

Office of the Auditor General
Follow-Up Report on Prior Audit Recommendations

Food and Dairy Division
Michigan Department of Agriculture and Rural Development

January 2020

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The auditor general may make investigations pertinent to the conduct of audits.

Article IV, Section 53 of the Michigan Constitution



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Office of the Auditor General

Report Summary

Follow-Up Report

Food and Dairy Division (FDD)

Michigan Department of Agriculture and Rural Development (MDARD)

Report Number:
791-0200-12F

Released:
January 2020

We conducted this follow-up to determine whether MDARD had taken appropriate corrective measures in response to the two material conditions noted in our May 2013 audit report.

Prior Audit Information	Follow-Up Results		
	Conclusion	Finding	Agency Preliminary Response
<p>Finding #1 - Material condition.</p> <p>Routine inspections and reinspections of dairy facilities, trucks, and haulers and samplers and retention of approval documentation for remodeling or equipment changes for dairy processing plants needed.</p> <p>Agency agreed.</p>	Partially complied	Reportable condition exists. See <u>Finding #1</u> .	Agrees
<p>Finding #4 - Material condition.</p> <p>Routine and follow-up inspections of food establishments and maintaining of inspection records for temporary food establishments needed.</p> <p>Agency agreed.</p>	Partially complied	Material condition still exists. See <u>Finding #4</u> .	Agrees

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Doug A. Ringler, CPA, CIA
Auditor General

January 22, 2020

Mr. Gary McDowell, Director
Michigan Department of Agriculture and Rural Development
Constitution Hall
Lansing, Michigan

Dear Mr. McDowell:

This is our follow-up report on the two material conditions (Findings #1 and #4) and four corresponding recommendations reported in the performance audit of the Food and Dairy Division, Michigan Department of Agriculture and Rural Development. That audit report was issued and distributed in May 2013. Additional copies are available on request or at audgen.michigan.gov.

Your agency provided the preliminary responses to the follow-up recommendations included in this report. The *Michigan Compiled Laws* and administrative procedures require an audited agency to develop a plan to comply with the recommendations and to submit it to the State Budget Office upon completion of an audit. Within 30 days of receipt, the Office of Internal Audit Services, State Budget Office, 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 our follow-up. If you have any questions, please call me or Laura J. Hirst, CPA, Deputy Auditor General.

Sincerely,

A handwritten signature in dark ink that reads "Doug Ringler". The signature is written in a cursive, flowing style.

Doug Ringler
Auditor General

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INTRODUCTION, PURPOSE OF FOLLOW-UP, AND DESCRIPTION

INTRODUCTION

This report contains the results of our follow-up of the two material conditions* (Findings #1 and #4) and four corresponding recommendations reported in our performance audit* of the Food and Dairy Division (FDD), Michigan Department of Agriculture and Rural Development (MDARD), issued in May 2013.

PURPOSE OF FOLLOW-UP

To determine whether MDARD had taken appropriate corrective measures to address our corresponding recommendations.

DESCRIPTION

FDD's mission* is to protect public health by ensuring a safe and wholesome food supply, while working to maintain a viable food and dairy industry.

FDD is responsible for licensing and inspecting more than 1,300 Michigan dairy farms annually or biannually to ensure the safety and quality of milk. FDD licenses, inspects, and regulates other dairy facilities. For the purpose of this report, dairy facilities include grade A dairy farms, manufacturing dairy farms, grade A processing plants, manufacturing processing plants, transfer stations, milk tanker truck cleaning facilities, and single service container and closure manufacturing facilities (single service facilities*). FDD also licenses, inspects, and regulates dairy trucks, including milk tanker trucks; dairy personnel, such as bulk milk haulers and samplers; and certified industry field representatives*.

FDD is responsible for licensing and inspecting more than 18,000 licensed food establishments*. These establishments include grocery and convenience stores, food processors, farmer's markets, temporary and fair food operations, and food warehouses*. Inspections address sanitary conditions, infrastructure safety, cleanliness, and freshness and wholesomeness of food.

In February 2016, FDD replaced MI-Inspector*, the previous food establishment inspection system, with Accela*. Accela is a Web-based system that FDD uses to manage licenses and inspections of food establishments.

For fiscal year 2018, FDD expended \$18.3 million for its operations. As of June 30, 2019, FDD had 121 employees.

* See glossary at end of report for definition.

PRIOR AUDIT FINDINGS AND RECOMMENDATIONS; AGENCY PLAN TO COMPLY; AND FOLLOW-UP CONCLUSIONS, RECOMMENDATIONS, AND AGENCY PRELIMINARY RESPONSES

FINDING #1

Audit Finding Classification: Material condition.

Summary of the May 2013 Finding:

FDD did not always conduct routine inspections and schedule reinspections of dairy facilities, trucks, and haulers and samplers according to law or guidelines. Also, FDD did not retain documentation of its approval of remodeling or equipment changes for dairy processing plants.

Recommendations Reported in May 2013:

We recommended that FDD conduct routine inspections and schedule reinspections of dairy facilities, trucks, and haulers and samplers according to law or guidelines.

We also recommended that FDD retain documentation of its approval of remodeling or equipment changes for dairy processing plants.

AGENCY PLAN TO COMPLY*

On August 20, 2013, MDARD indicated that three additional dairy inspectors had been hired and were working in the field to ensure that all inspections were being completed within their required inspection frequencies. MDARD also planned to implement short-term and long-term corrections.

By October 1, 2014, MDARD planned to complete the following:

- Develop a staff report that provides quantity and quality information related to each dairy inspector's output, plus establish goals to more easily monitor and ensure minimum productivity and quality levels.
- Develop a supervisor quality assurance policy to standardize quality review elements and allow FDD to generate quality review metrics.
- Develop metrics to address all audit improvement areas, with goals and periodic tracking.
- Review and update procedures for staff to conduct and document their reasons for follow-up decisions.
- Develop procedures for staff to document plan review approvals for dairy manufacturing plants.

* See glossary at end of report for definition.

By October 1, 2016, MDARD planned to complete the following:

- Implement an electronic inspection system and smart mobile hardware to improve dairy program productivity and plan review recordkeeping capabilities.

**FOLLOW-UP
CONCLUSION**

Partially complied.

With regard to parts a., b., and c. of the finding, our follow-up noted that MDARD:

- a. Partially complied.

Since the 2013 performance audit, MDARD added 5 additional inspector positions, and filled 4 of those positions, to assist in conducting routine inspections. In addition, the inspection frequency for milk tanker trucks was revised from 12 to 24 months, as required by the Pasteurized Milk Ordinance* (PMO).

We reviewed 150 dairy facilities, trucks, and haulers and samplers for which FDD conducted 524 routine inspections between October 1, 2016 and June 30, 2019. For 49 (9%) of the 524 routine inspections, FDD did not conduct inspections within 30 or more days after the required inspection frequency (see column 4 in the following table).

Regarding manufacturing dairy farms, in December 2015, FDD made the decision to discontinue routine inspections to focus its resources on higher risk dairy facilities. FDD indicated that the decision was verbally communicated to staff. However, MDARD did not officially document how the communication occurred regarding this decision. Manufacturing dairy farms are generally smaller operations and the resulting products are further processed at facilities that are inspected by FDD. Section 288.650 of the *Michigan Compiled Laws* (Public Act 267 of 2001) states that MDARD shall, at a minimum, inspect all dairy farms every 12 months or at a time interval as specified by the director. FDD could improve its business practice and help foster transparency by formally communicating changes in a written communication or written policy and documenting how the decision was reached.

Since the 2013 performance audit, MDARD made significant improvements in the percentage of late inspections for most types of dairy facilities. Single service facilities had a 0% rate of late inspections,

* See glossary at end of report for definition.

which is a decrease from 20%. The rate of late inspections on haulers and samplers decreased from 72% to 52%. MDARD also substantially conducted timely routine inspections on the two types of dairy facilities requiring the most inspections: grade A dairy farms and grade A processing plants.

The following table summarizes the inspection frequency and number of days late for dairy facilities, trucks, and haulers and samplers:

Type of Dairy Facility, Truck, or Hauler and Sampler	Required Inspection Frequency	Number of Inspections 30 or More Days Late (as Determined in the 2013 Performance Audit)	Follow-Up Audit	
			Number of Inspections 30 or More Days Late	Range of Days Late
Grade A dairy farms	6 months	4 (2%) of 217	3 (1%) of 212	60 to 181
Manufacturing dairy farms	12 months	6 (19%) of 31	*	*
Grade A processing plants	3 months	16 (12%) of 134	4 (3%) of 120	77 to 122
Manufacturing processing plants	6 months	6 (16%) of 38	2 (6%) of 31	36 to 220
Transfer stations	6 months	4 (15%) of 26	1 (6%) of 17	273
Milk tanker truck cleaning facilities	6 months	7 (22%) of 32	2 (6%) of 36	32 to 83
Single service facilities	3 or 6 months	8 (20%) of 41	0 (0%) of 36	0
Milk tanker trucks	24 months**	29 (56%) of 52	20 (51%) of 39	42 to 1,641
Haulers and samplers	24 months	21 (72%) of 29	17 (52%) of 33	61 to 690
Total		101 (17%) of 600	49 (9%) of 524	

* We were unable to review because FDD discontinued manufacturing dairy farm inspections.

** The inspection frequency changed from 12 months to 24 months with the 2015 PMO.

b. Partially complied.

FDD revised its inspection policies for dairy facilities, trucks, and haulers and samplers to remove several conditions requiring automatic reinspection. The revised policies were designed to utilize a risk-based analysis and require automatic reinspection only for situations in which an inspector finds an equipment surface dirty if that equipment surface regularly comes into contact with milk product. These changes resulted in a significant improvement in scheduling reinspections.

As reported in the 2013 performance audit, FDD did not schedule 133 (69%) of 193 reinspections. Our follow-up noted that FDD did not schedule 9 (11%) of 83 reinspections for 8 dairy facilities, trucks, or haulers and samplers in which violations met the conditions for reinspection.

c. Complied.

During the 2013 performance audit, FDD did not have a process in place for documenting its approval of detailed remodeling plans and equipment changes at dairy processing plants. Our follow-up noted that FDD established a written process and followed that process for expansions at two existing dairy plants. For both expansions, FDD reviewed detailed blueprints and equipment schematics for the new developments. Also, FDD tested the new equipment to ensure that it functioned properly prior to use. In addition, FDD enhanced its process for documenting approvals of remodeling plans and equipment changes at dairy processing plants.

**FOLLOW-UP
RECOMMENDATION**

We again recommend that FDD conduct routine inspections and schedule reinspections of dairy facilities, trucks, and haulers and samplers according to law or guidelines.

**FOLLOW-UP
AGENCY
PRELIMINARY
RESPONSE**

MDARD provided us with the following response:

MDARD agrees with the recommendation. FDD has implemented new procedures designed to improve compliance with required inspection frequencies. Additionally, FDD has recently hired the last of the five additional inspectors which will further contribute to the noted improvements in complying with the statutory inspection frequencies and timely scheduling of reinspections.

FINDING #4

Audit Finding Classification: Material condition.

Summary of the May 2013 Finding:

FDD did not always conduct routine and follow-up inspections of food establishments in accordance with the Michigan Food Law of 2000. Also, FDD did not always maintain inspection records for temporary food establishments* in accordance with MDARD's records retention and disposal schedule.

Recommendations Reported in May 2013:

We recommended that FDD conduct routine and follow-up inspections of food establishments in accordance with the Michigan Food Law of 2000.

We also recommended that FDD maintain inspection records for temporary food establishments in accordance with MDARD's records retention and disposal schedule.

AGENCY PLAN TO COMPLY

On August 20, 2013, MDARD indicated that one additional food inspector would be hired by October 1, 2013, pending receipt of grant funding from the U.S. Food and Drug Administration (FDA). MDARD also planned to implement the following corrections by October 1, 2015:

- Develop a staff report that provides quantity and quality information related to each food inspector's output, plus establish goals to more easily monitor and ensure minimum productivity and quality levels.
- Develop a supervisor quality assurance policy to standardize quality review elements and allow FDD to generate quality review metrics.
- Develop metrics to address all audit improvement areas, with goals and periodic tracking, and establish emergency evaluation frequencies to complement the desired frequency schedule to ensure that the evaluations that are not done at the desired frequency are completed at least by the emergency frequency point.

In addition, MDARD planned to implement the following corrections by October 1, 2016:

- Replace MI-Inspector with an electronic inspection system and smart mobile hardware to improve the productivity of existing staff.
- Propose adding additional inspection staff and appropriate supervision to be able to evaluate all food facilities at MDARD's established frequencies.

* See glossary at end of report for definition.

- Propose adding additional auditing resources and making audit functions across FDD more seamless by sharing best practices and coordinating efforts.

By October 1, 2014, MDARD planned to update procedures to ensure that all temporary food establishment licenses for each fair are reconciled against applications and that all applications, inspections, and licenses for each fair are organized into folders which would be located centrally. A verification process is in development to ensure that each folder is received and reviewed for completeness.

**FOLLOW-UP
CONCLUSION**

Partially complied.

With regard to parts a., b., and c. of the finding, our follow-up noted that MDARD had:

- a. Not complied.

We randomly sampled 40 active food establishments and reviewed the date of the most recent inspection. As of June 30, 2019, FDD was overdue on conducting the most recent inspection for 13 (33%) of the 40 establishments for which an inspection was due based on the normal inspection frequency. This is an improvement from the 2013 performance audit which noted that FDD did not conduct routine inspections for 48% of the establishments.

For the 13 establishments with an overdue inspection, it had been between 10 and 41 months since the last routine inspection, as follows:

<u>Number of Months Since Last Inspection</u>	<u>Number of Active Food Establishments</u>
37 - 41	3
28 - 36	2
19 - 27	6
10 - 18	2
Total	<u>13</u>

Inspectors assign each food establishment a risk category based on the potential and inherent food safety risk associated with the establishment. Each risk category has a recommended normal inspection frequency of 6, 12, or 18 months. FDD informed us that, after the 2013 performance audit, it prioritized the completion of overdue inspections so that it could catch up on food establishments that were long overdue for routine inspection. This caused many routine

inspections to be completed later than the normal inspection frequency.

MDARD hired 6 additional food inspectors in fiscal year 2017. FDD informed us that 12 to 18 months of training is needed before the new inspectors can perform inspections on their own. Therefore, the inspectors did not work independently until fiscal year 2018 at the earliest.

The FDA recommends one full-time equated (FTE) inspector for every 280 to 320 inspections performed. During fiscal years 2017 and 2018, FDD employed 57 and 58 inspectors who performed 19,122 inspections (an average of 335 inspections per FTE) and 22,215 inspections (an average of 383 inspections per FTE), respectively. Therefore, MDARD exceeded the FDA's recommended number of inspections per inspector.

b. Not complied.

For the 40 food establishments sampled, 15 required a follow-up inspection. FDD conducted 3 (20%) of the 15 follow-up inspections 50, 106, and 244 days after the routine inspection, instead of within 30 days as required by law.

c. Complied.

FDD implemented new procedures, including a tracking sheet and centralized recordkeeping, to ensure that temporary food establishment inspections were completed and that records were maintained for the record retention period. We randomly sampled 40 temporary food establishments and determined that FDD maintained inspection records for all 40 establishments that we reviewed.

We consider this finding to be a material condition because of the significant exception rates in conducting timely routine and follow-up inspections which help to ensure the safety of food products for consumption.

**FOLLOW-UP
RECOMMENDATION**

We again recommend that FDD conduct routine and follow-up inspections of food establishments in accordance with the Michigan Food Law of 2000.

**FOLLOW-UP
AGENCY
PRELIMINARY
RESPONSE**

MDARD provided us with the following response:

FDD agrees with part a. of the finding with the following clarifications:

Since the performance audit, FDD has hired and trained 10 new inspectors which has contributed to reducing both the number of firms overdue for an inspection, as well as the number of days inspections are past due. The revenue source for these new staff was phased in over a 3-year period ending in fiscal year 2018. Therefore, during the period reviewed for the follow up, FDD was still in the process of adding and training new staff.

Additionally, the follow-up did not include inspections performed at new licensees where an initial inspection was performed. This represents about 15% of the total food inspection workload. Inspections of these firms are very time sensitive and required for a firm to obtain a license and begin selling food. When the calculation includes new licensees, the percentage that are overdue drops to 27%.

FDD would also like to note that, while this follow-up was strictly focused on routine inspection work, there are several other activities that FDD performs to protect public health. Foodborne illness investigations, responding to consumer complaints, and investigations triggered by positive lab results all take priority over routine inspection work due to a risk-based analysis. This follow-up does not assess the balance of multiple activities being done by FDD to protect public health.

MDARD will continue to review the inspection frequency requirements to ensure that they adequately reflect the risk level of the licensee. The frequency requirements at the time of this follow-up significantly exceeded the federal requirements for manufacturing firms. FDD has begun adjusting the frequency of inspections for manufacturing firms to be more aligned with federal requirements, which will further reduce the number of overdue firms without increasing the risk to Michigan consumers.

FDD agrees with part b. of the finding. However, we would like to provide one point of clarification regarding the follow-up inspection that was conducted 244 days late. This delay was not a performance issue, but rather the result of an unusual circumstance that can occur with a non-standard licensee. This firm seasonally processes a high-risk food product, apple cider. The inspection violations included in the report were connected to the seasonal production of this product which had already ceased for the year. Therefore, the inspector did not conduct the follow up at the required 30-day reinspection interval. FDD recognizes this decision does not align with the language in the law. However, it was made with the intent of most effectively addressing the food safety concern.

**AUDITOR'S
COMMENTS TO
AGENCY
PRELIMINARY
RESPONSE***

In relation to part a., our testing included only establishments that should have had an initial licensing inspection and at least one routine inspection to determine whether MDARD continued to inspect food establishments according to the risk-based schedule. Including food establishments that only had an initial inspection would not have allowed us to assess the timeliness of routine inspections. Therefore, the 33% of establishments overdue for an MDARD inspection is representative of the sample that we tested.

Therefore, the follow-up conclusion stands as written.

** See glossary at end of report for definition.*

FOLLOW-UP METHODOLOGY, PERIOD, AND AGENCY RESPONSES

METHODOLOGY

We reviewed MDARD's corrective action plan as well as its policies, procedures, and standards related to dairy and food establishment inspections. Specifically, for:

a. Finding #1, we:

- Interviewed FDD staff to obtain an understanding of their process for conducting routine inspections and reinspections of dairy facilities, trucks, and haulers and samplers.
- Reviewed the Michigan Grade A Milk Law of 2001 (Public Act 266 of 2001), the Michigan Manufacturing Milk Law of 2001 (Public Act 267 of 2001), and the PMO to identify routine inspection frequencies and any changes to those frequencies since our 2013 performance audit.
- Reviewed the revised FDD policies on establishing the time frame for when reinspections are required.
- Examined 100% of inspections for 3 transfer stations and 6 single service facilities and reviewed inspections for a random and judgmental selection of 141 other dairy facilities, trucks, and haulers and samplers to determine if routine inspections were conducted by their required inspection frequency and to verify that reinspections were conducted when necessary.
- Reviewed the new policy for documenting approvals of remodeling and equipment changes at dairy processing plants and examined approvals related to two examples of expansions at dairy processing plants.

Our random samples were selected to eliminate bias and enable us to project the results to the respective populations. For our judgmental samples, we could not project our results to the respective populations.

b. Finding #4, we:

- Interviewed FDD staff to determine how they conduct routine inspections and follow-up inspections of food establishments.
- Observed a walk-through of Accela, FDD's food inspection system in place since February 2016.

- Reviewed the Michigan Food Law of 2000 (Public Act 92 of 2000) and FDD's risk-based evaluation policy to understand the required time frame for routine inspections and follow-up inspections.
- Randomly sampled 40 active food establishments to determine the timeliness of routine inspections and follow-up inspections and to assess whether follow-up inspections were conducted when required.
- Reviewed 40 randomly sampled temporary food establishment inspection records to verify that FDD maintained sufficient inspection documentation.

Our random samples were selected to eliminate bias and enable us to project the results to the respective populations.

PERIOD

Our follow-up generally covered October 1, 2016 through June 30, 2019.

**AGENCY
RESPONSES**

Our follow-up report contains 2 recommendations. MDARD's preliminary response indicates that it agrees with the recommendations.

The agency preliminary response that follows each follow-up recommendation in our report was taken from the agency's written comments and oral discussion at the end of our fieldwork. Section 18.1462 of the *Michigan Compiled Laws* and the State of Michigan Financial Management Guide (Part VII, Chapter 4, Section 100) require an audited agency to develop a plan to comply with the recommendations and to submit it to the State Budget Office upon completion of an audit. Within 30 days of receipt, the Office of Internal Audit Services, State Budget Office, 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.

GLOSSARY OF ABBREVIATIONS AND TERMS

Accela	The current electronic food inspection and licensing system used by FDD to capture food inspection data, schedule future inspections, and maintain licensing records for food establishments. This system, implemented in February 2016, replaced a previous system known as MI-Inspector.
agency plan to comply	The response required by Section 18.1462 of the <i>Michigan Compiled Laws</i> and the State of Michigan Financial Management Guide (Part VII, Chapter 4, Section 100). The audited agency is required to develop a plan to comply with Office of the Auditor General audit recommendations and to submit the plan to the State Budget Office upon completion of an audit. Within 30 days of receipt, the Office of Internal Audit Services, State Budget Office, 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.
auditor's comments to agency preliminary response	Comments that the OAG includes in an audit report to comply with <i>Government Auditing Standards</i> . Auditors are required to evaluate the validity of the audited entity's response when it is inconsistent or in conflict with the findings, conclusions, or recommendations. If the auditors disagree with the response, they should explain in the report their reasons for disagreement.
certified industry field representative (CIFR)	An industry employee who is trained and certified to conduct official grade A dairy farm inspections in the same manner that an MDARD inspector would inspect a dairy farm.
FDA	U.S. Food and Drug Administration.
FDD	Food and Dairy Division.
food establishment	An operation where food is processed, packed, canned, preserved, frozen, fabricated, stored, prepared, served, sold, or offered for sale.
food warehouse	A food establishment that stores or distributes prepackaged food for wholesaling.
FTE	full-time equated.
material condition	A matter that, in the auditor's judgment, is more severe than a reportable condition and could impair the ability of management to

operate a program in an effective and efficient manner and/or could adversely affect the judgment of an interested person concerning the effectiveness and efficiency of the program. Our assessment of materiality is in relation to the respective audit objective.

MDARD	Michigan Department of Agriculture and Rural Development.
MI-Inspector	The previous electronic food inspection system used by FDD to capture inspection, consumer complaint, seizure, and enforcement information for food establishments.
mission	The main purpose of a program or an entity or the reason that the program or the entity was established.
Pasteurized Milk Ordinance (PMO)	Regulations approved by the FDA governing the design and maintenance of dairy farms and processing plants to make sanitation and milk quality uniform across state lines.
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.
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: a deficiency in internal control; noncompliance with provisions of laws, regulations, contracts, or grant agreements; opportunities to improve programs and operations; or fraud.
single service facilities	single service container and closure manufacturing facilities.
temporary food establishment	A food establishment that operates at a fixed location for a temporary period not to exceed 14 consecutive days.



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