

Jeffrey A. Meyers
Commissioner

Lisa Morris
Director

**STATE OF NEW HAMPSHIRE DEPARTMENT OF
HEALTH AND HUMAN SERVICES**

**29 HAZEN DRIVE, CONCORD, NH 03301-6503
603-271-4549 1-800-852-3345 Ext. 4549
Fax: 603-2718705 TDD Access: 1-800-735-2964**



February 15, 2017

The Honorable Neal M. Kurk, Chairman
Fiscal Committee of the General Court
State House
Concord, NH 03301

INFORMATIONAL ITEM- Quarterly Report on Food Protection progress regarding Legislative Budget Assistant 2015 Performance Audit

Information

In accordance with Executive Order 2014-03, the Department of Health and Human Services (DHHS), Division of Public Health Services (DPHS), Food Protection Section (FPS) submits the fourth progress report which provides details of actions the program has taken in response to observations and recommendations from the Legislative Budget Assistant (LBA) 2015 Performance Audit.

Explanation

Actions Taken to Address Audit Observations and Recommendations

At the request of DHHS/FPS, a Health and Human Services Oversight Subcommittee for the Food Protection Performance Audit was convened with legislators that have expertise in food laws. The first meeting of this working group was held on 12/2015, with a target of completing the review by April 2016. A final report was produced by the Oversight Subcommittee in May 2016 with practical recommendations, primarily legislative. The Department has followed the recommendations in the subcommittee report and drafted amendments to current RSA's. The amendments will be put forward in the SPY 17 legislative session.

This report provides a summary of the completed corrective actions during the most recent six-month period, July 2016-December 2016 as well as steps that are in progress. Each 'Observation' refers to the original LBA audit "Observations", with the update focused on the portion of the 29 Observations for which corrective action is producing reportable progress. Completed response to Observations reported in prior periods are not repeated unless there is relevant additional progress to report.

Observations 2 – Expand scope of operations to Reflect Statutory Obligations, and 8 – Improve Management of the Food Sanitation Subprogram- Inspect unlicensed establishments based on risk.

HHS SUBCOMMITTEE RECOMMENDATION: Clarify RSA 143-A:S to specify the legislative intent that "exempt from licensing" is also "exempt from inspection". This includes RSAs 143-A:12 pertaining to homestead foods, RSA 143-A:IS, 16 pertaining to poultry and rabbits and RSA 143-A:S for establishments listed as exempt from DHHS/FPS licensing because they are licensed and inspected by another agency. The suggested changes to the RSAs include an emphasis that these exemptions from inspections apply except in situations where an imminent health hazard is suspected. The committee advises to keep licensing and inspection (to include food) for summer camps with Department of Environmental Services (DES), and for nursing homes and child care centers with DHHS Facilities Licensing. Thus for these areas no amendments will be proposed.

The DHHS/FPS will follow the Subcommittee recommendation by filing legislation in the SFY 17 session to clarify exemptions as well as imminent health hazard exceptions to exemption. DHHS/FPS will further add language for prioritization of risk-based inspection to clarify consideration of risk and resource levels to determine if and when to inspect.

HHS SUBCOMMITTEE RECOMMENDATION: Request to hire additional inspectors to achieve a capacity that is more protective of public health based on the FDA risk-based inspection frequency guidelines. Also, use all fees collected annually from food establishments to support program costs (i.e. based on the current annual surplus of collected fees this would allow for 4-5 added inspector positions). Consider increasing food establishment fees to further support an acceptable level of inspectors given the FDA risk-based recommended inspection frequency.

DHHS makes this request in the Efficiency Budget proposed to the Governor for the SFY 18/19 biennial budget. A fee increase will not be proposed.

HHS SUBCOMMITTEE RECOMMENDATION: The committee supports changing RSA143-A: 5, III to add permit/licensing requirement for large-scale temporary and occasional food service establishments.

FPS recommends that this change to RSA be set aside until we have reasonable assurance that the added resources needed for implementation can be effectively put in place.

HHS SUBCOMMITTEE RECOMMENDATION: Explore the feasibility of coordinating food safety inspections with the inspections that may be occurring by third party inspectors. Where feasible, leverage and integrate these third party inspections into the development of a DHHS/FPS inspector training program.

DHHS/FPS contacted the NH Grocers Association and the NH Lodging and Restaurant Association on 6/6/16 to explore current practice of third party inspectors. FPS also obtained a sample seasonal inspector contract from the Maine food protection program for review and consideration. FPS will address this option further, including proposing amendments to the relevant RSAs for authority to license and inspect large-scale temporary events, once our core inspection capacity is expanded as proposed in the SFY 18/19

budget. This step is necessary to adequately address inspection frequency for current number of licensed establishments (before adding on more seasonal establishments). Planning for how to fund "seasonal surge" temporary inspectors is also needed.

HHS SUBCOMMITTEE RECOMMENDATION: The committee advises that FPS not inspect and regulate farmers markets or pet foods (currently exempt from FPS licensing). Also, FPS concerns include that the word "shall" creates a broad mandate without regard to resources or risk. The committee recommends changing this language in RSA 130:3 and 143:4 from "shall" to "may" and including risk based language.

DHHS/FPS will include this change in proposed amendments to RSA 143-A:S in the SFY 2017 legislative session, and upon passage of the amended version will make related changes to rule and practice. However, we will also include language to allow for inspection when the department has reason to suspect there is an imminent public health hazard, as defined in the current RSA.

RSA amendment will propose changing "shall inspect" to replace with "The department has discretion to determine to focus and frequency of inspections and shall use a risk-based approach in consideration of available resources to prioritize inspections".

HHS SUBCOMMITTEE RECOMMENDATION: The committee was not aware of RSA 130:2 Inspection of Meat. Though it was not cited in the LBA audit of FPS, there is general agreement that this should be repealed because it is not a current practice and FPS has authority to inspect and remove any food that is a health hazard in other sections of RSA. Establishing an actual "meat inspection program" would require additional food protection program resources and expertise.

DHHS/FPS will include this change in proposed amendments to RSA 130:2 in the SFY 2017.

Observation 9 - Improve Management of Out-of-State Producers in Residential, Non-commercial Kitchens; Register out-of-state non-commercial producers.

HHS SUBCOMMITTEE RECOMMENDATION: Revise RSA 143:29 to achieve parity between in-state exempt producers and out-of-state producers.

DHHS/FPS has included this change in proposed amendments to RSA 143:29 that will be put forward in SFY 2017 legislative session and upon passage of the amended version will make related changes to the rule and practice.

Observation 11 - Improve Oversight of Self-Inspecting Town Food Safety Programs

Two additional updated MOAs have been completed with towns specifying the requirement or monthly reporting of complaints and outcomes/performance measures. Two others were updated in December 2015, with one remaining to be updated which is being reviewed by the remaining town - Merrimack. Supervision of the self-inspecting communities has not yet been increased as the current available administrative FTEs are not sufficient to increase this function. We anticipate having one manager who carries an inspection responsibility for 200 food establishments to have more time to provide managerial oversight to self-inspecting communities if and when

new inspector positions are added. Quarterly meetings continue to be held with the self-inspecting cities and towns for coordination, policy discussion, education and information sharing.

Observation 12 - Improve Management of Dairy Sanitation Subprogram; Dairy and Department of Agriculture

Markets and Food (DAMF), milk distributors, accredit transfer stations.

HHS SU COMMITTEE RECOMMENDATION: Change RSA 184 to consolidate licensing of milk haulers within DHHS/FPS. Accredit (license) transfer stations. Consider pricing change to come closer to actual costs for the license fee. Consider removing the fee from statute and placing in rule.

DHHS/FPS will work on revisions to the dairy RSAs (184) in the spring of 2017 for submission in the fall of 2017.

DPHS has updated dairy rules to reflect doing inspections of milk distributors and accrediting stations, adding fines for consistency with other programs, and updating references to forms. The revised rules have been filed and a public hearing was held on 12/2016.

Observation 16- Reinstitute Statutorily-required Systematic Sampling of Food Articles; Food sampling and testing

HHS SUBCOMMITTEE RECOMMENDATION: The committee is in favor of continued and expanded testing (if resources are available) as a public health measure and even offered to have NH representatives transport samples if that could be arranged logistically and work within the protocols for chain of custody and avoidance of cross-contamination of samples. A revision to RSA 130:3 may not be necessary, but can be considered to include language that recognizes that sampling and testing will be risk-based and proportionate to available resources. The word "may" in "may take samples" in RSA 130:3 seems appropriate in that it allows DPHS discretion as needed, thus no change in RSA is needed.

DHHS/FPS/PHL has delayed further review of this practice and development of Standard Operating Procedures (SOPs) for expanded testing. We will return to focusing on this after January, 2017.

DHHS/FPS/Public Health Lab (PHL) will develop a chain of custody courier protocol for transport of samples and report back to the committee regarding feasibility and logistics of the offer for state representatives to act as transporters of such samples.

DHHS/FPS/PHL has delayed further review of this practice and development of SOPs for courier assistance due to not having the time needed to develop the protocol, and other projects such as the new data system requiring extensive investment of configuration and staff training time. We will return to focusing on this after January, 2017.

Observation 10 – Improve Compliance with Food Safety Statues during required food and inspection for all “provisional” approvals and 7 vehicle inspections

HHS SUBCOMMITTEE RECOMMENDATION: The committee supports making changes to RSA 143-A: 6 and the related rule to allow FPS to have discretion to determine when to do a second inspection. This must be

balanced with transparent language that businesses can understand regarding what is in rule that determines conditions for business closure.

FPS reviewed RSA 143-A:6 to assess if clarifying changes are needed and will submit a proposed revision to the RSA in the SFY 2017 legislative session and to the rule following the legislative outcome to support greater discretion at the program level. FPS shall also revise rule regarding re-inspection to more realistically align with practice based on risk and inspection resources. FPS will include guidance for staff in our Standard Operating Procedures manual (to be developed by 6/30/17) regarding protocols for initial inspections related to provisional licensing as well as when to do a second inspection

HHS SUBCOMMITTEE RECOMMENDATION: The committee recommends FPS establish a written protocol that prioritizes when staff should be inspecting trucks transporting food.

FPS developed a draft protocol that prioritizes when staff should be inspecting trucks transporting foods. The draft will be added to the Standard Operating Procedures manual.

Observation 23 – Improve Fiscal Management – Charging inspection fees for every inspection, dairy and shellfish underfunding (also included #27 regarding can DPHS provide "free" TA/consultation) and fee exempt municipal cafeterias.

HHS SUBCOMMITTEE RECOMMENDATION: The committee recommends changing the RSA 143-A: 6 to reflect the practice of not-charging for inspections. This practice is more pragmatic as costs for the Food Establishment segment of FPS are already covered in the annual licensing fee structure. Costs for the dairy and shellfish programs are not sufficiently covered by licensing fees, and the committee reviewed this aspect and makes a recommendation in another section of their report. For food venues that require more frequent, repeat inspections, the fines and sanctions structure should be used to incentivize compliance rather than charging fees to cover FPS cost for re-inspections.

DHHS/FPS will include this change to not require a charge for each inspection in proposed amendments to RSA143-A: 6 in the SFY 2017 legislative session. Upon passage of the amended version FPS will make related changes to rule and practice.

HHS SUBCOMMITTEE RECOMMENDATION: The committee recommended changing RSA 184:85 to reverse the requirement that the dairy industry be cost neutral due to the reality of the economics of these industries. If the agricultural industry is subsidized by general funds the committee finds that to be an acceptable business practice. However, further review of the few very large dairy companies based in NH that may be paying too little is recommended. This data review will show the proportion of hours staff must spend with the larger companies. At that time, consideration of raising fees proportionately can be reviewed.

DHHS/FPS will include this change to remove the requirement that dairy program be cost neutral in proposed amendments to RSA 184:85 in 2017 and upon passage the amended version will make related changes to rule and practice.

DHHS/FPS reviewed timekeeping records to determine percent of staff time in the dairy program being spent on the larger producers to make a determination if fees should be adjusted accordingly. It was determined that 2% and 5% of dairy staff time is spent with the two largest producers, Hood and Stonyfield. However, due to economic pressures on the dairy industry there is a concern to not raise fees for the two large producers as those costs could be passed on to the smaller dairy farms, which are in financial difficulty due to the drought, feed costs and the low price of milk.

HHS SUBCOMMITTEE RECOMMENDATION: The committee recommends that the *food establishment* fees collected annually be used to support proportionate staffing levels, with an emphasis on increasing the number of inspectors to get closer to the FDA recommended risk-based inspection frequency levels. (See attached matrix that shows the FDA recommended levels and the current state for FPS capacity to meet only 30% of these levels.) *Food establishment* license fees are deposited in the State General Fund, and LBA Audit Table 3 (attached, from page 90 of Audit) shows that the fees are generating a substantial surplus beyond the costs of that program component.

The DHHS will address this as a budget request in the submitted SFY 18119 budget. This change may also support the funding of seasonal temp inspectors to cover large-scale temporary events.

Observation 24 Improve Performance Measurement and Information and Records Management-

The Food Protection Licensing and Inspection Information System (LIIS) installation continued on a daily basis during this quarter. The DPHS/FPS team included the Section Administrator, Licensing Coordinator, a DHHS Project Manager and various FPS staff. The project received added support from senior level DHHS project managers and the vendor has added more staffing resources to move more effectively to a partial go-live with enough functionality to make the start-up adequately serve business functionality. The project "Go-Live" date was moved to October 2016 due to:

- O Corporate Merger: reduced/shifting resources within Decade/Accela on the project, internal process changes, etc.
- O 5.4 release- bugs: problems saving documents to Rackspace, synching and installing of the new version.

Intense work on this project has caused the FPS to delay work on Observations 12 and 16. Phase I of this data system has been successfully launched during mid-October, with Phase II work to start in January 2017, with an estimated completion date of April 2017. Key functionality achieved in Phase I includes one system to do billing, permitting, inspection scheduling, and inspection recording, and report extraction for key metrics. Phase II will include uploading of dairy lab testing, on-line payment option, and complaints reporting.

Observation 26 Improve Risk Management

A contract was approved by the Governor and Executive Council in mid-March 2016 to enter into a strategic plan to develop prioritized, measurable annual objectives for program direction and improvement. The first meeting with the contractor was held on 3/30/16. The planning meetings were completed by June 30 and the contractor drafted the written plan for review by FPS.

The strategic plan review was completed in August 2016. The plan as well as State of New Hampshire 2018-2019 Biennium Form B- Activity Level-Goals and Performance Measures completed as part of the SFY 18119 budget process will be used to set goals and to determine which activities to track for moving towards goal accomplishment. The strategic plan is available upon request using the contact information provided with this update.

Observation 29 Improve Policies and Procedures.

Standard Operating Procedures development has been started by categorizing the areas of focus where the audit recommended. FPS requested and obtained samples from 2 states, which will be used to draft NH versions with a target completion date of June 2017. New SOPs have been drafted for two practice areas: (1) cargo and vehicle inspection. A review of all current SOPs is in process as part of an effort to reconfigure the existing Food SOPs so that there is a better flow, integration and similar structure. FPS has been advised to prioritize which SOPs areas to develop based on what has the most value due to the length, complexity and time needed to develop them.

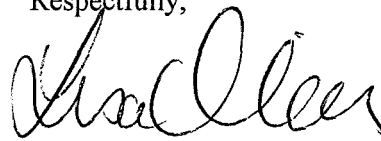
Development of training for new food inspectors began by obtaining sample training modules and procedures from other states. FPS has developed a scope of work to be included in an RFP for a contract for SFY 18 and 19 to assist with this component.

This concludes the fourth quarterly update. Please contact the following staff if further documentation or clarifications are needed.

Michael Dumond, Bureau Chief, 271-4549, michael.dumond@dhhs.nh.gov
Colleen Smith, FPS Section Administrator, 271-4858, colleen.smith@dhhs.nh.gov

The next report will be provided at the end of March 2017.

Respectfully,



Lisa Morris, MSSW
Director



Jeffrey A. Meyers
Commissioner

Approved by:

cc:

The Honorable Bob Haefner
The Honorable John O'Connor
The Honorable Peter Bixby
The Honorable Rebecca Brown
The Honorable Sharon Carson
The Honorable Andy Sanbom
The Honorable Frank Kowtoski
The Honorable Donald LeBrun
The Honorable Ken Weyler
Michael Kane Legislative Budget Assistant

Enclosure (1)
MD/gaz

New Hampshire Food Protection Section Plan for Risk Based Inspections for Food Establishments- 9/18/15

The FDA 2009 Food Code, Annex 5 describes the most significant risk factors for foodborne illness, which include the types of food served, the food preparation processes used, the volume of food, and the population served, which all have a bearing on the occurrence of foodborne illness risk factors in retail and foodservice establishments. Standard 3 of the FDA Retail Food Regulatory Program Standards requires that regulatory jurisdictions develop and use a process that groups food establishments into at least three categories based on potential and inherent food safety risks. In addition, Standard 3 requires that regulatory jurisdictions assign inspection frequency based on the risk categories to focus program resources on food operations with the greatest food safety risk. With limited resources, creating a variable inspection frequency for each category will allow inspection staff to effectively spend more time in high risk establishments that pose the greatest potential risk of causing foodborne illness.

The new FPS database will contain a risk assignment based on license category. Table 1 of Annex 5 of the FDA 2009 Food Code (below) was used as a reference to determine risk assignment. The type of food served, food preparation processes conducted, and history of compliance related to foodborne illness risk factors are used as the basis of categorizing risk.

Each risk assignment (1-4) was assigned an inspection frequency. The database will generate a work queue for each inspector based on the risk assignment and frequency. The frequency was determined by what is feasible given the current number of establishments currently licensed and number of inspectors. The FDA recommended frequency along with FPS assigned frequency is also displayed in the table below.

It is important to note that the FDA standards, if followed by New Hampshire, would require approximately 3-4 times as many inspections as would be feasible using the proposed FPS matrix, and thus meeting this standard would require 3-4 times as many FTEs as FPS currently has available. Also, the recent Legislative Budget Assistant audit has proposed adding on inspections of unlicensed food venues, which would require additional staffing resources to conduct inspections based on the risk matrix schedule:

Annex 5, Table 1. Risk Categorization of Food establishments

	DESCRIPTION	FPS License Category	FREQUENCY #/YR
1	<p>Examples include most convenience store operations, hot dog carts, and coffee shops. Establishments that serve or sell only pre-packaged, no potentially hazardous foods (non time/temperature control for safety (TCS) foods). Establishments that prepare only nonpotentially hazardous foods (nonTCS foods). Establishments that heat only commercially processed potentially hazardous foods (TCS foods) for hot holding. No cooling of potentially hazardous foods (TCS foods). Establishments that would otherwise be grouped in Category 2 but have shown through historical documentation to have achieved active managerial control of foodborne illness risk factors.</p>	<ul style="list-style-type: none"> • bars/lounges with a food preparation area • retail food stores that allow self-service of food • homesteads • servicing areas • arenas/theaters servicing TCS food • bed and breakfasts, <ul style="list-style-type: none"> • lodging facilities serving packaged food; • mobile food units • bakeries which do not serve TCS food and have no onsite seating • bars/lounges without a food preparation area; • arena/theater concessions serving non-TCS food • retail food stores serving pre-packaged ice cream • sellers of pre-packaged frozen meat or poultry that is processed in a USDA-inspected plant; • food processing plants that package non-TCS bulk food; 	<p>FDA recommendation: 1 time per year</p> <p>FPS-1 time every 3 years</p>
2	<p>Examples may include retail food store operations, schools not serving a highly susceptible population, and quick service operations. Limited menu. Most products are prepared/cooked and served immediately. May involve hot and cold holding of potentially hazardous foods (TCS foods) after preparation or cooking. Complex preparation of potentially hazardous foods (TCS foods) requiring cooking, cooling, and reheating for hot holding is limited to only a few potentially hazardous foods (TCS foods). Establishments that would otherwise be grouped</p>	<ul style="list-style-type: none"> • retail food stores with 2 to 3 food preparation areas • food service establishments with 100 to 199 indoor seats • caterers serving food off-site • food service establishments with 25 to 99 indoor seats • food service establishments with 0 to 24 seats • mobile food units which cook or prepare food 	<p>FDA recommendation: 2 times per year</p> <p>FPS-1 time every 2 years</p>

	in Category 3 but have shown through historical documentation to have achieved active managerial control of foodborne illness risk factors. Newly permitted establishments that would otherwise be grouped in Category 1 until history of active managerial control of foodborne illness risk factors is achieved and documented.		
3	An example is a full service restaurant. Extensive menu and handling of raw ingredients. Complex preparation including cooking, cooling, and reheating for hot holding involves many potentially hazardous foods (TCS foods). Variety of processes require hot and cold holding of potentially hazardous food (TCS food). Establishments that would otherwise be grouped in Category 4 but have shown through historical documentation to have achieved active managerial control of foodborne illness risk factors. Newly permitted establishments that would otherwise be grouped in Category 2 until history of active managerial control of foodborne illness risk factors is achieved and documented.	<ul style="list-style-type: none"> • retail food stores with 4 or more food preparation areas ▪ food processing plants which commercially process less than 100,000 packages of food per year; • institutions including state, county, and municipal institutions • <ul style="list-style-type: none"> • Senior meal sites, schools, including but not limited to private schools, colleges and universities and state run schools • Municipality-run school activities • 	<p>FDA 3 times per year Recommendation: FPS-1 time every year</p>
4	Examples include preschools, hospitals, nursing homes, and establishments conducting processing at retail. Includes establishments serving a highly susceptible population or that conduct specialized processes, e.g., smoking and curing; reduced oxygen packaging for extended shelf-life.	<ul style="list-style-type: none"> • 100,000 packages of food or more per year • Food processing plants which commercially process • Food service establishments with 200 or more seats • FPS is not inspecting hospitals, nursing homes and 	<p>FDA Recommendation: 4 times per year FPS-1 time every 9 months</p>

FPS Current Establishment Inventory by Risk and Annual Inspection Calculations

Risk	sw	RA	RT	88	DS	Bob??	JS	AR	NR
1	143	184	154	145	72	152	79	43	178
2	351	484	402	410	235	358	185	91	363
3	43	75	58	40	17	65	24	11	82
4	24	28	27	25	26	23	9	3	12

Total Establishments 561 771 641 620 350 598 297 148 635

Annual Inspection Calculations

Annual routine with risk frequency	291.5	407.2	338.95	319.75	188.6	318.35	151.45	73.15	331.9
Follow-up (5/100est)	87.45	122.16	101.685	95.925	56.58	95.505	45.435	21.945	99.57
Complaint (5/100est)	28.05	38.55	32.05	31	17.5	29.9	14.85	7.4	31.75
Licensing (20/100 est)	112.2	154.2	128.2	124	70	119.6	59.4	29.6	127
Total estimated Annual inspections	512	722.11	600.885	570.675	332.68	563.355	271.135	132.095	590.22

Assumptions:

DS-50% food inspection;

50% Shellfish (#s not shown)

JS-50% food inspection/50% admin-staff training

AR-25% food inspection/75% dairy (dairy #s not shown)

RT-80% food inspections; 20% plan review

Fee Revenue And Expenditures By Subprogram, SFYs 2013 And 2014

Subprogram	Fund Source	SFY 2013		SFY 2014		Balance As Of June 30 2014
		Revenue	Estimated Expenditures	Revenue	Estimated Expenditures	
Food	General	\$1,410,713	\$ 794,570	\$1,403,339	\$ 823,143	\$1,196,339
Dairy	Dedicated	30,275	230,310	30,250	238,592	-408,377
Beverage and Bottled Water	Dedicated	90,608	57,578	86,600	59,648	59,982
Shellfish	General	8,975	69,093	10,675	71,578	-121,021
Total		\$1,540,571	\$1,151,551	\$1,530,864	\$1,192,961	\$ 776,933

Notes:

Due to a lack of cost accounting subprogram level, the expenditure breakdown by subprogram was estimated using budget data and includes all direct and indirect costs to the extent they were including DHHS data.

² LBA estimate based on DHHS data; not actual account balances.

Source: LBA analysis of unaudited FPS data.

”