



Michigan Department of
AGRICULTURE
& Rural Development

**Food Service Program
Model Enforcement Guidance
For Local Health Departments
_____, 2013**

Adoption Date: _____ Health Officer Signature: _____

(The adoption date and signature of the Health Officer are required. Your LHD Logo, information, etc. should replace the MDARD information on the cover sheet.)

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MDARD MODEL ENFORCEMENT GUIDANCE FOR LHDs
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INTRODUCTION:

The purpose of this document is to provide model enforcement procedures for local health department (LHD) enforcement of the Michigan Food Law of 2000, P.A. 92, as amended (Food Law) and the 2009 Food Code provisions adopted in Michigan's Food Law (Food Code). This model is necessarily general, recognizing the diverse local rules that govern the various LHDs. This model has been drafted to comply with sections 2441 and 2442 of Michigan's Public Health Code, the Food Law, and The Administrative Procedures Act. MDARD recommends that LHDs assess their regulatory provisions that pertain to food service establishments in light of this model and consider proposing changes to their ordinances or policy and procedure where they determine that provisions contained within this model will strengthen their programs. Such an assessment may involve reviewing problems encountered in attempts to prosecute under existing local provisions; considering comments received by the regulatory authority about its enforcement process; consulting with staff and legal counsel to identify gaps or weaknesses in the provisions; comparing provisions with sister agencies for comprehensiveness, equity, and uniformity; and seeking input from outside sources that have experience in taking, or being the subject of, enforcement actions.

Although the situations necessitating escalated enforcement actions comprise a small percentage of those encountered by the regulator, enforcement tools must be used where compliance is not obtained voluntarily. At such times, there should be clearly stated and legally sound procedures that include the criteria for compliance and enforcement, the responsibilities of all parties, sanctions for noncompliance, and constitutional guarantees.

This model applies the progressive enforcement approach for Priority, Priority Foundation, and Core violations. This approach begins with providing education and/or information and progresses to a penalty or restriction of a firm's operations. When applied consistently to all firms, it promotes fair and objective treatment. It is also critical to note that persons regulated under state law have a constitutional right to equal protection and due process. Due process rights are required under the Administrative Procedures Act and are incorporated into this model. Imperative to any enforcement program is timely and appropriate follow-up. Any order or enforcement decision must include follow-up by the food inspector or management team to ensure the enforcement actions results in establishment compliance or lead to further enforcement.

This model is designed to provide flexibility. It does not dictate what specific action must occur in each particular situation, but provides options for each level of enforcement. The decision regarding particular actions will be made by LHD staff, given the specifics of each case. **Each decision must be documented in the file.**

PRINCIPLES:

Recognizing that safe food is fundamental to individual and public health, further recognizing that food service operations that are constructed, maintained, and operated in a proper manner are necessary to safeguard public health, and to minimize the onset and spread of foodborne illness from food service operations; these rules and regulations governing food service establishments, vending locations, and temporary food establishments are hereby established under the authority of Section 289.3117 of the Food Law.

Specifically, Section 289.3117 states "A LHD may apply procedures for the enforcement of this act that provide notice and opportunity for a hearing equivalent in effectiveness to and which protect the rights of the applicant or licensee comparable to the provisions of chapters 4 and 5 of the Administrative Procedures Act of 1969, 1969 PA 306, MCL 24.271 to 24.292. An LHD

shall have a written enforcement procedure and shall make a copy of that procedure available to the public upon request.”

AUTHORITY:

- The Food Law
- The Michigan Public Health Code, Act 368, P.A. of 1978, Part 24, as amended
- The (LOCAL HEALTH DEPARTMENT) Regulations/Policies

ACCREDITATION: MINIMUM PROGRAM REQUIREMENTS

(Accreditation guidance documents change periodically. Check for the most recent accreditation document when updating your policy)

An audit of the LHD’s enforcement program is part of the Michigan accreditation process. MPR Indicator Guide- Section III clarifies MDARD requirements for the program, how compliance is judged, and tips for passing MPR 10:

Program Indicators

- Determine if the enforcement policy affords notice and opportunity for a hearing equivalent to the Administrative Procedures Act.
- The policy is compatible with Chapter 8 of the Food Code and the Food Law.
- Determine if the department’s policy has enforcement procedures for addressing unauthorized construction, operating without a license, imminent health hazards, continuous Priority, Priority Foundation or Core violations, and recurring Priority or Priority Foundation violations.
- Verify if the policy has been adopted and signed by the Health Officer.
- Review the past three years of evaluation reports from the sample of establishments to determine if the department’s enforcement policy is being followed. An individual establishment folder will be considered to be in compliance when the appropriate action specified in the enforcement policy is taken to eliminate: (see MDARD’s “Model Enforcement Policy” for definitions):
 - Unauthorized construction
 - Operation without a license
 - Imminent health hazards
 - Continuous Priority and Priority Foundation violations
 - Recurring Priority and Priority Foundation violations

Tips for passing MPR 10

- Use the MDARD’s “Model Enforcement Policy.”
- Make certain that the model has been adopted by the health officer. The mere presence of a draft of the MDARD model policy in a folder is not sufficient.
- Conduct routine quality assurance reviews to make certain staff are following the enforcement policy.

PROCESS:

Using routine and follow-up evaluations to determine if enforcement action is necessary, the evaluator must identify violations according to the MDARD Interpretative Memorandum of November 8, 2000, titled “Uniform Citation of Violations.” (Appendix A)

Routine evaluations must be a comprehensive inspection of the operation, facility, hygienic practices, food handling, and related aspects. **Violations of priority or priority foundation items should be corrected at the time of inspection. A follow-up evaluation must be conducted within 30 days or less when a priority or priority foundation violation is not corrected during the routine evaluation; or a substantial number of core violations are cited but not corrected during the routine evaluation. However, if not more than two priority foundation item violations are noted and the director determines that the violations are not a risk to food safety; the director may confirm correction of the priority foundation item violation at the next routine evaluation.**

Follow-up evaluations must verify whether violations have been corrected or if there is a need for further enforcement action. During the follow-up evaluation, the food program inspector should not inspect the entire operation, but instead should concentrate on violations previously cited. However, if a different priority or priority foundation violation is identified, it should be cited.

Core item violations should be corrected within 90 days, but the correction may be confirmed at the next routine evaluation.

DEFINITIONS

Active Managerial Control: A purposeful incorporation of specific action or procedures by industry management into the operation of their business to obtain control over foodborne illness risk factors. This is a preventive rather than an active approach to food safety through a continuous system of monitoring and verification.

Continuous violation: A specific violation that is observed during a routine evaluation, is documented, and persists on the next two follow-up evaluations without correction. (Example - routine/follow-up/follow-up.)

Core Item: Means a provision of the Food Code that is not designated as a Priority item or a Priority Foundation item. This violation usually relates to general sanitation, operational controls, sanitation standard operating procedures, facilities or structures, or general maintenance.

Director: "Director" means the director of the department or his or her designee.

Imminent Health Hazard- Food Law (1109 (a)): A condition at the food establishment that the director determines requires immediate action to prevent endangering the health of people. (See Appendix D-8 for a sample letter.)

Minor Noncompliance: The Person In Charge is practicing Active Managerial Control as evident by demonstrating substantial compliance with the Food Code Standard; however, they are not in full compliance with the Food Code Standard (i.e. Proper hand washing techniques were observed throughout the evaluation, but one employee did not wash his hands when returning to his workstation after a break.)

Major Noncompliance: The Person in Charge is not practicing Active Managerial Control as evident by demonstrating substantial noncompliance with the Food Code Standard. (Throughout the evaluation, hand washing was absent. When mentioned to the Person in

Charge, the evaluator was told that they were too busy to take the time for hand washing during the lunch rush.)

Priority Item: A provision in the Code whose application contributes directly to the elimination, prevention, or reduction to an acceptable level, hazards associated with foodborne illness or injury and there is no other provision that more directly controls the hazard. These violations have a quantifiable measure to show control of hazards such as cooking, cooling, and handwashing.

Priority Foundation Items: A provision in the Food Code whose application supports, facilitates, or enables one or more Priority items. These violations include items that require the purposeful incorporation of specific actions, equipment, or procedures by industry management to attain control of risk factors that contribute to foodborne illness or injury, such as personnel training, infrastructure, or necessary equipment, HACCP plans, documentation or record keeping, and labeling.

Recurring Violations: A specific violation that is observed during a routine evaluation, is documented, is corrected, and recurs. Two examples of a recurring violation are:

1. The same violation is documented on three consecutive routine inspections, but the violation is corrected after each documentation, OR
2. A specific violation that is observed during a routine inspection, is document on three of the last five evaluations, but need not be on consecutive evaluations.

Risk Control Plan- A written document developed by the establishment in cooperation with the department for the purpose of correcting a violation that has been repeated on two or more consecutive evaluations. A risk control plan should address what the problem is, why it is a problem, how it will be solved; as well as methods to ensure it does not occur again. Successful risk control plans are often developed with a team of people instead of individually. They involve training, teaching, and coaching staff on proper procedures. Risk control plans will be reviewed by department representatives to determine, if followed, that the risk control plan corrects the violation. (See Appendix B for a sample Risk Control Plan.)

Unauthorized Construction- If any person constructs or begins construction of a new food service establishment, or if any person constructs or begins a remodel of a portion of an existing food service establishment without an approved plan, the Health Officer and/or the LHD shall take action as provided in Section 3117 of the Food Law. If the Health Officer and/or the LHD determines that any person is constructing or remodeling a food service establishment in violation of the provisions of this Food Code, the Health Officer and/or the LHD shall order the immediate cessation of the construction, alterations, conversions, or remodeling until the owner/licensee submits appropriate and acceptable plans and specifications to the Health Officer and/or the LHD. (See Appendix D-10 for a sample letter.)

ENFORCEMENT OPTIONS:

The goal of this model policy is to achieve consistent and progressive model enforcement.

Enforcement decisions that vary from the typical procedure of Office Conference, Informal Hearing, and Formal Hearing, may be made by the supervisor / E.H. Director dependent on the circumstances and information provided. These decisions must be

thoroughly documented so as to provide a clear enforcement path for corrections of these violations.

Optional pre-enforcement actions may consist of the following steps:

Risk Control Plan: (See Appendix B)

Standard Operating Procedures (SOPs): Procedures specific to an operation that describe the activities necessary to complete tasks in accordance with the Food Code and Food Law. The procedures are used to train the staff members responsible for the tasks. Three purposes for establishing SOPs are: to protect products from contamination from microbial, chemical, and physical hazards; to control microbial growth that can result from temperature abuse; and to ensure procedures are in place for maintaining equipment.

Warning Letter: A letter is issued by the supervisor that lists the violations and establishes compliance requirements. This letter can also be a warning that the violation has occurred two times, and the third violation will start the formal enforcement process. (See Appendix D)

Typical model enforcement for Priority, Priority Foundation, and Core violations consists of the following steps:

Office Conference: An Office Conference is a meeting between an establishment owner or a designated representative, and LHD representatives, for the purpose of reviewing the severity of observed violations, the need for correction, and consequences of allowing violations to continue. In addition, the conference is intended to reach agreement on procedures that, if followed, will result in compliance with Food Law and Food Code. Office conferences are preliminary to informal hearings. (See Appendix C for additional information and Appendix D-2, D-3 and D-4 for sample letters.)

Informal Hearing: This is a meeting between a licensee or designated representative, and LHD representatives. This is preliminary to issuance of a formal notice of the department's intent to revoke or suspend the license. This process should be coordinated through the Health Officer. (See Appendix C for additional information and Appendix D-5 for sample letters.)

Formal Hearing: A formal hearing is held for the purpose of determining whether a food service license should be suspended or revoked; or to determine whether an order from the Health Officer to suspend food service should be relieved. In addition, a food service license holder may request a formal hearing if the licensee is aggrieved by an order of the Health Officer or his agent. (See Appendix C for additional information and Appendix D-6 for sample letters.)

ADDITIONAL ENFORCEMENT TOOLS (These tools do not replace enforcement actions.)

Fees / Fines – Some LHDs may have adopted local ordinances, which allow them to charge a re-inspection fee. Some may subject the licensee to civil fines as part of the enforcement process. Other jurisdictions may charge the licensee for the cost of the enforcement process. All of these policies must be associated with the LHD fee schedule.

License Limitation – The agency may place restrictions on a food service license, limiting the preparation of food for the purpose of protecting the public’s health. A licensee must be provided an opportunity for an administrative hearing on the issue of the imposition of the license limitation. A licensee may, at any time, request a re-inspection of the food service establishment for removing the limitation and re-instating the full license. (Food Law)

License Revocation or Suspension – Usually part of the formal hearing process. (See Appendix D-7)

Order to Cease Food Operations – When continuance of the operation would create an imminent or substantial health hazard. (See Appendix D-8)

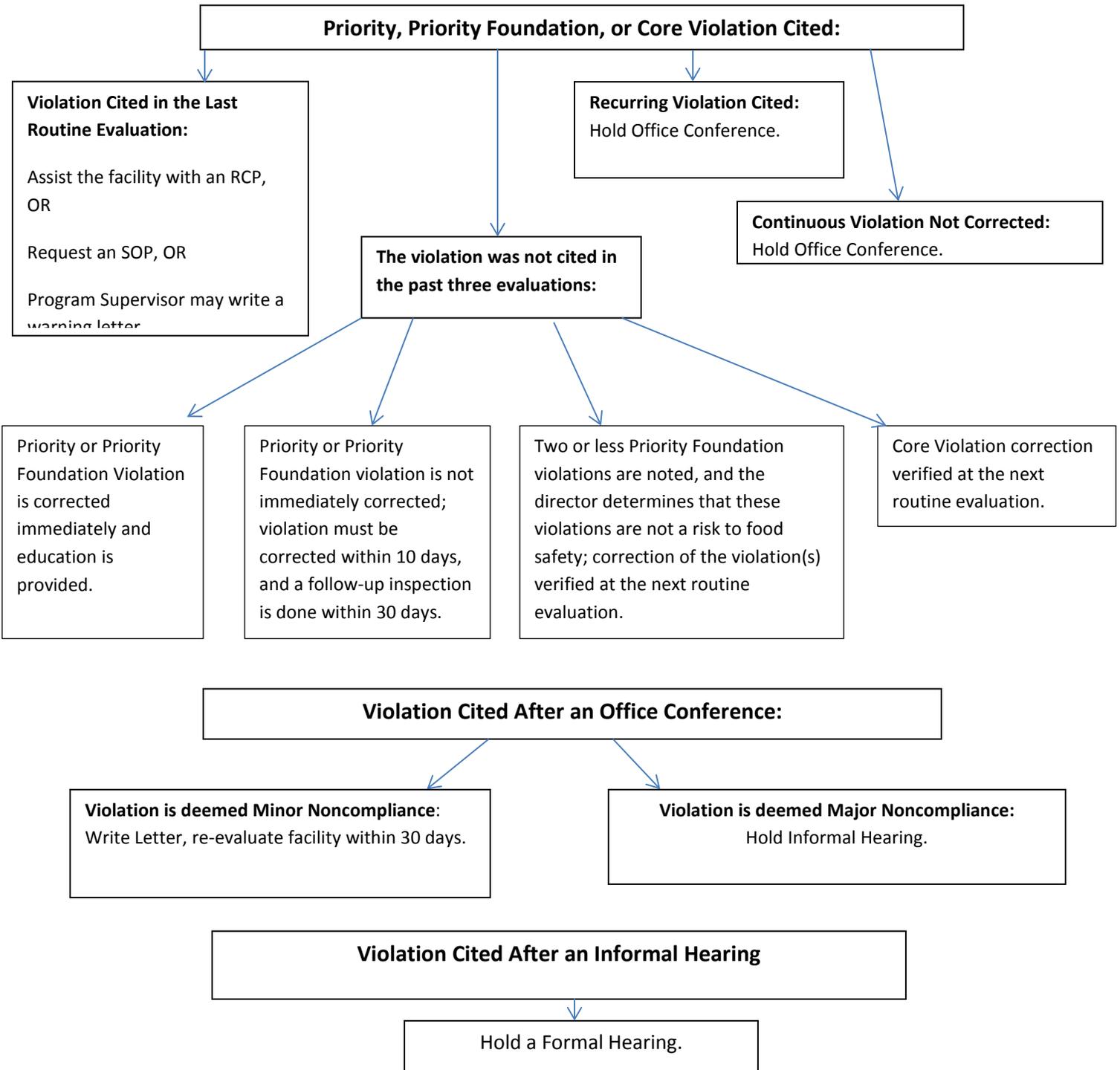
Order to Cease All Food Operations – When an operator does not possess a food service establishment license. (See Appendix D-9)

Order for All Construction to Cease – When plans for construction or remodeling have not been submitted and/or approved.

Seizure – Order issued to hold food found to be sold, held for sale, or exposed for sale in violation of state laws and regulations, or suspected of being in violation of state laws and regulations. Follow-up is required to record disposition of product. (Food Law, §2105)

EXAMPLE 1- MDARD MODEL ENFORCEMENT POLICY VIOLATION FLOW CHART

RECOMMENDED ENFORCEMENT ACTION STEPS FOR VIOLATIONS



Note: In all steps of enforcement, including the citation of a violation, the licensee has a right to appeal the decision of the State or County representative.

EXAMPLE 2- An Example of an LHD Enforcement Protocol Format (Be sure to include all required steps of enforcement when using this format.) **(Enforcement of Core violations must also be addressed.)**

Continuation of Priority and/or Priority Foundation Violations

Inspection Conducted: Priority or Priority Foundation violation found. Are they corrected at the time of the inspection?

YES

NO

No further action required.

Inform the operator that correction must be made within 10 days. In addition, the operator needs to be told that if the violation is not corrected at the time of the follow-up inspection, they will be called for a hearing (if the problem is employee practice), or be charged \$100 fine (if the problem is a physical condition).

Conduct a follow-up inspection within 30 days. Is the violation corrected?

YES

NO

The sanitarian will fax a copy of the last routine inspection and the follow-up inspection, along with a copy of the food license to the Food Program Coordinator.

EMPLOYEE PRACTICES

PHYSICAL CONDITIONS

The facility will be charged \$100 per Priority/Priority Foundation violation. Another follow-up will be conducted within 30 days. Is the violation corrected?

An informal hearing is held. Within 30 days a follow-up inspection is conducted. Is the violation corrected?

NO

YES

YES

NO

Informal Hearing held. Another follow-up inspection will be done within 30 days. Is the violation corrected?

No further action is required.

An informal hearing is held. Within 30 days a follow-up inspection is conducted. Is the violation corrected?

NO

YES

YES

NO

Formal Hearing held. Final corrective action decided.

EXAMPLE 3- An Example of an LHD Enforcement Protocol Format

(Be sure to include all required steps of enforcement when using this format.)

STEPS 1-6 ARE THE PROGRESSIVE ENFORCEMENT ACTIONS TAKEN TO ASSURE COMPLIANCE WITH THE FOOD LAW	
Step 1	<p style="text-align: center;">Routine evaluation determines that establishment is in substantial compliance because:</p> <ul style="list-style-type: none"> ▪ No Priority or Priority Foundation violations were found – or – ▪ Priority or Priority Foundation violations were found but corrected immediately or by the time allowed – and – ▪ Amount of core violations was not substantial – and – ▪ No repeat violations were found
Step 2	<p style="text-align: center;">Follow-up evaluation required because:</p> <ul style="list-style-type: none"> ▪ Priority or Priority Foundation violations were not corrected at the routine inspection and time was allowed for correction – or – ▪ Amount of Core violations was substantial – or – ▪ Repeat violations were found
Step 3	<p style="text-align: center;">Office conference required because:</p> <ul style="list-style-type: none"> ▪ Priority or Priority Foundation violations were not corrected after Step 2 ▪ Core violations were substantial and not corrected after Step 2 ▪ Chronic repetition of violations at routine evaluations despite correction after Step 2 <p>The Environmental Health Supervisor presides over the office conference. A compliance schedule is set at the office conference and signed by operator.</p>
Step 4	<p style="text-align: center;">Notice of intent to limit, suspend, or revoke a license issued and informal hearing required because:</p> <ul style="list-style-type: none"> ▪ Compliance schedule from Step 3 not met ▪ Violations are still present or repeated after Step 3 <p>The Environmental Health Supervisor presides over the informal hearing. Licensee may submit 2 page summary of his/her case 3 business days before the hearing. Corrective actions ordered, based on status of violations.</p>
Step 5	<p style="text-align: center;">Order to limit, suspend, or revoke a license issued because:</p> <ul style="list-style-type: none"> ▪ Corrections not made in accordance with orders issued in Step 4 ▪ Other situations warrant this action to protect public health <p>Licensee offered the right to appeal the limitation, suspension, or revocations at a formal hearing.</p>
Step 6	<p style="text-align: center;">Formal hearing before the Food Licensing Board of Review convened because:</p> <ul style="list-style-type: none"> ▪ Licensee appeals the order issued in Step 5 <p>Licensee may submit 2 page summary of case to the board 5 business days before the formal hearing. The Board of Review upholds or overturns the decision of the LHD to deny, limit, suspend or revoke a license, based on evidence presented. The decision is final.</p>
<p>Other situations, listed below, may require action to protect public health. In every case, except when a hold/destruction order is issued for suspect food or beverages, a licensee or operator may appeal the order (see Steps 5 and 6 above).</p>	
Imminent Health Hazard	
<p>Operation ordered closed immediately until hazard is eliminated. Hazards include, but are not limited to:</p> <ul style="list-style-type: none"> ▪ Lack of power, water, hot water, refrigeration, sewer, or presence of sewage ▪ Severe insect or rodent infestation ▪ Damage due to fire, flooding, or severe weather ▪ Unchecked foodborne illness outbreak and continued exposure of patrons to disease causing organisms 	
Operation Without a License	
<p>Operation ordered closed immediately until license is approved.</p>	
Operation Beyond Capability	
<p>Operation ordered limited immediately:</p> <ul style="list-style-type: none"> ▪ Menu scaled back to the point where food safety can be assured – or – ▪ Operation (hours, number of seats, etc.) scaled back to the point where food safety can be assured 	
Construction or Remodeling Without a Permit	
<p>Stop work order issued immediately. Order stays in effect until plans for the construction or remodeling are approved by the LHD.</p>	
Safety of Foods or Beverages Suspect	
<p>Hold order placed on the food or beverage. Order is lifted when the operator provides laboratory proof that the food or beverage is safe. Otherwise, the food or beverage is destroyed.</p>	
Denial	
<p>Issuance of license is denied for failure to meet minimum requirements.</p>	

APPENDIX A

Date: **Effective 11/08/00**

INTERPRETATIVE MEMORANDUM

TO: All Local Health Departments
Attn.: Health Officer/Director of Environmental Health/Chief Sanitarian
MDARD Food Program Staff

FROM: Food Service Sanitation Section & Science and Technology Section
Food and Dairy Division

SUBJECT: **Uniform Citation of Violations**

Background

All those involved in food inspections agree that uniformity of the inspection process is critical. Operators become frustrated when the requirements seem to change from county to county or inspector to inspector. Inspectors become embarrassed when they are caught in a situation where another inspector contradicts them or issues conflicting requirements.

One aspect of uniformity is a consistent method for citing violations. The following process delineates the specifics of what constitutes a violation. It limits the possible shades of gray, but does not totally eliminate them.

Steps in Determining and Citing Violations

Step 1 - Does a violation exist?

Items are marked as violations on the inspection report when they clearly exist in the food establishment. A violation represents a deviation from a Food Code (FC) or Food Law provisions. Slight violations, such as one dirty utensil among a thousand clean ones, does not indicate that the establishment is significantly deviating from the requirement to use clean utensils.

Step 2 - Is there one or more than one violation?

Each violation of a code provision is reported as a separate item on the inspection report. This does not mean, however, that each instance should be considered a distinctly separate reportable violation. Some discretion is warranted when preparing the inspection report, but this discretion should fall within the following guidelines:

A. Grouping by Common Cause

Numerous violative items resulting from a common cause should be categorized into a single violation.

Example 1: A cooler with mechanical problems may result in a dozen or more potentially hazardous food items being at a violative temperature. The cooler is considered a malfunctioning refrigeration device under FC § 4-501.11, Cooling, Heating, and Holding Capacities, because repairs are needed to bring the unit into compliance. These numerous items are categorized as one food temperature violation and cited only one time under FC § 3-501.16(B) or (C), Potentially Hazardous Food, Hot and Cold Holding. (Of course, if the time the food is out of temperature warrants, each of the violative foods

should be discarded by the permit holder or person in charge and disposition noted on the report.)

B. Separation by Type

A single situation may contain multiple violations. Each type of violation should be separated out by category and cited.

Example 2: A cooling unit is properly functioning, but improper cooling practices were used, resulting in the high temperatures being found in the potentially hazardous food. This is a violation of FC § 3-501.15(A), Cooling Methods, **and** FC § 3-501.16(B) or (C), Potentially Hazardous Food, Hot and Cold Holding.

C. Separation of Multiple Causes

When similar violative items occur from separate causes, each item is cited individually. *Example 3:* Two separate coolers have items out of temperature as the result of two separate instances of improper practices. Each instance should be individually cited as a violation. The details included in each citation should clearly delineate the conditions found in each instance.

Example 4: A large meat cutting room has numerous separate areas requiring cleaning. If there were a buildup of old food debris and other filth on the floor of the room in five separate areas, then one violation would exist. However, if the cleaning problem existed in the meat room, the produce area, bakery, and two restrooms, one violation of FC § 6-501.12(A) is cited for each of the incidences listed.

Step 3 - Record all violations found.

Record inspection findings on the report to detail the violations found during the inspection. This applies even to those items corrected during the inspection (note corrections on the inspection report). The U.S. Food and Drug Administration's studies of programs that have the most effective compliance found a correlation between the completeness of data recorded and the success of the compliance program.

Alternative approaches decrease regulatory effectiveness.

STYLE ELEMENTS

The following style elements for narrative reports have been found to increase the effectiveness of the report:

- List the ~~the~~ and PF violations first for emphasis.
- Leave a blank line between individual violations cited.
- Note repeat violations. Repeat items are those that were in violation on the last inspection. Indicating when the original violation occurred may also be helpful. Notation may be made with an asterisk and footnote.

Reference: Annex 4 of the FDA Food Code

APPENDIX C

HEARING GUIDANCE FOR OFFICE CONFERENCE, INFORMAL AND FORMAL HEARINGS

NOTE: All enforcement correspondence should list the actual noncompliant violation(s) cited (including the Food Code or Food Law section numbers), and the dates the violations are cited.

All letters should be either hand delivered with documentation; or delivered as Certified Mail with return receipt for documentation.

All enforcement actions/decisions should be thoroughly documented (meeting minutes, letters, etc.).

OFFICE CONFERENCE:

An office conference may result in development of a Risk Control Plan or requirements for providing Standard Operating Procedures.

Office conferences are preliminary to informal hearings. An office conference may be held for any or all of the following reasons:

1. A written request from licensee.
2. A recurring or continuous violation is found.
3. Lack of active managerial control is exhibited at the establishment.

A follow-up evaluation should be completed to verify whether violations have been corrected or if there is a need for further enforcement action.

INFORMAL HEARING:

An informal hearing is held to determine correction schedules and license limitations necessary to create compliance with Michigan's food service regulations and to protect the public health. An informal hearing may be held for any or all of the following reasons:

1. Failure to comply with an order of the Health Officer or their designee to correct recurring, continuous, or Priority, Priority Foundation, or Core Food Code violations.
2. Failure to meet the minimum requirements of the Food Law.
3. Repeat violations are found during routine evaluations following an office conference.

If a representative of the LHD observes practices or conditions in violation of an existing compliance agreement, the requirement for an informal hearing shall be noted on the evaluation report. The licensee shall be notified of the time, place, and date for the informal hearing in a written notice. The notice shall state the reasons for the hearing; and shall advise the licensee of his/her right to legal representation at the hearing.

At the hearing, a hearing officer will hear testimony from the LHD staff and the licensee or licensee's representative. The procedures developed in the Office Conference to correct the

violation(s) will be reviewed. The hearing officer shall mandate corrections and a compliance schedule.

The facility shall remain in compliance with mandated corrections for the length of the compliance schedule. The LHD must verify correction of the violation to see if there is a need for further enforcement action.

FORMAL HEARING:

A Formal Hearing may be held for any or all of the following reasons:

1. Either upon request to the Health Officer, by or on behalf of, any licensee or licensee's representative whose license has been revoked.
2. If a foodservice establishment has failed to comply with requirements set forth by an informal hearing; a formal hearing shall be afforded as soon as possible, within a period not to exceed ten working days.
3. Interfering with an agent of the Health Officer in performance of his/her official duties.

The hearing shall be conducted during the working hours of (LHD NAME) Health Department at the time and place designated by the Health Officer. The Hearing Board shall consist of members determined by the LHD, applicable to local codes. The board shall include a member of the local governmental entity and the regulatory agency.

Upon conclusion of the presentations at the hearing, the Hearing Board shall determine whether and under what stipulations the affected license shall be re-instated; or shall be further suspended, limited, or revoked; and shall notify the licensee in writing of the determinations.

The decision of the Hearing Board, following the hearing, shall be final unless appealed to a court of competent jurisdiction. The licensee or licensee's representative may attend the hearing with witnesses, and may be represented by legal counsel. In the event the licensee or licensee's representative fails to attend said hearing, the licensee shall be deemed to have been afforded an opportunity to comply with said regulations.

Formal Hearing Procedures:

Notification of Formal Hearing: Notification to licensee of a Formal Hearing shall be sent by certified/return receipt requested mail or hand-carried to licensee/operator of the facility and shall include the following:

- A. Dates of previous routine and follow-up inspections, relative to the formal hearing.
- B. List of deficiencies, item by item or statement of issues.
- C. A statement that deficiencies are in violation of Act 92 of 2000, as amended.
- D. Time, date, and place of Formal Hearing. Address and phone number of the local health department.
- E. Notice that the licensee may have legal counsel present.
- F. No less than 48 hours notice if rescheduling is necessary.
- G. Notice that a failure to appear or reschedule may result in revocation of license to operate a food service establishment.

Formal Hearing Requirements:

1. A hearing may be adjourned if the licensee sends a written notification of inability to attend the hearing no less than 48 hours before the scheduled hearing date. If the licensee fails to appear without giving prior notice, the hearing may proceed and a decision may be rendered in the licensee's absence.
2. The (NAME OF LHD) shall prepare an official record of all hearings, which shall include:
 - a. Notices, evaluation reports, correspondence, and intermediate rulings.
 - b. Questions and offers of proof, objections and rulings thereon.
 - c. Evidence presented.
 - d. Proposed findings.
 - e. Any decisions, opinions, orders, or findings of fact by the officer presiding at the hearing and by the (NAME OF LHD).

Legal Representation and Witnesses:

1. Licensee and (NAME OF LHD) may have legal representation and witnesses in their behalf.
2. The Hearing Officer may require attendance and the giving of testimony by witnesses, and the production of books, papers, and other documentary evidence.
3. A party may cross-examine a witness, including the author of a document prepared by, on behalf of, or for use by the (NAME OF LHD) and offered in evidence. A party may submit rebuttal evidence.
4. The (NAME OF LHD) shall make all records in a case, including statements by (NAME OF LHD) witnesses, available to opposing parties for use on cross-examination.

Evidence:

1. Parties shall be given an opportunity to present oral and written arguments on issues of law, policy, and facts.
2. All evidence to be presented at a hearing shall be entered only at the time of the hearing. No evidence will be added or deleted after the hearing.
3. Irrelevant, immaterial, or repetitious evidence may be excluded. Objections to offers of evidence may be made and shall be noted in the record. Hearsay evidence and testimony may be allowed, but the weight will be adjusted accordingly.
4. A deposition may be used in lieu of other evidence, when taken in accordance with the Michigan Court Rules.
5. Documentary evidence may be received in the form of a copy or excerpt. All documentary evidence, incorporated by reference, must be made available for examination by licensee, his/her representative, or legal counsel.

Decisions:

1. Decision of the Hearing Board shall be rendered within 30 days of the hearing and shall be final concerning the administrative hearing process.

2. Final decision in a case must be read into the record, or put into written form and copies sent to all concerned parties and attorneys of record. A final decision or order shall include findings of fact and conclusions of law.
4. An appeal may be sought through Circuit Court not later than 60 days after the date of delivery or mailing notice of the final decision.

FORMAL HEARING, SEQUENCE OF REPRESENTATIONS:

The sequence of presentation at hearing shall be as follows:

A. Call to order.

1. Date, time, and reason for hearing stated.
2. Introductions: All names, positions and titles, representatives, and reasons for attendance of individuals present at the hearing shall be stated for the record by the Hearing Officer. At this time, the Hearing Officer shall question Board Members as to any conflict of interest in the case before the Board.

B. Hearing Format:

1. Proceedings are to be recorded and kept available as a matter of public record.
2. (NAME OF LHD) staff shall present their case, allowing opportunities for cross-examination by the licensee or the licensee's representative.
3. The licensee or the licensee's representative shall present their case, allowing an opportunity for cross-examination by the (NAME OF LHD) staff, or the (NAME OF LHD) representative.
4. Both the (NAME OF LHD) and the licensee shall have an opportunity to clarify their respective positions.
5. Hearing Board members may ask questions at any time.
6. The Board may deliberate on the testimony and evidence for no more than 30 days. The Board must render a decision within 30 days.
7. Final decisions of the Board shall be announced with all parties present in a meeting open to the public. A decision may be made for the (NAME OF LHD) or the licensee on each allegation.

APPENDIX D- SAMPLE ENFORCEMENT LETTERS

D-1

Sample Warning Letter

Date

Name of Facility

Address

Attn: OWNER / PIC

Facility Name / License Number:

Subject: Violations repeated on the last two evaluation reports for your facility

Reason for Warning Letter: Our office conducted an evaluation of your food establishment on (DATE). During the evaluation, it was noted that the following violations were cited on your last two evaluation reports.

(LIST VIOLATIONS RECORDED THAT ARE REPEATED VIOLATIONS)

In order to assure long term compliance with the Food Code, our office will conduct a follow-up evaluation at your facility. Please be advised that future non-compliance with Food Code regulations could lead to administrative enforcement and fees.

If you have questions about these matters, please call me at (Phone #).

Thank you for your attention to these matters.

Respectfully,

Food Program Supervisor / Health Officer

NOTICE OF OFFICE CONFERENCE

Date

Name of Facility

Address

Attn: OWNER / PIC

Facility Name / License Number:

Subject: Office Conference to address (CONTINUOUS / RECURRING) violations.

Date of Office Conference:

Time:

Location:

Reason for Office Conference: The Food Law and the Food Code require use of a progressive enforcement policy to correct (CONTINUOUS / RECURRING) violations. This office conference is being held to reach an agreement on correction of these violations.

An evaluation of (NAME OF FACILITY) was conducted on (DATE). During the evaluation the following (CONTINUOUS / RECURRING) violations were noted:

(LIST VIOLATIONS- include the appropriate definition of the violation listed below)

(A CONTINUOUS VIOLATION IS DEFINED AS A VIOLATION THAT IS OBSERVED DURING A ROUTINE EVALUATION, IS DOCUMENTED, AND PERSISTS ON THE NEXT TWO FOLLOW-UP INSPECTIONS WITHOUT CORRECTION.)

(A RECURRING VIOLATION IS DEFINED AS A VIOLATION THAT IS OBSERVED DURING A ROUTINE EVALUATION, IS DOCUMENTED, CORRECTED, AND RECURS AT THE NEXT EVALUATION)

Requirement: You or your authorized agent is required to attend an office conference at the previously stated date and time.

Prior notice of at least 48 hours is required if either party wishes to reschedule the Office Conference.

Should you fail to comply with this notice or the decision of this meeting; further administrative action will be pursued regarding the establishment's food license.

If you have any questions, please contact this office at (PHONE NUMBER).

Respectively,

(FOOD PROGRAM SUPERVISOR / HEALTH OFFICER)

Hand Delivered by: _____ **Certified mail/ return receipt requested:** _____

OFFICE CONFERENCE COMPLIANCE FORM

Date

Name of Facility

Address

Attn: OWNER / PIC

Regarding Facility Name / License Number:

Subject: Office Conference Agreement to address (CONTINUOUS / RECURRING) violations.

Date of Office Conference:

Time:

Location:

Office Conference Attendees:

I, the licensee or Designated Representative, agree to comply with the violation correction schedule established at this Consultation.

Name: _____ Date: _____

Failure to comply with the violation correction schedule will result in this agency taking administrative action against your food service license.

NOTICE OF NO-SHOW AT OFFICE CONFERENCE

Date

Name of Facility

Address

Attn: OWNER / PIC

Regarding Facility Name / License Number:

Subject: Office Conference Agreement to address (CONTINUOUS / RECURRING) violations.

Date of Office Conference:

Time:

Location:

Office Conference Attendees:

An Office Conference Notice was delivered to you (CERTIFIED MAIL / HAND DELIVERED) on (DATE) to reach an agreement on corrections of violations found during the (DATE) evaluation of your facility. The Health Department did not receive a request to reschedule the meeting as provided in the original notice.

In your absence, the Office Conference was held, and a violation correction schedule was established. You must comply with the attached correction schedule.

A revisit will be conducted by a representative of this department within the next _____ (DAYS / WEEKS) Failure to comply with this violation correction schedule will result in an Informal Hearing Notice.

If you have any questions, you may contact the office at (PHONE NUMBER)

Respectively,

Food Program Supervisor / Health Officer

Hand Delivered by: _____ Certified mail/ return receipt requested: _____

NOTICE OF INFORMAL HEARING

Date

Name of Facility

Address

Attn: OWNER / PIC

Facility Name / License Number:

Subject: Informal Hearing to address (CONTINUOUS / RECURRING) violations.

Date of Office Conference:

Time:

Location:

Reason for Office Conference: The Food Law and the Food Code require use of a progressive enforcement policy to correct (CONTINUOUS / RECURRING) violations. This Informal Hearing is being held to reach an agreement on correction of these violations.

On (DATE) an Office Conference was held to discuss long term corrections of these violations. Your facility was informed that further administrative action would occur if the violations continued.

An evaluation of (NAME OF FACILITY) was conducted on (DATE). During the evaluation the following (CONTINUOUS / RECURRING) violations were noted:

(LIST VIOLATIONS- include the appropriate definition of the violation listed below)

(A CONTINUOUS VIOLATION IS DEFINED AS A VIOLATION THAT IS OBSERVED DURING A ROUTINE EVALUATION, IS DOCUMENTED, AND PERSISTS ON THE NEXT TWO FOLLOW-UP INSPECTIONS WITHOUT CORRECTION.)

(A RECURRING VIOLATION IS DEFINED AS A VIOLATION THAT IS OBSERVED DURING A ROUTINE EVALUATION, IS DOCUMENTED, CORRECTED, AND RECURS AT THE NEXT EVALUATION)

Requirement: You or your authorized agent is required to attend an Informal Hearing at the previously stated date and time. Prior notice of at least 48 hours is required if either party wishes to reschedule the Hearing. You may be represented by legal counsel if you so elect.

Should you fail to comply with this notice or the decision of this meeting; further administrative action will be pursued regarding the establishment's food license.

If you have any questions, please contact this office at (PHONE NUMBER).

Respectively,

Food Program Supervisor / Health Officer

Hand Delivered by: _____

Certified Mail/Return Receipt Requested:

NOTICE OF FORMAL HEARING

Date

Name of Facility

Address

Attn: OWNER / PIC

Facility Name / License Number:

Subject: Formal Hearing to address (CONTINUOUS / RECURRING) violations.

Date of Office Conference:

Time:

Location:

Reason for Office Conference: The Michigan Food Law and the FDA Food Code requires use of a progressive enforcement policy to correct (CONTINUOUS / RECURRING) violations. This Formal Hearing is being held to reach an agreement on long term correction of these violations; and could lead to license revocation, suspension, or an immediate closure order.

On (DATE) an Informal Hearing was held to discuss long term corrections of the violations. Your facility was informed that further administrative action would occur if the violations continued.

An evaluation of (NAME OF FACILITY) was conducted on (DATE). During the evaluation the following (CONTINUOUS / RECURRING) violations were noted:

(LIST VIOLATIONS- include the appropriate definition of the violation listed below)

(A CONTINUOUS VIOLATION IS DEFINED AS A VIOLATION THAT IS OBSERVED DURING A ROUTINE EVALUATION, IS DOCUMENTED, AND PERSISTS ON THE NEXT TWO FOLLOW-UP INSPECTIONS WITHOUT CORRECTION.)

(A RECURRING VIOLATION IS DEFINED AS A VIOLATION THAT IS OBSERVED DURING A ROUTINE EVALUATION, IS DOCUMENTED, CORRECTED, AND RECURS AT THE NEXT EVALUATION)

Requirement: You or your authorized agent is required to attend a Formal Hearing at the previously stated date and time. Prior notice of at least 48 hours is required if either party wishes to reschedule the Hearing. You may be represented by legal counsel if you so elect.

Should you fail to comply with this notice or the decision of this meeting; further administrative action will be pursued regarding the establishment's food license.

If you have any questions, please contact this office at (PHONE NUMBER).

Respectively,

Food Program Supervisor / Health Officer

Hand Delivered by: _____

Certified Mail/Return Receipt Requested:

SUMMARY SUSPENSION OF FOOD LICENSE

Date:

Name of Establishment:

Address:

License Number:

Due to an imminent and substantial health hazard (LIST VIOLATIONS) you are in violation of The Food Law.

Your establishment shall be closed until correction is made and the (LHD) determines that the violation(s) has (have) been eliminated or corrected.

You may request a contested case hearing on this matter by submitting a written request within fifteen (15) calendar days of this notice. The request shall be signed and shall include:

1. The name, address and telephone number of the appellant;
2. A short statement regarding the matters in question;
3. A short statement of the appellant's position.

(IF THERE IS A CHARGE FOR AN APPEAL, PLEASE LIST)

A request for a hearing does not nullify this notice. The establishment must remain closed pending results of the hearing or approval from the (LHD).

Address hearing request to:

NAME

ADDRESS

Hand delivered by: (LHD REPRESENTATIVE)

Received by: (LICENSEE OR DESIGNATED REPRESENTATIVE)

Date:

Time:

IMMEDIATE CLOSURE OF FOOD SERVICE ESTABLISHMENT / IMMINENT HEALTH HAZARD

Date

Name of Facility

Address

Attn: OWNER / PIC

Facility Name / License Number: IMMEDIATE CLOSURE OF THIS ESTABLISHMENT

Reason for Closure: Due to an imminent and substantial health hazard: (LIST VIOLATION), you are in violation of Public Act 92 of 2000, the Food Law of 2000. Your establishment shall be closed until correction is made and this department determines that the violation(s) has (have) been eliminated or corrected.

You may request a contested case hearing on this matter by submitting a written request within fifteen (15) calendar days of notice. The request shall be signed and shall include:

- (1) The name, address and telephone number of the appellant;
- (2) A short statement of the matters in question; and
- (3) A short statement of the appellant's position.

Also, a (COST OF HEARING FEE) filing fee must be submitted to (NAME OF LHD).

A request for a contested case hearing does not nullify this notice. The establishment must remain closed pending the results of the hearing or elimination of the violations.

The request should be addressed to:

(NAME)
(ADDRESS, CITY, STATE, ZIP)

Hand delivered by: _____ (LHD REPRESENTATIVE)

Received by: _____ (LICENSEE OR DESIGNATED REPRESENTATIVE)

Date: _____

Time: _____

OPERATING A FOOD SERVICE ESTABLISHMENT WITHOUT A LICENSE

Facility Did Not Renew Their License:

NOTE: If a facility is operating and has not renewed their Food Service Establishment License, the agency shall order the operator to cease all food service operations. Operations may not resume until the operator is in full compliance with all licensing requirements.

FINAL NOTICE

_____	_____
Establishment:	Date Notice Delivered
_____	_____
Address	Time (AM/PM)
_____	_____
City	License Number

You are in violation of the Food Law.

Section 12904(1) "A person shall not operate a food service establishment, transitory food unit, temporary food service establishment or vending machine location in this state without a license issued by the department."

You are hereby ordered to apply for a license to operate a food service establishment. Failure to apply for said license within 48 hours will result in closure of your business.

Submittal of the application (utilizing the pre-printed application if possible) with the appropriate fee of \$_____ and a late charge of \$_____, for a total of \$_____ must be received by this office located at {address} before _____ AM/PM on (date).

Notice Received by: (licensee or designated representative)

Food Program Supervisor / Health Officer

Date

D-10

**PLAN REVIEW WAS NOT APPROVED. A LICENSE WAS NOT ISSUED:
OPERATING A FOOD SERVICE ESTABLISHMENT WITHOUT A LICENSE**

If a facility has opened without Plan Review Approval and submission of a Food Service License Application, the agency shall order the operator to cease all food service operations at once. Operations may not resume until the operator is in full compliance with all licensing requirements.

NOTICE

Establishment:	Date Notice Delivered
Address	Time (AM/PM)
City	License Number

You are in violation of the Food Law.

Section 12904(1) "A person shall not operate a food service establishment, transitory food unit, temporary food service establishment or vending machine location in this state without a license issued by the department."

You are hereby ordered to submit the appropriate Plan Review Documents and apply for a license to operate a food service establishment. All construction work must cease immediately.

Submittal of the application (utilizing the pre-printed application if possible) with the appropriate fee of \$_____ and a late charge of \$_____, for a total of \$_____ must be received by this office located at {address} before _____ AM/PM on (date).

Notice Received by: (licensee or designated representative)

Food Program Supervisor / Health Officer

Date

An example of a Local Health Department Letter showing:

AN ORDER TO CEASE FOOD SERVICE OPERATIONS with a citation and fine section in the county policy. Use only when your department has such regulations)

Establishment Name: _____ License # _____

Address: _____

The following imminent or substantial hazard(s) to public health at the above referenced food service establishment was(were) observed and verified this date:

- Loss of electrical power
- Lack of hot water
- Loss of potable water supply
- Severe vermin infestation
- Backup of sewage into the establishment
- Improper sewage disposal
- Severe structural damage
- Ongoing foodborne illness
- Extremely poor sanitation
- Other: _____

Michigan’s Food Law, Act 92, Public Acts of 2000, Section 2113(1) states that: “The director may order immediate cessation of operation of a food establishment upon determination that continued operation would create an imminent or substantial hazard to the public health.”

Further, Section ____ of the _____ County Environmental Health regulations, effective _____, states in part: “The Health Officer may require immediate discontinuance of any operation...where continuation could create a health hazard.”

Under the authority of both the above cited Act and Regulations, you are hereby ordered to cease and desist immediately from all food service operations. Failure to comply with this order is a misdemeanor as provided by Section ____ of the same public act. This order will be lifted and an approval to resume operations will be granted upon demonstration to this department that the condition(s) causing the imminent public health hazard have been eliminated in the manner required.

Section 2113 (3) of the above cited act states: “If the director orders an immediate cessation of operation of a food establishment under subsection (1), the license holder may request an administrative hearing.” A petition for a hearing shall be made to the health officer within 30 calendar days of this notice.

Failure to comply with this order shall cause this department to pursue one or more of the following remedies:

1. **Petition a court for Injunctive Relief to restrain further operations.** {Authority: Act 368, P.A. 1978, Part 24, Section _____, and _____ County Environmental Health Regulations, Section _____}
2. **Issue a misdemeanor appearance ticket.** {Authority: Act 92, P.A. 2000, Section _____; Act 368, P.A. 1978, Part 24, Section _____; and _____ County Health Regulations, Section _____}.
3. **Levy a monetary civil penalty.** {Authority: Act 368, P.A. 1978, Part 24, Section _____, and _____ County Environmental Health Regulations, Section _____}.

RECEIVED BY
DATE

HEALTH DEPARTMENT REPRESENTATIVE

An Example of a Local Health Department Form Sent When it is Discovered that a Facility is

Operating a Food Service Establishment Without a License

ORDER OF IMMEDIATE CESSATION

Establishment Name: _____

Address: _____

The above referenced food service establishment is in operation without a food service establishment license approved by this department.

Under the authority of Michigan’s Food Law, Section 4101 AND the _____ County Environmental Health Regulations (Effective :) the above referenced food service establishment is hereby ordered closed. Food and drink service operations shall cease immediately.

Failure to comply with this order to close shall cause this department to pursue one or more of the following remedies:

- 1. Petition a court for Injunctive Relief to restrain further construction. {Authority: _____}
2. Issue a misdemeanor appearance ticket. {Authority: Act 92, P.A. 2000, as, amended, Section 5107; Act 368, P.A. 1978, Part 24, Section 2463; and _____ County Health Regulations}.
3. Levy a monetary civil penalty. {Authority: Act 368, P.A. 1978, Part 24, Section 2461, and _____ County Environmental Health Regulations, Section _____}

Should you wish to operate this food service establishment, you shall make all the necessary corrections to violations noted in the previous evaluation inspection. When the corrections have all been completed, call _____ at the _____ County Health Department for an opening inspection.

RECEIVED BY Food Program Supervisor / Health Officer DATE