or application of available resources) is often a difficult and long-term challenge. Particularly in those situations where resources must be added to build up the basic capacity, the challenge though straightforward can be a difficult one to achieve without consistent effort.

Fifty percent of local health departments failed to complete the required quantity of inspections. This raises a serious concern because the deficiency is in the core of the program. Just as no business can survive if its employees show up only one half of the time, no food safety regulatory program can deliver the expected protection of food safety when only one half of the inspections are performed. This presents a major obstacle to the program's statewide effectiveness, and to its ability to protect the public in safe food service.

Local and state public health leaders must consistently communicate the public health science behind food safety inspections, and must also effectively advocate for the important preventative public health intervention that food service inspections represent. Management must also remain vigilant to protect against other negative consequences from inadequate resources, such as the pressure to sacrifice minimum inspection quality to achieve the required quantity, or worse. The reviews revealed a number of incidents of falsification of inspection records. This included both falsification of inspections that did not occur and falsification of the reports of actual inspections. More than one local health department inappropriately implemented a policy of reduced frequency of inspection in establishments with critical violations (such as no hand sinks in the food preparation area, no hot water at hand sinks, and no hot water (at all) in the food service facility).

## **PLAN REVIEW**

### Background

The plan review process presents a unique opportunity to lay a foundation that enables the proposed food operation to proactively sustain compliance with the Food Code over time. For the plan review program to be effective, it is essential that the local health department receive a complete set of plans and specifications to allow for a proper review of the food service establishment.

Plan review also provides regulatory agents a special opportunity to provide a direct service to the regulated operations. The review, when conducted properly, can and does prevent future problems and violations a food service operator may encounter during the pre-opening inspection and routine inspections. Thus, proper plan review not only lays a solid foundation for a productive and cooperative relationship between regulators and operators, it can prevent needless expense for establishment owners.

### Findings

Fifty-seven percent (57%) of local health departments were conducting inadequate plan review programs. Fifty-two percent (52%) accepted and approved incomplete plans (plans without the components required by law and necessary to conduct a proper review). Fifty-two percent (52%) approved plans that contained violations of the law, such as food service establishments with no employee restrooms or no hand-washing sink in the food preparation area.

Other deviations from the plan review requirements include permitting food service establishments to be constructed without plan review; failure to issue plan approval letters; pre-opening inspections being conducted, but allowing food service establishments to open and operate with uncontrolled food safety hazards; ventilation violations being identified, yet the local health department allowing facilities to open and operate; failing to require or receive air balance reports for the proper capture and supply of air; and failure to conduct the required smoke test to verify the capture ability of the ventilation system.

### Discussion

When a local health department does not conduct a plan review or when plans are accepted and approved without the necessary components to conduct a proper review, this undermines the entire plan review process. Acceptance of incomplete plans creates a domino effect, affecting subsequent aspects of the plan review process. That is, without complete plans, a correct and complete plan review cannot be conducted, and proposed construction may result in violations in the Food Law. For example, incomplete plans may result in approval of a food establishment with no hand sink provided in the food preparation area.

On initial review, fifty-seven percent (57%) of local health department's plan review programs did not meet the requirements of the applicable law. This degree of deficiency is serious because the plan review process accomplishes two important purposes. First, plan review assures compliance with the appropriate Food Law requirement, which protects the public health. For example, failure to test ventilation systems, and the failure to require correction of ventilation violations that were identified, puts the establishment employees and the public at risk from possible carbon monoxide exposure, inhalation of grease-laden air, and potential fire risks. Further, many other aspects of construction may create critical violations of the food safety law.

Second, plan review provides a consultative service to the businesses, assisting owners in constructing their establishments with suitable materials and design. This foundation can save considerable effort, grief, and expense after construction is complete. When the local health department requires the owner to correct after the construction, this requires not only the additional costs of repair, but also the added costs of removal of improper construction, and the expense of inconvenience and lost business during reconstruction. If the local health department conducted an appropriate and thorough review of complete sets of plans and specifications, these issues could be noted and corrected prior to construction. There is a saying that captures this principle well: "It's cheaper to change it in pencil, than change it in concrete."

The efforts of the local health department can also pay dividends at the plan review stage by reducing the overall time spent on inspections, follow-up, and enforcement. Conversely, deficiency at the plan review stage multiplies the amount of regulatory work required later. This deficiency creates a ripple effect on other components of the food safety program. That is, deficiencies in construction requirements of the Food Code often lead to deficiencies in operation of the food establishment, creating food safety violations because the construction does not support the operation's activities, which in turn creates added enforcement and follow-up work. For example, if the hot water heater capacity is inadequate for the size of the operation, dishes may be improperly cleaned and sanitized. Thus, failure to require proper hot water capacity at plan review may lead to citation for sanitation violations. Failure to install a hand washing sink convenient to food processing is likely to result in food workers failing to adequately wash their hands, which leads to citation for hygiene violations, contamination of food, transmission of foodborne pathogens, and so on.

During the period covered by this report, the Michigan Department of Agriculture prepared a number of new materials to assist local health departments in their plan review responsibility and continued to offer existing training and consultative services, such as the following:

- Five two-day plan review workshops in 2000.
- Publication of a training manual, FOOD ESTABLISHMENT PLAN REVIEW GUIDE, developed to assist both regulatory and industry personnel, to achieve greater uniformity, and to make the plan review process easier for all.
- Publication of a model Food Establishment Plan Review Worksheet.
- Six two-day plan review courses in 2001.
- Publication of PLAN REVIEW TRAINING 2001, containing training materials on the most requested topics indicated on an MDA survey of plan review staff at local health departments along with other current information and basic material.
- Numerous one-on-one consultations with local health department reviewers.
- The PROFESSIONAL FOOD SERVICE SANITATION TRAINING PROGRAM was displayed on the MDA web site ([www.mda.state.mi.us/](http://www.mda.state.mi.us/)), which includes a module on plan review. This training program was developed with a \$43,000 grant from the U.S. Food and Drug Administration.

## **KNOWLEDGEABLE STAFF**

### Background

It is important that food service regulatory staff who are knowledgeable about foodborne illness prevention, the Food Law of 2000, the Food Code, public health principles, epidemiology, and communication of public health principles so they are prepared to recognize conditions that may contribute to foodborne disease, and to take appropriate preventative and corrective actions.

### Findings

Ninety-five percent (95%) of the local health departments had staff that met the minimum requirements for knowledge and training. One hundred percent (100%) met the requirement for field training.

### Discussion

Local health departments have invested important effort in assuring they have knowledgeable food service regulatory staff.

## **LICENSING**

### Background

Establishments serving food to the public are required to be licensed. Inspection prior to licensing ensures compliance with the food safety requirements before serving. Each local health department has the authority to set their own license fee amounts. Once the local health department has received a license application and the appropriate fees, the department processes the application, approves by signing, dates, and submits the application to MDA with the state-portion of the fees. MDA in turn, prints and mails the licenses to the local health department, where one copy is maintained in the local department's file, and one copy provided to the establishment for display.

### Findings

The reviews revealed forty-eight percent (48%) of the local health departments did not properly process licenses as required and submit fees as needed. Examples of noted deficiencies follow:

- Accepting license applications and fees, but not processing the license applications.
- Not remitting to the state the appropriate state fees due.
- License applications unprocessed for over one year.
- Collecting food license applications and fees, failing to conduct the required inspection, yet keeping both the state of Michigan fees and the local fees.
- Licenses being approved in the office without the required inspection.
- Issuing licenses after the establishment closed and there was nothing to inspect.

## **FOLLOW-UP & ENFORCEMENT**

Enforcement is an essential part of the food program. Although the situations requiring enforcement action comprise a small percentage of the total number of establishments, it is necessary that enforcement proceed where immediate hazards exist or where compliance is not obtained voluntarily, particularly with critical item violations<sup>6</sup>.

The reviews revealed that sixty-two percent (62%) of the local health departments were not pursuing administrative enforcement actions when required in response to immediate hazards or uncorrected critical violations (and also often breaking their local department's policies). Sixty-six percent (66%) of the local health departments did not consistently conduct follow-up inspections for uncontrolled critical violations. The following examples were noted:

- Failing to conduct follow-up inspections of uncontrolled hazards (such as the serving of home-canned foods, no hot water at sinks, no hand sink in food preparation area, rodent infestations, dish washers not properly sanitizing utensils, inadequate hot and cold holding units etc.).
- Allowing uncontrolled hazards to exist and continue after follow-up inspections, including failure to correct chronic uncontrolled hazards.
- Allowing imminent health hazards to continue without correction, such as raw sewage in a food establishment.

## **FOODBORNE ILLNESS INVESTIGATION**

### Background

A local health department food service regulatory program is required to establish a system to collect and investigate complaints of food-related illness and injury; and investigate foodborne disease outbreaks. The system includes a standard operating procedure or a memorandum of understanding (MOU) with the appropriate epidemiological investigation program and other departments or agencies involved in conducting investigations of foodborne illness. The operating procedure or MOU identifies the roles, duties and responsibilities of each party.

Food program management, alone or in cooperation with another department or agency, maintains a log or database of all complaints alleging food-related illness or injury. At the conclusion of the complaint investigation, the findings are recorded in the log or database for surveillance purposes, and the investigation reports are filed in or linked to the establishment record.

### Findings

Seventy-seven percent (77%) of the local health departments were found implementing foodborne illness investigation and surveillance systems that meet the minimum requirements.

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<sup>6</sup> Critical items are provisions of the Food Code that, if in non-compliance, are more likely than other violations to contribute to food contamination, illness, or environmental health hazard. Critical items are denoted in the Food Code with an asterisk.\*

## MANAGEMENT

No minimum program requirement for food service regulatory program directly evaluates the program management, but management is indirectly evaluated in every program requirement. At the simplest level, management is assessed with each requirement because it is management's responsibility to ensure that the minimum program requirements are met.

Management's role is critical, and much is expected. They must be knowledgeable in the requirements of the laws, review and address employee work outputs, and design tools for tracking the status of the work performed. Further, management needs to assure appropriate staffing levels, and that staff have been properly trained to perform the duties asked of them.

The local health departments were noted to have a ninety-five percent (95%) compliance rating for knowledgeable and trained staff. While we strive to continuously improve the program's knowledge base, the high rate of compliance with the training and knowledge requirements for staff in the food safety program indicates that most difficulties experienced by local health departments in meeting the program requirements are not caused by a failure to understand. Most deficiencies arose from a difficulty to implement fundamental requirements: completion of inspections, documentation of critical violations, and follow-up. (Food service inspection frequency was deficient in sixty-eight percent (68%) of the local health departments, follow-up inspections of uncontrolled hazards were deficient in sixty-eight percent (68%), and enforcement actions were deficient in sixty-eight percent (68%) of the departments.)

Considering that reputations and more can ride on the outcome of an evaluation, it is not surprising that a certain amount of strategic behavior occurred to beat the system. Examples include innocuous attempts to play catch up, such as conducting three years of vending inspections within a single two-week period. Most examples involve challenging the standards and the evaluation results, or evading responsibility for a local health department deficiency. (For example, one department explained that the reason they did not meet certain requirements was because MDA failed to provide the health department with a copy of the law.) More serious are a few incidents of falsification of records. Approximately ten percent of the local health departments openly defied some requirements of the law. Managers stated that they didn't care what the law was, they simply were not going to do it. (For example, a number of local health departments were found denying or revoking licenses without providing an opportunity for a hearing, or refusing hearings.)

Most troubling was the widespread evasion encountered in evaluations. Nearly half of local health departments completed self-assessment reports containing significant inaccuracies in areas with clear, quantitative objectives (for example, stating that one hundred percent of inspections were completed when less than fifty percent were actually conducted). A number of local health department managers candidly declared that they knew their self-assessments were inaccurate, but they weren't going to make it easier on the evaluator, weren't going to make their department look bad, or they hoped the evaluator wouldn't find the inaccuracy (or even went so far as to hide records). More than one manager stated that they knew they were not meeting all the requirements – or said they knew they were breaking the law – but stated that they weren't going to change until MDA told them or made them. More than one person apologized for an inaccurate self-assessment, but explained that they were ordered to make it look good.

Such behavior creates a number of undesirable results. Perhaps, foremost, it robs the accreditation program of half of its promise, and it hamstring a local health department of important opportunities to improve. Those departments that invested effort and candor in their self-assessments generally had excellent results or responded quickly to implement improvements. Those departments with the significantly inaccurate self-assessments generally have taken far longer to implement corrections. Not only do these latter departments lose six months of the opportunity to correct deficiencies during self-assessment, but also the authors of an inaccurate self-assessment often found themselves in a self-defeating position of defending their inaccuracies. This situation creates an adversarial relationship with the MDA evaluators and the Accreditation process turns into a rocky one.

Hopefully, such behavior will decrease as understanding of the requirements grows; but it is critical that the Accreditation Program and the Michigan Department of Agriculture consistently mean what they say and consistently resist such pressuring. Fortunately, local public health leadership has been at the forefront of building a system that ensures local agencies have minimum capacity and performance, and the majority of local health managers have responded to the challenge of building local program's capacity and performance.

The essential role of local department management cannot be overstated. Only local health department management can investigate and determine the causes of the deficiencies that an evaluation identifies. Only local health department management can initiate corrective actions and prevent a recurrence. The management process that a department utilizes to assure that staff carries out the requirements is perhaps the single greatest challenge facing local health departments.

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## V. CONCLUSIONS

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The people of Michigan deserve a food service regulatory system that protects their health and safety in an effective, consistent, and sensible manner. Through MDA's evaluations of local health departments and the participation in the Accreditation Program, we have made important strides to create such a regulatory system. Nevertheless, steps remain, but MDA will not falter in its important responsibility to ensure such a regulatory system exists in Michigan. This report is intended to focus and enhance this effort.

The Michigan Department of Agriculture is responsible for setting standards for the safe production and sale of foods, and advising local governments on food safety standards for food service establishments. In this role, MDA works closely in partnership with local agencies. This includes the Local Public Health Accreditation Program, which was brought about in large measure by the leadership, vision, and courage of local public health agency leaders. Local public health leadership was not only essential in bringing forth the Accreditation Program, but has responded to the challenge of building local programs capacity and performance. This report is based, by necessity, largely upon the results of initial reviews. Many of the requirements noted "Not Met" have already been corrected. Since completion of the past three years of evaluations by MDA staff and considerable effort by all, improvement has been dramatic.

Taken in this constructive light, this retrospective look at local programs can provide important insight for where we must focus our energies. If the safety of food in the food service industry is to be significantly improved, the managers of food service regulatory programs must establish effective management control over the individual program requirements. The local health department community must remain focused in their efforts to reduce the deficiency in the requirements having the most significant “Not Met” observation rate.

Part of the Accreditation Program evaluation is a process for program self-assessment based on the minimum program requirements. A Guidance Document to assist local health departments in self-assessment is provided to the program managers. Managers of the food service regulatory programs are encouraged to review existing practices and procedures on a regular basis. Ideally, the local health department procedures should include provisions to create a system that guides the field inspection process and other operations to achieve the desired results.

Regulatory food programs should incorporate practices and procedures that:

- Include a method for assessing elements of the minimum program requirements so appropriate adjustments can be made as needed.
- Determine and document the compliance and non-compliance status.
- Provide appropriate corrective action when essential requirements are determined to be unmet.

Program managers are strongly encouraged to conduct periodic self-assessments of their program to determine effectiveness, and establish a system to ensure continued compliance. For more information on conducting program self-assessment, refer to the Michigan Local Public Health Accreditation Program website: <http://www.accreditation.localhealth.net/>. Additional information is available in the *FDA's Recommended National Retail Food Regulatory Program Standards* at [www.cfsan.fda.gov](http://www.cfsan.fda.gov). The food service sanitation regulatory minimum program requirements with official comments and other information are available on the MDA website: <http://www.mda.state.mi.us/>.

The Michigan Department of Agriculture, in partnership with local health agencies, is dedicated to protection of the public's well being through education, enforcement, problem solving, leadership, and expertise related to food safety matters. Food service program management must continue to increase their skills and effectiveness when reviewing and evaluating their programs' procedures and systems in order to identify and control the risk factors that contribute to foodborne illness.

MDA remains committed to continue in its oversight, guidance, and provision of support to local health departments to ensure that this cooperative state-local government regulatory program is fairly and uniformly implemented, and ensure that foods served are safe and wholesome.

November 2001

**APPENDIX - FOOD SERVICE SANITATION REGULATORY MINIMUM PROGRAM REQUIREMENTS**

1. A local health department, upon receipt of plans and specifications for construction, alteration, conversion, or remodeling of a food service establishment, shall review the plans and specifications to determine conformance with applicable requirements. [Food Law of 2000 (FL2000) §§ 6101 to 6113.]
2. The local health department shall conduct one or more pre-operational inspections to verify that the food establishment is constructed and equipped in accordance with the approved plans and approved modifications of those plans, and is in compliance with the law. [FL2000 § 6115; Food Code (FC) § 8-203.10.]
3. The local health department shall perform an inspection of each food service establishment at least once every 6 months, except that a food service establishment which operates 9 or fewer months each year shall be inspected at least once during the period of operation by the local health department. [FL2000 § 3123.]
4. The local health department shall make compliance inspections of each vending machine location at least once every 6 months. [FL2000 § 3123.]
5. A local health department shall review all food service establishment license applications, and forward its recommendations concerning licensure to the MDA. [FL2000 §§ 3115, 3119(6), 3123, and 3123.]
6. A local health department shall inspect all temporary food service establishments, for which required notifications are made to the local health department, and upon compliance, shall issue the temporary license. [FL2000 §§ 3115 and 4125(1).]
7. The program regulatory staff are trained with the skills and knowledge to: a) during inspections, identify critical items (risk factors) that may contribute to foodborne illness; b) correctly interpret and apply regulatory requirements; c) communicate public health principles; d) promote and assist in development of risk control plans; and e) enforce the provisions of the laws. [FL2000 § 2119(2)(b).]
8. Beginning October 1, 1999, the local health department program management has established a quality assurance program to ensure uniformity among regulatory staff in the interpretation and application of regulatory requirements, policies, and procedures. The quality assurance program includes as a minimum, a record review of both routine inspections and foodborne illness investigations. [FL2000 §§ 2119, 3103, 3105, 3107, and 3109.]
9. The local health department food service inspection program correctly and uniformly interprets and applies the requirements of the Food Law of 2000 and other related laws. [FL2000 §§ 3105, 3109, and 3121.]
10. A local health department shall maintain a record of all consumer complaints, the ensuing investigation, and the result of the investigation. [FL2000 § 2101(2), 3121(3), 3129, and 3131.]

LOCAL HEALTH DEPARTMENT CONFORMANCE WITH MINIMUM PROGRAM REQUIREMENTS

11. A local health department shall conduct an investigation of foodborne illness and suspected foodborne illness connected with food service establishments, and report the findings to MDA in a timely manner. [FL2000 § 2101(2), 3121(3), 3129, and 3131.]
12. The food service program has an established operating procedure for conducting and communicating foodborne illness outbreak investigations with applicable governmental agencies and organizations. [FL2000 § 3131.]
13. The inspection process: a) identifies all uncontrolled hazards; b) obtains corrective action on uncontrolled hazards as appropriate; and c) supports appropriate regulatory action. [FL2000 §§ 2119(2), 3121, and 6101; FC § 8-403.10.]
14. A follow-up inspection shall be conducted by the local health department to confirm correction of all previously identified critical violations, unless the critical violation was corrected at the time of initial inspection. [FL2000 §§ 3127, 6101, and 6129.]
15. The local health department shall conduct administrative and judicial enforcement actions as required to ensure compliance with statutory and administrative rule requirements. [FL2000 §§ 2101, 3105, 3107, and 3109.]