



MICHIGAN

OFFICE OF THE AUDITOR GENERAL

AUDIT REPORT



THOMAS H. MCTAVISH, C.P.A.
AUDITOR GENERAL

The auditor general shall conduct post audits of financial transactions and accounts of the state and of all branches, departments, offices, boards, commissions, agencies, authorities and institutions of the state established by this constitution or by law, and performance post audits thereof.

– Article IV, Section 53 of the Michigan Constitution

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Michigan *Office of the Auditor General* **REPORT SUMMARY**

Performance Audit

Report Number:
791-0127-12

Weights and Measures Program

Consumer Protection Section, Laboratory Division, Michigan Department of Agriculture and Rural Development (MDARD)

Released:
August 2013

The mission of MDARD's Consumer Protection Section, within the Laboratory Division, is to prevent economic fraud and deception concerning weights and measures, motor fuel quality, and labeling and advertising of all commodities; to be responsible for environmental issues related to the distribution of gasoline products; to provide National Institute of Standards and Technology traceability on the State's standards and measures; and to provide regulatory resource expertise to the public, industry, and government.

Audit Objective:

To assess the effectiveness of MDARD's efforts to monitor the accuracy of weighing and measuring devices used for commerce and the accuracy of the stated weight, measure, or count of products for sale in Michigan.

Audit Conclusion:

MDARD's efforts to monitor the accuracy of weighing and measuring devices used for commerce and the accuracy of the stated weight, measure, or count of products for sale in Michigan were moderately effective. We noted four reportable conditions (Findings 1 through 4) and three observations (Observations 1 through 3).

Reportable Conditions:

MDARD had not established detailed written procedures for imposing fines and economic benefit penalties on businesses with inaccurate weighing and measuring

devices and short weight packages in accordance with State statutes (Finding 1).

The Weights and Measures Program did not conduct timely reinspections of condemned devices (Finding 2).

The Weights and Measures Program did not inspect all licensed retail motor fuel outlets, including gasoline stations, in accordance with the Laboratory Division's recommended time frames (Finding 3).

MDARD did not prioritize inspections based on a risk assessment to ensure the efficient use of limited resources and to help ensure that it periodically inspected high-risk devices, packages, businesses with price scanners, and businesses that post prices (Finding 4).

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Audit Objective:

To assess the effectiveness of MDARD's efforts to timely investigate and resolve complaints regarding weights, measures, price advertising, price scanner errors, and packaging.

Audit Conclusion:

MDARD's efforts to timely investigate and resolve complaints regarding weights, measures, price advertising, price scanner errors, and packaging were effective. Our audit report does not include any reportable conditions related to this audit objective.

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Agency Responses:

Our audit report contains 4 findings and 4 corresponding recommendations. MDARD's preliminary response indicates that it agrees with 3 recommendations and disagrees with 1 recommendation.

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A copy of the full report can be obtained by calling 517.334.8050 or by visiting our Web site at: <http://audgen.michigan.gov>



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August 7, 2013

Mr. Bob Kennedy, Chair
Michigan Commission of Agriculture and Rural Development
and
Ms. Jamie Clover Adams, Director
Michigan Department of Agriculture and Rural Development
Constitution Hall
Lansing, Michigan

Dear Mr. Kennedy and Ms. Clover Adams:

This is our report on the performance audit of the Weights and Measures Program, Consumer Protection Section, Laboratory Division, Michigan Department of Agriculture and Rural Development.

This report contains our report summary; description of program; audit objectives, scope, and methodology and agency responses and prior audit follow-up; comments, findings, recommendations, agency preliminary responses, and observations; and a glossary of acronyms and terms.

Our comments, findings, recommendations, and observations are organized by audit objective. The agency preliminary responses were taken from the agency's response subsequent to our audit fieldwork. The *Michigan Compiled Laws* and administrative procedures require that the audited agency develop a plan to comply with the audit recommendations and submit it within 60 days after release of the audit report to the Office of Internal Audit Services, State Budget Office. Within 30 days of receipt, the Office of Internal Audit Services is required to review the plan and either accept the plan as final or contact the agency to take additional steps to finalize the plan.

We appreciate the courtesy and cooperation extended to us during this audit.

Sincerely,

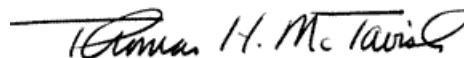

Thomas H. McTavish, C.P.A.
Auditor General

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Description of Program

The Michigan Department of Agriculture was created by Act 13, P.A. 1921 (Sections 285.1 - 285.7 of the *Michigan Compiled Laws*), and was renamed the Michigan Department of Agriculture and Rural Development (MDARD) by Executive Order No. 2011-2 in March 2011. The mission* of MDARD's Consumer Protection Section, within the Laboratory Division, is to prevent economic fraud and deception concerning weights and measures, motor fuel quality, and labeling and advertising of all commodities; to be responsible for environmental issues related to the distribution of gasoline products; to provide National Institute of Standards and Technology* traceability on the State's standards and measures; and to provide regulatory resources expertise to the public, industry, and government.

The Weights and Measures Program within the Consumer Protection Section is responsible for ensuring that the buying or selling of commodities on the basis of weight, measure, or count is done in accordance with the requirements of the Weights and Measures Act (Act 283, P.A. 1964, as amended). Weights and Measures Program inspectors conduct inspections of weighing and measuring devices used in commercial trade at retail establishments, warehouses, and laboratories in Michigan to ensure the accuracy of commodities sold to the public. Some examples of weighing devices are retail counter scales (e.g., meat, deli, and candy); animal livestock scales; vehicle scales; crane scales; and platform scales. Some examples of measuring devices are motor fuel pumps, home heating fuel meters, and propane dispensers. The Weights and Measures Program is also responsible for ensuring the accuracy of the net contents of all packaged products offered for sale by weight, measure, or count in Michigan, such as the net contents of boxes, cans, and bottles. Measuring counts are anything sold by the number of items, such as prepackaged nails, screws, and cotton swabs.

The Weights and Measures Program registers and monitors service agencies and personnel. Registered service agencies* can place commercial weighing and measuring devices into service, repair weighing and measuring devices, and return repaired condemned measuring devices to service. Registered service personnel must prove competency for different types of weights and measures by passing examinations conducted by the Weights and Measures Program. In fiscal year 2010-11, there were 91 registered service agencies with 303 registered service personnel.

* See glossary at end of report for definition.

In addition, the Weights and Measures Program is responsible for inspecting retail pricing; retail price scanners; and price posting of consumer items, merchandise, and commodities in accordance with the Shopping Reform and Modernization Act (Act 15, P.A. 2011).

As of September 30, 2012, the Weights and Measures Program employed 1 manager, 1 administrative support person, and 15 inspectors. For fiscal years 2009-10, 2010-11, and 2011-12, the Weights and Measures Program incurred expenditures of \$1.6 million, \$1.3 million, and \$1.8 million, respectively. For the fiscal year ended September 30, 2012, the Weights and Measures Program assessed 33 penalties against agencies totaling \$267,000 related to short weight packages* or inaccurate weighing and measuring devices.

* See glossary at end of report for definition.

Audit Objectives, Scope, and Methodology and Agency Responses and Prior Audit Follow-Up

Audit Objectives

Our performance audit* of the Weights and Measures Program, Consumer Protection Section, Laboratory Division, Michigan Department of Agriculture and Rural Development (MDARD), had the following audit objectives:

1. To assess the effectiveness* of MDARD's efforts to monitor the accuracy of weighing and measuring devices used for commerce and the accuracy of the stated weight, measure, or count of products for sale in Michigan.
2. To assess the effectiveness of MDARD's efforts to timely investigate and resolve complaints regarding weights, measures, price advertising, price scanner errors, and packaging.

Audit Scope

Our audit scope was to examine the program and other records of the Weights and Measures Program. This includes the process used by MDARD to inspect licensed retail motor fuel outlets and to assess fines and penalties for fraud and deception in the use of inaccurate weights and measures as well as inaccurate net weight packages. Our review did not include the process used by MDARD to assess fines and penalties for inaccurate motor fuel pumps and the Weights and Measures Program's oversight of registered service agencies and registered service personnel. We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives. Our audit procedures, conducted from July 2012 through January 2013, generally covered the period October 1, 2009 through October 31, 2012.

* See glossary at end of report for definition.

Audit Methodology

To establish our audit objectives, we conducted a preliminary review of the Weights and Measures Program operations. As part of our preliminary review, we interviewed Weights and Measures Program management and staff; reviewed applicable policies, procedures, laws, and regulations; and analyzed and conducted limited testing of the Weights and Measures Program records.

To accomplish our first objective, we evaluated MDARD's process to identify and inspect weighing and measuring devices, price scanning, or price postings at high risk for being inaccurate. We sampled and tested weights and measures fines and penalties imposed on businesses to determine the accurate calculation of fines and penalties and the economic impact on the public. We also sampled and tested inspection records in which the Weights and Measures Program inspectors condemned one or more weighing or measuring devices. We analyzed licensed retail motor fuel outlet inspection records. We evaluated MDARD's process to identify and inspect short weight packages. We sampled and tested fines and penalties imposed on businesses for underweight packages to determine the accurate calculation of fines and penalties and the economic impact on the public. We also sampled and tested inspection records.

To accomplish our second objective, we sampled and evaluated consumer complaints regarding fuel pumps, such as pricing errors, short measure, leaking hoses, and advertising discrepancies. Other complaints that we sampled and evaluated included propane and kerosene dispensers, scanning errors, and inaccurate scales resulting in short product sales. We obtained the representations of Weights and Measures Program management regarding the resolution of certain individual complaints and obtained and evaluated the Program's policies and procedures used in our testing of complaints.

When selecting activities or programs for audit, we use an approach based on assessment of risk and opportunity for improvement. Accordingly, we focus our audit efforts on activities or programs having the greatest probability for needing improvement as identified through a preliminary review. Our limited audit resources are used, by design, to identify where and how improvements can be made. Consequently, we prepare our performance audit reports on an exception basis.

Agency Responses and Prior Audit Follow-Up

Our audit report contains 4 findings and 4 corresponding recommendations. MDARD's preliminary response indicates that it agrees with 3 recommendations and disagrees with 1 recommendation.

The agency preliminary response that follows each recommendation in our report was taken from the agency's written comments and oral discussion subsequent to our audit fieldwork. Section 18.1462 of the *Michigan Compiled Laws* and the State of Michigan Financial Management Guide (Part VII, Chapter 4, Section 100) require MDARD to develop a plan to comply with the audit recommendations and submit it within 60 days after release of the audit report to the Office of Internal Audit Services, State Budget Office. Within 30 days of receipt, the Office of Internal Audit Services is required to review the plan and either accept the plan as final or contact the agency to take additional steps to finalize the plan.

We released our prior performance audit of the Motor Fuel Quality and Quantity Inspections and Enforcement Efforts, Laboratory Division, Department of Agriculture (791-0111-06), in December 2007. Within the scope of this audit, we followed up 2 of the 4 prior audit recommendations. MDARD complied with one prior audit recommendation. We rewrote the other prior audit recommendation for inclusion in Finding 3 of this audit report.

COMMENTS, FINDINGS, RECOMMENDATIONS,
AGENCY PRELIMINARY RESPONSES,
AND OBSERVATIONS

EFFECTIVENESS OF EFFORTS TO MONITOR THE ACCURACY OF WEIGHING AND MEASURING DEVICES AND THE STATED WEIGHT, MEASURE, OR COUNT OF PRODUCTS FOR SALE

COMMENT

Audit Objective: To assess the effectiveness of the Michigan Department of Agriculture and Rural Development's (MDARD's) efforts to monitor the accuracy of weighing and measuring devices used for commerce and the accuracy of the stated weight, measure, or count of products for sale in Michigan.

Audit Conclusion: MDARD's efforts to monitor the accuracy of weighing and measuring devices used for commerce and the accuracy of the stated weight, measure, or count of products for sale in Michigan were moderately effective. Our assessment disclosed four reportable conditions* related to procedures for fines and economic benefit penalties, reinspections of condemned devices, monitoring of licensed retail motor fuel outlets, and risk assessment for inspections (Findings 1 through 4).

In addition, our assessment resulted in three observations* related to the State law for weighing and measuring devices and packages, the assessment of penalties, and public notification of inspections (Observations 1 through 3).

FINDING

1. Procedures for Fines and Economic Benefit Penalties

MDARD had not established detailed written procedures for imposing fines and economic benefit penalties on businesses with inaccurate weighing and measuring devices and short weight packages. Establishing such procedures would help ensure that fines and economic benefit penalties were properly imposed and documented.

The Weights and Measures Act (Act 283, P.A. 1964, as amended) gives MDARD the authority to impose fines of between \$150 and \$2,500 on businesses with inaccurate weighing and measuring devices as well as short weight packages or

* See glossary at end of report for definition.

commodities offered for sale that are not labeled with the accurate weight. The statute also allows MDARD to impose economic benefit penalties in the amount that a business realized by overcharging the public.

MDARD established and implemented Commission Policy 10, which provides a general framework for administering enforcement action including granting program management significant discretion regarding the dollar amounts of fines and penalties to be imposed. However, MDARD should establish corresponding detailed procedures to provide guidance for imposing fines and economic benefit penalties.

We reviewed MDARD's inspections of weighing and measuring devices and packages between October 2009 and October 2012. Our review disclosed:

- a. MDARD did not charge businesses that violated weighing and measuring or short weight packaging standards the full economic benefit penalty amount that it calculated. In addition, MDARD did not document why it did not impose the economic benefit penalty that it calculated. We reviewed businesses that had been assessed economic benefit penalties or had failed packaging inspections:
 - (1) We judgmentally selected 5 of 14 businesses upon which MDARD assessed economic benefit penalties for having inaccurate weighing and measuring devices. We noted that, for 1 of the 5 businesses, MDARD did not charge, or document why it did not charge, the full economic benefit that the business received from consumers. MDARD inspectors estimated that the business benefitted by \$2,750; however, MDARD modified the amount and assessed only a \$2,000 fine, or 27% less than the estimated economic benefit.
 - (2) We judgmentally selected 14 of 98 businesses upon which MDARD assessed economic benefit penalties for failed packaging inspections. Also, we randomly sampled 43 of 2,269 businesses that failed packaging inspections. We noted that, for 8 (57%) of the 14 and 16 (37%) of the 43 businesses sampled, the amounts MDARD charged to the businesses

for economic benefit penalties were less than the amounts MDARD inspectors calculated by between \$53 and \$7,830. MDARD did not document the reason why it did not charge the full penalty amounts. In addition, we noted that for 3 (7%) of the 43 businesses that sold short weight packages, MDARD could not provide documentation as to how the economic benefit was calculated or why the penalty was waived.

- b. MDARD did not impose a fine or an economic benefit penalty, or document why it did not impose a fine or an economic benefit penalty, on all businesses whose weighing and measuring devices failed inspection. We randomly selected 27 of 247 businesses that failed inspections. These 27 businesses had 45 inaccurate weighing and measuring devices that failed inspections. We noted that, for 44 (98%) of the 45 inaccurate devices, MDARD did not impose a fine or an economic benefit penalty or document why a fine or an economic benefit penalty was not imposed.

MDARD informed us that it is its practice to achieve compliance with State laws by gaining cooperation from a business rather than assessing fines and penalties.

RECOMMENDATION

We recommend that MDARD establish detailed written procedures for imposing fines and economic benefit penalties on businesses with inaccurate weighing and measuring devices and short weight packages.

AGENCY PRELIMINARY RESPONSE

MDARD disagrees with the recommendation. MDARD informed us that it follows Commission Policy 10, which utilizes progressive enforcement and allows MDARD discretion when issuing penalties. MDARD believes that it applied consistent, progressive enforcement practices in accordance with statute and MDARD policy (e.g., compliance assistance, warning letters, fines, and stop-sale orders). MDARD informed us that, because of the requirements in statute and MDARD policy, it is required to determine the most appropriate enforcement action based on an assessment of all relevant factors identified during an inspection. MDARD also informed us that it has always gained compliance, as this is its ultimate goal.

MDARD informed us that it utilizes a consistent methodology when reviewing violations, assessing monetary penalties, and revoking or suspending service registration. MDARD also informed us that the protocols have been in place for over a decade and have served the Weights and Measures Program, MDARD, the State, and other stakeholders well during that period. MDARD believes that its ability to resolve matters outside the court room has saved State resources and has allowed those operators who have not intentionally violated the law to initiate corrective actions with monies that would have otherwise been spent on legal fees and court costs. The statute allows for discretion, and the consent agreement process itself is one based upon a cooperative effort.

Regarding part a. of the finding, MDARD informed us that economic benefit is merely an estimate put together by the inspector. The Weights and Measures Program tries to ascertain, based on reasonable information, what may have happened in the past and for how long. MDARD informed us that a business is always given the benefit of the doubt as MDARD does not want to place undue penalties upon the business or business owner. MDARD also informed us that, as a result, it usually rounds estimated economic harm down to a level that the Weights and Measures Program feels it is able to justifiably assess. In addition, MDARD informed us that the penalty is always determined for the same reason based on the evidence available and discussion with the investigator. The fine is what management would consider justifiable should the case proceed to court.

Regarding part b. of the finding, MDARD informed us that, unless weighing or measuring inaccuracies are found to be in egregious error, are a repeat problem, or have resulted in a large estimated economic benefit, MDARD only requires the business to repair the device, after which it may receive a warning letter depending on the severity of the results of the inspection report.

OFFICE OF THE AUDITOR GENERAL EPILOGUE

In the agency preliminary response, MDARD indicated that it disagrees with our recommendation that it establish detailed written procedures for imposing fines and economic benefit penalties on businesses because MDARD already has established and follows Commission Policy 10. While Commission Policy 10 provides some framework for administering enforcement action, it is not

comprehensive and does not provide guidance as to the relevant factors Program management should consider in the decision to not utilize progressive enforcement, in determining if an egregious error is present, and in determining what constitutes a large economic benefit. In addition, Policy 10 does not require Program management to document the factors it considered and the associated weight of each factor in determining the enforcement action taken.

FINDING

2. Reinspections of Condemned Devices

The Weights and Measures Program did not conduct timely reinspections of condemned devices. As a result, MDARD could not ensure that devices it had previously condemned were repaired and were operating in accordance with National Institute of Standards and Technology (NIST) standards.

Section 290.628c of the *Michigan Compiled Laws* requires MDARD to evaluate devices using NIST standards. When the Weights and Measures Program inspector determines that a device does not meet these standards, the inspector condemns the device. Weights and Measures Program management informed us that it instructs its inspectors to reinspect all devices condemned for repair within 35 days from the date the device was condemned.

We sampled 82 of 4,952 inspections in which Weights and Measures Program inspectors condemned one or more devices. We evaluated the documentation regarding these inspections to determine the disposition of devices and whether reinspections occurred timely. Our review disclosed that the Weights and

Measures Program did not perform reinspections within its desired 35-day time frame in 23 (28%) instances:

Number of Days Reinspections Exceeded Desired Time Frame	Number of Reinspections Not Performed Within Desired Time Frame
8 to 10 days	6
11 to 15 days	3
26 to 30 days	2
30 to 60 days	3
61 to 90 days	2
91 to 120 days	2
204 to 250 days	3
762 days	1
Reinspection not performed	1
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	23
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RECOMMENDATION

We recommend that the Weights and Measures Program conduct timely reinspections of condemned devices.

AGENCY PRELIMINARY RESPONSE

MDARD agrees with the recommendation. The reinspection of condemned devices is not a requirement the Weights and Measures Act. MDARD believes that it conducted all reinspections that should have been conducted. MDARD also believes that ensuring devices were properly repaired was done so by the Registered Service Program. In 2002, a registration program for servicepersons was created in the Act to alleviate the burden of having inspectors return to reinspect devices and also to allow device owners to get their device back into use quicker. The registration program requires that servicepersons be knowledgeable in the requirements of the Act and in NIST Handbook 44 (Specifications, Tolerances, and Other Technical Requirements for Weighing and Measuring Devices). MDARD informed us that the servicepersons complete a Placed in Service Report, which notifies MDARD that the servicepersons have repaired a device and placed it back into commercial service.

The Weights and Measures Program had an informal reinspection policy, but MDARD informed us that a written policy has been put in place that directs inspectors to conduct reinspections on "Condemned for Repair" devices as soon after the five-day period as possible but no later than 30 days. MDARD also informed us that, starting in May 2011, it implemented and distributed to its staff a bimonthly spreadsheet that identifies which locations have condemned devices that have not been reinspected to assist staff in conducting reinspections in a manner that is conducive to the schedule and location.

FINDING

3. Monitoring of Licensed Retail Motor Fuel Outlets

The Weights and Measures Program did not inspect all licensed retail motor fuel outlets, including gasoline stations, in accordance with the Laboratory Division's recommended time frame. As a result, MDARD lacked assurance that all licensed retail motor fuel outlets were operating in compliance with applicable State statutes related to motor fuel quantity.

MDARD Laboratory Division Policy SOP MI-103 stipulates that all licensed retail motor fuel outlets are to be inspected at least once every four years. As of October 31, 2012, there were 4,773 licensed retail motor fuel outlets within the State.

MDARD did not inspect 179 (3.75%) of the 4,773 licensed retail motor fuel outlets at least once in the past four years. Furthermore, for 47 (26%) of the 179 outlets, the Weights and Measures Program lacked any support that would indicate that it had ever performed an inspection.

RECOMMENDATION

We recommend that the Weights and Measures Program inspect all licensed retail motor fuel outlets, including gasoline stations, in accordance with the Laboratory Division's recommended time frame.

AGENCY PRELIMINARY RESPONSE

MDARD agrees with the recommendation. MDARD informed us that the Weights and Measures Act does not have a requirement for how often gas stations are to

be inspected; MDARD's responsibility is only to maintain oversight. MDARD informed us that it has set a high standard for itself with Policy SOP MI-103, which stipulates that licensed gas establishments are to be inspected once every four years. MDARD acknowledges, and accepts the risk, that not every retail establishment will be inspected within this time frame. MDARD asserts that the small percentage of stations not checked within the four-year period has a negligible impact on the public's economic well-being. One of the major reasons for the small amount of gas stations not inspected is the lack of resources. MDARD informed us that, in fiscal year 2009-10 and fiscal year 2010-11, the Weights and Measures Program lost 4 of 11 field staff. In fiscal year 2011-12, MDARD has replaced and added field staff and is bringing them up to speed on inspection requirements. This corrective action will allow MDARD to fill the gap in those 179 locations that had not been inspected in the last four years. However, MDARD informed us that there are still some locations that will not be inspected as there are a number of locations that MDARD is not capable of inspecting. These include marinas and small stations with above-ground storage tanks. In spite of these obstacles, MDARD informed us that it was still able to inspect over 96% of all licensed establishments within the four-year policy requirement. MDARD also informed us that in 2011 the average number of stations beyond the four-year period was 263; therefore, much improvement has been made.

FINDING

4. Risk Assessment for Inspections

MDARD did not prioritize inspections based on a risk assessment to ensure the efficient use of limited resources and help ensure that it periodically inspected high-risk devices, packages, businesses with price scanners, and businesses that post prices. Developing a process to prioritize MDARD's inspection efforts based on an evaluation of risk factors would help ensure that MDARD is using its limited resources for the areas of greatest economic impact to the consumer.

NIST Handbook 155, *Weights and Measures Program Requirements: A Handbook for the Weights and Measures Administrator*, recommends the use of risk-based inspections as a method to reduce the amount of resources needed for inspections. MDARD identified consumer complaints as a priority; however, after complaints are investigated, MDARD has not prioritized its inspection efforts for

weighing and measuring devices, short weight packages, price scanning errors, and deceptive price postings. The Weights and Measures Program employs 15 inspectors to inspect all weighing and measuring devices, packages, businesses with price scanners, and businesses that post prices. For the three-year period from October 2009 through September 2012, MDARD inspected 2,682 (1%) of Michigan's estimated 250,000 weighing and measuring devices, excluding motor fuel pumps.

Prior to fiscal year 2011-12, MDARD was required to spend most of its appropriation on motor fuel inspections. In fiscal year 2011-12, MDARD expanded its efforts to include investigating more non-motor fuel pump devices and packages. An evaluation of risk factors would help MDARD determine the devices and packages at the highest risk for being inaccurate. MDARD should develop a process to prioritize its inspection efforts based on an evaluation of all the risk factors that it believes are relevant to weighing and measuring. For example, MDARD could evaluate data of past investigations of short weight packages and inaccurate weighing and measuring devices, the lack of compliance with weights and measures legal requirements for businesses in different regions of the State, deficiencies identified by other states' weights and measures programs, and the number and frequency of consumer complaints.

RECOMMENDATION

We recommend that MDARD prioritize inspections based on a risk assessment to ensure the efficient use of limited resources and to help ensure that it periodically inspects high-risk devices, packages, businesses with price scanners, and businesses that post prices.

AGENCY PRELIMINARY RESPONSE

MDARD agrees with the recommendation and informed us that it will work with internal auditors to develop a risk-based inspection procedure. Although there currently is no formal risk assessment procedure, the Weights and Measures Program has assessed risk by reviewing device and package compliance on a yearly basis. MDARD informed us that gas dispensers have one of the highest compliance rates and large capacity scales have the lowest compliance rates. However, due to a requirement in the budget bills for fiscal year 2006-07 through

fiscal year 2009-10, MDARD was required to spend 76% of its resources on motor fuel quantity and quality. This requirement not only took away MDARD's ability to utilize risk-based inspections but was a detriment to the inspectors on keeping up with knowledge of other weighing and measuring devices. Over the last two years, the Weights and Measures Program has directed more of its staff to inspect weighing devices rather than gas stations (though the majority [59%] of inspections must still be gas station inspections as the Weights and Measures Program is mainly funded by the Refined Petroleum Fund). MDARD informed us that this places the Weights and Measures Program at risk of not inspecting all gas stations within the four-year time frame that is in policy and adds burden to the Motor Fuel Quality Program to provide assistance. MDARD also informed us that fully utilizing a risk-based approach would require changes to other policies and procedures, namely the four-year gas station inspections and the seven-business-day complaint initiation.

In addition, MDARD informed us that, as risks are identified within certain areas, whether it be devices, packages, or geographical locations, it conducts special projects in those specific areas. The most recent examples are the Upper Peninsula Project, Scrap Yard Project, and Terminal Project.

OBSERVATION

1. State Law for Weighing and Measuring Devices and Packages

State law requires MDARD to inspect and certify weighing and measuring devices used in commerce within the State. However, State law does not require businesses to register the devices with MDARD. Therefore, MDARD did not have a complete inventory of the number and location of all weighing and measuring devices within the State. MDARD estimated that there are approximately 400,000 weighing and measuring devices, including 150,000 motor fuel pumps and 250,000 non-motor fuel pump devices. In 2011, MDARD inspected 13,100 (3%) devices. Without a complete inventory, MDARD cannot ensure that it effectively monitors the accuracy of all weighing and measuring devices used for commerce within the State. MDARD informed us that it requested that the Legislature amend State law to require businesses to register their devices with MDARD; however, device registration has not been added to State law.

OBSERVATION

2. Assessment of Penalties

State law gives MDARD the authority to charge businesses penalties for the economic benefit that businesses realized by overcharging the public to help ensure that businesses do not profit or gain an unfair advantage from inaccurate weighing or measuring devices or short weight packages. However, State law does not require businesses to provide MDARD with documentation to support estimates of the businesses' product sales. MDARD estimated the amount of economic benefit based on the observed error, the businesses' stated product sales, and item price. We reviewed judgmentally selected fine and penalty work sheets for devices and packages that failed inspection. We noted that, for 24 (52%) of 46 fine and penalty work sheets, MDARD calculated economic benefit using estimates of the businesses' product sales that were not supported by documentation. MDARD should seek amendatory legislation that would require businesses to provide documented evidence of product sales related to the overage.

OBSERVATION

3. Public Notification of Inspections

MDARD did not notify the public of the results of its investigations and inspections of weighing and measuring devices, packages, retail price scanning, and price posting. Public notification of investigations and inspections would help deter businesses from using inaccurate devices and pricing and would make consumers aware of locations where device and price discrepancies occurred.

MDARD publishes the results of its Food and Dairy Division's inspections of food establishments and restaurants on its Web site. In addition, other states publish inspection results, histories, and reports on their Web sites. For additional transparency, MDARD should consider similarly publishing the results of its Weights and Measures Program inspections.

**EFFECTIVENESS OF EFFORTS
TO TIMELY INVESTIGATE AND RESOLVE
COMPLAINTS REGARDING WEIGHTS, MEASURES,
PRICE ADVERTISING, PRICE SCANNER ERRORS, AND PACKAGING**

COMMENT

Audit Objective: To assess the effectiveness of MDARD's efforts to timely investigate and resolve complaints regarding weights, measures, price advertising, price scanner errors, and packaging.

Audit Conclusion: MDARD's efforts to timely investigate and resolve complaints regarding weights, measures, price advertising, price scanner errors, and packaging were effective. Our audit report does not include any reportable conditions related to this audit objective.

GLOSSARY

Glossary of Acronyms and Terms

effectiveness	Success in achieving mission and goals.
MDARD	Michigan Department of Agriculture and Rural Development.
mission	The main purpose of a program or an entity or the reason that the program or the entity was established.
National Institute of Standards and Technology (NIST)	A non-regulatory federal agency within the U.S. Department of Commerce. NIST's mission is to promote U.S. innovation and industrial competitiveness by advancing measurement science, standards, and technology in ways that enhance economic security and improve the quality of life.
observation	A commentary that highlights certain details or events that may be of interest to users of the report. An observation differs from an audit finding in that it may not include the attributes (condition, effect, criteria, cause, and recommendation) that are presented in an audit finding.
performance audit	An audit that provides findings or conclusions based on an evaluation of sufficient, appropriate evidence against criteria. Performance audits provide objective analysis to assist management and those charged with governance and oversight in using the information to improve program performance and operations, reduce costs, facilitate decision making by parties with responsibility to oversee or initiate corrective action, and contribute to public accountability.

registered service agency	Any agency, firm, company, or corporation that installs, services, repairs, or reconditions commercial weights and measures and that holds a registration issued by the Weights and Measures Program.
reportable condition	A matter that, in the auditor's judgment, is less severe than a material condition and falls within any of the following categories: an opportunity for improvement within the context of the audit objectives; a deficiency in internal control that is significant within the context of the audit objectives; all instances of fraud; illegal acts unless they are inconsequential within the context of the audit objectives; significant violations of provisions of contracts or grant agreements; and significant abuse that has occurred or is likely to have occurred.
short weight package	A commodity short of net weight excluding any materials, substances, or items not considered to be part of the commodity including containers, conveyances, bags, wrappers, packaging materials, labels, individual piece coverings, decorative accompaniments, prizes, coupons, and, in the case of edible commodities, anything that is nonedible.

