

# LEGISLATIVE AUDIT DIVISION

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## MEMORANDUM

**To:** Legislative Audit Committee Members  
**From:** William Soller, Senior Performance Auditor  
**Cc:** Anna Whiting Sorrell, Director, Department of Public Health & Human Services  
Jane Smilie, Administrator, Public Health & Safety Division  
Marie Matthews, Administrator, Business & Financial Services Division  
Jim Murphy, Bureau Chief, Communicable Disease Control & Prevention Bureau  
**Date:** May 2012  
**Re:** Performance Audit Follow-up (12SP-31): Inspection and Enforcement Activities for Retail Food Establishments (orig. 10P-06)  
**Attachments:** Original Performance Audit Summary

### Introduction

In November 2010, the performance audit of the Food and Consumer Safety Section's (section) inspection and enforcement activities for retail food establishments was presented to the Legislative Audit Committee. The performance audit made three recommendations to the Department of Public Health and Human Services (department). In early 2012, we began to gather information from the department on its progress in implementing the audit recommendations. This memo presents background information and summarizes the results of follow-up work.

### Overview

The report featured information on the inspection and enforcement activities and addressed the department's use of available management information. Our recommendations included complying with statutory requirements for annual inspections, establishing a food safety task force or advisory council as required by law, and strengthening program activities and compliance by using existing management information available to the program. The department has implemented one of the recommendations, partially implemented another, and is in the process of implementing the third.

### Background

The Food and Consumer Safety Section, within the department, is responsible for providing public health protection through education and training, the delivery of technical services, and the enforcement of health protection through local health departments serving Montana's counties. The section's Retail Food Program (program) regulates retail food establishments to decrease the risk of unsafe food sources and practices. To prevent potentially dangerous conditions and practices, retail food establishments are subject to annual licensing and inspection requirements. As required by law, state or local health officers must

perform the annual inspections. The objective of the audit was to determine whether the department's inspection and enforcement activities protect the public as outlined in statute.

### **Follow-Up Audit Findings**

The report contained three recommendations to the department. Our follow-up work included a review of program documents and spreadsheets, as well as interviews with department staff and a member of the advisory council. The following summarizes information related to follow-up audit work and the implementation status of each recommendation.

#### **RECOMMENDATION #1**

**We recommend the department develop a plan to comply with statutory responsibilities outlined in §50-50-301, MCA.**

#### **Implementation Status – Partially Implemented**

Section 50-50-301, MCA, requires state and local health officers to inspect retail food establishments once a year and report the results to the department. In response to our recommendation, the department has developed a spreadsheet to track the number of inspections performed each quarter. The department is also in the process of developing a written policy that establishes target inspection percentages by quarter; staff intend to follow-up with the counties that look like they will miss these benchmarks. The department will contact the local sanitarian to troubleshoot and offer assistance after the second quarter of the calendar year if less than 25 percent of licensed retail food establishments have been inspected at that point, and after the third quarter if the sanitarian has inspected less than 50 percent of licensed facilities by then. If the local sanitarian fails to inspect at least 75 percent of licensed retail food establishments by the end of the year, the department will send a letter to the local board of health. By reaching out to the local sanitarian, the department intends to provide assistance and to identify any barriers preventing the sanitarian from completing the required inspections.

The statute indicates the responsibility to inspect retail food establishments is shared between state and local health officials. However, department staff reported they believe the inspection responsibility lies with the local sanitarians, while the department's role is to provide assistance, training and support. According to staff, the department will not perform any inspections of retail food establishments to make up for inspections not performed by the local sanitarian. Consequently, it is unclear how the department intends to ensure all licensed facilities receive the required annual inspection when a local sanitarian does not comply with the statutory requirements. Further, it is unlikely the statutory requirement will be completely satisfied; in 2011, fourteen counties reported inspecting less than 75 percent of the establishments in their jurisdiction, which would trigger a letter to the local board of health under the department's new process. One county reported inspecting 43 percent of the licensed facilities in their jurisdiction, the lowest reported percentage for 2011. Since the department does not intend to inspect retail food establishments, the Legislature could decide the statute does not clearly assign the responsibility for ensuring the annual inspections are completed as required, and could decide this is an area that warrants further examination.

#### **RECOMMENDATION #2**

**We recommend the department establish a food safety task force or advisory council as outlined in §50-50-103(2)(b), MCA.**

#### **Implementation Status – Implemented**

The department established the Food Safety Advisory Council in the fall of 2010. The council is comprised of three members of the industry and three county sanitarians who are appointed for two-year terms. The first council was established to review proposed legislation for the 2011 Legislative Session.

The department anticipates reviewing and updating the applicable administrative rules beginning in the spring of 2012, and will forward proposed revisions to the advisory council for their comments before adopting any changes. The department intends to ask each of the members to remain on the council for the next two-year term, which will include the 2013 Legislative Session.

### **RECOMMENDATION #3**

**We recommend the department ensure the program functions as intended by utilizing existing management information to:**

- A. Review quarterly inspection reports to ensure inspections are being conducted, and verify information from county sanitarians is accurate.**
- B. Review remaining balance from retail food establishment license fees to evaluate available resources to meet provisions of the chapter, such as annual inspection requirements.**
- C. Verify which counties participate in the retail food program payment schedule.**

### **Implementation Status – Being Implemented**

The department is in the process of implementing each of the subparts to Recommendation #3. The specific steps taken by the department include the following:

- A. As described in response to Recommendation #1, the department has developed a spreadsheet to track the inspections reported by local sanitarians each quarter, which helps the department ensure inspections are being conducted. Additionally, the department has implemented an informal process to review a random sample of inspection reports each quarter to verify the information reported. Department staff will choose individual inspection reports based on the quarterly reports and request the local sanitarian who performed the individual inspection to send the inspection report form to the department for review. Department staff will review the report for such information as whether the sanitarian is following the administrative rules and correctly identifying violations. The department used the first round of review to generate baseline information, such as whether the sanitarians are using the correct form. The department held a two-and-a-half day training program for local sanitarians in April 2012 which included a session specifically on report writing.
- B. Department staff noted that they now track and reconcile the payments made to the counties out of the Local Board Inspection Fund account at the program level as well as through their fiscal division. The department reported a balance from retail food establishment license fees of \$23,940 for 2011; however, the amount of this balance was not readily accessible upon request. Department staff stated that the excess fund balance is diminishing as counties' participation in the cooperative agreement increases. The department indicated that they will use any extra funds not reimbursed to the counties to support program activities such as upgrades to the electronic database and provision of training to local sanitarians. The department does not intend to use these funds to inspect retail food establishments when a local sanitarian does not perform all of the required inspections.
- C. The department has developed a spreadsheet to track each county's participation in the retail food program payment schedule as defined in the cooperative agreement. The spreadsheet documents which counties have signed the cooperative agreement, which counties have declined to participate, and which counties have not yet responded. Department staff noted that some counties may have been unable to respond yet, as the local board of health, which must approve the participation in the cooperative agreement, might not hold regular meetings or might not have met in 2012.