oppaga

Justification Review

November 2001 Report No. 01-53

Some Funding Shifts Are Possible for the State's Food Safety and Quality Program

at a glance

- The Food Safety and Quality Program provides a public health benefit and should be continued. The program is properly placed in the Department of Agriculture and Consumer Services.
- The program has generally met its performance standards related to dairy and food safety, although it did not meet its workload standards for pesticide residue analyses and grading poultry and eggs due to workload changes.
- To reduce costs, the department should stop inspecting a dairy located in Spain that is exporting dairy commodities to Florida, as this function is the responsibility of the U.S. Food and Drug Administration.
- The Legislature and the department could reduce the program's general revenue funding needs and contribute toward department overhead costs by up to $5.4 million by increasing regulatory fees to levels that fully support program direct and indirect costs.

Purpose

This report presents the results of our Program Evaluation and Justification Review of the food safety and dairy regulation activities performed by the Department of Agriculture and Consumer Services' Food Safety and Quality Program. State law directs our office to complete a justification review of each state agency program that is operating under a performance-based program budget. (See Appendix A, page 10.)

Background

Program description

The Food Safety and Quality Program is intended to ensure the safety and wholesomeness of consumer dairy and food products through food and dairy establishment permitting and inspection and food analysis activities. The program is composed of the Division of Dairy Industry and the Division of Food Safety.

The **Division of Dairy Industry** permits and inspects 1,501 dairy farms, milk processors, frozen dessert manufacturers, single-service container manufacturers, and bulk milk tankers to assure compliance with sanitary requirements and correct labeling. These facilities produce milk, milk products, and ice cream and frozen desserts, and may ship these products to other states. Dairy inspectors collect samples that are tested by the program's laboratories for product quality standards and the presence of bacteria, antibodies, and other impurities.

In Fiscal Year 2000-01, the Division of Dairy Industry conducted 3,115 inspections, and conducted 83,586 milk and milk product analyses. In recent years the division has shifted the sampling and testing of bulk shipments of imported milk to the industry, which contracts directly with private laboratories certified by the state.

During Fiscal Years 1998-99 through 2000-01, the Division of Dairy Industry achieved industry compliance through use of warning letters and stop sale/hold orders and assessed no fines for violations of program standards. [1] The division issued 407 warning letters for violations of bacterial count standards or shelf life expiration dates and 91 stop sale/hold orders for contamination and/or excess water in milk products in Fiscal Year 1998-99. [2]

The **Division of Food Safety** permits and inspects food establishments to assure compliance with sanitation requirements in 36,581 permitted retail food stores, food processing plants, and food distribution points where food is sold to the public. The program issues permits after determining that the facilities demonstrate compliance with sanitation requirements and then periodically inspects them to ensure continued compliance with sanitation standards.

Division inspectors also weigh-test packages to verify accuracy of labeling, test packaged meat products for labeled fat content, and collect food samples to detect bacterial contamination and authenticity of ingredients. The program's labs test these samples for the presence of pathogens, contamination, or adulteration.

The program also provides grading and inspection services to poultry and egg packing plants that wish to voluntarily display United States Department of Agriculture (USDA) grades on products offered for sale. [3] Further, it licenses water vending machines and monitors water purity for water sold through the machines, monitors the processing and labeling of bottled water and packaged ice, and oversees inspections of bottled water plants, packaged ice plants, and water vending machines.

In Fiscal Year 2000-01, the division conducted 71,623 food establishment inspections, graded 403,653 tons of eggs and poultry, and conducted 50,563 food analyses and 236,308 analyses for pesticide residue. The division also removed 2,674,313 pounds of food products from sale as health risks and issued 18,387 stop sale/use orders. In Fiscal Year 2000-01, the division collected $433,948 in fines for non-compliance.

Program Fund

For Fiscal Year 2001-02, the Food Safety and Quality Program was appropriated $17,083,416 and 304 positions for food safety and dairy regulatory activities (see Exhibit 1). This amount covers the costs directly appropriated to the program's two divisions, but does not include an estimated $2,090,895 in indirect costs that the department incurs on behalf of the program. [4]

The Division of Food Safety collects a variety of permit fees, inspection fees, and grading charges. The Division of Dairy Industry assesses an annual fee for frozen dessert licenses and a milk fat tester permit fee issued

[1] A stop sale/hold order prevents a dairy or processor from selling the product in question.

[2] This is the most recent year for which program staff compiled data on warning letters and stop sale/ hold orders.

[3] This activity is conducted under a cooperative agreement with the USDA to ensure that these products qualify for labeling under USDA standards. The activity is substantially self-supporting.

[4] These indirect costs include agency-level support services, such as data processing, purchasing, accounting, budgeting, legal, and other administrative costs paid through the Office of the Commissioner. The department does not allocate all of these costs to its divisions. However, the department provided us with an estimate showing that if all department overhead costs were allocated, the portion attributable to this program would be $2,090,895.

for a two-year period, but the dairy division is solely supported by general revenue appropriations. [5]

Exhibit 1
Food Safety Is Primarily Trust Funded, But Receives No Appropriations of Trust Fund Revenue for the Division of Dairy Industry

Appropriation	Division of Food Safety	Division of Dairy Industry	Total
FTEs	**274**	**30**	304
General Revenue Fund	**$ 2,390,867**	**$1,543,731**	$ 3,934,598
Trust Funds	**13,148,818**	**0**	13,148,818
Total Appropriation[1]	**$15,539,685**	**$1,543,731**	**$17,083,416**

[1] Excludes an estimated $2,090,895 in indirect costs for department overhead.
Source: General Appropriations Act for Fiscal Year 2001-02.

Program Benefit and Impact of Abolishment

The primary public benefit of the Food Safety and Quality Program's activities is helping to ensure the safety and wholesomeness of food and dairy products made available for sale to consumers in Florida. Food-induced illnesses are a danger to public health and the financial well-being of Florida businesses. In 1998, the most recent year for which information is available, Florida experienced 315 outbreaks of food-borne illnesses affecting 3,290 people.

Abolishing the program could increase the occurrence of food-borne illnesses. The lack of a state inspection program for dairy facilities would also prevent these facilities from legally shipping milk and milk products to other states unless local authorities could provide the funds and resources for this service.

Program Placement

The program is logically placed within the Department of Agriculture and Consumer Services in that food safety-related activities are closely aligned with the department's mission of consumer protection and supporting the production and promotion of agricultural products. Keeping these activities within one agency promotes their coordination.

The Department of Agriculture and Consumer Services and the Department of Business and Professional Regulation have similarities in mission and activities related to food service inspections. The Department of Business and Professional Regulation inspects food service establishments (such as restaurants) and vending machines, while the Department of Agriculture and Consumer Services inspects retail food stores and food processors, as well as water vending machines. OPPAGA will examine the option of combining certain food inspections in our upcoming justification review of the Department of Business and Professional Regulation, which will be conducted in 2002.

Program Performance

The Food Safety and Quality Program substantially met its legislative outcome performance standards for its Fiscal Year 2000-01 (see Exhibit 2). The percentages of dairy establishments and food establishments that were determined to meet food safety and sanitation requirements when inspected generally met the legislative standards. The percentages of tested dairy products and food products that met product quality standards also generally met legislative performance expectations.

[5] The division collects $22,900 from fees that are deposited into the General Inspection Trust Fund. The division received no trust fund appropriation for Fiscal Year 2001-02.

Exhibit 2

Dairy Regulation Improved Performance in Most Areas Since Fiscal Year 1999-00 and Met Fiscal Year 2000-01 Standards, While Food Safety Regulation Met Most Performance Standards for Fiscal Year 2000-01

Division	Measure	1999-00 Actual Performance	2000-01 Actual Performance	2000-01 Performance Standard	Reason for Not Meeting Standard
Dairy Industry	Percent of dairy establishments meeting food safety and sanitation requirements	90.0% (Combined with food safety)	85.5%	80.77%	Met standard
	Percent of milk and milk products analyzed that meet standards	91.9%	92.6%	90.7%	Met standard
	Number of milk and milk product analyses conducted	80,433	83,586	70,000	Met standard
	Number of dairy establishment inspections	2,994	3,115	2,500	Met standard
Food Safety	Percent of food establishments meeting food safety and sanitation requirements	90.0% (Combined with dairy)	89.0%	90.6%	Substantially met standard. This outcome is affected by several factors, including a large number of new food establishments, improved training, upgraded equipment, and increases in the number of inspections performed.
	Percent of food products analyzed that meet standards	91.9%	90.51%	91.4%	Substantially met standard. This outcome was reduced because the program targeted sampling toward food products expected to not meet standards.
	Percent of produce or other food samples analyzed that meet pesticide residue standards	97.85%	98.14%	97.7%	Met standard
	Number of inspections of food establishments and water vending machines	53,946	71,623	62,472	Met standard
	Number of food analyses conducted	40,241	50,563	41,570	Met standard
	Number of pesticide residue analyses conducted	275,000	236,308	260,830	Did not meet standard because emphasis was changed to detecting lower levels of pesticide residue for a smaller number of targeted compounds.
	Tons of poultry and shell eggs graded	434,099	403,653	430,000	Did not meet standard because of reductions in workload demand for grading activities during the year.

Source: General Appropriations Act for 2000-01 and Department of Agriculture and Consumer Services documents.

The percentages of food products that met quality standards fell slightly in Fiscal Year 2000-01 from the prior year. Program managers attributed this to better targeting food sampling at products that are deemed a higher risk of not meeting standards. It is not possible to compare the percentages of food stores and dairy establishments that met standards over the two years because the department changed how these measures were calculated. [6]

As shown in Exhibit 2, the program also met four of its six output (workload) standards. However, it did not meet legislative expectations for the number of pesticide residue analyses conducted and tons of poultry and shell eggs graded. Output standards for poultry and egg grading were not met because of reduced workload demand, while pesticide residue analyses declined because the program changed its testing process to identify lower residue quantities, which made the analyses more time-consuming to perform.

Options to Reduce Reliance on General Revenue and Lower Costs

The Legislature and the department should increase program fees to reduce the program's reliance on general revenue

The Food Safety and Quality Program is not self-supporting, although the legislative intent for the program is to charge industry fees to food establishments to help offset the cost of regulation. In Fiscal Year 2001-02, the program was appropriated $3.9 million in general revenue to pay for direct services, or 23% of program funding. [7]

Many general taxpayers neither use the regulated products nor receive any indirect benefit from regulation. Cost-recovery based fees charged directly to industry represent a more equitable way to fund regulatory activities. There is also a healthy dynamic—regulated industries will resist fee increases and will criticize underlying cost increases if not fully justified. A regulated industry is less likely to resist increased general revenue appropriations or oppose cost increases if paid by general revenues.

The program adjusted some fees in March 2001 and has proposed additional fee increases. However, these new fees, if implemented, still will not cover all program costs. The program could become more self-supporting by

- further adjusting permit fees paid by food establishments and charging reinspection fees; and
- establishing dairy industry bulk delivery charge and reinspection fees.

Food Establishment Fees. Although the Division of Food Safety is primarily funded through industry fees, it was appropriated $2,390,867 million in general revenue to pay for direct service costs for Fiscal Year 2001-02. The 2001 Legislature authorized the department to increase permit fees for food establishments to a maximum of $500 per establishment and to assess a reinspection fee. The department increased regulatory fees in March 2001, but it has not implemented the maximum fee levels or begun assessing reinspection fees, and its current fees are still insufficient to cover its regulatory costs.

---

[6] In Fiscal Year 1999-00, the program reported the compliance rates of dairy establishments and food establishments as a single measure. For Fiscal Year 2000-01, the compliance rates of dairy establishments and food establishments are reported separately.

[7] This funding does not include estimated program indirect costs for department overhead of $2,090,895. If the general revenue portion of these additional costs is considered ($746,770), the program will receive a general revenue subsidy of $4,681,368 in Fiscal Year 2001-02.

We projected that the program's current fees and other revenues will fall $1.8 million short of covering the program's direct costs for regulating food establishments.[8] The program's current fee levels also are not sufficient to generate revenues to fully fund the department's indirect overhead cost for this activity, which the department estimates will be $1.9 million in Fiscal Year 2001-02.

Although the program is further increasing fees this fall, these increases will only generate an estimated $723,033 in additional revenues. This amount will not be sufficient to cover the $3.7 million needed to fully cover the program's direct and indirect costs for regulating food establishments.

The program's food establishment regulatory activities could become more self-supporting if the department increased its food establishment permit fees. For example, if the department raised various food establishment permit fees to $400, the department would realize increased revenues of $3.5 million over the current levels to fund direct and most indirect costs. (See Appendix B.) If the department wanted to only cover direct costs, establishing all of these fees at $350 would be sufficient to increase revenues by an estimated $1.9 million.[9]

Another potential revenue source is to assess the reinspection fee recently authorized by the Legislature. A reinspection fee would have the added benefit of possibly improving compliance rates, as food establishments would be directly penalized if the department had to reinspect a facility due to serious violations found at the initial inspection.[10] A reinspection fee of $200 would provide an estimated $374,800 in increased revenues. If the reinspection fee were set at the $500 statutory maximum for food establishment permits, the fee would generate an estimated $937,000 annually.

In implementing fee increases for food establishments, the department should establish a sliding scale that takes into account the relative time spent inspecting different types of regulated facilities. Currently, regulated facilities are charged fees ranging from $75 to $350 per annual permit fee. Larger facilities, such as super-markets, take longer to inspect because of their size and the variety of types of foods they offer for sale. For example, some supermarkets may have a deli, meat counter, seafood counter, and sushi counter, in addition to full service access to grocery, produce, fruit, and dairy products. In contrast, small grocery stores may only offer specialty or limited foods and take relatively little time to inspect. Establishing a sliding scale would reflect this workload difference and avoid creating fee burdens for small businesses. A sliding scale that fully takes this workload difference into account may require the Legislature to raise statutory fee maximums.

Dairy Industry Fees. The program's dairy regulatory activities are funded from general revenue and the program charges no fees to conduct inspections of dairy farms and processor facilities for sanitation and food quality standards compliance. For Fiscal Year 2001-02, the program was appropriated $1,543,741 for this activity.[11]

Several other states fund this activity through regulatory fees rather than general revenue.

[8] The Division of Food Safety was appropriated $15.5 million for Fiscal Year 2001-02. Based on department information, we estimated that the division will collect $12 million in fee revenues at current levels and $1.7 million from other revenue sources such as grants and fines. Thus, the division's total revenues for Fiscal Year 2001-02 would be an estimated $13.7 million.

[9] As shown in Appendix B, some of the permit fees are already at this level.

[10] During Fiscal Year 2000-01, program officials estimate the program conducted 1,874 reinspections.

[11] This does not include department overhead allocations of an estimated $232,031.

These states assess annual permit fees to regulated dairy facilities. However, assessing a volume fee may be more feasible, as permit fees in Florida would have to be set at a high level due to the relatively small number of dairy facilities that operate in the state.[12] A volume fee should be assessed on bulk milk at the time of delivery to a processing plant, as this would be relatively easy to administer and these deliveries are already audited by the U.S. Department of Agriculture.

We estimate that a bulk charge of seven cents per hundredweight of milk delivered would produce $1,678,600 in revenues and fully fund the program's direct regulatory costs and a large portion of its indirect costs for department overhead. The potential impact on consumers would likely be less than one cent per gallon, and would result in regulatory costs being borne by the consumers of these products rather than taxpayers as a whole.

A reinspection fee is an additional possibility for covering some of the costs of dairy inspections. A reinspection fee could be used to help ensure that noncompliant facilities pay for the extra work they create. Such a fee would have the added benefit of possibly improving compliance rates, as dairies would be directly penalized if the department had to reinspect a facility due to serious violations. At a minimum, a reinspection fee of $200 would generate an estimated $55,200 annually.[13]

Establishing bulk point-of-delivery charges and reinspection fees for dairies would require the Legislature to revise s. 502.053, *Florida Statutes*, to authorize the department to levy these charges.

The program should discontinue farm certifications and inspections in Spain

The Food and Drug Administration (FDA) is responsible for conducting port inspections of imported dairy products that have been shipped into the U.S. from foreign countries. The purpose of this inspection is to ensure that only products that have been certified to be in compliance with U.S. food standards come into the country.

However, the department reports that the FDA notified it on September 15, 1998, that yogurt products had been shipped into Florida from a non-certified dairy in Spain. These products had been shipped into Florida for two years before a competitor discovered the situation. The FDA advised program staff that they could have the yogurt taken off of the shelves or take one of three options. One of these options was for the department to assume responsibility for certifying and inspecting the Spanish dairy and thus treat the dairy the same as any other in the state's regulatory jurisdiction.[14]

Department officials chose to certify the dairy rather than having the product removed from the shelves or taking the other options. Their

[12] During Fiscal Year 2000-01, the program issued permits for 219 dairy farms, 17 milk processing plants, and 85 frozen dessert manufacturing facilities. Permit fees would need to be established at a level of $5,532 per facility to cover the program's costs, which could be burdensome to some of these businesses.

[13] The program does not currently have data on the total number of reinspections conducted during a year. However, program managers provided us with information on the reinspections they could readily identify from the data available. These data show that for a six-month period beginning January 6, 2001, program inspectors conducted 138 reinspection trips to dairies due to serious violations. We annualized these data to estimate that the program conducts at least 276 reinspection trips to dairies within a year. Program managers stated that better data on reinspections would be available using a new data system they are implementing.

[14] A memorandum from the Milk Safety Branch of the FDA dated June 28, 2000, *Importation of PMO Defined Dairy Products (M-I-00-4),* provides guidance that the states can use to respond to inquiries regarding importation of Grade-A dairy products from other countries. The Spanish yogurt came under the state's jurisdiction through acceptance of option 1 of the memorandum to inspect the farm. The other available options were (1) to have Spain adopt the FDA's inspection regulations, and (2) for the FDA to compare the U.S. and the Spanish food safety systems and obtain industry approval of the Spanish system. None of these three options are mandatory and alternative approaches are allowed if they satisfy legal and procedural requirements.

rationale for this decision was to avoid litigation and that the Spanish company was intending to build a Grade-A dairy plant in Florida.[15] In 1998, the program certified the dairy and began traveling to Spain for periodic inspections. State dairy inspectors must visit the dairy at least four times a year.

The program's costs for certification and periodic inspection are only partially reimbursed by the Spanish dairy. Through an agreement between the program and the farm, the dairy reimburses state employee travel costs and other out-of-pocket expenses.

Since 1998, the Spanish dairy did not reimburse $27,587 in salary costs for 152 person days spent traveling to Spain for

- sending one inspector at least four times a year;
- sending one laboratory certifier and one state rater at least every two years; and
- one trip each for the division director and an interpreter.

The trips lasted from 5 to 13 days and averaged 10 days.

We believe that it is highly inappropriate for the department to conduct these inspections. Regulation of products imported into the United States is a federal, not a state responsibility. By choosing to certify the Spanish dairy, Florida is assuming both the cost and potential liability of these inspections. The department has established a precedent that could lead to further agreements of this nature. Predictably, a dairy in Argentina has approached the department about making the same arrangement for shipping milk into Florida.

[15] The Spanish company has not begun construction of a Florida facility to date, and program officials believe it will be at least two years before such construction will begin. Department managers told us that they are currently working with Enterprise Florida and the Office of the Governor to partner the Spanish farm with another Florida processor.

Recommendations

The Food Safety and Quality Program's activities are beneficial to the state in helping to assure the safety and wholesomeness of food and dairy products made available for sale to consumers in Florida. The program has generally met its legislative performance standards.

However, to reduce the program's reliance on general revenue funding, we recommend that the department and Legislature take the actions below.

- The department should revise rule 5K-4.020, *Florida Administrative Code,* to assess food establishment permit fees at levels needed to cover program costs and to levy the reinspection fee as authorized by law. If fees were established at levels to cover direct and indirect costs, the program would generate an estimated $3.7 million in additional revenues and be self-supporting.
- In implementing fee increases for food establishments, the department should establish a sliding permit fee system that bases permits on the size and nature of the business being regulated, which would better reflect the program's workload and help avoid creating burdensome fee levels for small businesses. A sliding scale that fully takes workload differences into account may require the Legislature to raise statutory fee maximums.
- The Legislature should amend statutes to authorize the department to assess a dairy product inspection fee levied at the bulk delivery point and to charge a reinspection fee. If fees were established at levels needed to cover direct and indirect costs, the program would generate an estimated

$1.7 million in additional revenues and no longer need general revenue for this function.

To reduce program costs for unnecessary regulatory activities, the department should discontinue certification and inspection of the Spanish dairy. The department should first consult with its legal counsel and the Food and Drug Administration regarding any potential legal liability and available options for discontinuing state certification.

Agency Response

The Commissioner of the Department of Agriculture and Consumer Services provided a written response to our preliminary and tentative findings and recommendations. The Commissioner's written response is reprinted herein beginning on page 13.

Appendix A

Statutory Requirements for Program Evaluation and Justification Review

Section 11.513(3), *Florida Statutes,* provides that OPPAGA program evaluation and justification reviews shall address nine issue areas. Our conclusions on these issues as they relate to the Department of Agriculture and Consumer Services' Food Safety and Quality Program are summarized in Table A-1.

Table A-1
Summary of the Program Evaluation and Justification Review of the Food Safety and Quality Program

Issue	OPPAGA Conclusions
The identifiable cost of the program	The program was appropriated $17 million and 304 FTEs for Fiscal Year 2001-02. This represents the program's direct cost and does not include indirect costs of $2 million.
The specific purpose of the program, as well as the specific public benefit derived therefrom	The mission of the Food Safety and Quality Program is to ensure the safety and wholesomeness of consumer dairy and food products through food and dairy establishment permitting and inspection and food analysis activities. The primary public benefit of the program's activities is assuring the safety of food and dairy products made available for sale to consumers in Florida. Food-induced illnesses are a danger to public health and the financial well-being of Florida businesses.
The consequences of discontinuing the program	It would not be in the state's best interest to abolish this program due to the negative effect on consumers, the public health, and businesses that grow, prepare, or process food and dairy products. Abolishing the program could increase the occurrence of food-borne illnesses. The lack of a state inspection for dairy facilities would prevent these facilities from legally shipping milk and milk products to other states unless local authorities could provide the funds and resources for this service.
Determination as to public policy, which may include recommendations as to whether it would be sound public policy to continue or discontinue funding the program, either in whole or in part in the existing manner	The public benefits derived from the program's food safety-related services indicate that it is sound public policy to continue funding the program. However, fees for dairy facilities should be established and program fees for food establishments should be increased to better cover its regulatory costs and reduce its reliance on general revenue.
Progress towards achieving the outputs and outcomes associated with the program	The Food Safety and Quality Program met all of its Fiscal Year 2000-01 performance standards for dairy regulatory activities. The program also met or substantially met its outcome standards and met two out of four output standards for food safety regulatory activities.
An explanation of circumstances contributing to the state agency's ability to achieve, not achieve, or exceed its projected outputs and outcomes, as defined in s. 216.011, *F.S.,* associated with the program	The percentages of food products that met quality standards fell slightly in Fiscal Year 2000-01 from the prior year. Program managers attributed this to better targeting food sampling at products that that are deemed a higher risk of not meeting standards. It is not possible to compare the percentages of food stores and dairy establishments that met standards over the two years because the department changed how these measures were calculated. Output standards for poultry and egg grading were not met because of reduced workload demand, while pesticide residue analyses declined because a smaller number of pesticide compounds were targeted.

Issue	OPPAGA Conclusions
Whether the information reported pursuant to s. 216.031(5), *F.S.,* has relevance and utility for the evaluation of the program	The legislative performance measures allow for an assessment of the extent to which the program meets its purpose or is successful in carrying out its key functions.
Whether state agency management has established control systems sufficient to ensure that performance data are maintained and supported by state agency records and accurately presented in state agency performance reports	The department's inspector general has conducted a review to ensure the validity and reliability of this program's performance data. The inspector general has also recently conducted training for program managers and required them to submit a self-assessment of each measure to identify those measures that lack sufficient controls and require more extensive review. The inspector general plans to complete a review and make a determination for any program measure or data control system that appears to be problematic during Fiscal Year 2001-02.
Alternative courses of action that would result in administering the program more efficiently and effectively	To reduce program reliance on general revenue and improve the efficiency of program activities, OPPAGA recommends that the alternative courses of action below be implemented. ▪ To reduce the program's general revenue funding needs and contribute toward department overhead costs by up to $5.4 million, the Legislature and the department should establish reinspection fees and increase regulatory fees to levels that support program costs. ▪ To reduce program costs for unnecessary regulatory activities, the department should discontinue certification and inspection of the Spanish dairy after first consulting with its legal counsel and the Food and Drug Administration regarding any potential legal liability and available options for discontinuing state certification.

Appendix B

Example of Food Establishment Permit Fee Levels Necessary to Fund Direct and Most Indirect Costs

Type of Establishment[1]	Number of Units[2]	Type of Charge	Current Fee [3]	Estimated Revenue from Current Fees	OPPAGA Example of Fees	Total Estimated Revenue From Fee Example	Additional Revenue from Fee Example
Retail bakery	1,372	Food Permit	$325	$ 445,900	$400	$ 548,800	$ 102,900
Wholesale bakery	279	Food Permit	350	97,650	400	111,600	13,950
Canning plant	9	Food Permit	350	3,150	400	3,600	450
Bottling plant	79	Food Permit	350	27,650	400	31,600	3,950
Rabbit/game processor	31	Food Permit	350	10,850	400	12,400	1,550
Fish/seafood processor	354	Food Permit	350	123,900	400	141,600	17,700
Processor, other perishable foods	261	Food Permit	350	91,350	400	104,400	13,050
Processor, other non-perishable foods	511	Food Permit	275	140,525	400	204,400	63,875
Food storage warehouse	1,652	Food Permit	325	536,900	400	660,800	123,900
Food salvage center	29	Food Permit	350	10,150	400	11,600	1,450
Salvage store	88	Food Permit	350	30,800	400	35,200	4,400
Convenience store	4,424	Food Permit	275	1,216,600	400	1,769,600	553,000
Convenience store with food service	7,289	Food Permit	350	2,551,150	400	2,915,600	364,450
Meat market	236	Food Permit	350	82,600	400	94,400	11,800
Seafood market	571	Food Permit	350	199,850	400	228,400	28,550
Grocery store	1,569	Food Permit	350	549,150	400	627,600	78,450
Supermarket	1,671	Food Permit	350	584,850	400	668,400	83,550
Minor food outlet	5,659	Food Permit	275	1,556,225	400	2,263,600	707,375
Minor food outlet with food service	705	Food Permit	325	229,125	400	282,000	52,875
Health food store	1,037	Food Permit	275	285,175	400	414,800	129,625
Mobile vendor	3,588	Food Permit	275	986,700	400	1,435,200	448,500
Limited sales	2,255	Food Permit	75	169,125	400	902,000	732,875
Total From Food Establishment Permit Fees				**$ 9,929,375**		**$ 13,467,600**	**$ 3,538,225**

[1] We have excluded bottled water plants and packaged ice plants from this example, as these are subject to different permit fee maximums than the other food establishments.
[2] Units are the number of permitted food establishments as of July 1, 2001.
[3] Current fees are those that went into effect on March 6, 2001.

Source: OPPAGA analysis of Department of Agriculture and Consumer Services documents.

Florida Department of Agriculture and Consumer Services
CHARLES H. BRONSON, Commissioner
The Capitol • Tallahassee, FL 32399-0800

Please Respond to:

October 31, 2001

Mr. John W. Turcotte, Director
Office of Program Policy Analysis
and Government Accountability
111 West Madison, Room 312
Tallahassee, Florida 32399-1475

Dear Mr. Turcotte:

The following is my response to the preliminary findings and recommendations in your Justification Review of the Food Safety and Quality Program, Department of Agriculture and Consumer Services.

Recommendation 1
The department should revise rule 5K-4.020, Florida Administrative Code, to assess food establishment permit fees at levels needed to cover program costs and to levy the reinspection fee as authorized by law. If fees were established at levels to cover direct and indirect costs, the program would generate an estimated $3.7 million in additional revenues and be self-supporting.

Response
The Department has recently revised the annual permit fees in two rule revisions that will increase revenues by an anticipated 25% in FY 01-02. The most recent revision, effective today, establishes $500 as the annual fee for the most complex types of food establishments. This is the maximum cap authorized by the Legislature although a maximum cap of $1000 was requested. Annual permit fees for less complex establishments are set at lower dollar amounts. We will continue to assess food establishment permit fees set in rule 5K-4.020, F.A.C., to assure that they are established in an equitable manner and recover as much of the program's cost as is practical, while consistent with the cap established by statute. Food Safety was almost totally general revenue funded until 1992 when annual permit fees were established. Since that time fees and trust funds now pay 84.6% of the budget. The authority to establish a reinspection fee became effective July 1, 2001. The Department has initiated rule-making to implement procedures for cost recovery in accordance with the recent legislation.

Recommendation 2
In implementing fee increases for food establishments, the department should establish a sliding permit fee system that bases permits on the size and nature of the business being

regulated, which would better reflect the program's workload and help avoid creating burdensome fee levels for small businesses. A sliding scale that fully takes workload differences into account may require the Legislature to raise statutory fee maximums.

<u>Response</u>
The Department's fee schedule for the annual food permit fees has historically been on a sliding scale that reflected the nature of the business type. The permit fee is assessed once annually although a firm may be visited as often as three to four times per year depending upon the firm type and risk of products being made or sold. Also, the concept of the program's workload for different businesses was fully considered in the most recent rule revision. Efforts to assign fees more equitably led, in part, to the Department's decision to establish seven new firm categories in the current rule. However, it is unavoidable to note that this recommendation is inconsistent with the preceding recommendation, with the current statutory cap of $500 for food permit fees. The 2001 Legislature fully considered options for increasing the prior fee cap of $350 and determined that the cap should be $500 rather than a greater amount proposed by the Department for full recovery for inspection costs for the larger more complex food establishments.

The Department will maintain its schedule of annual food permit fees to assure that it reflects the program's workload and avoids unwarranted burdens for small businesses. The Department also concurs with the observation that Legislative action to increase the fee maximum will be necessary to fully address workload considerations.

<u>Recommendation 3</u>
The Legislature should amend statutes to authorize the department to assess a dairy product inspection fee levied at the bulk delivery point and to charge a reinspection fee. If fees were established at levels needed to cover direct and indirect costs, the program would generate an estimated $1.7 million in additional revenues and no longer need general revenue for this function.

<u>Response</u>
The Department does not support this recommendation as the dairy program is a long term established public health program with no ability for the limited number of dairy farms and processing plants to absorb such large fees such as the suggested seven cents per hundred weight for milk in Florida. As this recommendation is directed to the Legislature, we will work with the appropriate Legislative committees as they consider this recommendation.

<u>Recommendation 4</u>
To reduce program costs for unnecessary regulatory activities, the department should discontinue certification and inspection of the Spanish yogurt farm and take action to remove the product from grocery store shelves. To achieve this end, the department should first consult with its legal counsel and the Food and Drug Administration regarding any potential legal liability and available options for discontinuing state certification.

Response
The report accurately states that Florida agreed to inspect Pascual Dairy in Spain to avoid potential litigation and because the company expressed an intention of building a plant in Florida as soon as their U.S. markets justified a plant here. We are currently negotiating with Pascual about such a Florida plant.

We disagree with the assertion that those inspections have cost Florida $27,587. In fact, Pascual Dairy has reimbursed Florida for 100% of its direct expenses for visits to Spain. While the value of personnel expenses for the visits may have been $27,587, they did not cost the Division of Dairy Industry any additional salary dollars. The Division currently uses 0.1 to 0.2 FTE's per year to support its activities in Spain. Though Division personnel have had to work a little harder to meet this commitment, the Division has not neglected any local duties or added additional personnel to accommodate the Spanish dairy.

> ***OPPAGA Director's Comments***
> ***Our point is that the use of state resources to inspect the Spanish dairy is inappropriate. This activity is a federal responsibility, and it opens the state to potential liability. Sending an inspector four times a year, sending a laboratory certifier and a state rater at least every two years, and allowing trips by the division director and an interpreter all result in costs to the department. In our opinion, these costs are poor uses of state resources.***

In fact, the Division of Dairy Industry has benefited from its Spain experience. The Pascual products produced and imported are shelf-stable yogurt and puddings which do not compete with Florida dairy products. The facility is a very modern ultra-high temperature (UHT) pasteurization plant unlike any in the U.S. It has exposed Division personnel to new technology and significantly improved their regulatory knowledge base and skills in high-technology plants.

I appreciate the efforts of your staff in helping us to improve the operations of state government.

Sincerely,

/s/
Charles H. Bronson
Commissioner of Agriculture

CHB/ac

The Florida Legislature

Office of Program Policy Analysis and Government Accountability

Visit the *Florida Monitor*, OPPAGA's online service. See http://www.oppaga.state.fl.us. This site monitors the performance and accountability of Florida government by making OPPAGA's four primary products available online.

- OPPAGA publications and contracted reviews, such as policy analyses and performance reviews, assess the efficiency and effectiveness of state policies and programs and recommend improvements for Florida government.
- Performance-based program budgeting (PB²) reports and information offer a variety of tools. Program evaluation and justification reviews assess state programs operating under performance-based program budgeting. Also offered are performance measures information and our assessments of measures.
- Florida Government Accountability Report (FGAR) is an Internet encyclopedia of Florida state government. FGAR offers concise information about state programs, policy issues, and performance. Check out the ratings of the accountability systems of 13 state programs.
- Best Financial Management Practices Reviews of Florida school districts. In accordance with the *Sharpening the Pencil Act*, OPPAGA and the Auditor General jointly conduct reviews to determine if a school district is using best financial management practices to help school districts meet the challenge of educating their students in a cost-efficient manner.

Subscribe to OPPAGA's electronic newsletter, Florida Monitor Weekly, a free source for brief e-mail announcements of research reports, conferences, and other resources of interest for Florida's policy research and program evaluation community.

OPPAGA provides objective, independent, professional analyses of state policies and services to assist the Florida Legislature in decision making, to ensure government accountability, and to recommend the best use of public resources. This project was conducted in accordance with applicable evaluation standards. Copies of this report in print or alternate accessible format may be obtained by telephone (850/488-0021 or 800/531-2477), by FAX (850/487-3804), in person, or by mail (OPPAGA Report Production, Claude Pepper Building, Room 312, 111 W. Madison St., Tallahassee, FL 32399-1475).

Florida Monitor: http://www.oppaga.state.fl.us/

Project supervised by Becky Vickers (850/487-1316)
Project conducted by Ron Patrick (850/487-3878)
John W. Turcotte, OPPAGA Director