



## **Chapter-II**

### **Performance Audit**

**Implementation of Food  
Safety and Standards Act,  
2006**



## Chapter-II: Performance Audit

### Public Health and Family Welfare Department

#### Implementation of Food Safety and Standards Act, 2006

##### 2.1 Introduction

Food Safety and Standards (FSS) Act, 2006 regulates the manufacture, storage, distribution, sale and import of food to ensure availability of safe and wholesome food for human consumption. The onus of food safety is on the Food Business Operators<sup>14</sup> (FBOs) for compliance of safety based on trackability and traceability<sup>15</sup>. This is a move away from prosecution to self-regulation and graded punishment on risk-based inspection and science-based standards.

##### 2.1.1 Organisational Set-up

Public Health and Family Welfare Department (PH&FWD) of Government of Madhya Pradesh (GoMP) is the nodal Department for implementation of FSS Act, 2006 at the State level. Commissioner, Food Safety (CFS), Designated Officers (DO), Food Safety Officers (FSO) and other food authorities function under the administrative control of the Principal Secretary, PH&FWD to ensure food safety under the overall guidance and control of Food Safety and Standards Authority of India (FSSAI). While FSS is a central Act, its enforcement rests with the State Government including Central licenses and State issued licenses<sup>16</sup>.

CFS is the head of the Department for implementing the Act. However, the State Government has not appointed a full time CFS. While prior to January 2020, the Commissioner, Health was holding the additional charge of CFS, since January 2020, Controller, Food & Drugs Administration has been holding the charge of CFS in addition to his regular duties. Same is the case at the district level, where the Chief Medical and Health Officer (CM&HO) has been appointed as the ex-officio Deputy Director, Food and Drugs (DDF&D), Administration in an additional charge for implementing the Act. Besides the CM&HOs, the other administrative officers *i.e.* Sub Divisional Officers (SDO), Deputy Collectors and Joint Collectors in different districts were appointed on different occasions as DOs to handle issue of licenses to FBOs while headquarters FSOs in the districts who work under the DOs issue registration certificates. Only the FSOs are full time while all

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<sup>14</sup> Food business operator in relation to food business means a person by whom the business is carried on or owned and is responsible for ensuring the compliance of this Act, rules and regulations made thereunder.

<sup>15</sup> Section 28 of the Act specifies the responsibility of FBOs to withdraw from the market in case the food does not conform to the standard. This specifies the ability to follow the movement of a food article through specified stages of production, processing and distribution.

<sup>16</sup> Designated Officers appointed by FSSAI, function as Central licensing authorities to issue Central licenses. State licenses are issued by State licensing authorities. Food Business Operators under category schedule 1 of FSS (Licensing and Registration of Food Business) Regulations, 2011 and operating in more than 2 states have to get Central license. The annual turnover of FBO required for Central license is more than ₹30 crore and for State license, it is between ₹12 lakh to ₹30 crore.

other supervisory authorities are looking after food administration as an additional responsibility.

Additional District Magistrate (ADM) of each district acts as an Adjudicating Officer (AO) for adjudication of offences in addition to his regular work and in the absence of ADM, District Magistrate (DM) discharges this duty. District and Sessions Judge (D&J) acts as the Presiding Officer of Food Safety Appellate Tribunal (FSAT) for appeals against orders of AOs in addition to their original duty. Chief Judicial Magistrate (CJM) decides offences punishable with imprisonment against food safety violations.

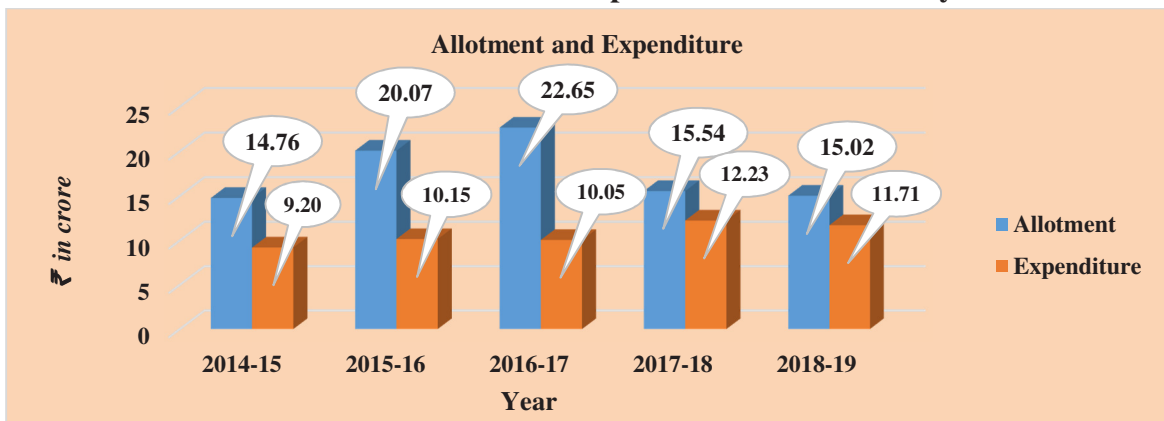
State level and District level Steering Committees are required to conduct regular reviews for ensuring food safety.

There is only one Food Laboratory at Bhopal for examining samples received from 52 districts in the State under the supervision of two Food Analysts. The set-up of food safety administration is given in the organogram in **Appendix 2.1**.

### 2.1.2 Allotment and Expenditure on Food Safety Administration

During 2014-19, GoMP spent ₹ 53.34 crore against budget allotment of ₹88.04 crore for food safety administration in the State as depicted in **Chart 2.1**.

**Chart 2.1: Allotment and Expenditure on Food Safety**



Source: Data furnished by CFS

Meagre budgetary allocation indicates lack of priority accorded by the Government to the crucial aspect of ensuring food safety and compliance with relevant standards. The Department could not utilise even this meagre allotment due to delays in processing procurement proposals and absence of adequate staff in key positions. The Department did not utilize ₹1.04 crore on office equipment, ₹8.42 crore on State Food Lab machines, ₹0.39 crore on maintenance of machine and equipment and ₹0.50 crore for procurement of samples and other materials for lab.

## 2.2 Audit Framework

### 2.2.1 Audit objectives

Performance audit of implementation of FSSA was conducted with the objective of assessing whether:

- (a) The existing legal framework was robust for regulating food safety in the State;
- (b) The existing administrative mechanism (manpower, equipment, oversight, penalties *etc.*) was effective in ensuring food safety; and
- (c) The deterrent measures and penalties were adequate and able to ensure food safety.

### 2.2.2 Audit criteria

Audit findings were benchmarked against the criteria sourced from Food Safety and Standards Act, 2006, Food Safety and Standards Rules, 2011, FSS (Licensing and Registration of Food Business) Regulations, 2011, FSS (Laboratory and Sample Analysis) Regulations, 2011, FSS (Recognition and Notification of Laboratories) Regulations, 2018, Guidance Document for setting up of a Regulatory Food Analysis Laboratory issued by FSSAI, directives of Central Advisory Committee of FSSAI, Food Licensing and Registration System (FLRS) developed by FSSAI, and Minutes of Meetings of State Level Steering Committee (SLSC), Notifications, Orders/ Instructions issued by FSSAI and State Government from time to time.

### 2.2.3 Audit Scope and Methodology

Audit was carried out during December 2019 to March 2020 and involved a review of the performance of the PH&FW Department with regard to implementation of the Act during the five-year period 2014-19. Audit methodology involved examination of the relevant records in the office of the Principal Secretary (PH&FWD), Commissioner of Food Safety and State Food Laboratory at State level.

Audit also examined the related records in eight out of 52 district offices-three of these districts (Indore, Bhopal and Ujjain) were selected based on the highest number of licensee/registered FBOs and milk production; three were selected based on number of vendors at places of religious significance (Hoshangabad, Satna and Khargone) and two (Gwalior and Morena) were selected based on risk perception arising from media reports and production and use of milk and milk products. Relevant records were examined in various offices in these districts *viz.* offices of Deputy Director, Food and Drugs Administration, Additional District Magistrate (ADM), Chief Medical & Health Officer, Civil Surgeon-Cum-Chief Hospital Superintendent (C&S), District Excise Officer (Commercial Tax Department), District Programme Officer (DPO), Women & Child Development Department (W&CDD), District Project Co-ordinator (DPC), School Education Department and District Supply Officer (DSO), Food Civil Supplies and Consumer Protection Department.

Audit team undertook a joint physical verification (along with the departmental authorities) of 101<sup>17</sup> (selected on simple random sampling basis without replacement) out of 688 (**Appendix 2.2**) licensees/ registered FBOs of milk/milk based food articles in the selected districts.

An Entry Conference was held in February 2020 with the Principal Secretary wherein the audit objectives, scope, criteria and audit methodology were discussed. Exit Conference was held in June 2020 with Principal Secretary, PH&FWD. The views expressed by the Department during the Exit Conference and its written replies have been suitably incorporated in the report.

## Audit findings

### Existing Legal Framework

***Audit Objective I: Whether the existing legal framework was robust for regulating food safety in the State.***

#### 2.3 Enforcement Structure

Principal Secretary (PS), PH&FWD and CFS are responsible for efficient implementation of food safety norms and compliance with the Food Safety and Standards Act, 2006, the Food Safety and Standards Rules, 2011 and various Regulations on Food notified (and amended) since 2011.

Several notifications/orders have been issued by the State Government for effective implementation of the FSSA.

##### ***2.3.1 Efficacy of State/District Level Steering Committee (SLSC/DLSC)***

State Level Steering Committee (SLSC) was constituted (June 2013) with five members for effective implementation of Act under the Chairmanship of PS (PH&FWD). The District Level Steering Committee (DLSC) was constituted (January 2014) with ten members under the chairmanship of District Collector. While FSSAI directed (November 2018) to reconstitute the SLSC with 18 members and DLSC with 16 members, State Government did not reconstitute SLSC and DLSCs.

During the five-year period 2014-19, the SLSC met four times as against the requirement of 18 meetings; it did not submit the minutes of these four meetings to the FSSAI. DLSCs also did not convene quarterly meetings and Action Taken Notes (ATNs) were not sent to the CFS in violation of August 2018 directives of CFS.

Audit noticed that among the sampled districts, District Level Committee was reconstituted in Hoshangabad (September 2019). Indore and Ujjain reported the names of nominated members to CFS and the DDF&D of the remaining five districts stated that action was under process and meetings would be held.

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<sup>17</sup> Out of the 101 FBOs, two shops were found closed and one downed the shutter, hence 98 verified.

Commissioner, Food Safety stated (February 2020) that the reconstitution of State/ district level committees was under process and that, the minutes of State level meetings were sent to SLSC. With regard to audit requisition for producing the ATNs received from districts, CFS stated that directions were issued to districts to hold meetings and send the ATNs to headquarters. The reply is not acceptable as the Department needs to monitor the action taken in compliance with the decisions at district level by obtaining the action taken reports from the districts.

Principal Secretary, PH&FWD stated (July 2020) that action to issue notification for reconstitution of state/ district level committees was under process.

Audit scrutiny revealed that, where the decisions of the SLSC meetings were minuted, the Department did not comply with these, as detailed below:

- i. Against July 2015 directives of the SLSC, the CFS did not compile information on non-conforming<sup>18</sup> food samples, maintain records of prosecution cases finalised by the court at district level or set targets for FSOs/DOs to increase issue of licenses/ registrations.
- ii. The Steering Committee recommended in the third meeting (December 2016) for provision of hired four wheeler vehicles for the FSOs at district level. However, the Department did not implement the recommendation even after the lapse of more than three years since the decision until Audit raised the issue. The Department obtained administrative sanction (January 2020) to provide 53 four-wheeler vehicles on monthly rate basis for State and district level. However, the vehicles were yet to be hired as on February 2020.

PS, PH&FWD stated (July 2020) that orders have been issued (June 2020) by CFS to all the DOs in the State defining the formats to maintain records of samples and prosecution at district level. It was further stated that the proposal for hiring of vehicles would be sent to the Finance Department.

The above findings indicate that the SLSC and DLSCs as institutional mechanisms did not function as intended under the Act/Rules for ensuring foods safety and there is substantial scope for improvement in the functioning of SLSC/DLSC.

### ***2.3.2 Non- establishment of separate tribunals and courts for food safety***

Though the Hon'ble High Court of MP consented to constitution of separate Food Safety Appellate Tribunals as required under the Act, State Government did not set up these, stating that only 60 appeal cases came up before the MP High Court during August 2011 to March 2013. State Government instead appointed (October 2013) District and Sessions judges as presiding officers of the Appellate Tribunals in the districts, in addition to their regular duties. Audit noticed that during 2014-19, appeal cases increased by 416 *per cent* (from 43 to 179) in seven out of the eight test-checked districts except Satna. There was a pendency of 106 (59 *per cent*) out of 179 appeal cases in these seven districts. The CFS did not maintain district-wise information on appeal cases.

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<sup>18</sup> Samples that do not fulfil the parameters of food.

State Government did not establish separate special courts or ordinary courts for trial of offences relating to grievous injury or death and imprisonment as required under the Act. Though criminal cases were being submitted in the CJM courts for prosecution, yet no legal notification authorising the CJM to act as special or ordinary court had been issued by the Department under the Act leading to non-tenable legal authority of the CJM. Audit noticed that there were 217 serious cases during 2014 to 2019 in five out of the eight sampled districts (three districts did not furnish information).

Principal Secretary, PH&FWD stated (July 2020) that action was being taken to send proposal to the Law Department fixing two days in each month in the Appellate Tribunal for quick disposal of appeal cases and that, proposal to Law Department for establishment of special courts for consideration of unsafe<sup>19</sup> sample cases was under process.

### **2.3.3 Power to compound offences**

CFS directed (February 2018) all the DOs to act on compounding offences<sup>20</sup> of petty vendors/ manufacturers. However, in the absence of specific rules or defined procedures for compounding cases, the DOs could not take effective action against petty vendors. DDF&Ds of the districts stated (February 2020) that this provision was not implemented, as instructions relating to procedure for compounding offence was not issued by CFS.

Principal Secretary, PH&FWD stated (July 2020) that action for preparing procedures to be adopted for disposal of cases under Section 69 was under process.

### **2.3.4 Prosecution cycle**

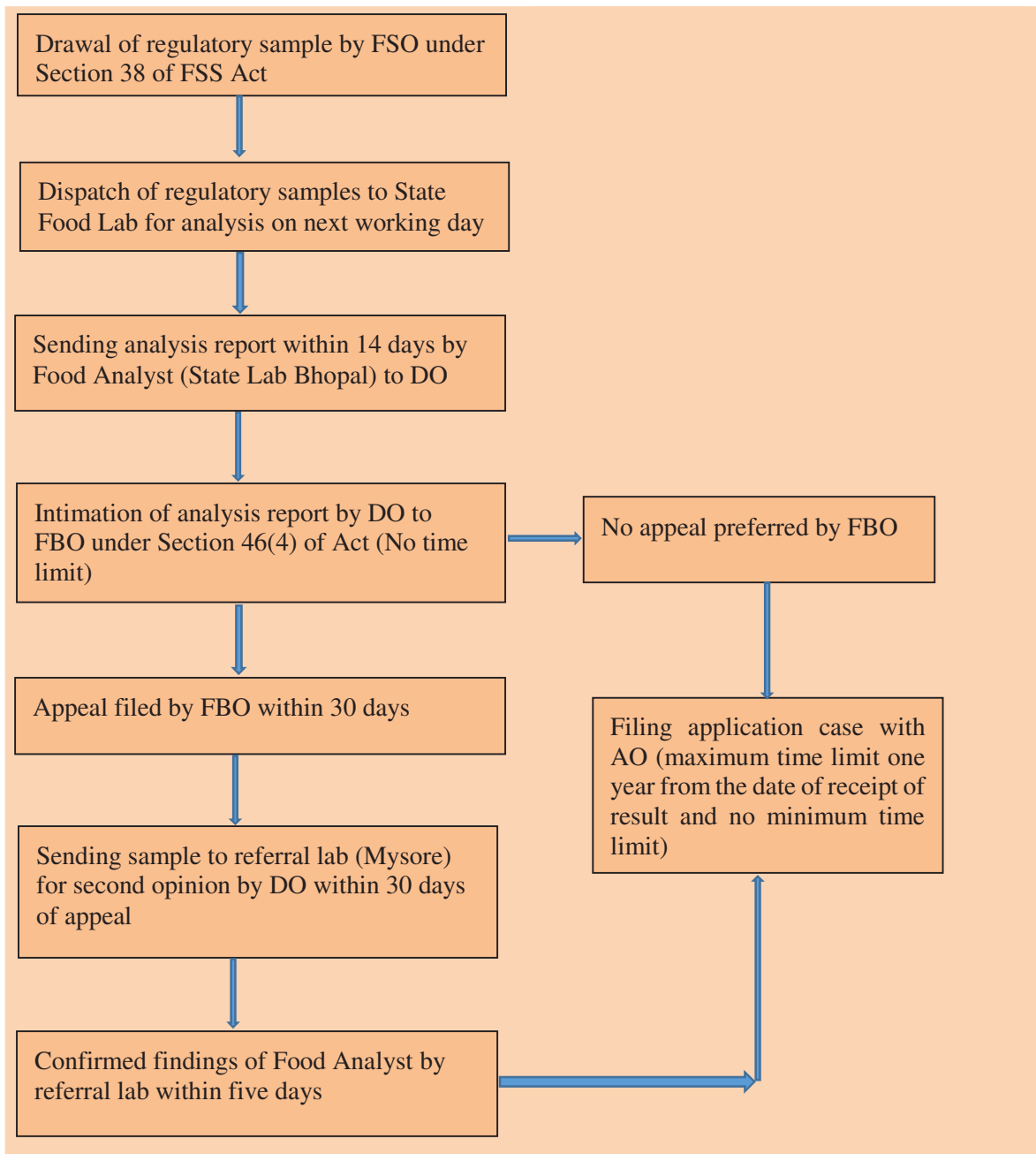
As per FSS Rules 2011, the DO has to send a copy of analysis report received from Food Analyst to FBO and the later has to file appeal within 30 days of receipt of result for sending to referral lab. The DO examines both the cases where referral lab has confirmed the findings of the Food Analyst and appeal is not preferred by FBO to file an application for adjudication of offence. A maximum time limit of one year has been prescribed under Section 77 of FSS Act for initiating prosecution from the date of receipt of result. It can be extended up to a maximum of three years by the order of the District Collector. The proceedings from the stage of drawing sample to filing prosecution is shown in the following flow chart:

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<sup>19</sup> An article of food whose nature, substance or quality is so affected as to render it injurious to health as prescribed under Section 3(zz) of FSS Act.

<sup>20</sup> The DO is empowered to accept from petty manufactures who manufacture and sell any article of food, retailers, hawkers, itinerant vendors and temporary stall holders, payment of a sum of money by way of composition of the offence which such person is suspected to have committed.





No time limit was prescribed under the Act/Rules for sending the analysis report to FBO. Nor did the Department fix any time limit for sending the report. Consequently, there were delays at various stages in the prosecution cycle, as detailed below in **Table 2.1**.

**Table 2.1: Details of non-compliance with prosecution cycle**

Sl. No.	Types of non-compliance	Year	No. of Analysis reports of samples	Delayed period	No. of districts
1	Delays in launching prosecution due to results of samples not being intimated timely and received with delay from State food lab in the districts after the date of analysis <sup>21</sup>	2014-19	789	05 to 360 days	7 <sup>22</sup>
2	Sample analysis report received with delay from the referral lab	2014-16 and 2017-19	56 out of 240	09 to 87 days	6 <sup>23</sup>
3	DOs delayed dispatch of analysis report to FBOs	2014-19	131 out of 158	02 to 286 days	5 <sup>24</sup>

**Source: Departmental records**

The reasonable time limit for initiating prosecution is neither provided under the Act/ Rules nor has the Department issued any directions in this regard. Besides, the Act/Rules also did not specify the manner/procedures to be adopted before filing prosecution cases.

Audit noticed that the DOs did not file the application for prosecution after expiry of the time period of thirty days prescribed for appeal, due to the failure of DOs and FSOs in ensuring receipt of analysis reports by FBOs. Entries of acknowledgement were not available in the records. In cases where the FBOs did not file appeal, the DOs did not prosecute FBOs on expiry of time limit of appeal. This led to delay in initiating prosecution against such FBOs. Thus, delayed initiation of prosecution had a cascading impact on finalisation of prosecution.

Audit noticed that during 2014-19, 814 out of 1,800 cases in the seven out of the eight sampled districts<sup>25</sup> were filed in the court with delays of four to 35 months, of which, 65 cases were filed after one year. However, permission obtained from the District Collector in this regard was not produced to audit.

Out of 814 cases, the DOs filed 294 milk/milk product prosecution cases with delays ranging between four to 23 months.

Principal Secretary, PH&FWD stated (July 2020) that time limit for sending intimation under Section 46(4) to food business operators had been fixed in March 2020 wherein CFS directed (March 2020) DOs to send the analysis report to FBOs within 14 days from the date of receipt in local office as directed by SLSC in its meeting (February 2020). Further, in respect of filing prosecution, CFS instructed (June 2020) DOs to file prosecution in the court

<sup>21</sup> Result received within 14 days not taken.

<sup>22</sup> Bhopal (210), Gwalior (63), Hoshangabad (440), Indore (27), Khargone (11), Morena (04) and Ujjain (34).

<sup>23</sup> Bhopal (4, 10), Gwalior (8, 105), Indore (10, 61), Khargone (7, 10), Morena (24, 33) and Ujjain (3, 21).

<sup>24</sup> Bhopal (46, 14 to 191 days), Gwalior (02, 06 to 12 days), Khargone (02, 12 to 16 days), Morena (12, 02 to 13 days) and Ujjain (69, 03 to 286 days).

<sup>25</sup> Bhopal (245, 153), Gwalior (362, 78), Hoshangabad (174, 08), Indore (663, 341), Khargone (00, 17), Morena (148, 60) and Ujjain (208, 157).

within three months, extendable in referral cases for an additional month in case of single seller/proprietor and additional two months in case of more than one firms.

Inordinate delay in fixing time limit for sending reports and minimum time limit for initiating prosecution led to delayed action on the part of district authorities in expediting prosecution procedures. The FBOs continued their business without fear of consequences of violations of FSS Act. The delay in prosecution with regard to milk/ milk product cases sold loose without packaging would have been avoided as multiple agencies were not involved.

### ***2.3.5 Non-constitution of earmarked funds for reward to informers***

Sections 94 and 95 of the Act provide for constitution of a fund to reward informers who assist the food safety authorities to detect various offences.

The Department did not constitute an earmarked fund in this regard, despite nine years of operation of the Act (since 2011).

Principal Secretary, PH&FWD confirmed the facts and stated (July 2020) that action was being taken to make budget head, budget provisions, prepare rules and procedures in compliance to the provisions of the Act.

### ***2.3.6 Non-disposal of redundant samples***

As per FSS Rules 2011, the Designated Officer was to ensure timely disposal of redundant samples<sup>26</sup>, in the manner notified for seized materials by the CFS. However, CFS did not notify the manner of disposal of seized material. In the absence of prescribed procedure, the disposal of redundant samples was made in the manner, the district authorities deemed appropriate. Audit found that 689 redundant samples of the years 2014-19 were destroyed in five<sup>27</sup> out of eight districts. Disposal of the redundant samples without prescribed procedure may lead to polluting the environment.

Principal Secretary, PH&FWD stated (July 2020) that orders had been issued for disposal of redundant samples in which no legal action was pending. The reply is not acceptable because CFS directed (July 2020) the DOs to dispose off food samples within the prescribed time limit fixed for different cases and disposal of seized materials as per provision of FSS Regulations 2011. He, however, did not notify the manner/ procedure to be adopted for disposal as required under the Act.

### ***2.3.7 Food Borne Diseases***

Audit noticed that FSSAI did not notify registered medical practitioners in the State for reporting food poisoning cases as required under the Act.

The CFS did not have information relating to food poisoning cases that occurred during 2014-19. However, audit collected information on food poisoning cases from C&S, CM&HO, DPC and District Education Officer (DEO), School Education Department in the eight sampled districts. In five<sup>28</sup> districts, audit noticed that 3,169 patients of food poisoning

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<sup>26</sup> The samples not needed for further use.

<sup>27</sup> Bhopal (338), Gwalior (33), Indore (55), Khargone (223) and Ujjain (40).

<sup>28</sup> Gwalior (460), Hoshangabad (119), Indore (1,908), Khargone (108) and Ujjain (574).

were treated during 2014-19 in various hospitals. There were no such cases in the remaining three districts. Out of 3,169 cases, 110 food poisoning cases occurred on 21 August 2014 in one<sup>29</sup> school in Hoshangabad district in 2014-15 while consuming mid-day-meal.

In the absence of specific directions, food poisoning cases were not being reported and the FSOs did not respond to incidents of food poisoning to assist the DO to initiate corrective action against the FBOs who provided food.

Principal Secretary, PH&FWD stated (July 2020) that proposal was being sent to FSSAI, for issuing notification authorising the doctors as required under the Act.

## **2.4 Enforcement of Act by Food Safety authorities**

***Audit Objective II: Whether the existing administrative mechanism (manpower, equipment, oversight, penalties etc.) was effective in ensuring food safety.***

The Designated Officers and Food Safety Officers are mainly responsible for enforcing regulatory activities like licensing, sampling, inspection *etc.* under the Act/Rules. As of February 2020, there were 51 part time DOs and 165 full time FSOs in the State against the requirement of 55 DOs and 380 FSOs respectively.

### **2.4.1 Food Safety Structure**

The Central Advisory Committee (CAC) of FSSAI suggested that the States follow the food safety structure approved by it in August 2014. This structure involved creation of a post of FSO at every block in rural areas and one FSO for every 1,000 FBOs in urban areas. The CAC suggested creation of nine posts in eight different cadres (one post each of Assistant Commissioner, DO, Senior FSO, FSO, Steno, Senior Clerk, Junior Clerk and two posts of peon) at divisional level.

The Department had not made available to audit the criteria adopted for creating posts both at the State as well as at district level. Audit scrutiny revealed that separate structure at State level, Division level and District level as recommended by the Committee was not formed. Against the requirement of 771 posts, the Department sanctioned only 424 posts (55 *per cent*) excluding 46 sanctioned posts for Laboratory. Even against these sanctioned posts, the men-in-position as on February 2020 was only 165 while 259 posts remained vacant (61 *per cent*). Details are shown in **Appendix 2.3**.

However, as per the existing manpower position under the food safety set-up, the men-in-position as on February 2020 was 174 (37 *per cent*) against the sanctioned strength of 470 as shown in **Appendix 2.4**. Shortage of FSOs affected the drawal of samples and impacted the coverage of FBOs.

Further, the FSOs did not perform the following duties as prescribed in FSS Rules 2011:

- Inspection of suspected vehicles carrying unsafe food or food which does not comply with the provisions of the Act/ Rules in six<sup>30</sup> districts.

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<sup>29</sup> Primary School/ middle School Sukkarwada, Babai (110 students).

<sup>30</sup> Hoshangabad, Indore, Khargone, Morena, Satna and Ujjain.

- Conducting food safety surveillance to identify and address the safety hazards and to attend food poisoning incidents.
- Facilitate preparation of food safety plans for *Panchayats* and Municipalities.

The CFS stated (February 2020) that demand for more than 700 posts under different cadres was made before the Finance Department; however, only 152 posts were sanctioned in October 2018 and that, these posts would be filled up after finalisation of recruitment procedure, which was under process. The CFS further stated that due to absence of block mapping in FLRS and any mechanism to assess the number of block-wise FBOs, the posts of FSOs were created taking into account the geographical area, business activities and administrative work.

During the Exit Conference, the PS, PH&FWD stated (June 2020) that the proposal for creation of posts was sent to Government and action would be taken for appointment against the sanctioned posts after framing service recruitment rules.

#### **2.4.2 Appointment of Designated Officers**

FSS Rules, 2011 stipulate appointment of a full time Designated Officer (DO) for timely disposal of redundant samples, suspension, cancellation or revocation of the license of the FBOs in case of any threat or grave injury to the public; issue of license, sanction or launch prosecution in cases of contraventions punishable with fine/ imprisonment and maintain records of all inspections made by Food Safety Officers.

Audit noticed that the Department created (October 2018) 41 posts of DOs and 10 posts of Senior DOs but did not fill up the posts due to the absence of service rules.

There are 51 part time DOs in the State. The Department nominated SDOs/Deputy Collectors/Joint Collectors/CM&HOs as Designated Officers on various occasions, in addition to their regular duties. The tenure of all DOs expired in August 2019 as per the directives (February 2017) of FSSAI. Although the Department was aware of expiry of tenure of DOs, it did not take timely action for seeking extension of tenure of DOs from FSSAI. The Controller (Food & Drugs) sought permission (August 2019) for extension of tenure of DOs for six months from FSSAI and directed (September 2019) DOs to continue their duties until further orders. Permission for extension of tenure of DOs was yet to be obtained from FSSAI as of October 2020. Thus, the powers exercised and duties performed by the DOs were without authorisation from September 2019 onwards, which was irregular.

During the exit conference, PS, PH&FWD stated (June 2020) that the matter would be brought to the notice of the Finance Department for filling up the posts. The Department (PS) confirmed the facts and stated (July 2020) that preparation of new departmental service recruitment rules for appointment of DOs is under process and efforts would be made for appointment of full time DOs at the earliest.

The Department failed to formulate rules and recruitment procedures for appointment of DOs, even after nine years of the enactment of the Act in 2011. Absence of DOs affected the sample processing and licensing activities.

### **2.4.3 License and Registration**

#### **2.4.3.1 Survey of industrial units**

The FSS Act, 2006 stipulates that the CFS shall survey the industrial units engaged in the manufacturing or processing of food in the State to verify their compliance with the standards notified by the Food Authority for various articles of food.

Audit noticed that the CFS did not conduct a survey of the industrial units nor issued instructions to the districts to do so during the five-year period 2014-19. The DDF&D of test-checked districts also confirmed (February 2020) that survey of industrial units was not conducted due to absence of any instructions from CFS. Failure to assess the industrial units engaged in manufacturing/ repacking *etc.* led to the likelihood of these units not being covered under the ambit of the Act and where covered, the possibility of non-compliance with the standards specified in the Act.

In the Exit Conference, the PS, PH&FWD stated (June 2020) that instructions had been issued by CFS to districts to take necessary action for their coverage. It was also stated that database of Urban Local Bodies/ Municipal Corporation relating to FBOs who were registered in other Acts under these bodies would be collected for their coverage, and additionally, database of Income tax and Commercial tax departments will also be considered.

#### **2.4.3.2 Maintenance of database of FBOs**

The FSS Rules, 2011 require the FSO to maintain a database of all the food business within his jurisdiction. Audit scrutiny revealed that the DOs did not define the geographical jurisdiction for each FSO leading to non-maintenance of a database of the FBOs. Separate jurisdiction for each FSO was allotted only in district Satna, out of the eight sampled districts. The SLSC in its fifth meeting (06.02.2020) decided that allotment of area should be done by CFS in respect of FSOs every six months. Thus, the decision of area allotment was taken after eight years of implementation of Act. In the absence of a database, the Department could not ensure whether all the FBOs had license/ registration.

Principal Secretary, PH&FWD stated (July 2020) that action for allotment of area to FSOs for six months would be taken from headquarters (Bhopal) level. CFS had issued (March and June 2020) directions to DOs to submit a copy of area allotment orders made by them for FSOs and list of tehsils and wards in urban areas in the district.

#### **2.4.3.3 Organisation of special campaigns for identification of FBOs**

In order to increase the number of licensees/ registered FBOs in the State, the Department issued (February 2019) instructions for forming divisional level special teams consisting of five FSOs to organise special campaigns. The campaign was to be conducted every day in the second and fourth week of the month by coordinating with the districts under the division. The in-charge of team would report the progress of the campaign to CFS by the fifth of every month. Similarly, the CAC directed (March 2019) in its 25<sup>th</sup> meeting to launch a special campaign to identify the FBOs who continued their business after expiry of their license and those who had taken new license without renewing the old one.



Audit noticed that the required monthly progress reports were not sent to CFS and he did not monitor the progress of the campaign prescribed for the districts. In the test-checked districts, the DOs had not maintained the records of the campaigns organised. In the absence of records, audit could not ascertain whether the campaigns were organised as per guidelines and the extent of coverage of the FBOs.

Principal Secretary, PH&FWD stated (July 2020) that orders had been issued to DOs to organise special camps to increase the number of license/registration and action would be taken to appoint an officer from the headquarters to ensure compliance in this regard.

#### **2.4.3.4 Issue of license/ registration**

Section 31 of the Act prohibits operation of food business without license. As per FSS (Licensing and Registration of Food Business) Regulations, 2011, in case registration certificate is not granted or denied within seven days or decision is not taken within 30 days of application, the petty manufacturers may start business. Similarly, an applicant for a license may start business if the license is not issued within 60 days.

##### **(i) Assessment of food business operators and their license/registration**

Audit scrutiny revealed that there was no mechanism at State/ district level to monitor/obtain information on the number of FBOs/petty manufacturers operating without license/ registration.

During the Exit Conference, the PS, PH&FWD stated (June 2020) that the matter would be reviewed and necessary action would be taken. Further, PS, PH&FWD stated (July 2020) that FSSAI had developed new software which now has the provision for information on number of FBOs district-wise/ state-wise.

##### **(ii) Pending cases of license/registration**

Analysis of online data of FLRS revealed an increasing trend of pendency of applications for license/registration during 2016 to 2019. Audit noticed that 2,672 applications for license and 10,027 applications for registration were pending as on 30 March 2019 in the State. In the test-checked districts, it was found that 526 applications for license (during January 2019 to December 2019) were pending in four<sup>31</sup> districts at FSO level without any reason in the FLRS. Similarly, 334 applications were pending in eight<sup>32</sup> districts for registration (during September 2013 to January 2020) as of date of audit (February 2020).

On verification of FLRS data, audit noticed delayed issue of license in 143 cases ranging between six days to five years after the prescribed time limit of 60 days in six<sup>33</sup> districts due to delay in submission of documents by FBOs, late inspection by FSOs and late issue of license at DOs level. The details of delay at different levels are shown in **Table 2.2**.

<sup>31</sup> Bhopal (303), Gwalior (12), Morena (132) and Satna (79).

<sup>32</sup> Bhopal (101), Gwalior (38), Hoshangabad (04), Indore (31), Khargone (11), Morena (01), Satna (43) and Ujjain (105).

<sup>33</sup> Bhopal (30, two to 11 months), Gwalior (28, five months to five years), Indore (13, two to 20 months) Khargone (55, six days to 15 months), Morena (12, eight days to eight months), Satna (05, three to 14 months). In Ujjain district, verification of license details from FLRS could not be done during audit due to non-availability of ID/ Password as DO was not appointed from 28.12.2019 to 25.02.2020.

**Table 2.2: Position of delay in issue of license at different levels**

Name of District	No. of licenses issued with delays	Reasons for and extent of delay					
		Document submission by FBO	Period	Inspection/ Delay in scrutiny by FSO	Period	Issue of license by DO	Period
Bhopal	30	0	0	18	2 to 7 months	30	3 to 7 months
Gwalior	28	0	0	26	2 months to 4 years	24	2 months to 3 years 5 months
Indore	13	11	7 to 19 months	4	2 to 14 months	1	2 Months
Khargone	55	0	0	46	1 to 17 months	14	1 to 11 months
Morena	12	0	0	12	2 to 9 months	1	1 month
Satna	5	1	8 months	4	4 to 12 months	2	2 to 7 months

Source: FLRS data

The post of DO being held as additional charge, shortage of FSOs and delayed completion of online procedures were the main reasons for pendency of applications of license/ registration certificates.

In the Exit Conference, the PS, PH&FWD assured (June 2020) that pending cases would be reviewed and inspection process would be strengthened. He further stated (July 2020) that instructions were issued (June 2020) by CFS to all the districts to ensure quick clearance of pending cases.

**(iii) Coverage of Agencies for License/ Registration**

With regard to the coverage of agencies for license and registration in the State, the following instructions were issued by FSSAI and State authorities:

- (a) The FSSAI directed (December 2012) all CFSs to ensure that all persons dealing with business of alcoholic drinks and wines are registered as FBOs.
- (b) The Department issued (January 2014) instructions to Principal Secretaries (PS) and Managing Directors of 16 departments (**Appendix 2.5**) to ensure that only registered/ licensed FBOs are permitted to operate in their respective departments.
- (c) The Department issued (May 2018) instructions to District Collectors/ DOs and CM&HOs to ensure that only registered/licensed FBOs/agencies should operate in selling/ distribution of diet in Government/ private hospitals. The SLSC directed in its fourth meeting (June 2018) to take action against the earlier instructions issued by the Department to ensure license/ registration.
- (d) The CFS issued (April 2019) instructions to PS, Food Civil Supplies and Consumer Protection (FCS&CP) and PS, Commercial Tax Department to ensure that only licensed/ registered fair price shops/businesses/shops with the food authorities should be allowed to operate in manufacturing/ distribution/ storage/ import/ transportation and selling of foreign and country liquor.

The number of agencies engaged in various businesses under the Act in the test-checked districts are shown in **Table 2.3**.



**Table 2.3: Status of FBOs engaged in business under various Departments**

Name of Department	Commercial Tax Department	Women and Child Development Department (W&CDD)	Food Civil Supplies and Consumer Protection Department
Details of business category	Selling country/foreign liquor	Self Help Groups (SHG) supplying Nutrition under Supplementary Nutrition Programme	Fair Price Shops engaged in Public Distribution System
Total Nos.	794	4,447	4,482

Source: Information furnished by concerned departments

Audit observations in this regard are as follows:

- 794 FBOs engaged in selling country/foreign liquor did not have license/registration.
- Similarly, 4,482 fair price shops did not have license/registration.
- District Programme Officer, W&CDD, of five<sup>34</sup> districts reported having license/registration of 1,276 SHGs out of 4,447 SHGs. Audit verified the status of 248 SHGs from the FLRS data in six<sup>35</sup> districts and found that 62 were having license/ registration and 186 (75 per cent) were not having license/ registration.
- The CM&HOs of the test-checked districts did not ensure that the diet to patients in private/ Government health institutions was provided by licensed/registered agencies.

The PS/ CFS did not coordinate/monitor/supervise non-compliance in other Departments. The above indicates that the Departments did not comply with the instructions of the food authorities nor reported the compliance to the CFS. The district authorities also did not comply with these instructions. Audit noticed that the CFS also did not follow up with various authorities for compliance except for issuing instructions and waiting for compliance.

Thus, the above agencies were conducting business in violation of the Act apart from loss of revenue to the State Government. Revenue loss could not be assessed as turnover details of the FBOs were not made available to audit. In the case of 732 FBOs<sup>36</sup> selling country/foreign liquor in seven of the eight sampled districts, there was a revenue loss of ₹14.60 lakh<sup>37</sup> per annum.

In the Exit Conference, the PS, PH&FWD stated (June 2020) that survey of FBOs could not be undertaken due to manpower constraints. He further stated (July 2020) that a meeting of interdepartmental committee was held (July 2020) under his Chairmanship wherein it was decided to prepare a work plan for getting license/registration for sale/ distribution of food articles and other activities under different schemes from all departments.

<sup>34</sup> Bhopal (145), Hoshangabad (06), Khargone (01), Satna (23) and Ujjain (1,101).

<sup>35</sup> Bhopal (145, 17), Hoshangabad (06, 02), Khargone (01, 01), Indore (51, 07), Satna (23, 17) and Ujjain (22, 18).

<sup>36</sup> Bhopal(93), Gwalior(112), Indore(173), Khargone(83), Morena(59), Satna(71) and Ujjain(141)

<sup>37</sup> 730 licensees at the rate of ₹2,000 and 2 registered FBOs at the rate of ₹100. Annual turnover of remaining 62 FBOs was not available due to which they were not considered in calculation.

### 2.4.3.5 Renewal of License

The registration or license issued under the Act is valid for one to five years as chosen by the FBOs. The FBOs are required to renew their licenses/registrations 30 days before the date of expiry, failing which, a late fee of ₹100/- is chargeable for each day of delay in case of license. Upto August 2013, the Department issued licenses/registration manually (offline) and thereafter, it started issuing online licenses through FLRS.

#### (i) Offline licenses

In seven<sup>38</sup> test-checked districts, Audit found that 5,321 (95 per cent) out of 5,610 licenses issued (during October 2011 to October 2013) were due for renewal, of which, only 1,395 licenses were renewed in six<sup>39</sup> districts while entries of renewal of 315 licenses were not found in Ujjain district. The district authorities did not ensure renewal of the remaining 3,611 licenses in six<sup>40</sup> districts. Morena district did not produce records of offline license/ registration issued.

Out of 5,321 licenses due for renewal, audit selected 339 licenses in order to ascertain the status of renewal. Out of 339, 158 licenses were found renewed, however renewal status in respect of the remaining 181 cases could not be ascertained from the FLRS. Further, the licensing authority did not confirm the status of renewal of FBOs. This indicates that the DOs failed to monitor the renewal of cases.

Principal Secretary, PH&FWD stated that the validity of license/ registration is for five years and therefore all the licenses/ registrations issued manually prior to 2013 had expired and FSSAI would be asked to delete those licenses/registrations. Reply is not acceptable because verification of renewal of offline licenses issued for less than five years was not ensured from FLRS.

#### (ii) Online licenses

Scrutiny of Annual Report of the State for the year 2018-19 sent to FSSAI, revealed that 11,074 licenses had expired. Details of inspections conducted for expired licenses and the number of cases in which the food business was running with expired license was not available at State level.

Audit of FLRS data (February 2020) in eight test-checked districts indicated the status of active and expired license/ registration certificates as shown in **Table 2.4**.

**Table 2.4: Status of active and expired license/registration certificates**

Sl. No.	Particulars	Issued as per FLRS	Active	Expired	Not displayed in FLRS
1.	License	22,137	10,286	11,851	470
2.	Registration certificates	1,12,952	60,686	52,266	444

Source: Data as per FLRS

<sup>38</sup> Bhopal (616), Gwalior (918), Hoshangabad (477), Indore (2,620), Khargone (292), Satna (362) and Ujjain (325).

<sup>39</sup> Bhopal (51), Gwalior (19), Hoshangabad (296), Indore (901), Khargone (54) and Satna (74).

<sup>40</sup> Bhopal (533), Gwalior (898), Hoshangabad (79), Indore (1,719), Khargone (224) and Satna (158).

Analysis of Management Information System (MIS) in FLRS indicated that the provision for ascertaining expired licenses/registrations was available to the CFS at State level and DO at district level. However, the FSOs did not generate the list of defaulters from the FLRS database to conduct inspections to detect whether FBOs were operating business without license/ registration and initiate penal action. Audit found that in 111 cases in the eight test-checked districts, prosecution was launched against those FBOs who had no license/ registration during 2014-19. These cases were detected during drawal of samples.

The DOs at district and CFS at State level did not supervise to ensure action against the FBOs and the laxity of FSOs. Non-renewal of expired licenses of FBOs and absence of inspections clearly indicate lackadaisical attitude of the officials in the implementation of Food Safety Act. During joint physical verification (February 2020 and March 2020), audit found that in six out of 98 FBOs, the license/registration had expired. Further, 44 out of 98 FBOs did not display their registration/license in the place of business.

The above facts indicate that self-regulation of FBOs alone may not ensure effective implementation of the Act. A mix of departmental intervention is also required for regulation of FBOs.

In the Exit Conference, the PS, PH&FWD stated (June 2020) that efforts would be made to improve the system and monitoring the same through online process in a timely manner. Further, PS, PH&FWD stated (July 2020) that instructions had been issued to districts for appropriate supervision of expired licenses/registrations and a headquarters level officer would supervise to ensure compliance.

***(iii) Monitoring of application of license in FLRS***

Audit found that the licensing/ registration authority did not monitor the license applications cancelled by the FBOs in the FLRS. A total of 275 applications (November 2013 to January 2020) including 50 renewal cases were cancelled by the FBOs. Audit verified the status of 50 renewal cases from FLRS and found that fresh licenses were issued in 20 cases in place of renewal and status of 30 cases could not be found in FLRS. Three FBOs in Gwalior district were issued fresh license by changing their firm name and not renewing the license. Similarly, 131 applicants who had applied for registration cancelled their applications during September 2013 to December 2019; however, reasons for cancellation was not verified by FSO.

As required under clauses 2.1.1(3) and 2.1.4(2) of the Regulations, the required documents desired by the licensing/ registration authority should be submitted by the FBOs during processing of license in the FLRS. Audit found that 1,803 applications for license and 1,226 applications for registration applied during September 2013 to February 2020, were rejected due to non-submission of documents by the FBOs.

The licensing/registration authority did not monitor the status of license/ registration in the above cases from FLRS to ensure that they had immediately stopped business.

In the Exit Conference, the PS, PH&FWD stated (June 2020) that a regular officer at State level has been put in place for monitoring the cases. Further, PS, PH&FWD also stated (July 2020) that instructions would be issued to monitor these cases and for renewal of licenses

as per provision of the Act. However, the Department did not submit documents in support of deputation of regular officer at State level.

#### 2.4.4 Inspection of Food Business Operators

As per FSS Rules, 2011, the FSO should inspect all licensed FBOs' (having an annual turnover of more than ₹12 lakh) food establishments<sup>41</sup> as frequently as prescribed and ensure their compliance with conditions of license. The DOs should maintain records of inspection as per the Act. Besides, annual inspection of registered FBOs (having an annual turnover of less than ₹12 lakh) should be ensured as required under FSS Regulations, 2011.

The status of State level licensee and registered FBOs along with the test-checked districts and joint physical inspection conducted by audit are given in **Table 2.5**.

**Table 2.5: Status of State issued license and registration and audit coverage**

State Level (as on March 2019)		Test-Checked Districts (as of Feb 2020)		Coverage of Milk/ Milk Products FBOs in test-checked districts	
No. of State Licensee FBOs	No. of Registered FBOs	No. of Licensee FBOs	No. of Registered FBOs	Sample drawn from milk/ milk product FBOs in 2018-19	Coverage of FBOs by Audit during Joint Physical Verification
43,751	4,83,907	10,286	60,686	688	98 (14 per cent)

Source: FLRS, Departmental records and joint physical verification

Audit found that neither the State level authorities nor the DOs in the test-checked districts, fixed targets and periodicity for conducting inspection of licensee FBOs. However, in response to audit observation, CFS issued (June 2020) instructions fixing a monthly target of 30 food establishments to be inspected by each FSO.

Annual inspection of registered FBOs was also not carried out as per FSS Regulations, 2011. Audit found that the DOs also did not maintain records of inspections carried out by FSOs in any of the test-checked districts.

During joint physical verification (February and March 2020) of 98 FBOs, Audit found non-compliance with conditions of license/ registration by FBOs as given below-

- 48 FBOs did not display the food articles on the notice boards.
- 51 FBOs did not maintain purchase and sale records.
- 19 FBOs did not follow hygienic and sanitation practices in their shops.
- The facility of cold chain/deep freezer/refrigerator was not available with four out of 48 licensee FBOs for storage of milk/milk products.
- One FBO in Gwalior district closed the shutter of the shop on seeing the team and did not open the shop.

Due to absence of periodical inspection, the level of compliance of required laws by the FBOs remained unassessed. The Department could not assess the extent of compliance to the food safety laws.

<sup>41</sup> The places used for manufacturing, handling, packing or selling of an article of food.

Principal Secretary, PH&FWD stated (July 2020) that inspection of each FBO is not possible at present due to shortage of field staff; Department had issued orders to conduct inspection of more FBOs covering all aspects of inspection as per the Act including issue of improvement notices for deficiencies on the part of FBOs.

#### **2.4.5 Drawal of Food Samples and their analysis**

Food Testing Laboratories are a vital arm of a responsive food regulatory system, for robust implementation and enforcement. These laboratories with adequate infrastructure, facilities, equipment, *etc.* are benchmarks that support the increasingly stringent quality and safety standards. Formal accreditation, operation of effective internal quality control procedures are key elements in ensuring the quality of results generated by analytical laboratories.

#### **Infrastructure for Food Analysis**

##### **2.4.5.1 Laboratory facilities for analysis**

There are three food laboratories in Madhya Pradesh - State Food Laboratory (SFL), Bhopal is maintained by the Department, while the laboratories located at Indore and Ujjain are operated by the respective Municipal Corporations. In May 2013, FSSAI proposed to upgrade all the three food labs at Bhopal, Indore and Ujjain during 2013-15 at an estimated cost of ₹12 crore per laboratory to be shared by GoI (75 per cent) and GoMP (25 per cent). Further, GoMP was required to engage laboratory analysts and other technical/support staff to run the upgraded facility. The Department was also required to obtain National Accreditation Board for Testing and Calibration Laboratory (NABL) accreditation for the food labs at Indore and Ujjain which is mandatory under Section 43 of the FSS Act 2006. FSSAI had also requested (May 2013) GoMP to suggest at least five locations for establishment of three level 2 laboratories (having basic testing facility).

Audit observations in this regard are as follows:

- (a) Only the SFL at Bhopal has been upgraded (March 2017 to February 2020) for microbiological testing. The new SFL building (for microbiology lab) at Bhopal has been completed (January 2020) with a delay of eight months. The construction work was not completed within the scheduled time (May 2019) as the CFS had not vacated the construction site at SFL, leading to delayed start of work. However, the Department neither filled up the post of microbiologist nor procured all required equipment as of February 2020. Therefore, as on date (August 2020) even the SFL Bhopal was not fully operational with biological testing facility and only continuing with basic testing.
- (b) The Department did not submit any upgradation proposal for food labs at Indore and Ujjain even after seven years of FSSAI's proposal for upgradation in 2013.
- (c) The Department did not obtain NABL accreditation for the food labs at Indore and Ujjain despite being a mandatory requirement under Section 43 of the FSS Act, 2006. The Indore and Ujjain Municipal Corporations intimated (February 2020) that the food labs were not in operation due to non-availability of FSSAI notified Food Analyst in Indore and non-availability of staff at Ujjain respectively. In May 2019, FSSAI directed GoMP to discontinue the food labs at Indore and Ujjain w.e.f. 14 June 2019 as these labs were without NABL accreditation.

(d) The Department had not initiated any action so far to establish three level-2 laboratories in the State.

As the Department did not upgrade or obtain NABL accreditation for labs at Indore and Ujjain and has not completely upgraded the SFL at Bhopal as required, the food testing requirement as per FSSAI and the FSS Act, 2006 could not materialise.

The State Government failed to fulfill the requirements of FSSAI as it did not make arrangements for notified Food Analysts in both the labs required for accreditation. As a result, the labs were not considered for upgradation. The rush of sample analysis in the SFL could have been solved if both the labs were accredited by NABL.

Principal Secretary, PH&FWD stated (July 2020) that Food labs in Municipal Corporations of Indore and Ujjain were not incorporated in the work plan as they were non-functional and did not have NABL accreditation. He further stated that construction of building works was delayed due to delay in sanction for allotment at Government level and *Lok Sabha* and Assembly elections; appointment against posts created for microbiology testing would be made after revision in recruitment rules; procurement of equipment for microbiology lab would be made for which FSSAI had provided (March 2020) ₹one crore; installation of three modern equipment procured (January and February 2019) for upgradation and training of their operators was under process.

Further, PS, PH&FWD also stated that Food labs at Indore and Ujjain were not under the control of that Department and no such cases for notification of Food Analysts in these labs were pending at CFS level. Decision for food labs working under municipal corporations would be taken by their controlling officers and more analysis of samples could be done after operation of three new labs at Indore, Jabalpur and Gwalior.

The above facts indicate that the State Government failed to seize the opportunity of operationalizing both the labs. Besides, there was no delay in sanction as Government accorded sanction (August 2018) after two months of receipt (May 2018) of estimates from construction agency, Capital Project Administration Bhopal.

#### **2.4.5.2 Functioning of Existing State Food Laboratory**

The guidance document of FSSAI prescribes the requirement of manpower, equipment and other facilities for a regulatory food analysis laboratory. Audit found shortage of manpower, equipment and other facilities in the existing State Food Laboratory as discussed below: -

##### **(i) Availability of Staff**

Audit found that the posts created in the SFL were not as per the guidance document. Further, it was also noticed that 22 (71 *per cent*) out of 31 sanctioned posts were lying vacant in the State Food Lab. The post-wise details as of February 2020 are given in **Table 2.6**.



**Table 2.6: Manpower position in State food lab.**

Sl. No.	Name of Post	Sanctioned post	Men-in-position	Vacant Post
1	Public Analyst	4	1	3
2	Chemical Chemist	1	0	1
3	Assistant Public Analyst	1	1	0
4	Sr. Chemist	3	1	2
5	Chemist Grade-I	1	0	1
6	Asstt. Public Analyst/ Chemist Grade-II/ Asstt. Chemist	12	2	10
7	Lab Assistant	9	4	5
<b>Total</b>		<b>31</b>	<b>9</b>	<b>22</b>

Source: Information furnished by Department

The PS, PH&FWD stated (July 2020) that proposal for recruitment against vacant posts of Chemist and revision in service rules for recruitment against newly sanctioned posts in microbiology lab is under process.

**(ii) Availability of equipment**

Audit noticed that the CFS had sent (September 2016) the gap analysis report conducted for upgradation under the scheme for strengthening of Food Testing System to FSSAI. As per the said report, 22 types of equipment were functional and 12 types of equipment were non-functional in the SFL. The requirement of the gap analysis exercise was not fulfilled and the types of non-functional equipment have increased to 18 (as on July 2020).

- Further, other than gap analysis, 32 out of 69 types of equipment were not available as prescribed in the guidance document issued by FSSAI.
- Procurement of 22 types of equipment was not made (as of February 2020) as per demand of SFL of which 10 types of items to be procured were non-functional.
- The life of 10 types of existing equipment were more than 10 years old and the life of other equipment could not be ascertained, as records in this regard were not maintained. Analysis work was affected due to non-functional items of equipment and required food sample analysis was done with the available equipment. Analysis of food additives, cloud points of oil and heavy metals could not be done. The usage of old equipment would affect the analysis and accuracy of result which is reflected from huge variation in referral cases.

Principal Secretary, PH&FWD stated (July 2020) that according to the proposal of FSSAI, the Department had sent list of equipment as per guidance document to FSSAI which could be made available after their approval.

**(iii) Non-availability of facilities**

Audit found non-availability of required facilities, as detailed below:

- Highly inflammable/ inflammable chemicals were not kept separately.
- There was no facility of freezer/ deep freezer for storage of food samples in the store.
- CCTV surveillance facility was not available.

Principal Secretary, PH&FWD stated (July 2020) that CCTV surveillance is functional on the ground floor while the work is pending on the first floor; facility for freezer/ deep freezer for storage of samples in sample receipt section on the first floor had been proposed and its procurement was pending.

Absence of required manpower and the use of old equipment affected the analysis and accuracy of results as brought out below:

Audit found in seven<sup>42</sup> test-checked districts that out of 259 samples sent to the referral lab for second opinion during 2014-19, in 82 cases the opinion of the State food lab and referral lab were the same and in 177 cases (68.34 per cent) there was a difference of opinion. There was substantial scope for improvement in analysis of food samples by SFL. Therefore, deploying qualified analysts/ technicians and establishing standard operational and working procedures in the State lab was a necessity which was not ensured. Besides, wide variation in results could affect the trust of FBOs on the analysis work of State lab. The variation in opinion of referral lab against the findings of SFL is given in **Table 2.7**.

**Table 2.7: Status of variation in result of SFL and referral lab**

No. of Food samples	Findings as per SFL	Findings as per Referral Lab (No. of cases)						
		Sub-Standard	Conform	Mis-Branded	Adulterant	Unsafe	Sub-Standard & Mis-Branded	Prohibited for Sale
47	Unsafe	27	15	05	00	00	00	00
01	Sale prohibited	00	00	00	00	01	00	00
02	Unsafe & Misbranded	00	02	00	00	00	00	00
01	Unsafe & Prohibited	00	01	00	00	00	00	00
57	Misbranded	05	48	00	00	04	00	00
53	Sub-Standard	00	44	01	00	02	04	02
10	Conform	08	00	02	00	00	00	00
06	Non-conform	00	06	00	00	00	00	00
<b>177</b>		<b>40</b>	<b>116</b>	<b>08</b>	<b>00</b>	<b>07</b>	<b>04</b>	<b>02</b>

Source: Departmental Records

Principal Secretary, PH&FWD stated (July 2020) that the report of referral lab would be obtained to study and know the reasons for variations. The facilities for analysis of various food parameters i.e. microbiology examination, food contaminants and other various additives *etc.* were not available in SFL during 2014-19.

#### 2.4.5.3 Lifting of Regulatory Samples

Section 38 (1) of the Act empowers FSO to take a sample of any food, or any substance, which is meant for sale. FSS Rules, 2011 prescribes the procedure for drawing food samples and the manner of sending it for analysis to the Food Analyst.

<sup>42</sup> Bhopal (10), Gwalior (105), Hoshangabad (19), Indore (61), Khargone (10), Morena (33) and Ujjain (21).



SLSC fixed (March 2016) a monthly target of drawing four regulatory and eight surveillance samples for each FSO.

The number of State license/ registrations, regulatory samples<sup>43</sup> drawn, samples analysed and non-conforming samples in the State during 2014-19 is given in **Table 2.8**.

**Table 2.8: Status of food samples drawn, samples analysed by State lab and non-conforming samples**

Year	No. of State licensee/ registered FBOs	No. of regulatory samples drawn	No. of regulatory samples analysed	No. of non-conforming regulatory samples (percentage)	Coverage of FBOs in percentage
2014-15	3,23,106	9,532	9,131	1,412 (15)	2.95
2015-16	3,72,362	10,035	9,994	1,311 (13)	2.69
2016-17	4,18,711	5,675	5,461	609 (11)	1.36
2017-18	4,66,998	7,121	6,270	904 (14)	1.52
2018-19	5,27,658	7,254	7,112	1,612 (23)	1.37
<b>Total</b>	----	<b>39,617</b>	<b>37,968</b>	<b>5,848 (15)</b>	

Source: State level Annual report sent to FSSAI and data of FSSAI CAC meeting

From the above table, it could be seen that

- Although the number of State licensees and registered FBOs had increased during 2014-19, their coverage in terms of the number of samples drawn decreased except during 2017-18, as compared to 2016-17 wherein an increase of 1.52 *per cent* was noticed.
- The targets for drawing sample by each FSO were not changed in proportion to licenses/registrations owing to less capacity of lab (500 per month) and shortage of FSOs which led to short coverage of FBOs for drawal of samples.
- The *percentage* of samples drawn in proportion to the number of licensees/ registered FBOs ranged between 1.36 to 2.95 *per cent* during the period 2014-19 and 97 *per cent* FBOs remained uncovered.

In eight test-checked districts audit found:

- During 2014-19, 11,440 regulatory samples were analysed against 11,505 samples drawn in which 2,118 samples were non-conforming (19 *per cent*). The district-wise/ year-wise details are given in **Appendix 2.6**.
- The results of 65 samples were not received, of which 50 samples were more than one to four years old.
- In 2016-17, the number of samples drawn was least in comparison to other years due to absence of DOs in the districts and regulatory samples were not drawn during the period October 2016 to January 2017.

During the joint physical verification (February and March 2020), Audit noticed non-coverage of 71 out of 98 selected FBOs in the eight test-checked districts since the commencement of their business.

<sup>43</sup> The sample used for prosecution purpose.

The increasing trend of non-conforming samples indicates lack of self-regulation on the part of FBOs and thus requires strengthening of the overall sample drawal activity and testing by the Department. Further, in the eight sampled districts, audit noticed (February 2020) shortfall in achievement against targets fixed by SLSC for drawing regulatory and surveillance samples<sup>44</sup> by the FSOs during the period 2016-2019 as given in **Table 2.9**.

**Table 2.9: Status of targets and achievement of regulatory and surveillance food samples**

Year	Targets as per FSOs		Achievements		Shortfall (Percentage)	
	Regulatory	Surveillance	Regulatory	Surveillance	Regulatory	Surveillance
2016-17	2,080	4,160	1,483	1,988	597 (29)	2,172 (52)
2017-18	2,172	4,344	2,177	1,656	- 5	2,688 (62)
2018-19	2,208	4,416	2,105	1,147	103 (5)	3,269 (74)
<b>Total</b>	<b>6,460</b>	<b>12,920</b>	<b>5,765</b>	<b>4,791</b>	<b>695 (11)</b>	<b>8,129 (63)</b>

Source: Departmental records

From the above table it is evident that the overall *percentage* of shortfall in regulatory samples was 11 during the period 2016-19. Three districts *i.e.* Gwalior, Hoshangabad and Morena achieved more than the target set for regulatory samples during the period 2016-19. The highest *percentage* of shortfall in target set for regulatory sample was in Satna district (50) and lowest *percentage* in Khargone district (4).

The overall *percentage* of shortfall in surveillance sample was 63 during 2016-19. There was an increasing trend in shortfall of surveillance samples from 2016-17. The highest *percentage* of shortfall in target set for surveillance sample was in Satna district (97) and lowest *percentage* in Khargone district (12).

The district-wise and year-wise targets and achievements of regulatory and surveillance samples are given in *Appendix 2.7* and *Appendix 2.8* respectively.

The above facts indicate that the Department failed to draw adequate number of samples, which would have ensured compliance with the standards by the FBOs at all stages of food business.

In the Exit Conference, the PS, PH&FWD stated (June 2020) that targets have been reduced due to long pendency in analysis of samples and since the lab capacity is limited, efforts are being made to get the samples tested in other labs.

#### **2.4.5.4 Analysis of Regulatory food samples**

FSS Rules, 2011 prescribes the procedure for analysis of sample by Food Analyst. The Food Analyst should send the analysis report within 14 days of receipt of sample. In case of delay in analysis, the Food Analyst shall inform the DOs and the CFS giving reasons and specifying the time to be taken for analysis. If the sample received is found unfit for analysis, the Food Analyst should inform the DO within seven days from the date of receipt of such sample for sending the second part<sup>45</sup> of the sample. On receipt of requisition from the Food

<sup>44</sup> Surveillance samples are not used for prosecution purpose.

<sup>45</sup> Section 47 of the Act stipulates that the sample taken by FSO is to be divided into four parts. First part of the sample is sent for analysis to the Food Analyst under intimation to the Designated Officer and two parts are sent to the Designated Officer for keeping these in safe custody. In case the first part found unfit for analysis, the second part (out of two parts) is further sent for analysis.

Analyst, the DO should dispatch requisitioned sample by the next working day. FSS (Laboratory and Sample Analysis) Regulations, 2011 specifies the quantity of sample of food to be sent to the Food Analyst for analysis.

Audit found delayed analysis of samples in SFL in contravention of the provision of the Rules. The position of samples received and analysed during the period 2015-19 is given in **Table 2.10**.

**Table 2.10: Position of samples received and analysed in State lab**

Year	No. of samples received <sup>46</sup>	No. of samples analyzed	No. of samples pending analysis	Percentage of samples analyzed	Pendency of samples excluding last fortnight of the financial year
2014-15	NA	2,703	NA	NA	NA
2015-16	10,081	5,173	4,908	51	4,662
2016-17	7,692	5,633	2,059	73	1,665
2017-18	7,596	7,868	00	104	00
2018-19	7,491	7,231	260	97	00

**Source: Departmental records**

The SFL did not produce the sample receipt register for the year 2014-15. The lab at Bhopal did not analyse the food samples received within 14 days and there was substantial pendency of samples to be analysed. There was pendency of samples in the years 2015-17 even after deducting the number of sample results sent to districts within the first fortnight of 2016-18.

Further scrutiny of records revealed the following:

- Delay in analysis of 2,649 samples was attributed by the Food Analyst to engagement of staff in *Simhastha Kumbh Mela*, Government holidays and absence of Food Analyst and non-availability of postage stamps and chemicals. The reasons reported are not acceptable because postage stamps would be required at the time of sending report and lack of chemicals affecting analysis indicates lack of internal management at CFS level. Besides, the expected date of analysis was also not mentioned in the intimation letter.
- Further, in the testing dispatch register, the serial number of 15 reports in the year 2014-15 were entered twice, 14 reports during 2014-16 and 2017-19 were not allotted any serial number and entries of 49 reports were provided separate serial numbers on separate dates on different occasions during 2014-15 and 2016-19. Thus, the result of entries were made in the testing dispatch register in a manner that would appear to avoid detection of delayed analysis and projecting dispatch of reports within time.

In the Exit Conference, the PS, PH&FWD stated (June 2020) that large number of samples could not be tested in time due to limited testing capacity of SFL.

In the eight test-checked districts, audit observed the following:

- Samples of food articles which were not analysed in 14 days were not mentioned in 15 intimation letters sent by the Food Analysts to DO in three<sup>47</sup> districts. Besides, the

<sup>46</sup> The State food lab maintained the receipt of first part and second part in single sample receipt register due to which audit could not access the second part of sample received.

<sup>47</sup> Bhopal (04), Gwalior (05) and Hoshangabad (06).

probable time to be taken for analysis was also not specified in the letters. The information of delay in analysis was not sent to DO in 512 cases during 2014-19 in four<sup>48</sup> districts by the Food Analysts. Thus, there was non-compliance of the Act on analysing as well as reporting of the results of samples which needs to be adhered.

- Out of 11,505 regulatory samples drawn, 4,814 (42 per cent) samples<sup>49</sup> were drawn from 1,988 FBOs on the same date by the FSOs on different occasions during 2014-19. This act of FSO increased the number of samples but did not cover additional number of FBOs.
- Quantity of sample drawn for analysis was not recorded in the sample register maintained in the districts, in the absence of which, audit could not verify whether the prescribed quantity of sample of food was drawn for analysis. Besides, records relating to quantity of food samples, other preservative materials procured and expenditure incurred on such procurement and expenses made on the delivery of samples to food lab for analysis were not maintained at district level.
- During 2014-19, DDF&D of audited districts spent ₹6.48 lakh on procurement of food samples against budget allotment of ₹11.24 lakh. Further, the department did not allot budget to five<sup>50</sup> districts in 2014-15, one district (Ujjain) in 2016-17 and seven<sup>51</sup> districts in 2018-19.
- The date of sending the second part of the sample to the State lab was not mentioned in sample register in these districts, in the absence of which, the number of requisitions made for the second part by the State lab and sending the sample by the next working day could not be ensured.
- The method of analysis was not mentioned in the testing report of samples sent by the Food Analysts and the cause of unsafe/ misbranded/ substandard samples were also not mentioned. Thus, the procedure of analysis was not in compliance with the rules. The DDF&Ds stated that the deficiencies would be rectified.

Principal Secretary, PH&FWD stated (July 2020) that analysis and reporting work through Indian Food Laboratories Network (InfoLnet) online portal of FSSAI is under process for strengthening the food sample analysis and reporting system and to make the system of record keeping, receipt and dispatch of samples more effective.

#### **2.4.5.5 Surveillance Samples**

As per provision of Rule 2.1.3(4) (iii) (d) of FSS Rules, 2011 the FSO should draw samples for the purposes of surveillance, survey and research, which shall not be used for prosecution.

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<sup>48</sup> Bhopal (06), Gwalior (17), Hoshangabad (488) and Ujjain (01).

<sup>49</sup> Bhopal (1,189 samples 423 FBOs), Gwalior (899 samples 398 FBOs), Hoshangabad (201 samples 99 FBOs), Indore (1,373 samples 591 FBOs), Khargone (349 samples 150 FBOs), Morena (492 samples 198 FBOs), Satna (162 samples 66 FBOs) and Ujjain (149 samples 63 FBOs).

<sup>50</sup> Bhopal, Hoshangabad, Khargone, Morena and Ujjain.

<sup>51</sup> Gwalior, Hoshangabad, Indore, Khargone, Morena, Satna and Ujjain.

Audit found acute shortfall in analysis of surveillance samples in the State. Out of 19,309 samples received, only 2,443 (13 *per cent*) samples were analysed during January 2016 to December 2018. The main reason for shortfall was that the State food lab gave priority to the analysis of regulatory samples only, due to lack of adequate analysis capacity of the lab (500 samples per month). This was due to the fact that under the Act, non-conforming regulatory samples was considered for prosecution, while result of surveillance samples could not be used for prosecution purposes.

In seven test-checked districts (except Bhopal), the result of 1,178 surveillance samples were received from the State food lab against 5,308 samples drawn, in which, 53 samples were non-conforming. The result of 4,130 samples (78 *per cent*) were not received; of these, 3,046 samples were more than one to four years old. In Bhopal district, the result of 413 surveillance samples sent for analysis were not made available to audit. The district-wise/year-wise details are given in **Appendix 2.9**.

Further, audit noticed that the SLSC decided (December 2016) to send the surveillance food samples to an NABL accredited laboratory owing to the constraints in capacity of the SFL. Accordingly, the CFS approved (April 2018) the rate of a private NABL accredited laboratory (M/s Excellent Bio Research Solution Pvt. Ltd., Jabalpur) at ₹1,155/- per sample<sup>52</sup> and directed (February 2019) the districts to send samples to this firm. However, only 180 samples were analysed in one month by this firm as the validity date for analysis was up to 31 March 2019 with no provision for extension in the agreement.

The CFS did not take further action in order to clear the pendency of surveillance samples. The CFS replied (February 2020) that the State had only one food lab due to which, surveillance samples were not analysed as regulatory samples were given priority and that, alternative arrangements were under process.

In the Exit Conference, the PS, PH&FWD stated (June 2020) that efforts are being made to clear the pendency and it was decided to send the samples to other labs/other State labs to clear the backlog. Further, PS, PH&FWD confirmed the facts and stated (July 2020) that efforts were being made to get the samples tested in the lab of Higher Education Department. He stated that the sample analysis load of SFL, Bhopal could be reduced after operation of three under construction divisional labs and commencing the departmental labs in Sagar and Ujjain with the cooperation of FSSAI (under process).

Considering that analysis of surveillance samples discloses the overall quality of different kinds of food in the market, it is imperative that the Department increase drawal and analysis of these samples.

#### **2.4.5.6 Mobile Food Testing Laboratory**

Scrutiny of records of CFS made available to audit revealed that the three mobile food testing laboratories (MFTL) were not completely engaged for analysis of food samples and Information, Education and Communication (IEC) activities (surveillance and creating

<sup>52</sup> Food samples for all food categories except food for infant nutrition and packaged drinking water and mineral water.

awareness). The status of operation of three laboratories and testing conducted during the period 2015-19 is given in **Table 2.11**.

**Table 2.11: Status of Mobile Food Testing Labs**

Sl. No.	MFTL	MFTL available	Operating period	Functional	Remained idle	No. of sample tested
1.	MFTL No. 1 (MP02AV 6008)	Year 2015	February 2016 to March 2019	16 months	22 months	2000
2.	MFTL No. 2 (MP02AV 6658)	April 2018	May 2018 to March 2019	7 months	4 months	826
3.	MFTL No. 3 (MP02AV 6982)	November 2018	December 2018 to March 2019	3 months	1 month	60

Source: Departmental records

The MFTL No.1 was not operated according to the approved programme from January 2017 to December 2017, for reasons not on record. In the test-checked districts, the MFTLs were not used during the period 2015-19 except in Satna district. Thus, the mobile testing laboratories were not optimally utilised for the desired purpose.

In the Exit Conference, the PS, PH&FWD stated (June 2020) that the main constraint is manpower and efforts would be made to engage contractual manpower in the absence of regular manpower. Further, PS, PH&FWD stated (July 2020) that FSSAI had provided seven new MFTLs, which would be operationalised after their registration and would be operated in all divisions to create more public awareness.

#### 2.4.5.7 Ensuring Safety and Standards in Milk and Milk products

Audit scrutiny in the sampled districts and analysis of samples on the basis of National Milk Survey revealed deterioration in quality and non-compliance with standards<sup>53</sup> in milk and milk products.

The year-wise position of regulatory samples drawn, milk and milk product samples drawn and analysed during 2014-19 in the sampled districts is given in **Table 2.12**. The district-wise details are shown in **Appendix 2.10**.

**Table 2.12: Status of regulatory samples, milk samples drawn/ analyzed in test-checked districts**

(Figures in number)

Year	No. of regulatory samples drawn	No. of milk/ milk products samples drawn	No. of milk/ milk products samples analyzed	No of Milk/ milk products non-conforming samples (percentage)	Result of samples not received
2014-15	2,645	995	995	215 (22)	00
2015-16	3,095	1,095	1,095	182 (17)	00
2016-17	1,483	455	451	65 (14)	04
2017-18	2,177	805	804	165 (21)	01
2018-19	2,105	854	850	208 (24)	04
<b>Total</b>	<b>11,505</b>	<b>4,204</b>	<b>4,195</b>	<b>835</b>	<b>09</b>

Source: Departmental records

<sup>53</sup> The standards as prescribed in clause 2.1 of Food Safety and Standards (Food Products Standards and Food Additives) Regulations, 2011.



Out of the 835 samples that were con-compliant, 683 were substandard<sup>54</sup>, 109 misbranded<sup>55</sup>, five samples were adulterated and eight samples were unsafe<sup>56</sup>. The *percentage* of non-conforming milk and milk products samples ranged between 14 and 24. In Khargone district the details of 30 non-conforming samples were not recorded in the sample register in the years 2014-16.

Principal Secretary, PH&FWD stated (July 2020) that milk and milk products samples were taken under *Sudh Ke Liye Yudh Abhiyan* which was started from 19 July 2019 to March 2020 and action for initiating prosecution is being initiated against FBOs selling substandard milk and milk products.

(i) **Targets and Achievements of sampling of milk and milk products**

The CFS issued (March 2017) instructions to District Collectors and DOs to take 60 samples of milk and milk products per year.

The target was not achieved in three (Hoshangabad, Khargone and Satna) out of eight sampled districts during 2017-18. Target was achieved in Hoshangabad district in 2018-19 and the position in other two districts also improved during 2018-19. District-wise details are given in **Table 2.13**.

**Table 2.13: Target and Achievement of sampling of Milk and Milk Products**

(Figures in number)

Name of District	2017-18			2018-19		
	Target	Achievement	Shortfall	Target	Achievement	Shortfall
Bhopal	60	91	0	60	76	0
Gwalior	60	169	0	60	148	0
Hoshangabad	60	55	5	60	66	0
Indore	60	148	0	60	231	0
Khargone	60	26	34	60	40	20
Morena	60	159	0	60	132	0
Satna	60	22	38	60	45	15
Ujjain	60	135	0	60	116	0

Source: Departmental records

The shortfall in target indicates less coverage of sampling of milk/ milk products FBOs which could adversely impact quality.

In the Exit Conference, the PS, PH&FWD stated (June 2020) that necessary action would be taken.

<sup>54</sup> An article of food shall be deemed to be sub-standard if it does not meet the specified standards but not so as to render the article of food unsafe.

<sup>55</sup> An article of food is misbranded as it is defined under Section 3 (zf) of FSS Act.

<sup>56</sup> An article of food whose nature, substance or quality is so affected as to render it injurious to health as prescribed under Section 3(zz) of FSS Act.

**(ii) Analysis of Regulatory Milk Samples on the basis of National Milk Survey Report**

The Department instructed (September 2018) 13 districts<sup>57</sup> to take regulatory milk samples as per targets set on the basis of result of National Milk Survey. Audit found from the report of CFS sent (February 2019) to FSSAI that, 204 out of targeted 210 milk/ milk products samples were drawn and 42 of these samples were substandard; the results of 15 samples were not intimated by the districts.

The status with regard to the sampled districts is as follows:

- 20 out of 88 samples drawn during September 2018 to November 2018 in four districts<sup>58</sup> were sub-standard and the result of one sample was not received in Ujjain.
- Prosecution cases were finalised in 15 out of 19 cases - not initiated in one case in Ujjain district due to error in the name of FSO in the analysis report which was sent to the State lab for correction.
- Four cases were pending in district Hoshangabad. Penalty amounting to ₹0.78 lakh was recovered against penalty of ₹5.08 lakh imposed and ₹4.30 lakh remained outstanding.

Further, the Department instructed (March 2019) to draw 80 milk samples during 11.03.2019 to 19.03.2019 in five<sup>59</sup> districts and to report the action taken within seven days to CFS, which was not complied with by the districts.

In the sampled districts, 10 out of 42 samples drawn (March 2019) in two districts<sup>60</sup> were substandard. Prosecution was initiated in seven cases in which penalty of ₹0.76 lakh was imposed. Three prosecution cases were not filed in Ujjain district which were under investigation.

The PS, PH&FWD stated (July 2020) that 290 samples were taken in the districts and 69 prosecution cases filed against 71 substandard samples.

As per district-wise information furnished (August 2020) by CFS, out of 290 samples drawn against the order issued in September 2018 and March 2019, prosecution was initiated against 78 non-conforming samples. The CFS did not furnish reports received from districts, in the absence of which variation in reporting on non-conforming samples and prosecution could not be reconciled.

**(iii) Monitoring Milk and Milk products during Festive seasons**

FSSAI advised (October 2018) all CFSs to launch a special drive for ensuring safe and quality milk and milk products during festive seasons. As per FSSAI, adulteration in milk and milk products often increases during festive seasons when their demand outstrips

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<sup>57</sup> Ashok Nagar, Balaghat, Barwani, Bhind, Burhanpur, Dhar, Hoshangabad, Indore, Khandwa, Khargone, Ratlam, Seoni and Ujjain.

<sup>58</sup> Hoshangabad (sample drawn-15, substandard-05 and decided court cases-01), Indore (sample drawn-37, Substandard-04, decided court cases-04), Khargone (sample drawn-16, substandard-07, decided court cases-07) and Ujjain (sample drawn-20, substandard-04 and decided court cases-03).

<sup>59</sup> Balaghat, Barwani, Bhind, Indore and Ujjain.

<sup>60</sup> Indore (sample drawn-27, Substandard-06 and case filed-06) and Ujjain (sample drawn-15, Substandard-04 and case filed-01).



supply. The microbiological quality and certain types of adulterants used needs to be checked as they can have adverse impact on health.

Audit noticed in the eight test-checked districts that during 2014-19, out of total 4,204 milk and milk product samples drawn,<sup>61</sup> 1,158 were drawn during festive seasons *i.e.* *Dussehra, Diwali and Holi* (28 per cent). The district-wise details are shown in **Appendix 2.11**.

In the Exit Conference, the PS, PH&FWD stated (June 2020) that a campaign was launched by the State Government last year and 16,000 milk samples were taken and targets were already given to FSOs during monsoon and festival seasons. Necessary follow-up would be made by monitoring milk products in festival seasons.

#### 2.4.5.8 Coverage of Holy Places and Religious Fairs

Audit covered nine prominent holy places and eight religious fairs organised in six sampled districts as shown in **Appendix 2.12** and observed the following.

- The district food authorities did not assess the FBOs running business in permanent/temporary establishment/ premises.
- The Department had not issued specific instructions for regulating the activities of FBOs in holy places.
- Though the district food authorities reported conducting inspections of premises/ establishment, related records were not maintained.

It was not ensured that milk/milk products and other food articles offered as *Prasad (Bhog)* in the temples/ holy places were free of adulteration by drawing their samples regularly. As per the information furnished to audit, the status of food samples drawn in holy places/ during religious fairs was as follows (**Table 2.14**).

**Table 2.14: Status of food samples drawn in holy places/ during religious fairs**

Name of holy place	Year	No. of Samples drawn		No. of non-conforming samples	
		No. of milk/ milk product Samples	No. of other food samples	No. of milk/ milk product Samples	No. of other food samples
<i>Mahakaleshwar Temple, Ujjain</i>	2014-19	10	12	3	4
<i>Maa Sharda Temple, Maihar</i>	2014-17	5	7	0	2
<b>Religious fair places</b>					
<i>Mahakal Sawari, Ujjain,</i>	2014-19	30	23	6	7
<i>Khajrana Ganesh Utsav, Indore</i>	2016-17	0	13	0	0

**Source: Departmental records**

The FSOs did not cover all the holy places and religious fairs for sampling. The food samples were also not drawn regularly.

<sup>61</sup> Samples drawn before ten days and after five days of festival events were taken.

Further, audit noticed the following:

- The FSSAI certified *Mahakaleshwar* temple, Ujjain as a safe *bhog* place. There were four sales counters in the temple compound none of which had license/ registration. Three licenses obtained for preparation of *Laddu*, free *annakshetra* and *Laddu Kothar* (store). The manufacturing date and date before use were specified in the *Prasad* packet but batch number<sup>62</sup> was absent. The petty vendors selling almondettee seeds near the temple did not have registration.
- The audit team visited the famous *Hindu* religious place *Maa Sharda* temple, Satna and physical verification (February 2020) of *Maa Sharda Annakut* trust was also conducted. The trust was running a mid-day meal canteen managed by *Jaypee* Group since 2010 which prepared and served food (*Prasadam*) to visitors. The FSSAI certified the trust as a safe *bhog* place. Audit found that, the packing and expiry date were not available on the *Prasad* packets kept for sale in different shops. FBOs selling *Prasad*/ other food articles near the road side/ premises had not displayed registration document. The DDF&D, Satna stated that necessary action would be taken in this regard.

In response, PS, PH&FWD stated (July 2020) that continuous efforts were being made for ensuring quality of food articles/*prasad* likely to be sold and distributed in religious places and that, religious places were covered under *Safe Bhog Yojana* for quality improvement and FSSAI declared *Mahakaleshwar* temple, Ujjain, *Maa Sharda* temple Satna and *Khajrana Ganesh* temple, Indore as safe *bhog* places under this scheme. The scheme is under process in *Omkareshwar Jyotirling* Khandwa, *Bohra mandir masjid*, Burhanpur, Kundalgi Jain temple, Damoh and L.I.G *Gurudwara* Indore. He further stated that action plan was under process for preparation of separate procedures to be adopted for food establishments/*prasad* in temples/storage in religious places.

#### **2.4.5.9 Food Safety Audit**

Regulation, 2011 provides that Licensing Authority (DO) should ensure periodical food safety audit and inspection of the licensed establishments on its own or through agencies authorised by the FSSAI. In the eight sampled districts, food safety audit of licensee FBOs was not conducted either by any agency of licensing authority or by FSSAI. Consequently, the entire food safety audit system stipulated in the Regulations failed to take off.

Principal Secretary, PH&FWD stated (July 2020) that conducting inspection through other agencies would be considered.

#### **2.4.5.10 Maintenance of Records**

Scrutiny of sample receipt registers and testing dispatch registers maintained for regulatory/ surveillance samples in the State food lab revealed the following deficiencies:

- Separate records for requisition, receipt and dispatch of analysis report of second part of regulatory samples were not maintained.

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<sup>62</sup> This specifies not only identification of the specific batch produced, but all relevant issues of control and manufacturing particulars is also traceable from batch number.

- Records of surveillance samples received and dispatch of results were not maintained properly. The entries of surveillance samples received and samples received from buyers were recorded in the same sample receipt register. Similarly, the details of analysis reports of both the samples were recorded in one dispatch register in which other letters were also recorded.

Principal Secretary, PH&FWD confirmed the facts and stated (July 2020) that after audit observation, action was taken to record information on second part of samples in the remarks column of sample receipts register and separate dispatch registers were being maintained for regulatory samples, surveillance samples and samples received from buyers, second part sample letters and general letters. He further assured that departmental records would be computerised.

## 2.5 Prosecution and Trial of Offences

***Audit Objective III: Whether the deterrent measures and penalties were adequate and able to ensure food safety.***

### 2.5.1 Prosecution

Section 68 of the Act and Rule 3.1 prescribe the manner of adjudication proceedings. Rule 3.3 and Section 71 and 76 of the FSS Act provides the time limit to file an appeal in the Appellate Tribunal and Hon'ble High Court respectively.

As per the Annual Reports (2014-19) of the State sent<sup>63</sup> to FSSAI, audit observed that during 2014-19, 4,130 prosecution cases were initiated against 5,848 non-conforming samples. Action taken against 1,718 cases were not available at the State level along with details of 1,409 pending cases. CFS did not furnish reasons for not taking action against the non-conforming FBOs and pending cases to audit. The reports received from districts were only compiled for sending to FSSAI and prosecution cases were not monitored at State level.

As of March 2019, there were 1,307 Central licensees in Madhya Pradesh. Audit scrutiny in the eight sampled districts revealed that separate records were not maintained in respect of samples drawn and prosecution initiated for Central licensees. Therefore, audit could not segregate prosecution cases pertaining to Central licensing and State licensing.

District-wise and year-wise status of prosecution cases are shown in **Appendix 2.13**. The status of prosecution cases in the eight sampled districts during 2014-19 is given in **Table 2.15**.

<sup>63</sup> In May 2015 (2014-15), May 2017 (2016-17), June 2018 (2017-18) and July 2019 (2018-19).

**Table 2.15: Status of prosecution cases in eight test-checked districts**

Year	Total no. of cases initiated	No. of cases decided by ADM	No. of cases not decided	No. of appeal cases in D&J court	No. of cases decided by D&J	No. of pending cases in different courts			No. of total pending cases	No. of cases finalized
						D&J	ADM	High Court		
2014-15	375	347	28	43	20	23	33	1	57	318
2015-16	418	392	26	36	24	12	26	1	39	379
2016-17	311	291	20	39	11	28	20	3	51	260
2017-18	178	132	46	15	5	10	46	0	56	122
2018-19	477	306	171	46	13	33	171	0	204	273
<b>Total</b>	<b>1,759</b>	<b>1,468</b>	<b>291</b>	<b>179</b>	<b>73</b>	<b>106</b>	<b>296</b>	<b>5</b>	<b>407</b>	<b>1,352</b>

Source: Records of Department and information furnished by ADM

The highest *percentage* of pending cases was in Hoshangabad district (60) and lowest *percentage* was in Indore district (09).

Further, audit noticed the following:

- Additional District Magistrates were assigned the additional responsibility of adjudicating the cases relating to food safety and standards. Non-appointment of full-time Adjudicating Officers (AOs) led to delay in finalisation of cases. Consequently, while the number of pending cases increased the number of cases settled/ adjudicated could not match these. During 2014-19, 573 (39 *per cent*) cases<sup>64</sup> out of 1,468 cases filed were finalised in the ADM court.
- Prosecution was not initiated in 52 cases in five<sup>65</sup> districts even after receipt of results during 2014-19 in which 20 cases were relating to the years 2014-18 in three<sup>66</sup> districts.
- In five<sup>67</sup> districts, 217 cases initiated in Chief Judicial Magistrate court were pending as of February 2020 and three districts did not provide the required information. Further, 103 cases initiated during 2014-19 were still pending in eight test-checked districts.
- During 2014-19, 58 food samples in eight<sup>68</sup> districts were found unsafe as per the reports of Food Analyst. The DOs did not cancel or suspend the license immediately as per FSS Rules, 2011. The cases were only initiated in the CJM court which were pending.

The PS, PH&FWD stated (July 2020) that instructions were issued earlier for quick disposal of court cases and added that video conferences would be held under the Chairmanship of CFS with AOs (ADM) of all districts for quick disposal of cases.

In the absence of punitive action due to pending prosecution cases, the FBOs were continuing their business without fear of consequences of violation of FSS Act and safety of public was compromised due to consumption of unsafe food.

<sup>64</sup> Bhopal (82 cases, seven to 28 months), Gwalior (183 cases, seven to 42 months), Hoshangabad (57 cases, seven to 58 months), Indore (58 cases, seven to 18 months), Khargone (35 cases, seven to 15 months), Morena (71 cases, seven to 51 months), Satna (20 cases, seven to 35 months) and Ujjain (67 cases, seven to 55 months)

<sup>65</sup> Bhopal (30), Gwalior (06), Hoshangabad (05), Satna (02) and Ujjain (09).

<sup>66</sup> Bhopal (13), Hoshangabad (04) and Ujjain (03).

<sup>67</sup> Bhopal (10), Gwalior (58), Hoshangabad (50), Indore (51) and Ujjain (48).

<sup>68</sup> Bhopal (05), Gwalior (20), Hoshangabad (07), Indore (04), Khargone (01), Morena (09), Satna (03) and Ujjain (09).

### 2.5.2 Compliance to order of Hon'ble Supreme Court

The Hon'ble Supreme Court issued directions on the decision (05 August 2016) against writ petition No. 159/2012 relating to prevention of adulteration in milk and milk products. The action taken by the Department on the decision is given below:

#### (i) *Developing Complaint mechanism*

The Hon'ble Court directed (August 2016) that the State Department should set up a website and create awareness about complaint mechanism. Contact details of Joint Commissioner and CFS should be available on the website for registering complaints. The State was also required to maintain toll free telephonic and online complaint mechanism.

Audit noticed that prior to the decision of Hon'ble Court, the SLSC had already decided (March 2016) to register complaint cases through Chief Minister (CM) Helpline No. 139 developed by the State as a grievance mechanism.

Audit noticed seven cases pending (as on February 2020) at CFS level received under CM helpline pertaining to March 2019.

Principal Secretary, PH&FWD stated (July 2020) that complaint portal developed by FSSAI is available for public. In addition, other sources of grievance mechanism developed by GoMP *i.e.* C.M Helpline, C.M *Samadhan*, Dial 104, C.M *Jan Adhikar* alongwith e-mail Ids and telephone numbers of the administration authorities are also available for registering complaints.

The reply is not acceptable because the Department did not setup and maintain a website as directed by the Hon'ble Court. Besides, the toll free number adopted was used for all types of public complaints and was not specific as per directions of Hon'ble Court.

#### (ii) *Use of Spot Testing Kit*

Audit found that the SLSC directed (December 2016) CFS to provide rapid testing kits developed by Defence Research and Development Organisation (DRDO) to FSOs for spot testing of milk and milk product samples. It was, however, found that the kits could not be provided as the supplier company of the kits was not recognised by FSSAI. Further, attempts were not made to get the kits from companies that were supplying to other States like Maharashtra, Uttar Pradesh and Karnataka. The CFS stated (February 2020) that a letter had been sent (October 2019) to FSSAI to provide spot testing kits (Magic box).

The reply is not acceptable because the directions of Hon'ble Court were not followed to check adulteration through spot checking since August 2016. As a result, urea based adulteration in milk and milk products was noticed as pointed out in the National Milk Survey and further analysis conducted by the Department in September 2018 and March 2019.

Principal Secretary, PH&FWD stated (July 2020) that action to deliver 51 Magic boxes received from FSSAI to all districts is under process.

The department did not provide spot testing kits for milk and milk products to ensure supply of quality milk and milk products to the consumers in violation of the Supreme Court order, which indicates grave negligence on the part of the responsible officials.

### 2.5.3 Imposition of penalties and recovery

FSS Rules, 2011 state that penalty amount imposed by the Adjudicating Officer (AO) will be deposited through demand draft drawn in favour of AO. CFS directed (January 2013 and September 2014) to deposit the amount of penalty in the departmental revenue head.

Audit noticed the following deficiencies in the recovery of penalty:

- In three test-checked districts (Gwalior, Khargone and Indore) the ADM directed, on different occasions during 2014-19, to deposit the penalty amount within 30 days from the date of decision. In the other five districts no such specific time was defined in the decision order. ADMs issued different directions regarding depositing penalty amount due to absence of prescribed time limit under the Act.
- There was no uniformity in the manner of depositing penalty amount by the FBOs. In Bhopal and Gwalior districts, the penalty amount was deposited in the bank account of AO through bank draft. In four<sup>69</sup> districts, the FBOs deposited the penalty amount in Government head through challans. In the two districts of Hoshangabad and Indore, the amount was deposited through both challans and bank drafts during 2014-19.
- Penalties imposed by ADM and D&J Court amounting to ₹3.64 crore out of ₹5.53 crore for the period 2014-19 were not deposited by the FBOs. The DOs/ FSOs did not initiate action for Revenue Recovery Certificate proceedings against defaulting FBOs except in Gwalior and Khargone districts. District-wise details of penalty imposed and collected are shown in *Appendix 2.14*. The particulars of appeal cases and decision against the cases in D&J court was not furnished to audit in Bhopal district.
- In 648 out of 1,334 cases, action was not taken to make recovery as arrears of land revenue and to suspend the licenses of FBOs by DO in case of non-payment of penalty as required under Section 96 of the Act.
- Penalty amounting to ₹1.65 crore received in three<sup>70</sup> districts were kept in bank accounts and not deposited in departmental revenue head as directed by the CFS.

Principal Secretary, PH&FWD confirmed the facts and stated (July 2020) that instructions were issued earlier to all Collectors for taking quick action in this regard.

## 2.6 Monitoring Mechanism

### 2.6.1 Insufficient Information, Education and Communication activities

The Central Advisory Committee (CAC)<sup>71</sup> in its eighth meeting (July 2012) advised that at least 75 per cent of the food license fee collections be used for IEC activities. The license

<sup>69</sup> Khargone, Morena, Satna and Ujjain.

<sup>70</sup> Bhopal (₹42.78 lakh), Gwalior (₹37.63 lakh) and Indore (₹84.21 lakh).

<sup>71</sup> A committee of FSSAI established under Section 11 of FSS Act. The Central Advisory Committee shall ensure close cooperation between the Food Authority and the enforcement agencies and organisations operating in the field of food.



fees collected could be utilised to organise IEC activities, 24x7 helpline on food safety, opening up of web page for interaction with consumers and petty traders.

As per departmental information furnished to audit by the CFS, ₹22.64 crore was collected during 2014-19 for food license/registration in the State. But the license fee collected was not utilised as per norms for IEC activities as prescribed. Further, the State Government had not framed any policy for IEC activities. Thus, the advisory of the CAC was yet to be complied with.

MP Online<sup>72</sup> was providing (September 2013) online facility for license/registration through its service providing centres. The CFS administration had not obtained information from MP Online about the year-wise amount of State license/ registration fees collected and deposited in the departmental revenue head.

In the Exit Conference, the PS, PH&FWD stated (June 2020) that IEC activities were not under taken due to non-allotment of budget and necessary action would be taken as per decision of State Government. Further, the PS stated (July 2020) that continuous efforts were made for public awareness and providing guidance to FBOs. Public awareness could be made more effective by operating seven new MFTLs at divisional level.

### ***2.6.2 Reporting on Inspection and Sampling***

Audit found that the Department procured (January 2018) 158 tablets costing ₹28.44 lakh for conducting online sampling, inspection and submitting the inspection report through FoSCoRIS<sup>73</sup> system.

In the eight sampled districts, audit noticed that out of 38 tablets available with the FSOs, 36 were in usable condition and two tablets were non-functional. Inspection works through FoSCoRIS system failed due to error in online connection.

The Department intimated in the action taken report submitted (April 2019) to FSSAI that inspection through FoSCoRIS system was not done in 2018-19 due to technical problems. The fact remained that online inspections were not carried out using the tablets and the Department did not take action for rectifying the problems. Besides, separate management information system for reporting was not developed.

As a result, the purpose of procuring tablets could not be fulfilled and expenditure on tablets remained unfruitful.

Further, the PS, PH&FWD stated (July 2020) that online inspection work through FoSCoRIS had been started and the use of tablets was proposed to be done in an online software which was being developed by the Department.

The reply is not acceptable because Department did not furnish appropriate reply on how inspections through FoSCoRIS had been conducted which was stopped due to technical problem. Further, the number of inspections conducted specifying the period of inspection was not provided to Audit.

<sup>72</sup> A joint venture of Madhya Pradesh Government and Tata Consultancy Services Limited.

<sup>73</sup> Food safety compliance through regular inspection and sampling system developed by FSSAI.

### 2.6.3 Submission of return by manufacturer

FSS Regulations 2011 stipulate submission of annual return by every licensed manufacturer and importer on or before 31 May of each year and half yearly returns by licensees engaged in manufacturing of milk and/or milk products to licensing authority. Any delay in filing return beyond 31 May of each year attracts a penalty of ₹100 per day of delay.

Audit found in seven test-checked districts that licensed manufacturers/ importers and licensees engaged in manufacturing of milk and/or milk products did not submit the required returns. In the district Khargone, the licensed manufacturers, manufacturers of milk and milk products submitted their return physically but the records of returns submitted were not maintained. There were 2,020 State issued licensed manufactures including 274 manufactures engaged in milk/ milk product in seven<sup>74</sup> test-checked districts. State licensing authorities did not take action against defaulters. During joint physical verification of 13 FBOs, it was noticed that only three FBOs which included two Central licensee (Bhopal and Ujjain) and one State licensee of Khargone district submitted their returns.

Principal Secretary, PH&FWD stated (July 2020) that the facility of submitting online returns has been started for maintenance of records and ensuring compliance of the Act. Department did not furnish any document in support of the reply.

### 2.6.4 Variations in Reporting

Audit found that the CFS sent the annual reports to FSSAI based on the reports of districts each year. The Department however, did not verify the authenticity of data sent by the districts before sending the report to FSSAI. Audit noticed variations in data of licenses/ registrations and samples drawn and analysed during 2016-19 as given in **Table 2.16**.

**Table 2.16: Variations in data of licenses/registrations and samples drawn and analysed**

(Figure in lakh)

Year	As per annual report		Data as per FSSAI		As per annual report		As per records of lab report	
	No. of State licenses	No. of registrations	No. of State licenses	No. of registrations	No. of samples drawn	No. of samples analysed	No. of samples received for analysis	No. of samples analysed
2016-17	0.36	4.11	0.31	3.88	0.06	0.05	0.08	0.06
2017-18	0.14	2.07	0.37	4.30	0.07	0.06	0.08	0.08
2018-19	0.44	2.83	0.44	4.84	0.07	0.07	0.07	0.07

Source: Annual report, FSSAI data on CAC meeting and State food lab

From the above table, it could be seen that the number of licenses/registrations reported in the annual report was more than the data of FSSAI in the 2016-17. In the years 2017-18 and 2018-19, less number was reported in comparison to FSSAI data. Besides, there was huge variation in number of samples drawn and number of samples received in the lab and samples analysed.

<sup>74</sup> Bhopal (151, 15), Gwalior (310, 37), Hoshangabad (115, 13), Indore (1,077, 96), Khargone (103, 17), Morena (148, 89) and Satna (116, 07).



The CFS stated (February 2020) that the annual report was compiled on the basis of report of districts. Districts and State food lab would be instructed for clarification to ascertain the reasons for variation. Further, discussions were held in CAC meeting and request was being made to FSSAI for rectification. Further, the PS, PH&FWD stated (July 2020) that FSSAI was intimated for rectification in technical error in respect of license/registration for the category of FBOs in the FLRS software.

## 2.7 Conclusion

*Food Safety and Standards (FSS) Act, 2006 regulates the manufacture, storage, distribution, sale and import of food to ensure availability of safe and wholesome food for human consumption. Performance audit of its implementation revealed that the existing legal framework was deficient, as the Government of Madhya Pradesh (GoMP) did not establish separate Food Safety Appellate Tribunal (FSAT) and also separate special or ordinary courts for trial of offences as required under the Act/Rules, despite increase in appeal and serious cases pending in D&J's court and Chief Judicial Magistrates' court respectively as of February 2020. The administrative machinery was also lacking, as all the important posts including Commissioner, Food Safety, Designated Officers (DOs) etc. necessary for overseeing the implementation of FSS Act were held as additional charge. Manpower vacancies of 61 per cent at various levels further crippled the Department in conducting survey and inspections of Food Business Operators (FBOs), which is critical to ensure compliance with the Act. The Department could not ensure collection of penalties of ₹3.64 crore imposed under the Act and also did not initiate RRC proceedings against the defaulter FBOs. Other issues of non-maintenance of database of FBOs, pendency of applications for license/registration, FBOs operating fair price shops, liquor shops etc. without licenses, fewer number of regulatory samples drawn and analysed and shortfall in analysis of surveillance samples were noticed. Existence of robust testing infrastructure is intrinsic to the objective of food safety. However, the State Food Laboratory (SFL), Bhopal was not completely upgraded for microbiological testing and food labs at Indore and Ujjain were also not upgraded which affected the food analysis work. The Department also took no action to establish level 2 food labs at three places in the State. The CFS at State level and DOs at district levels did not generate the list of defaulters from the Food Licensing & Registration System (FLRS) software to ascertain expired licenses/ registrations.*

## 2.8 Recommendations

- i.** State Government needs to reconstitute the SLSC/DLSC expeditiously and implement their recommendations to ensure food safety as intended in the Act/Rules etc.
- ii.** The Department should initiate action to frame service rules to fill up vacancies at various reporting levels expeditiously and seek approval of the Government to create the required number of posts.
- iii.** The Department should initiate immediate action for survey of all the industrial units and bring all the FBOs within the ambit of the FSS Act. It should also institute a mechanism

for carrying out regular inspections of the FBOs to ensure their compliance with the provisions of the FSS Act/Rules scrupulously.

- iv.** The Department should access and utilise the databases maintained by Urban Local Bodies/ Municipal Corporations, Labour Department, Industries and VAT/GST Departments *etc.* for expanding the coverage of FBOs.
- v.** State Government needs to constitute a State Level committee comprising Heads of related departments to ensure that all FBOs functioning under various departments operate only after issue of license/registration.
- vi.** State Government needs to upgrade the food labs at Indore and Ujjain and create adequate number of level 2 food labs to enable analysis of increased number of food samples. It should also increase the targets for FSOs to draw samples and ensure their compliance in this regard.
- vii.** The Department should compile and review statewide information on appeal, imprisonment and other serious cases and also constitute separate appellate tribunals, special and ordinary courts to fulfil the requirement of the Act based on six monthly or annual review of cases.
- viii.** The Department should fix responsibility on the officials concerned who failed to supply spot testing kits for testing of milk and milk products.
- ix.** The Department should pursue the pending cases at ADM/CJM courts and initiate action for recovery of penalties through RRC proceedings or suspend the licenses of the FBOs who have not deposited the penalties imposed by the courts.